

# Town of Wheatfield Local Waterfront Revitalization Program

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Adopted:  
Town of Wheatfield Town Board, March 25, 2013

Approved:  
NYS Secretary of State, February 25, 2014

Concurred:  
U.S. Office of Ocean and Coastal Management, July 24, 2014

This Local Waterfront Revitalization Program (LWRP) has been prepared and approved in accordance with provisions of the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42) and its implementing Regulations (19 NYCRR 601). Federal concurrence on the incorporation of this Local Waterfront Revitalization Program into the New York State Coastal Management Program as a routine program change has been obtained in accordance with provisions of the U.S. Coastal Zone Management Act of 1972 (p.L. 92-583), as amended, and its implementing regulations (15 CFR 923). The preparation of this program was financially aided by a federal grant from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, under the Coastal Zone Management Act of 1972, as amended. [Federal Grant No. NA-82-AA-D-CZ068.] The New York State Coastal Management Program and the preparation of Local Waterfront Revitalization Programs are administered by the New York State Department of State, Office of Planning and Development, One Commerce Plaza, 99 Washington Avenue, Suite 1010, Albany, New York 12231-0001.



# TOWN OF WHEATFIELD NIAGARA COUNTY

2800 Church Road  
North Tonawanda, NY 14120-1099  
Phone: (716) 694-6440 Fax: (716) 694-5419

Kathleen M. Harrington  
Town Clerk  
Registrar of Vital Statistics  
Records Management Officer  
Marriage Officer

## AUTHORIZING RESOLUTION

I, Kathleen Harrington-McDonell, elected Town Clerk of The Town of Wheatfield, 2800 Church Road, North Tonawanda, NY 14120, do hereby certify that the following resolution was adopted at the regular meeting of the Town of Wheatfield held on March 25, 2013 at 7:30 pm, and is incorporated in the original minutes of said meeting and that said resolution has not been altered, amended or revoked and is in full force and effect.

### Resolved:

WHEREAS, the Town of Wheatfield initiated preparation of Local Waterfront Revitalization Program in cooperation with the New York State Department of State, pursuant to Article 42 of the Executive Law; and

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

WHEREAS, the Town of Wheatfield as a lead agency, filed a Negative Declaration-Notice of Determination of Non-Significance on July 9, 2012 for the adoption of the Local Waterfront Revitalization Program, pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act);

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

**This motion was CARRIED: AYES 5 – NAYS 0.**

Kathleen M. Harrington-McDonell  
Town Clerk



STATE OF NEW YORK  
DEPARTMENT OF STATE

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

February 25, 2014

Honorable Robert B. Cliffe  
Supervisor  
Town of Wheatfield  
Town Hall, Upper Level  
2800 Church Road  
Wheatfield, NY 14120-1099

Dear Supervisor Cliffe:

I am pleased to inform you that I have approved the Town of Wheatfield Local Waterfront Revitalization Program, pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act. Everyone who participated in the preparation of this program is to be commended for developing a comprehensive management program that promotes the balanced preservation, enhancement, and utilization of the valuable local waterfront resources along Niagara River and Tonawanda Creek.

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

The approved LWRP will be available on the website of the Department of State, at [http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP\\_status.html](http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html).

If you have any questions, please contact Renee Parsons of the Office of Planning and Development at 518-473-2461.

Sincerely,

A handwritten signature in cursive script that reads "Cesar A. Perales".

Cesar A. Perales  
Secretary of State



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

JUL 24 2014

Mr. Steve Ridler  
State of New York  
Department of State  
One Commerce Plaza  
99 Washington Ave.  
Albany, NY 12231

Dear Mr. Ridler:

Thank you for the New York Department of State's March 19, 2014, request that changes to the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) be incorporated into the New York Coastal Management Program. You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) *Program Change Guidance (July 1996)*. OCRM received the request on March 25, 2014, and OCRM's decision deadline was extended to July 24, 2014.

Based on our review of your submission, we concur, with the exceptions described below, that the changes are RPCs and we approve the incorporation of the changes as enforceable and non-enforceable policies of the New York Coastal Management Program. Federal Consistency will apply to the approved changes to enforceable policies only after a notice of this approval is published pursuant to 15 C.F.R. § 923.84(b)(4) and OCRM's *Addendum to the July 1996 Program Change Guidance (November 2013)*. Please include in the public notice the list of changes provided in this letter, and please send a copy of the notice to OCRM.

### **CHANGES APPROVED**

See enclosed list of the changes incorporated into the New York Coastal Management Program.

### **QUALIFICATIONS**

States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by OCRM as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no requirement or document referenced in these approved enforceable policies may be applied for federal consistency unless that requirement or document has separately been approved by OCRM.



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*Section VI of the LWRP:*

Section 6.2 of the LWRP contains a list of federal actions subject to federal consistency review, which is identical to the most recent version of the state's list that OCRM approved on March 28, 2006. The only listing of activities subject to CZMA review is the state list approved by OCRM. Neither the list in Section VI 6.2 nor any other listing of activities in this, or any other LWRP, should be relied on in the state's exercise of CZMA review authority.

Section 6.3 of the LWRP provides a listing of "State and Federal Programs Necessary to Further the LWRP." This listing has no applicability for CZM review purposes.

**CHANGES NOT APPROVED**

*Section III of the LWRP:*

Policy 13 and its sub-policies are not approved for incorporation into the New York Coastal Management Program. In reviewing these policies, OCRM found several issues including: the lack of a definable standard (Policy 13); conclusory statements in the explanatory text presuming how the policy will be applied, which in effect prohibit certain activities (Policy 13); arbitrarily discriminatory distinctions in the permissibility of activities (Policy 13.2); incorporation by reference of regulations which have not been shown to have been incorporated into the New York Coastal Management Program (Policy 13.3); and the assertion of local authority over the siting of liquefied natural gas facilities which is within the exclusive jurisdiction of the Federal Energy Regulatory Commission (Policy 13.3). In 2012, OCRM gave notice of these issues to the state with its disapproval of similar policies included in the proposed program changes to the Town of Hamburg LWRP.

As part of the review of this RPC and other recently submitted RPCs for LWRPs, OCRM has had several discussions with the state in regard to the explanatory text for the policies. The state has not submitted the explanatory text for approval as an "enforceable policy" for CZMA federal consistency review purposes. As noted in the introduction to Section III in which the enforceable policies for the LWRP are described, the enforceable policies to be applied for the purposes of reviewing federal actions under the CZMA are only those statements enumerated as policies. It is further stated in the introduction that the explanatory text may not be relied upon as an enforceable policy for CZMA federal consistency review purposes. Nevertheless, the explanatory text is a statement as to how the Town, and state by virtue of its approval of the text, intends for the policy to be applied. OCRM cannot ignore these statements in the context of considering the approvability of these policies for incorporation into the New York Coastal Management Program as "enforceable policies" for CZMA federal consistency review purposes.

For example, Policy 13 states "Promote appropriate use and development of energy and mineral resources." Apart from lacking a subject noun, the policy is so vague that OCRM finds that it lacks a definable standard and thus raises concerns about the arbitrariness of its application. The explanatory text for Policy 13 goes beyond stating the factors that should be considered for determining appropriateness with the inclusion of the conclusory statement that offshore wind energy conversion systems are inappropriate. If the Town or state intends for the policy to prohibit offshore wind farms, then the policy should state that.

Despite the disclaimer in the introduction to Section III of the applicability of the explanatory text for CZMA federal consistency review purposes, Policy 6.1 contains explanatory text that states: "The standards for this section are to be applied to any activity that is subject to consistency review under federal and state laws." This assertion of the applicability of the standards within the explanatory text for CZMA review purposes has no such effect and is not part of the OCRM-approved LWRP.

**PUBLIC AND FEDERAL AGENCY COMMENTS**

OCRM received no comments on this RPC submission.

Thank you for your cooperation in this review. Please contact Glynnis Roberts at (301) 563-7102, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Joelle Gore". The signature is fluid and cursive, with a large initial "J" and "G".

Joelle Gore, Acting Chief  
Coastal Programs Division

Enclosure(s): Policies Approved and Incorporated into the New York State Coastal Management Program

**Enclosure to OCRM's July 24, 2014, Approval of the Incorporation of Changes to  
the New York Coastal Management Program**

Changes marked with an asterisk (\*) are incorporated into the New York Coastal Management Program, but do not contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
<b>ADDED:</b>		mm/dd/yyyy	mm/dd/yyyy
* Town of Wheatfield LWRP	* Sections I, II, IV, V, VI (except 6.3), VII, and Appendices A-F	02/25/2014	02/25/2014
Town of Wheatfield LWRP Policies	Section III, Policies 1-12 (including their sub-policies)  (note: explanatory text included in Section III is not applicable as enforceable policies for CZMA Federal Consistency Review purposes)	02/25/2014	02/25/2014

Changes marked with an asterisk (\*) are incorporated into the New York Coastal Management Program, but do not contain enforceable policies that can be used for Federal Consistency.

# Contents

<b>Introduction .....</b>	<b>1</b>
<b>Section I - Local Waterfront Revitalization Area Boundary .....</b>	<b>1</b>
1.1 Upland Boundary of the LWRA .....	1
1.2 Waterside Boundary of the LWRA.....	2
<b>Section II   Inventory and Analysis .....</b>	<b>1</b>
<b>2.1 Summary of Issues and Opportunities in the Waterfront Revitalization Area...</b>	<b>1</b>
2.1.1. Assets and Opportunities .....	1
2.2.2 Issues and Concerns .....	2
<b>2.2 Region Setting, Historic Context and Community Characteristics .....</b>	<b>2</b>
<b>2.3 Overview of Coastal Resources Planning Efforts .....</b>	<b>3</b>
2.3.1 Regional Planning.....	3
2.3.2 Local Planning .....	7
<b>2.4 Demographics and Economic Considerations .....</b>	<b>8</b>
2.4.1 Population and Household Characteristics.....	8
2.4.2 Housing .....	9
2.4.3 Income and Employment.....	10
<b>2.5 Existing Land and Water Uses .....</b>	<b>11</b>
2.5.1 Existing Land Use.....	11
2.5.2 Water Dependent and Water-Enhanced Uses.....	14
2.5.3 Abandoned, Underutilized and Deteriorated Sites and Structures.....	14
2.5.4 Public Access and Recreation .....	15

2.5.5 Zoning.....	16
2.5.6 Public and Underwater Land Ownership.....	18
<b>2.6 Surface Water Uses, Navigation and Harbor Management .....</b>	<b>21</b>
2.6.1 Vessel Use and Navigation .....	21
2.6.2 Marinas, Docks and Bulkheads.....	24
<b>2.7 Natural Resources.....</b>	<b>26</b>
2.7.1 Water Resources .....	26
2.7.2 Wetlands and Habitats.....	31
2.7.3 Topography and Soils.....	32
2.7.4 Flooding and Erosion .....	32
2.7.5 Environmental Hazards and Constraints.....	33
<b>2.8 Historic, Cultural and Scenic Resources .....</b>	<b>34</b>
2.8.1 Historic Sites and Structures.....	34
2.8.2 Archaeological Resources.....	35
2.8.3 Scenic Resources .....	36
<b>2.9 Public Infrastructure .....</b>	<b>37</b>
2.9.1 Water Supply .....	37
2.9.2 Wastewater Management .....	37
2.9.3 Stormwater Management.....	38
2.9.4 Solid Waste Management .....	38
2.9.5 Other Utilities .....	39
2.9.6 Transportation Systems.....	39
2.9.7 Emergency Services .....	39
<b>Section III - Local Waterfront Revitalization Program Policies .....</b>	<b>1</b>
<b>DEVELOPED WATERFRONT POLICIES .....</b>	<b>3</b>
POLICY 1 .....	3
POLICY 2 .....	8
POLICY 3 .....	10

<b>NATURAL WATERFRONT POLICIES.....</b>	<b>11</b>
POLICY 4.....	11
POLICY 5.....	19
POLICY 6.....	23
POLICY 7.....	25
POLICY 8.....	27
<b>PUBLIC WATERFRONT POLICIES.....</b>	<b>29</b>
POLICY 9.....	29
<b>WORKING WATERFRONT POLICIES.....</b>	<b>33</b>
POLICY 10.....	33
POLICY 11.....	35
POLICY 12.....	36
POLICY 13.....	36
<b>Section IV - Proposed Land and Water Uses and Proposed Projects.....</b>	<b>1</b>
<b>4.1 Proposed Land Uses.....</b>	<b>1</b>
<b>4.2 Proposed Water Uses/Harbor Management.....</b>	<b>3</b>
<b>4.3 Proposed Town Projects and Studies.....</b>	<b>3</b>
<b>Section V - Techniques for Implementation of the Local Program.....</b>	<b>1</b>
<b>5.1 Existing Laws.....</b>	<b>1</b>
Chapter 75, Campgrounds and Recreational Vehicle Parks.....	1
Chapter 82, Drainage.....	1
Chapter 101, Flood Damage Prevention.....	1
Chapter 114, Mobile Home Parks.....	2

Chapter 123, Parks and Recreation Areas .....	2
Chapter 134, Property Maintenance.....	2
Chapter 138, Public Improvements .....	2
Chapter 146, Sewers.....	2
Chapter 161, Solid Waste.....	2
Chapter 163, Storm Sewer System .....	3
Chapter 164, Stormwater Management .....	3
Chapter 169, Subdivision of Land .....	3
Chapter 194, Water .....	4
Chapter 198, Wind Energy Conversion Systems .....	4
Chapter 200 – Zoning.....	4
<b>5.2 Proposed Local Laws Necessary to Implement the LWRP.....</b>	<b>4</b>
LWRP Consistency Review Law.....	4
Waterfront Residential (R-W) District.....	5
Zoning.....	5
<b>5.3 Other Public and Private Actions Necessary to Implement the LWRP .....</b>	<b>6</b>
<b>5.4 Management Structure for Implementing the LWRP.....</b>	<b>7</b>
<b>5.5 Financial Resources Necessary to Implement the LWRP .....</b>	<b>8</b>
<b>5.6 Local Regulatory Changes .....</b>	<b>8</b>
<b>Section VI - State and Federal Actions and Programs Likely to Affect Implementation .....</b>	<b>1</b>
<b>Section VII - Local Commitment.....</b>	<b>1</b>
<b>7.1 Local Commitment.....</b>	<b>1</b>
<b>7.2 Consultation.....</b>	<b>1</b>
<b>Appendix A - LWRP Consistency Review Law.....</b>	<b>1</b>
<b>Appendix B –Zoning Amendment .....</b>	<b>1</b>
<b>Appendix C - Standards for Docks on the Canal System.....</b>	<b>1</b>
<b>Appendix D - Aerial Photos of Shoreline .....</b>	<b>1</b>
<b>Appendix E - Guidelines for Notification and Review .....</b>	<b>1</b>
<b>Appendix F – SEQRA Documents .....</b>	<b>1</b>

## ACKNOWLEDGEMENTS

The Town of Wheatfield Local Waterfront Revitalization Plan was funded in part by the New York State Department of State under Title II of the Environmental Protection Fund. The development of this Program was a multi-phased endeavor made possible through the efforts of:

### **Town of Wheatfield Waterfront Advisory Committee**

Larry Helwig, Town of Wheatfield Town Board Liaison

Robert O'Toole, Wheatfield Town Attorney

Richard Muscatello, Town of Wheatfield Planning Board Chairman

Edward Sturgeon, Town of Wheatfield Parks and Recreation Department

Bernie Rotella, Town of Wheatfield Grants Consultant

Joseph Gargas, Town of Wheatfield Citizen Representative

### **Our special thanks to all who assisted in the creation of this document**

Robert Cliffe, Town of Wheatfield Supervisor

Gilbert Doucet, Town of Wheatfield Councilman

Arthur Gerbec, Town of Wheatfield Councilman

Kenneth Retzlaff, Town of Wheatfield Councilman

Joseph Caturia, Town of Wheatfield Code Enforcement Officer

Kathleen Harrington, Wheatfield Town Clerk

Sharon Leighton, New York State Canal Corporation

Amy DeGaetano, New York State Department of State

### **And the Citizens of the Town of Wheatfield**

**Project Consultant** - Wendy E. Weber Salvati, AICP



## INTRODUCTION

The New York State Local Waterfront Revitalization Program (LWRP) is designed to give waterfront communities an opportunity to assess conditions along the waterfront, establish policies to guide development, and implement appropriate waterfront land uses and projects. It is an extension of the State's Coastal Management Program that allows communities to design the program to better reflect and address local issues and opportunities in the designated local waterfront revitalization area. The LWRP establishes a planning framework for future public and private investment and development actions that occur within that area.

The Town of Wheatfield is located on the shore of the Niagara River, in the southwestern portion of Niagara County, New York. The Town of Wheatfield has about 3.5 miles of shoreline, including approximately three miles of shoreline along the Niagara River in Sub-Area 1 and approximately one-half mile along the Erie Canal (Tonawanda Creek) in Sub-Area 2. The Town is surrounded by the Town of Lewiston and Town of Cambria to the north, Town of Pendleton to the east, City of North Tonawanda and Niagara River to the south, and the City of Niagara Falls and Town of Niagara to the west. Within the western New York region, Wheatfield is situated approximately 25 miles north of the Buffalo metropolitan area.

Although both sub-areas are predominantly rural in nature, much of the shoreline has been developed with medium density residential uses. Wheatfield riverfront in Sub-Area 1 had long been popular as a summer residential area, with numerous cottages and smaller, modest homes. Over the past few decades, the area has become increasingly attractive for residential use, with many cottages transitioning to year-round residences. The Sub-Area 1 waterfront includes distinct neighborhoods, which are characterized by narrow roadways lined with small homes and mature trees. These areas include Sunset Drive, Hird Street, York Road and Willow Lane. In addition, the area includes a mix of residential and commercial uses along River Road and a large manufactured/mobile home park.

The Erie Canal portion of the waterfront (Sub-Area 2) follows residential properties along Lockport Avenue, which extends below Niagara Falls Blvd. The western section, near the City of North Tonawanda, only has housing on the upland side of Lockport Road, with limited access to the Canal. Whereas, the eastern side of Lockport Road, which abuts West Canal Marina Park in the Town of Pendleton, has housing along both sides of Lockport Road. Housing along the Canal has private dockage.

With limited areas of public land, the Town desires to provide opportunities for public access to the greatest extent possible. The Town would also like to establish a multi-use trail that would become part of the regional Niagara River Greenway system, allowing a connection with the adjoining Cities

of Niagara Falls and North Tonawanda. This program is aimed at improving the quality of life in the waterfront areas and taking advantage of existing assets along the Niagara River and Tonawanda Creek (Erie Canal).

This LWRP includes an outline of proposed changes to the NYS Coastal Management Program boundary, to delineate the local waterfront revitalization area. Section II includes an updated inventory and analysis of existing conditions and resources in the waterfront area. The policies contained in Section III of this LWRP support the inventory and are focused on waterfront revitalization, making beneficial use of waterfront lands, protecting community character and protecting important natural and cultural resources. The policies are further supported by land and water use and implementation proposals outlined in Sections IV and V. Together, the information contained in the LWRP comprises a program that sets the direction for managing and revitalizing the Wheatfield waterfront into the future.

## SECTION I      Local Waterfront Revitalization Area Boundary

The Town of Wheatfield Local Waterfront Revitalization Area (LWRA) boundary expands the State's original coastal area boundary established in accordance with the requirements of the Coastal Zone Management Act of 1972, as amended, to include waterfront lands along the Tonawanda Creek/Erie Canal. The Town of Wheatfield LWRA boundary encompasses all of the land area and water area shown on [Map 1A](#) and [Map 1B](#) and described below.

### 1.1      Upland Boundary of the LWRA

The upland boundary of the Wheatfield LWRA incorporates two distinct sub-areas described as follows:

#### **Sub-Area 1 – Niagara River ([Map 1A](#))**

Beginning at the mean low water line of the Niagara River and proceeding in a northerly direction along the municipal boundary between the City of Niagara Falls and the Town of Wheatfield to the northerly right-of-way boundary at the terminus of LaSalle Expressway.; thence proceeding in a southeasterly direction along the northern right-of-way line of LaSalle Expressway to the intersection with the easterly right-of-way boundary of Williams Road. The boundary then proceeds south along the eastern right-of-way line of Williams Road to a point situated 100 feet north of the abandoned corridor for the CSX Railroad; the boundary then continues to the southeast at a measured distance of 100 feet north of the abandoned rail corridor to intersect with the western right-of-way boundary line of Liberty Drive. The boundary thence follows the westerly right-of-way boundary in a northeasterly direction for approximately 1,500 feet, where it turns directly east, to intersect with the northerly boundary of a narrow Town-owned parcel. From this point, the boundary line follows the north side of this Town-owned property, in an easterly then southeasterly direction, to a point where it intersects the municipal boundary for the City of North Tonawanda; thence proceeding directly south, along the municipal boundary, to the mean low water line of the Niagara River.

#### **Sub-Area 2: Tonawanda Creek ([Map 1B](#))**

Beginning at the mean low water line of the shoreline of Tonawanda Creek and proceeding in a northerly direction along the boundary between the City of North

Tonawanda and the Town of Wheatfield (along the centerline of Bull Creek – also known as Sawyer Creek) to Lockport Avenue; thence, extending generally east from the center line of Bull Creek, following the rear property lines of all of the parcels that have frontage along the northern (upland) side of Lockport Avenue, to the intersection with centerline of Niagara Falls Blvd. Then, proceeding north along the eastern right-of-way line of Niagara Falls Blvd. to the intersection with Connecting Blvd.; thence heading east along the northern right-of-way boundary of Connecting Blvd. to the northerly property line of Baisch Park. Then following the property boundary of Baisch Park in a northeasterly and then southerly direction to the southeastern corner of the property. At this point, the boundary extends directly east for approximately 400 feet, along the rear of the parcels that have frontage along the north (upland) side of Lockport Road, to intersect with the centerline of Townline Road (which is the municipal boundary between the Town of Wheatfield and the Town of Pendleton). The boundary then proceeds to the south, following the municipal boundary to the mean low water line at the shoreline of Tonawanda Creek.

## **1.2 Waterside Boundary of the LWRA**

The waterside boundary for the Sub-Area 1 portion of the Wheatfield LWRA begins at the intersection of the municipal boundary between the City of Niagara Falls and the Town of Wheatfield and the mean low water line of Niagara River, the LWRA waterside boundary then proceeds to the south along the municipal boundary of the Town of Wheatfield, over the surface waters of Niagara River, to the intersection with the boundary between Erie and Niagara Counties, which is generally located at the center of the River. The boundary then turns sharply to the southeast, following the County boundary line to a point where it intersects with the municipal boundary between the Town of Wheatfield and the City of North Tonawanda; then proceeding in a northerly direction to the mean low water line of Niagara River. This waterside boundary is consistent with the State Coastal Area boundary.

The waterside boundary for the Tonawanda Creek (Sub-Area 2) portion of the waterfront extends south from a point along the centerline of Bull Creek, which represents the boundary between the Town of Wheatfield and the City of North Tonawanda, where it coincides with the mean low water line at the shoreline of Tonawanda Creek. From this point, the boundary proceeds in a southerly direction to the center line of Tonawanda Creek, which is generally located at the center of the Creek; thence, proceeding in an easterly direction along the centerline of Tonawanda Creek to the intersection with the municipal boundary between the Town of Wheatfield and the Town of Pendleton. At this point the waterside boundary turns to the north and continues along the municipal boundary to the mean low water at the shoreline of Tonawanda Creek.

## SECTION II     **Inventory and Analysis**

The Town of Wheatfield has limited areas of waterfront, which are well-established with residential uses. These areas have retained a rural character that is enhanced by their shoreline locations. With limited areas of public land, the Town desires to provide opportunities for public access to the greatest extent possible. The Town would also like to establish a multi-use trail that would become part of the regional Niagara River Greenway system, allowing a connection with the adjoining Cities of Niagara Falls and North Tonawanda. This program is aimed at improving the quality of life in the waterfront areas and taking advantage of existing assets along the Niagara River and Tonawanda Creek (Erie Canal).

### **2.1     Summary of Issues and Opportunities in the Waterfront Revitalization Area**

#### **2.1.1     Assets and Opportunities**

- The Wheatfield waterfront areas have small town, rural character, making them attractive places for residents and visitors alike. Scheduled
- River Road, in Sub-Area 1, is a designated segment of the New York Great Lakes Seaway Trail and a State-designated Scenic By-Way, validating the scenic and cultural importance of this shoreline thoroughfare.
- The LWRA areas are served by public sewers and public water supply, and there is capacity at the Niagara County wastewater treatment plant to accommodate future development.
- The Town owns 4.6 acres of land with shoreline access in Sub-Area 1 that offers potential for public access and recreation.
- Baisch Park, in Sub-Area 2, offers opportunities for passive recreation.
- The waterfront areas are situated immediately adjacent to public parks in neighboring communities that offer boat launching and access to the waterfront.
- The Niagara County Sewer District property offers an opportunity for limited waterfront access for viewing and passive recreation along the Niagara River.
- Abandoned railroad corridors in Sub-Area 1 provide opportunities for the development of multi-use trails.

### **2.1.2 Issues and Concerns**

- The waterfront is primarily residential in nature; there are limited water-dependent uses, waterfront commercial and public recreation opportunities.
- Public Access is very limited in both sub-areas of the LWRA. Although there are numerous private docks in Sub-Area 1 and a few small private docks in Sub Area 2, there are no opportunities for public fishing access or public docking facilities in either area.
- River Road, in Sub-Area 1, accommodates a significant volume of commuter traffic that has adversely impacted the use and safety of this roadway for local residents.
- Control of signage along River Road to improve visual quality.
- Baisch Park, in Sub-Area 2, requires drainage improvements and enhancement with additional public amenities to improve its use and enjoyment.
- There is shoreline protection along many riverfront residences, but some of the existing erosion protection structures are in various states of disrepair.
- Water quality issues in the Niagara River and Tonawanda Creek have resulted in fish consumption advisories.
- Properties in Sub-Area 1 are narrow; many residential lots do not conform to current Code requirements.

## **2.2 Region Setting, Historic Context and Community Characteristics**

The Town of Wheatfield was formed in 1836 from the Town of Niagara. It is situated in the southwest part of Niagara County, surrounded by the Town of Lewiston and Town of Cambria to the north, Town of Pendleton to the east, City of North Tonawanda and Niagara River to the south, and the City of Niagara Falls and Town of Niagara to the west (see [Map 2](#)). Within the western New York region, Wheatfield is situated approximately 25 miles outside the Buffalo metropolitan area. The River Road (waterfront) section of the Town became a prosperous farm area in the 1920s and included the showplace "Wheatfield Farms". During the early to mid 1900's, there were vacation cottages, beaches, an amusement park, and nightclubs found along the Niagara River. Permanent housing has replaced many of the cottages and remnants of some bygone structures are still visible along River Road today.

The Town of Wheatfield measures 28.6 square miles in size and has about 3.5 miles of shoreline, including approximately three miles of shoreline along the Niagara River in Sub-Area 1 and approximately one-half mile along the Erie Canal in Sub-Area 2.

Although both sub-areas are predominantly rural in nature, much of the shoreline has been developed with medium density residential uses. As previously noted, the Wheatfield riverfront in Sub-Area 1, has long been popular as a summer residential area, with numerous cottages and smaller, modest

homes. Over the past few decades, the area has become increasingly attractive for residential use, with many cottages (over 90 percent) transitioning to year-round residences. The Sub-Area 1 waterfront includes distinct neighborhoods, which are characterized by narrow roadways lined with small homes and mature trees. These areas include Sunset Drive, Hird Street, York Road and Willow Lane. In addition, the area includes a mix of residential and commercial uses along River Road and a large manufactured/mobile home park. Access to the Niagara River in Sub-Area 1 is gained from private docks situated on residential properties that front along the river. There are no public parks, marinas or other waterfront amenities in this area.



*Sub-Area 1: Niagara River*

*Sub-Area 2: Erie Canal (Tonawanda Creek)*

The Erie Canal portion of the waterfront (Sub-Area 2) follows properties along Lockport Avenue, which extends below Niagara Falls Blvd., essentially splitting the area into two sections. Both sections are residentially developed. The eastern side, abutting West Canal Marina Park in the Town of Pendleton, has housing along both sides of Lockport Road, whereas the western section, near the City of North Tonawanda only has housing on the upland side of Lockport Road. This area is rural in nature, with limited access to the Canal.

## **2.3 Overview of Coastal Resources Planning Efforts**

### **2.3.1 Regional Planning**

There are a number of regional plans that are available to help guide land use and other activities in the Town of Wheatfield and Niagara County, as a whole.

- *Framework for Regional Growth for Erie and Niagara Counties*

The Framework for Regional Growth for Erie and Niagara Counties, New York is the regional planning document. The Framework was finalized in October of 2006 and establishes basic policies and principles to guide the future growth and development of the region. Specifically, the Framework provides:

- A vision for how the region should grow over the next 15 years.

- Direction regarding growth and redevelopment matters for County decision makers and other regional organizations that are linked to the two counties by way of funding, membership or other relationships.
- Information on the ways local governments, private sector and non-profit actions and initiatives can reinforce the overall regional vision.
- Mechanisms to insure that the goals, concepts and recommendations of the Framework for Regional Growth are implemented in an efficient and accountable manner.

The Framework's recommendations build on the recognition that the Region's communities cannot effectively plan in isolation or independently address important issues, as almost every challenge faced by a locality has a regional dimension. The Framework is not a conventional zoning or land use plan or capital improvement program. It is designed to help County and regional leaders make better policy and investment decisions, more effectively leverage limited resources and provide more consistent direction and useful support to municipalities.

The Framework for Regional Growth establishes planning policy areas that define, in broad terms, where County policies encourage development and public investment, where development and public investment may be appropriate subject to careful evaluation and where conservation strategies generally take precedence over plans for development and public investment. The planning policy areas include Developed Areas, Developing Areas and Rural Areas. The Town of Wheatfield waterfront area falls into the Developed Areas category because it is situated between the Cities of Niagara Falls and North Tonawanda, and includes suburban development that is served by public sewer, water and transportation infrastructure. The policies and strategies for the Developed Areas include:

- sparking investment, attracting new households and businesses,
- supporting the conservation and stabilization of existing neighborhoods,
- supporting new compact, pedestrian oriented, mixed-use development on vacant and underutilized sites, and
- improving livability and economic vitality.

■ *Niagara Communities Comprehensive Plan*

The Niagara Communities Comprehensive Plan (NCCP) is a county-wide planning document that emphasizes a multi-municipal approach for planning and decision making. The NCCP provides a framework for achieving five high priority goals:

- Encouraging desirable and appropriate growth and development,
- Strengthening the local economy,
- Improving the delivery of services,
- Prioritizing and coordinating capital improvements, and
- Improving the quality of life for County residents.

The Niagara Communities Comprehensive Plan is intended to unify existing county wide planning efforts, while recognizing the important planning initiatives undertaken at other levels of government, as well as the efforts of community organizations and agencies. The Plan is a guiding document for assisting future decision making by providing direction for ongoing and future planning efforts. The Plan also recommends various strategies and potential projects, and will be helpful for securing funds necessary to undertake these initiatives.

*Niagara River Greenway Plan*

The Niagara River Greenway Plan is a guidance document for creating connections between the various constituents, organizations and municipalities that comprise the Niagara River Greenway. It is an initiative with broad-based support aimed at fostering consensus. Under the umbrella of the Niagara River Greenway, these entities can advance local and regional agendas for community livability, environmental sustainability, tourism and economic revitalization.

The Niagara River Greenway Plan (NRGP) establishes a unified vision and a set of principles for the Niagara River Greenway. It identifies assets and resources that make up the Greenway. It sets priorities that suggest the types of activities to target in the near-term. It identifies potential funding sources, partnerships and linkages, and, in conjunction with the Metropolitan Planning Organization (MPO), addresses key transportation issues that affect the Greenway. The Plan also discusses several high priority Implementation Concepts, which describe system-wide approaches and strategies for Greenway development.

The principles and goals for the NRGP represent the general values for guiding greenway planning toward achievement of the vision. These principles and goals are centered on promoting high-quality, ecologically sensitive and sustainable activities and development.

The central theme is aimed at improving access to the Niagara River, making connections between communities and filling gaps in the trail system, protecting and restoring environmental systems, celebrating the history and heritage of the region, sparking revitalization and renewal, promoting long term sustainability and extending the Frederick Law Olmsted legacy for future generations.

A fundamental goal of the Niagara River Greenway Plan is riverfront preservation and restoration to fulfill the vision for Lake Ontario to Lake Erie access along the shoreline. Recognizing that much of the waterfront is held in private ownership, increasing public access and awareness through trails, conservation easements and other means is important. The recommendations in the Niagara River Greenway Plan identify two projects for the Town of Wheatfield waterfront. These include the development of a proposed multi-use pathway extending along the length of the waterfront connecting the Town with the adjoining communities of Niagara Falls and North Tonawanda, and the development of a waterfront park on a five-acre shoreline parcel owned by the Town.

- *2008 Bicycle and Pedestrian Master Plan for Erie and Niagara Counties*

The 2008 Bicycle and Pedestrian Master Plan sets forth the vision for making bicycling and walking an integral part of daily life in the Buffalo and Erie/Niagara region. This plan recommends projects, programs and policies for the next ten years to encourage use of these practical, non-polluting and affordable modes of transportation. The plan looks at streets for cycling and walking, parking, transit connections, education and marketing (health promotion), law enforcement and implementation. The plan contains goals and objectives, with over 100 suggested actions that detail how to implement the objectives in realistic, meaningful and cost effective ways.

The express purpose of the Master Plan is to provide coordinated guidance for the implementation of a safe, efficient and accessible transportation system designed for walking and bicycling. By reassessing previous goals and objectives, the intent is to adjust and reaffirm a regional vision regarding bicycling and pedestrian activities, including the establishment of interconnected bicycle and pedestrian networks for transportation. Such networks provide for focused treatments and sometimes separate facilities to promote walking and bicycling, and add a critical multi-modal element to a transportation system often geared toward motor vehicle travel. It furthermore reflects current federal goals to increase the amount of local bicycling and walking, and to increase safety by reducing the number of accidents. The Master Plan serves as a framework for facility investments and assists in promoting mobility options, healthier lifestyles, reducing air pollutants, and decreasing traffic congestion.

The goals of the 2008 Bicycle and Pedestrian Master Plan align with the Town's goal to construct a multi-use pathway along the abandoned railway corridor, situated north of River Road. The plan outlines objectives that support the Town's vision for the waterfront pathway, including the adaptation of existing roadways to allow for safe and convenient bicycle travel, the incorporation of innovative designs to expand and enhance the regional bikeway network, making intersections bicycle and pedestrian friendly, and identifying and eliminating hazards to pedestrian and bicycle movement.

- *2035 Long Range Transportation Plan Update*

This plan acts as the multimodal blueprint for transportation systems and services and is aimed at meeting the transportation demands of existing and future development in Erie and Niagara County. The plan provides forecasts for the year 2035 for both population and employment. The plan devotes 70 percent of funding to maintaining the existing transportation infrastructure system.

- *Transportation Improvement Program, 2011-2015*

The Transportation Improvement Program (TIP) is the capital programming component of the Long Range Transportation Plan consisting of all federally funded roadway, transit, and

major transportation projects being considered within the region through 2015. The TIP also includes those regionally significant transportation projects being advanced by state and local entities with non-federal funding.

- *Niagara County Comprehensive Emergency Management Plan (CEMP)*

This plan was developed to enhance Niagara County's ability to manage emergency situations, with the focus on rapidly and adequately responding in order to minimize injury and speed recovery. It consists of three components: disaster prevention and mitigation, disaster response, and disaster recovery. The CEMP defines roles and responsibilities in prevention, response, and recovery, including a detailed chain of command during an emergency. The plan places an emphasis on the role of local jurisdictions as first-line responders, but identifies the key role that County departments play in the process. The CEMP points out the importance of land use controls and development regulations in hazard-prone areas (e.g., floodplain development) for disaster avoidance and minimization.

### **2.3.2 Local Planning**

- *Town of Wheatfield Comprehensive Plan*

Local planning plays a big part in how the waterfront in the Town is used and developed. The Town has been pro-active in planning for growth in the Town and adopted a Comprehensive Plan in 2004, which was updated in 2012. Although the Town acknowledges that some of the information in this plan is falling out of date, the Plan still provides guidance for managing land use along the waterfront. The Comprehensive Plan recognizes that the waterfront areas are largely developed, and no major changes are expected in the area south of River Road or along Lockport Avenue. As public access is lacking in the area, the plan suggests recreational uses, such as trails to tie into the waterfront.

- *Stormwater Management Plan*

The Town of Wheatfield is a member of the Western New York Stormwater Coalition. The Coalition developed a Stormwater Management Plan as a shared resource to help local municipalities comply with the NYSDEC General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4). This Plan, which was adapted for the Town of Wheatfield, provides policy and management guidance, including minimum control measures and best management practices for Public Education and Outreach, Public Involvement and Participation, Illicit Discharge Detection and Elimination, Construction Site Runoff Control, Post-Construction Stormwater management, and Pollution Prevention / Good Housekeeping for Municipal Operations. In support of this Plan, the Town adopted a local law for stormwater management and erosion and sediment control and a local law for prohibiting illicit discharges, activities and connections to separate storm sewer systems. The town also appointed a designated Stormwater Management Officer.

- *Town of Wheatfield Greenspace Master Plan*

The Wheatfield Greenspace Master Plan was developed to help the Town preserve and incorporate greenspace into future development to maintain the ambiance and character of the community. The Plan includes an inventory of all parklands and greenspace for public access; identifies future greenspace areas for public access, emphasizes passive and active recreational needs and defines the quality of life in Wheatfield. This Plan, which is currently being updated, recommends capitalizing on the abandoned railway corridor to create a trail connection between Niagara Falls and North Tonawanda (at the east and west ends of Sub-Area #1) and other areas of the Town. It also recognizes the undeveloped Town-owned property located on the Niagara River shoreline, which proposed for use as public parkland.

## 2.4 Demographics and Economic Considerations

### 2.4.1 Population and Household Characteristics

The waterfront areas in the Town of Wheatfield cannot be captured easily by Census geography. Accordingly, the following discussion is based on Town-wide data, and is intended to provide the general context of the Town and how it may affect waterfront planning.

The population of the Town of Wheatfield was 18,117 persons in 2010 (U.S. Census Bureau, 2012). The Town is the fastest growing town in Western New York, with very strong growth in population over the past decades. Since 1990, the population has increased by nearly 7,000 residents, an increase of almost 63 percent. This strong growth suggests growing development pressure throughout the Town, including the waterfront areas. It also suggests increasing demand for recreational assets in the Town.

**Town of Wheatfield Population 1990 – 2010**

	Population	Change	
		Number	Percent
1990	11,125	n/a	n/a
2000	14,086	+2,961	+26.6%
2010	18,117	+4,031	+28.6%

*U.S. Census Bureau, 2010*

Median age of Wheatfield’s residents in 2010 was 42.4 years, which is slightly older than Niagara County, where the average age was 41.9 years. Age distribution is similar for the Town and the County. Wheatfield has a higher proportion of older residents (age 65 or older) than the County, and slightly fewer very young residents (under age 5). Correspondingly, the Town has more residents in the middle age ranges, both minors age 5 to 19, and adults aged 18 to 64. The following table shows the comparison of the Town and the County.

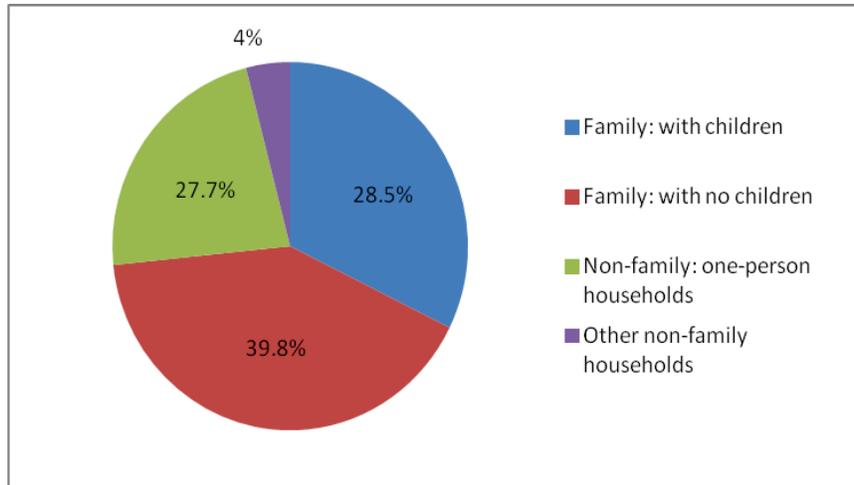
**Age Distribution - Wheatfield and Niagara County, 2000**

	Wheatfield		Niagara County	
Less than 5 years	920	5.1%	11,580	5.4%
5 to 17	3,441	19.0%	41,243	19.3%
18 to 64	10,346	57.1%	127,258	59.3%
65 or older	3,410	18.8%	34,388	16.0%

*U.S. Census Bureau, 2010*

There were a total of 7,180 households in the Town of Wheatfield in 2010. The average household size was 2.47 persons. The majority of households were family households (related persons), which made up 68.34 percent of all households. Single person and non-family households comprised 31.7 percent of households.

**Household Composition**



**2.4.2 Housing**

Most housing in Wheatfield consists primarily of single-family dwellings. U.S. Census data from 2010 indicates a total of 7,602 housing units in the Town. Nearly three-quarters (77.1 percent) of the housing stock is single-unit structures. Another 3.4 percent is mobile homes, which generally accommodate a single-unit. Housing along the waterfront is generally one-family dwellings. There is also a mobile home park located on the Niagara River in the Town of Wheatfield. Nearly all homes in Wheatfield are occupied on a year-round basis; according to Census data, seasonal units comprised only 0.5 percent of the housing stock (37 units).

Compared to many Western New York municipalities, the housing stock in Wheatfield is relatively new, reflecting the very strong growth trends in the Town. Only about 5.2 percent of houses in the Town were built prior to 1940, compared to 34.5 percent of housing structures in Niagara County. According to 2000 Census figures (most recent available) approximately 45 percent of residential structures in Wheatfield were built after 1990; only 13.2 percent of residential buildings across the County were built over the same time frame. Most new residential

construction in Wheatfield has occurred in areas outside the LWRA. While there has been some new construction along the waterfront, it has generally been replacement housing, not net new units.

Wheatfield has a high home-ownership rate. Of the total occupied housing units in the Town, 75.5 percent are owner occupied and 24.5 percent renter occupied. In comparison, only 69.7 percent of units in Niagara County are owner-occupied. In 2010, the Census reported an overall vacancy rate of 5.6 percent for the Town. The County’s vacancy rate was nearly twice that, at 8.6 percent. In 2010, the median value of a home in Wheatfield was relatively high, at \$164,600, compared to the County’s median home value of \$102,300. Again, this figure reflects the fact that a significant proportion of the housing stock in Wheatfield consists of new construction.

These strong housing trends in the Town suggest there will be increasing demand for waterfront properties in the Town. There have been some conversions taking place on the waterfront in Wheatfield, where older units are extensively renovated or replaced with newer units. This trend is likely to continue. In particular, it is anticipated that the mobile home park located off River Road on the Niagara River will eventually convert to either higher value residential or other uses over time as waterfront land values increase.

**2.4.3 Income and Employment**

Historically, the Wheatfield waterfront has been a residential area, with a few scattered businesses, with limited opportunities for employment. There are employment centers in the Town in relatively close proximity to the waterfront, including the Niagara Falls Boulevard corridor, which has a range of commercial and retail uses; the industrial park along Liberty Drive north of River Road; and the western portion of Town, where the Niagara Falls airport and other major employment centers are located, as well as Vantage Point and the Woodlands Corporate Center. Waterfront-related uses have not been strong employers in the Town, although the

**Income Distribution by Household - Town of Wheatfield**

<b>Income</b>	<b>Number</b>	<b>Percent</b>
Less than \$10,000	251	3.7%
\$10,000-14,999	298	4.4%
\$15,000-24,999	710	10.5%
\$25,000-34,999	636	9.4%
\$35,000-49,999	756	11.2%
\$50,000-74,999	1,413	20.9%
\$75,000-99,999	1,001	14.8%
\$100,000-149,999	1,163	17.2%
\$150,000-199,999	325	4.8%
\$200,000 or more	204	3.0%

*U.S. Census Bureau, American Community Survey 2007 - 2011*

Town’s Comprehensive Plan supports economic development activities associated with waterfront, recreational and tourism uses. There have been various plans to redevelop vacant lands north of River Road in the Town for recreational/tourism uses, although there are no active proposals for this land at this time.

Based on available Census data for the Town, 63.8% of Town residents age 16 or older participated in the labor force in 2010. Median household income was \$61,889, which compares very favorably to the County, which has a median household income of \$43,991.

**2.4.4 School Enrollment and Education Levels**

Most of the Town of Wheatfield is within the Niagara-Wheatfield School District. The eastern portion of Wheatfield is in the Starpoint Central School District. No schools are located in or near either waterfront area in the Town of Wheatfield.

Based on available Census data (2010), 90.5 percent of residents of the Town of Wheatfield were high school graduates, and 30.4 percent had achieved a bachelor’s degree or higher. In 2010, there were 4,224 residents aged 3 years or older who were enrolled in school.

**Town of Wheatfield School Enrollment, 2000**

	<b>Number</b>	<b>Percent</b>
Nursery school, Preschool	210	5.0%
Kindergarten	219	5.2%
Elementary School (grades 1-8)	1,755	41.5%
High School (grades 9-12)	1,138	26.9%
College or graduate school	902	21.4%

*U.S. Census Bureau, 2010*

**2.5 Existing Land and Water Uses**

**2.5.1 Existing Land Use**

Land use along the waterfront in the Town of Wheatfield is primarily residential in nature, with some commercial uses found along River Road in Sub-Area 1. There are no agricultural or industrial uses in either sub-area. Parkland is also very limited, with only one park found in Sub-Area 2 and one Town-owned parcel that is destined for future parkland development in Sub-Area 1. Sub-Area 1 has some areas of vacant land and open space, while Sub-Area 2 is well built out, with very little land available for further development. The land uses found in the LWRA are shown on [Map 3A](#) and [Map 3B](#) and described as follows.

Sub-Area 1



- *Residential* - There are approximately 178 residential parcels, accounting for 129 acres of land in Sub-Area 1. This includes three larger parcels that contain mobile home parks, which encompass approximately 28 acres. Housing lines the majority of the river shoreline and extends through upland areas along River Road. The smallest residential properties occur in riverfront residential enclaves along Hird and York Roads, where property frontages range between 30 and 60 feet wide. The area also includes a small number of larger estate-sized properties.
  - *Commercial* - There are a limited number of commercial properties in Sub-Area 1, including approximately 12 parcels that comprise approximately 23 acres of land. These properties are located along River Road, mostly at the western end of the area, near the Niagara Falls City boundary. Commercial uses include motels and small shops. It is also noted that there are two billboards for commercial advertising that exist along River Road in Sub-Area 1.
  - *Industrial* – There are no industrial land uses in Sub-Area 1.
- Community Facilities* – The Frontier Volunteer Fire Company has a station located on River Road that services the surrounding area. The Fire Company owns and operates R.B. U-Ren Park, which is located on the north site of River Road on the fire company property. This park is open for use by the general public. Additional community uses include properties that support pipelines, outfalls or other appurtenances for public or private utility services (see [Map 7A](#)).

- *Parkland* – There are no conservation lands in Sub-Area 1; U.B. Uren Park is the only park. However, the Town owns 4.6 acres of property at the western end of the area that is proposed for future parkland development. In addition, River Road is a designated segment of the NYS Great Lakes Seaway Trail system.
- *Vacant* – Approximately 520 acres or 65 percent of Sub-Area 1 is vacant lands, including a combination of wooded lots and abandoned properties, as well as an abandoned railroad corridor located north of River Road.

### Sub-Area 2



- *Residential* – There are approximately 30 residential parcels, accounting for 16 acres of land area in this portion of the LWRA. The area east of Niagara Falls Blvd., which bisects the area, has housing on both sides of Lockport Avenue, while the area west of Niagara Falls Blvd. has a very narrow area of shoreline, with housing situated on the upland side of Lockport Avenue. Housing in this area consists of single-family dwellings that are suburban in nature.
- *Commercial* – There is one commercial property located in Sub-Area 2. There is one property that was formerly a hotel that is converting to residential use. There are also one or two properties that conduct home occupations in this area.
- *Industrial* – There are no industrial land uses in Sub-Area 2.

- *Parkland* – There is one park found in Sub-Area 2. Herman Baisch Park is a 3.7-acre parcel that is used solely for passive recreation. There are no conservation lands in this area.
- *Community Facilities* – There are no community services or facilities in Sub-Area 2.
- *Vacant* – Approximately 0.6 acres or just over one percent of Sub-Area 2 is vacant lands, which is essentially comprised of the parcel located at the northeast corner of Connecting Blvd. and Lockport Road., as well as a thin strip of land that lie between Lockport Road and Tonawanda Creek, west of Niagara Falls Blvd. (which are owned by the NYS Canal Corporation).

### **2.5.2 Water Dependent and Water-Enhanced Uses**

The only water-enhanced uses are residential dwellings located along the waterfront. There are no parks or other facilities for public access located along the waterfront in either sub-area. Baisch Park, in Sub-Area 1, is located inland, away from the shoreline. Waterfowl hunting is conducted from shoreline docks and properties along the Niagara River during the fall hunting season.

There are limited water-dependent uses in the Wheatfield LWRA. These consist of pipelines and outfall facilities for local utility companies. The Niagara County wastewater treatment plant and the water treatment plant each own narrow parcels where they have located their outfall system and water intake piping, respectively. There are also two locations where National Fuel Gas has routed pipelines for natural gas, which extend along the bottom of the Niagara River, from the upland areas of the Town of Wheatfield over to Grand Island, across of the Niagara River. Water-dependent uses are depicted on [Map 7A](#).

### **2.5.3 Abandoned, Underutilized and Deteriorated Sites and Structures**

The Wheatfield waterfront in Sub-Area 1 has a history of use for summer recreation. The shoreline once contained dance halls, cottages and lodging that supported tourism trade. Over the years, these cottages converted to year-round residential use and other uses were replaced with additional housing. Today, the western end of Sub-Area 1, south of River Road, contains mostly vacant property that is under a mix of public and private ownership. The Town of Wheatfield owns 4.6 acres of vacant land, which is comprised of one four-acre parcel with just under 250 feet of shoreline access and four smaller parcels totaling 0.6 acres that are located immediately west of the larger parcel, along River Road. The Town is proposing to utilize this vacant property for passive recreation and public access. Much of the site would remain wooded and undeveloped. There is an approximate 11-acre property located just east of the Town-owned land that is under private ownership. This site has potential for reuse and is envisioned to be redeveloped with a mix of uses. Any future use of this property should include public access along the almost 700 feet of shoreline along the Niagara River. There are also a few, small vacant properties located immediately west of the Town-owned lands, extending to the City of Niagara Falls municipal boundary. The Town's long-term vision for this area would include public access that spanned

from the private lands, across the Town-owned and private lands to the west, to ultimately connect with recreation facilities in the City of Niagara Falls.

There is an abandoned railroad corridor that extends along the north side of River Road, from Williams Road to the Town boundary with the City of North Tonawanda. West of Liberty Drive, the corridor accommodated two tracks; east of Liberty Drive the corridor services an active CSX line, with one area of abandoned track line. The western portion of this corridor was to be used for the extension of the LaSalle Expressway, but this project was never completed. Although the Town would have liked to see this project materialize in an effort to remove commuter traffic from River Road, the extent of the work required makes it cost prohibitive. As an alternative, the Town has proposed the use of the area for redevelopment as a multi-use trail. This trail would represent a connecting segment in the regional Niagara River Greenway trail system that would ultimately extend from Old Fort Niagara (to the north), following the waterfront through Niagara Falls, Wheatfield and North Tonawanda, to connect with the Erie County system of waterfront trails (all part of the overall Niagara River Greenway system). Portions of the waterfront trails system in Niagara County currently exist, but there are gaps, such as this area in Wheatfield. Completion of the Wheatfield section would link with trails in the adjoining Cities of Niagara Falls and North Tonawanda.

There are some other vacant or underutilized properties in Sub-Area 1 that have potential for future residential development. These properties are found primarily in the Hird Street and Sunset Drive areas, and on the north side of River Road to the east (single lots). There is one large property at the eastern end of Sub-Area 1, on the north side of River Road, which once supported a commercial business. Due to traffic safety issues along this section of River Road, this property is recommended for future residential use. There are no abandoned, underutilized or deteriorated properties in Sub-Area 2.

#### **2.5.4 Public Access and Recreation**

Public parkland and waterfront access is limited to a few facilities within the Town of Wheatfield LWRA. While no formal public park facilities exist in Sub-Area 1, the Town holds ownership to a 4.6 acres of vacant land with waterfront access that is proposed for future public access and limited recreational use.

The Town is also proposing the development of a multi-use trail that would provide linkages to Niagara Falls and North Tonawanda, enabling safe public access to nearby recreational facilities in those locations. In addition, the Frontier Volunteer Fire Company owns and operates R.B. U-Ren Park on their property, which is located on the north side of River Road in Sub-Area 1. Sub-Area 1 is also directly contiguous with Gratwick Park, which is located along the eastern boundary in the City of North Tonawanda (just outside of the Sub-Area). Sub-Area 2 is located

contiguous with the West Canal Marina and Park facility in the Town of Pendleton, which is situated just outside of the Sub-Area to the east.

Herman Baisch Park is the only public park in Sub-Area 2. This 3.7 - acre recreation facility, which is owned by the Town of Wheatfield, is utilized for picnicking and similar passive uses, but lacks sufficient amenities for full enjoyment. It contains a surfaced court area of basketball or tennis, with open lawn and some wooded area. There is a small, formalized parking area. This park has some drainage issues that need to be remedied. Additional amenities, such as picnic pavilions, picnic tables and grills, and some additional play equipment would vastly improve the public use and enjoyment of the park.

### **2.5.5 Zoning**

Within the Town of Wheatfield, land use is regulated by the Zoning Ordinance (Chapter 200 of the Wheatfield Town Code - Zoning) and by Subdivision Regulations (Chapter 169 - Subdivision of Land). Zoning in the waterfront area includes four classifications (R-2 Residential-2 District, R-3 Residential-3 District, C-1 Commercial District and M-1 Light Industrial District). Existing zoning along the waterfront is depicted on [Map 4A](#) and [Map 4B](#). Zoning regulations include provisions for site plan review, home occupations, cluster and planned unit development and signage. The zoning code establishes height and bulk regulations, site plan specifications, development standards, required improvements, and penalties. A summary of the zoning districts that occur within the LWRA is as follows:

#### Sub-Area 1

The majority of the waterfront, seaward of River Road is zoned R-2; a section at the eastern end of the sub-area, along the north side of River Road, is zoned R-3. A small area at the east end, and the western end of the sub-area are zoned C-1. The remainder of the area, north of River Road, is zoned M-1.

There are many residential lots in Sub-Area 1 that do not meet the zoning setback requirements for the R-2 Residential classification. This has created a situation where many of the properties are non-conforming and zoning enforcement is a more difficult issue; therefore, as the Town has long been allowing variances for development or redevelopment in this area. The use of a zoning overlay district or a new zoning classification that has setback requirements that are realistic for this area would be a practical way to address this problem.

#### Sub-Area 2

The east and west sections of this sub-area are zoned R-2. The area surrounding Niagara Falls Blvd. is zoned C-1. The central section of Sub-Area 2 is also located within the Niagara Falls Blvd. overlay district (NFBO). The intent of the NFBO is to enhance the positive image of the Town of Wheatfield and to preserve greenspace, while at the same time improving commercial business activity along this important roadway. The NFBO overlay district sets forth additional

regulations to promote, protect and improve aesthetics and safety along the Niagara Falls Blvd. corridor.

The zoning classifications in the LWRA include the following provisions.

- *R-2 Residential-2 District* - This district allows one and two-family dwellings, churches, schools, parks, playgrounds and fire stations. Special Permit uses allowed in an R-2 district include cemeteries, golf courses, clubs and fraternal organizations, parks and recreation buildings, nursing homes, excavation and mining (in compliance with Section 200-34.1 of the Zoning regulations) and mortuaries.
- *R-3 Residential-3 District* – The R-3 district allows uses that are permitted in an R-2 district (both by right and with a special use permit), and multi-family housing. Accessory uses allowed are those as permitted in an R-1 district.
- *C-1 Commercial District*– This general commercial district allows a host of business and commercial uses including, telephone exchanges, real estate and insurance offices, mortuaries, opticians and optometrists, indoor recreation (bowling, health spas, tennis courts, etc.), medical offices and clinics (with restrictions), nursing and convalescent homes, professional and executive offices, tourist homes, day-care centers, personal service shops, laundromats, dry cleaners, theaters, assembly halls, custom shops (lighting, plumbing, woodworking, etc.), machine and tool sales and service, job and newspaper printing, shopping centers and plazas, nurseries and greenhouses, golf driving ranges, facilities for the assembly of previously prepared materials (with restrictions), indoor gun ranges and mobile home parks.

Uses allowed by Special Use permit in the C-1 district include car washes, drive-in theaters, gasoline service stations, collision shops, commercial storage buildings, new and used motor vehicles sales and services, kennels, drug and alcohol-related hospitals or clinics, and small animal hospitals. The C-1 classification also allows all uses that are allowed by right and all special permit uses that are allowed in the R-3 Residential district.

- *M-1 Light Industrial District* – As-of-right uses in this district include warehouses, truck terminals, airports, contracting and construction services, theme parks that may include other uses that are permitted in the C-1 and M-1 districts, and other businesses, services, manufacturing or processing of materials, goods or products not otherwise prohibited by law when conducted in a completely enclosed building (and when in conformance with M-1 performance standards as set forth in the zoning). Residential dwellings and adult entertainment establishments are permitted in an M-1 district by Special Use permit. The M-1 district also allows any as-of-right and special permit uses that are permitted in a C-1 district.
- *NFBO Niagara Falls Boulevard Overlay District* – This overlay district is designed to better manage and accommodate increasing commercial growth along the Niagara Falls Blvd. corridor through the implementation of guidelines to regulate traffic, signage and

development/redevelopment. It is intended to encourage the development of uses that are in harmony with the surrounding area, improve visual character, protect adjoining residential uses and enhance the character of the area as an important gateway.

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

Other codes in the Town of Wheatfield that affect land use in the Town include Chapter 82, which regulates drainage and drainage structures; Chapter 92 – Excavations; Chapter 101, which regulates flooding and flood damage prevention; Chapter 114 for Mobile Home Parks; Chapter 123, which regulates parks and recreation areas in the Town; Chapter 134 – Property Maintenance, which sets forth provisions for controlling litter, weeds and other debris abandoned or stored on public property; Chapter 146 – Sewers; Chapter 161 – Solid Waste – which controls the dumping, storage, collection and disposal of refuse in the Town; Chapter 163 – Storm Sewer System; Chapter 164 – Stormwater Management – which establishes minimum stormwater management requirements and controls; Chapter 165 – Streets and Sidewalks; Chapter 177 – Towers and Antennas, which regulates the installation of towers; Chapter 194 – Water; Chapter 196 – Weeds, which establishes provisions to control excessive growth of weeds, grass and other unhealthful plants that can constitute a nuisance; and Chapter 198 – Wind Energy Conversion Systems.

### **2.5.6 Public and Underwater Land Ownership**

There is only one property along the waterfront that is owned by the Town. This is a 4.8-acre brownfield property that the Town desires to utilize for future public parkland.

- *Public Trust Doctrine*

New York, upon attaining Statehood, succeeded the King of England in ownership of all lands within the State not already granted away, including all rights and title to the navigable waters and the soil under them (Public Lands Law, Section 4; People v. Trinity Church, 22 N.Y. 44, 1860; Langdon v. Mayor, 93 N.Y. 129, 1883). Broadly speaking, the State holds title to all underwater lands not otherwise conveyed away by patents or grants. The State holds title to these tidelands and submerged lands in its sovereign capacity in trust for the use and enjoyment of the public under the *Public Trust Doctrine* (People v. Steeplechase Park Co., 218 N.Y. 459, 1916; Appleby v. City of New York, 271 US364, 1926; Coxe v. State, 144 N.Y. 396, 1895). This legal doctrine emerged from the ancient concept that the sovereign had the right of way, an "incorporeal hereditament", to all navigable streams and waterways; the underlying theory being the protection of the public interest in fisheries and navigation.

State title to the public foreshore and submerged lands, and the power of disposition, is incident and part of its sovereignty, which cannot be surrendered, alienated or delegated, except for some public purpose or some reasonable use for the public benefit, and without impairing public rights in the remaining lands and water. Inherent in the nature of public trust lands is that they support diversified and important ecosystems without which many public rights, including fishing, swimming and the like, would be impossible to enjoy. The public interest demands the preservation and conservation of this vital natural resource against pollution, overuse, destruction and infringement by others, whether public or private.

It is in the public interest that State and other governmental ownership of public trust lands be maintained and, when possible, recovered from private ownership. Where full public ownership no longer exists, the application of the Public Trust Doctrine requires that any remaining rights of the public to use such lands should be preserved and protected for present and future enjoyment.

Occupation of public trust lands by riparian owners for purposes of gaining access to navigable waters should be undertaken in a reasonable manner that does not unnecessarily interfere with the public's right of passage upon, the use of the waters overlying such lands, and other public trust purposes. Considerations of public safety, resource protection and the need for access at a given location may be utilized as factors in determining the level and types of access to be provided. Public use of publicly-owned underwater lands and lands immediately adjacent to the shore shall be discouraged only where such use would be inappropriate for reasons of public safety, military security, or the protection of coastal resources.

- *Underwater Land Ownership*

Ownership of Lakes Erie and Ontario, within the territorial limits of New York State, and all submerged lands, including the subsurface lying under the lakes and the Niagara River, is held by the State of New York, unless ownership has been granted to any other person or entity. The beds of the Great Lakes and the River are susceptible to private ownership only for special purposes. The boundary line between State ownership of the lakebed or riverbed and ownership of the adjacent upland is the low water mark. The New York State Canal Corporation has jurisdiction of the Erie Canal and its underwater lands.

State-owned underwater lands in the Niagara River are managed by the New York State Office of General Services (OGS). The OGS issues grants, leases, easements and other interests for these underwater lands. They also investigate encroachments on littoral rights (the right of an upland owner to access the navigable waters of the lakes or river) and administer Navigation Law with respect to the location of structures in or on navigable waters. The OGS reviews NYSDEC and Army Corps of Engineers comments for proposed projects that affect State-owned bottom lands to ensure that the benefits of the public will not be deprived and that the environment will not be adversely impacted. The OGS strives to

achieve satisfaction on the part of all parties involved prior to the issuance of an interest (grant, lease or easement).

The State Office of General Services is the agency responsible for issuing grants, leases and easements for the use of underwater lands, and for other interests for docks and associated marine-related structures that are placed on State-owned underwater lands. In the case of the Town of Wheatfield, the OGS is an authorizing agency for the use of underwater lands for docks proposed along the Niagara River. The construction of any commercial dock or any private, non-commercial dock that exceeds 4,000 square feet in area size (including the perimeter) would require the granting of an interest (a grant or easement) from the OGS. Non-commercial structures that are less than 4,000 square feet in size (as measured from the outermost perimeter and including the surface area of the water contained within), less than 15 feet in height, and have a capacity of five or fewer boats, would not need an interest. For any property where an interest has been issued, Section 334(5) of the Real Property Law requires that riparian (or littoral) lines be included on the survey that is prepared for the subdivision of waterfront properties situated on navigable waters.

- *Underwater Land Grants and Leases*

Over the years, a number of underwater land grants have been issued by the State along the shoreline of the Niagara River in the Town of Wheatfield (see [Map 5](#)). These grants were issued for the express purpose of either *commerce* or *beneficial enjoyment*. Grants issued for commerce were given to shorefront businesses for more restricted activities and were usually written with conditions. If the conditions were not followed, the State could bring an action to declare the grant void and thereby recover ownership, per Section 78 of the Public Lands Law. Beneficial enjoyment grants were given to shorefront property owners without restriction and provided more complete title to the underwater lands. In either case, the grantee was given full ownership rights to the bottom lands. Grants for commerce were issued in the early to mid 1800's, and then the issuance of grants for beneficial enjoyment became more commonplace. Around 1890, the State began to restrict the grants issued for beneficial enjoyment, as well. Furthermore, in making grants of underwater lands, the State could also impose conditions on the use of these lands.

Water grant index maps were acquired from the NYS Office of General Services (OGS) Bureau of Land Management for the Wheatfield waterfront area. These maps indicate that numerous underwater land grants were issued in the area, primarily during the mid to late 1800's and early 1900's. Approximately 12 grants were issued along the shoreline between 1890 and 1897; all for beneficial enjoyment. These underwater grant lands consisted of offshore area that was likely used for the installation of docks or other offshore structures. In general, the form of the current day waterfront is due in part to fill, bulkheading and other activity that occurred through the issuance of the underwater land grants.

Based on discussions with Richard Bennett from the NYSOGS Bureau of Land Management in December of 2009, the interest in underwater lands is attached to either the new upland property that is created through fill activity or to the coterminous upland property. As ownership of the land changes hands, the interest in the underwater land moves with the title to that land. For private property, because the interest in the underwater lands is attached to the title, there is no need for the State to reconvey the lands to the new landowner. Therefore, underwater land ownership has been transferred, over the years, to the present day owners of the upland properties. In the future, when shoreline property owners are proposing the installation of off shore docking facilities or other structures requiring use of bottom lands, confirmation of the land grants should be cleared with the OGS.

## **2.6 Surface Water Uses, Navigation and Harbor Management**

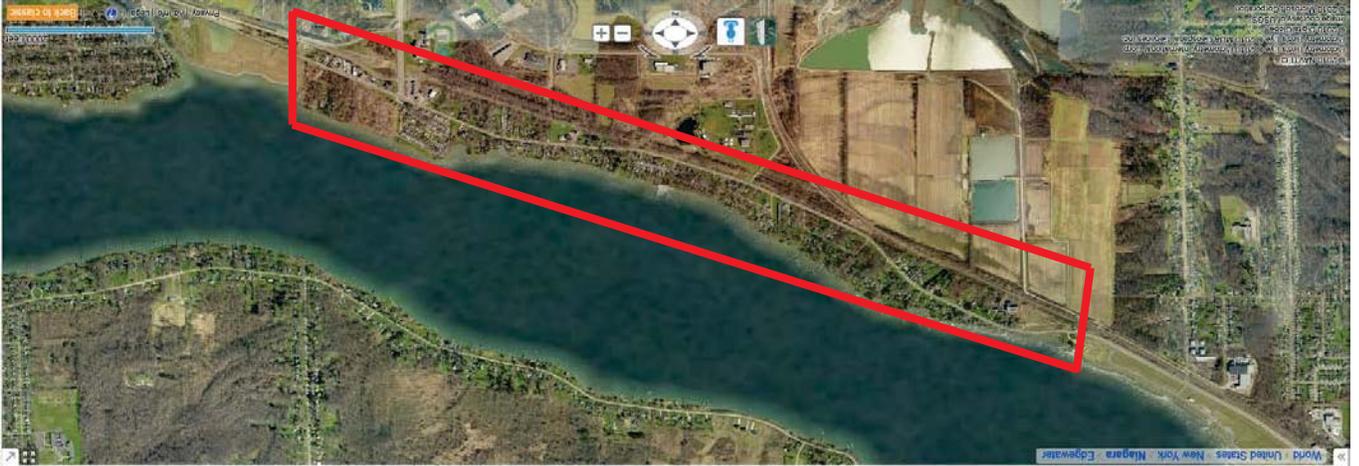
### **2.6.1 Vessel Use and Navigation**

#### *Sub-Area 1: Niagara River*

Vessel use along the Wheatfield waterfront is limited to small pleasure craft, which are used for recreation and fishing. There are no commercial vessels docked in the area and no commercial fishing industry or support facilities. A large number of residents along the shoreline have docks that are supported through underwater land grants (as noted above). Many of these structures (approximately 50 percent) are removed in the winter. These private docks are used primarily to launch small craft that would otherwise be docked at a marina outside the area (see Appendix D).

There is a federally-designated navigation channel that extends through the central portion of the Niagara River. Known as the Niagara River Channel, this navigation channel is dredged to a depth of 12 feet. This channel is maintained by the U.S. Army Corps of Engineers to facilitate safe passage. The Army Corps of Engineers conducts surveys to determine when the channel may need maintenance dredging.

According to the National Oceanic and Atmospheric Administration (NOAA) navigation chart, the off-shore water depths in the Niagara River range between 5 feet or less along the shoreline to between 10 and 13 feet mid river. While in places the near-shore bottom is sandy, the river bottom is predominately mud and silt. According to National Oceanic and Atmospheric Administration navigation charts, there are underwater obstructions in the form of submerged pilings and cribs. There are pilings for abandoned floating docks located near the shoreline in areas up to six feet deep. The cribbing is deeper and includes the wastewater treatment plant outfall.



*Approximate Boundaries of Sub-Area 1 – Along the Niagara River*

Water depths in the Niagara River are also impacted by the regular diversion of river water for the Robert Moses Niagara Hydroelectric Power Station. At night, a substantial portion of Niagara River water (up to 600,000 gallons per second) is diverted through massive underground pipelines, away from Niagara Falls, to a large storage reservoir located approximately 4.5 miles to the north. The water is removed through two large intake facilities that are located on the Niagara River shoreline, approximately four miles west of the Sub-Area 1. In 1950, the United States and Canada signed a treaty that regulates the amount of water diverted for hydroelectricity production. On average, more than 200,000 cubic feet per second (cfs), or 1.5 million gallons of water per second, flows from Lake Erie into the Niagara River. The 1950 treaty requires that at least half of the normal flow over the falls (100,000 cfs) is maintained, at least during the daytime throughout the tourist season (from 8:00AM to 10:00PM April 1 through September 15, and 8:00AM to 8:00PM September 16 to October 31). At night and during the winter months (non-tourist season), the flow over the falls may be reduced to a quarter (50,000 cfs).

The diversion of river water for the Niagara Falls power project causes the water levels off shore of Sub-Area 1 to drop significantly (what locals refer to as the “NYPA tide”). There are times when the river bottom is exposed and access to navigable water is precluded from shore. Residents along the waterfront are occasionally subjected to odors and views of the exposed debris that collects along the river bottom. In addition, sedimentation can exacerbate this problem. Although the flow of water through the dredged navigation channel in the mid-section of the river is swift, the current diminishes as you move toward the shore and sediment that is carried by the river occasionally sloughs off and accumulates in the nearshore areas. This can affect the ability to launch vessels from the shoreline and could create a situation that forces property owners to either dredge or construct docks that extend further out away from the shoreline in an effort to gain access to navigable waters. However, sedimentation is not a significant problem in this area.



*Niagara Falls Power Project Water Intake Facilities*

The fluctuating water levels create more significant shoreline icing problems in the winter. Although the power authorities are responsible for managing ice flow in the river, particularly to prevent from entering water intake facilities, including the installation of the ice boom at the mouth of Lake Erie, there is no ice management program that assists residents along the shorelines.

*Sub-Area 2: Erie Canal (Tonawanda Creek)*

Pursuant to the NYS Law (21 NYCRR Sub-chapter D, Parts 150-156), all activities on the Erie Canal are regulated by the New York State Canal Corporation. Certain Statewide boating regulations are in force along the Erie Canal, including speed limitations, requirements for the use of personal flotation devices and vessel waste treatment and disposal restrictions. The Erie Canal channel is 12 feet deep. Bridge clearance for the Niagara Falls Blvd. overpass varies between 15.5 and 20 feet. Every boat, vessel, raft or other floating apparatus that is navigated on the Canal must be in good operating condition. The vessel speed limit in the Canal is 10 miles per hour, unless otherwise posted. The New York State Police and the Niagara County Sheriff's Department are the agencies responsible for enforcing these regulations. In the event of a violation, Canal personnel will contact one of these agencies to launch a patrol boat in response to the call. There are no police boats temporarily or permanently docked in the Canal.

According to NYS Canal Law Section 156, the use or occupation of lands owned by the Canal Corporation requires a revocable use permit. Residences and camps that wish to gain access to canal waters must pay a fee of \$50 per year. This type of permit is restricted to upland owners and includes only lands between the upland residence or campsite and the canal waters. The permitted area cannot exceed one acre in size and cannot contain any building improvements



*Approximate boundaries of Sub-Area 2 along Tonawanda Creek (Erie Barge Canal)*

The permit gives the property owner the right of exclusive access across the canal lands to canal waters. An additional annual charge of \$50 is charged for erecting and/or maintaining a dock, ramp, slip or float within the canal waters. Permit fees for the use of canal lands and facilities not in conjunction with a private residence or camp are based on the fair market value of the property and the use of the permitted area, including, but not limited to, the placement of docks, ramps, slips and floats (see aerial photos of shoreline in Appendix D).

## **2.6.2 Marinas, Docks and Bulkheads**

There are no marinas within the LWRA. There are three public boat launch ramps available at parks located immediately outside of the LWRA, including Gratwick Park in the City of North Tonawanda and Griffin Park in the City of Niagara Falls, adjacent to Sub-Area 1; and West Canal Marina Park, in the Town of Pendleton, adjacent to Sub-Area 2. Within the LWRA, there are numerous private docking facilities found along the shoreline that are associated with private residential properties, which enable residents to utilize the Niagara River for recreational boating and fishing. A number of these structures include boathouses. Some residents hunt waterfowl from private docks or the shoreline along the Niagara River during open season. The docks along the river extend far enough into the river to allow navigable access, yet do not infringe on the navigation channel.

### *Sub-Area 1 – Docks and Bulkheading*

The increased proliferation of docks and other over-water structures, such as boathouses, can pose potential cumulative impacts, presenting a concern with respect to waterfront management.



There is evidence that over-water structures can adversely affect aquatic habitat through shading of submerged aquatic vegetation and fragmentation of habitats. These structures are known to alter patterns of water flow, introduce chemicals into the marine environment, impact navigation, and restrict access to public trust lands and resources.

The installation of docks, pilings, decks and boathouses along the Niagara River, in Sub-Area 1, is regulated by the Army Corps. of Engineers and requires the issuance of a Regional Permit, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Structures that do not meet the conditions of the Regional Permit can be considered for approval under an Individual Permit. NYSDEC approval may also be required depending on the circumstances. The NYS Canal Corporation enforces guidelines governing the construction of docks along the Erie Canal in Sub-Area 2, as set forth in the Standards for Docks on the Canal System publication (see Appendix C).

Various forms of shoreline protection are in place along much of the Niagara River and the Erie Canal waterfront. At a minimum, most locations utilize stone rip rap or rubble to protect the shoreline from erosion. The restricted vessel speed limit in the Canal helps to control deterioration along the shoreline from wave action; therefore, there is not a significant extent of erosion control protection in this area. More intensive erosion protection is found along the Niagara River.

*Sub-Area 2 – Bulkheading and Shoreline Dockage*



In Sub-Area 1, where a combination of forces (wind, wave action and current) impacts the shoreline, erosion protection structures are comprised of a mix of concrete walls and barriers, corrugated metal sheet piling, wooden bulkheading and stone rip rap. A limited number of locations along the shoreline in both sub-areas remain natural. While shoreline hardening may provide some temporary relief from erosion in areas subjected to intense storms and significant wave action or current, structural measures are expensive to install, degrade shoreline habitat, 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, whenever possible. 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 used as a last alternative, where there is a documented erosion problem and where alternative measures have been proven to be inadequate to protect the principal use. The construction and modification of erosion protection structures along the Niagara River requires review and approval from the U.S. Army Corps. of Engineers, as well as the NYSDEC. Structures along the Erie Canal are regulated by the NYS Canal Corporation.

## 2.7 Natural Resources

### 2.7.1 Water Resources

There are no major lakes or ponds within the LWRA. There are no major creeks or streams that outlet to the Niagara River in Sub-Area 1. According to the Upstate New York Groundwater Management Program report of the NYSDEC, there are no Primary or Principal Aquifers underlying either sub-area. The key waterbodies in the Wheatfield LWRA include:

Sub-Area 1: Niagara River

Sub-Area 2: Tonawanda Creek (Erie Barge Canal) and Bull Creek

The Niagara River is part of the Lake Erie (East End) – Niagara River Drainage Basin. Tonawanda Creek is a major tributary watershed to the Niagara River, with 1,538 miles or 28 percent of the basin stream miles.

In Sub-Area 1, there is a small unnamed tributary that flows south in the vicinity of Williams Road, crossing River Road through a large culvert and discharging to the Niagara River. This stream channel extends above ground, just west of York Road, for approximately 300 feet, before it is conveyed below ground to discharge through two separate outfall points to the river.

There is one creek in Sub-Area 2 that drains to Tonawanda Creek (Erie Canal) and forms the boundary between the City of North Tonawanda and the Town, constituting the LWRP boundary. Known as Bull Creek, this creek is tributary to Sawyer Creek and also commonly referred to by this name. Sawyer Creek intersects (or terminates at) Bull Creek approximately 0.6 miles inland from the shoreline. Although many maps indicate Sawyer Creek as the stream corridor that terminates at Tonawanda Creek, the Federal Emergency Management Agency officially mapped this segment of the stream channel as Bull Creek when the floodplain mapping was updated for the Town of Wheatfield in September 2010.

▪ **Water Quality**

In accordance with 6 NYCRR Part 701 Classifications - Waters and Groundwaters, the New York State Department of Environmental Conservation (NYSDEC) has assigned water quality stream classifications to surface waters in New York State. These classifications identify the best usage for each stream. The creeks along the Wheatfield waterfront are classified as follows:

<b><u>Waterbody Segment</u></b>	<b><u>Index No.</u></b>	<b><u>Classification</u></b>
Niagara River	Ont 158 (portion 2)	A-Spcl
Tonawanda Creek	Ont 158-12	C
Sawyer Creek (Bull Creek)	Ont 158-12-3-1	C

The Niagara River is designated Class A-Special (International Boundary Waters) along the entire Wheatfield (Sub-Area 1) shoreline. The best uses for Class A-Special waters include drinking water supply, food processing, primary and secondary contact recreation and fishing. These waters are also suitable for fish, shellfish and wildlife propagation and survival. Class C fresh surface waters are suitable for fishing. These waters are also considered suitable for primary and secondary contact recreation, although other factors may limit their use for these purposes.

### **Priority Waterbodies List**

The water quality classifications assigned to waterbodies do not necessarily reflect all water quality issues. The Federal Clean Water Act requires states to periodically assess and report on the quality of waters in their state. Therefore, the NYSDEC has developed a Statewide inventory of specific waterbodies, based on monitoring and information drawn from other programs and sources, which characterizes general water quality, the degree to which water uses are supported, and progress toward the identification of quality problems and improvements. The NYSDEC Division of Water periodically publishes a list of the surface waters that cannot be fully used as a resource or have problems that can damage their environmental integrity. The “Waterbody Inventory/Priority Waterbodies List” is used as a base resource for NYSDEC Division of Water program management. Separate Waterbody Inventory/Priority Waterbodies List Reports are prepared and maintained for each of the major drainage basins in the State. The list includes an assessment of water quality for waterbodies under six categories, which include:

- *Waters with No Known Impacts* – waterbody segments where monitoring data and information indicate no use restrictions or other water quality impacts or issues.
- *Threatened Waterbody Segments* – waterbody segments for which uses are not restricted and no water quality problems exist, but where specific land use or other changes in the surrounding watershed are known or strongly suspected of threatening water quality; or waterbodies where the support of a specific and/or distinctive use makes the waterbody susceptible to water quality threats.
- *Waters with Minor Impacts* – waterbody segments where less severe water quality impacts are apparent, but uses are still considered fully supported (these waters correspond with waters that are listed as having “stressed” uses).
- *Waterbodies with Impacts Needing Verification* – these are segments that are thought to have water quality problems or impacts, but where there is insufficient or indefinite documentation. These segments require additional monitoring to determine whether uses should be restricted.
- *Impaired Segments* – these are waterbodies with well documented water quality problems that result in precluded or impaired uses.
- *UnAssessed Waterbodies* – waterbody segments where there is insufficient water quality information available to assess the support of designated uses.

Impaired waterbodies are deemed waters that frequently do not support appropriate uses. Impaired segments, waters with Minor Impacts and Threatened Waterbody segments are the focus of remedial/corrective and resource protection activities by the NYSDEC.

The following table outlines the use impairments, types of pollutants and sources for each listed waterbody located within the Wheatfield LWRA.

Water Body	Impaired Use	Severity	Type of Pollutant	Causes/Source	Category
Niagara River Upper, Main Stem	Fish Consumption  Habitat / Hydrology  Aquatic Life	Impaired ( <i>known</i> )  Impaired ( <i>suspected</i> )  Stressed ( <i>suspected</i> )	Priority Organics (PCBs) Water level/flow Non-Priority Organics (PAHs)	<i>Known:</i> Contaminated / Toxic Sediments Habitat Modification  <i>Suspected:</i> Landfill / Landfill Disposal Combined Sewer Overflows Urban Runoff	Impaired Segment
Tonawanda Creek Lower, Main Stem	Fish Consumption  Aquatic Life  Recreation	Impaired ( <i>known</i> )  Stressed ( <i>suspected</i> )w Stressed ( <i>suspected</i> )	Priority Organics (PCBs) Nutrients Silt/Sediment	<i>Known:</i> Contaminated / Toxic Sediments Urban Runoff  <i>Suspected</i> Storm Sewers Streambank Erosion  <i>Possible:</i> Landfill / Landfill Disposal	Impaired Segment
Bull Creek and Tributaries	Aquatic Life	Impaired ( <i>known</i> )	Unknown toxicity, Dissolved Oxygen/Oxygen Demand, Nutrients	<i>Suspected</i> Municipal, Urban and Storm Runoff  <i>Possible:</i> Industrial	Impaired Segment

Shoreline development, bulkheading, dredging and other stream modifications have also impacted habitat along the Niagara River. As indicated by a NYS Department of Health advisory, fish consumption has been impaired in this segment of the Niagara River. These advisories recommend restricted consumption of some species due to elevated PCB levels. Fish consumption in the Erie Canal, from the City of Lockport to the Niagara River, is also impaired due to PCB levels in sediments. Improved water quality in the Canal, however, has been attributed to upgrades at the Town of Amherst wastewater treatment plant.

Section 303(d) of the Federal Clean Water Act also requires states to identify *Impaired Waters*, where specific designated uses are not fully supported. For these Impaired Waters, states must consider the development of a *Total Maximum Daily Load (TMDL)* or other strategy to reduce the input of the specific pollutant(s) that restrict waterbody uses, in order to restore and protect such uses. The Niagara River and its tributaries were monitored in 2000 to 2002 and 2005 to 2007. Additional information was finalized in June of 2010 with respect to the identification of waterbody segments that do not support appropriate uses and that require development of a Total Maximum Daily Load (TMDL) or other restoration strategy. The final list indicates that the Niagara River requires the development of such a strategy to remedy water quality impacts from

pathogens carried in urban/stormwater runoff. This effort must also consider sediments contaminated with PCBs, which have adversely affected fish consumption.

The Niagara River is subject to a joint U.S. – Canadian Niagara River Toxics Management Plan to reduce toxic contributions to the basin. The river, from its mouth at Lake Ontario to Smokes Creek (near the southern end of Buffalo Harbor) has been designated an International Joint Commission Area of Concern (AOC), and associated Remedial Action Plans have been developed, including an action plan for the Niagara River to address serious impairment from pollutants that affect the beneficial use of the river. Past municipal and industrial discharges, waste disposal sites and urban/stormwater runoff have long been the key source of contaminants to the river. Beyond this, water quality issues in the drainage basin are quite diverse and, as noted in the table above, include non-point source pollution problems, stream bank erosion, urban/industrial runoff, combined sewer outfall discharges, and agricultural activity.

The Niagara River Remedial Action Plan (RAP) was completed in September 1994 and a status report was prepared in 2000 to report on the progress of remedial actions. Specific priority activities and strategies in the RAP focus on stream water quality, inactive hazardous waste site remediation, contaminated river sediments, point source control, fish and wildlife habitat improvements, and enhanced environmental monitoring activities.

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

In an effort to address issues with stormwater runoff, the Town prepared a Stormwater Management Plan and adopted Chapter 164 - the Stormwater Management Law. This law was determined necessary to help address problems associated with land development and associated increases in impervious surfaces that alter the hydrologic response of local watersheds and increase stormwater runoff rates and volume. 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 was also 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. While this law is essential for addressing water quality problems in the community, the Stormwater Management Plan sets forth best management practices to address other sources of non-point source pollution that are conveyed by stormwater runoff. The Stormwater Management Plan complements the law and provides educational information for the public.

### **2.7.2 Wetlands and Habitats**

Wetlands (swamps, marshes and similar areas) are areas saturated by surface or ground water sufficient to support distinctive vegetation adapted for life in saturated soil conditions. Wetlands serve as natural habitat for many species of plants and animals and absorb the forces of flood and tidal erosion to prevent loss of upland soils. As shown on [Map 6A](#) and [Map 6B](#), there are no areas of State-designated freshwater wetlands in either sub-area; however, there are areas of federal jurisdictional wetlands, which are managed by the Army Corps of Engineers. The Corps regulates all activities that occur, or that are proposed, within or near regulated wetland areas. Wetlands in Sub-Area 1 are concentrated at the western end of the area, near the City of Niagara Falls boundary, and to the east, primarily in the vicinity of the railroad corridor. A narrow band of freshwater wetlands also extends along the shoreline of the river. Freshwater wetlands in Sub-Area 2 are found along Tonawanda Creek and the shoreline of Bull Creek. There are no wetlands in the upland area.

The NYSDEC mapping data indicate that there are two areas in the Sub-Area 1 that were noted to contain rare, threatened or endangered species; one area includes the southwestern end of Sub-Area 1 and the other covers a larger area to the west. According to NYSDEC Division of Fish, Wildlife & Marine Resource representatives, the area to the west reflects the outer edge of the identification area for the Buckhorn Island State Park, which is located on the opposite side of the Niagara River in the Town of Grand Island. This area is ecologically significant and a designated Bird Conservation Area. No portion of this resource falls within the boundaries of the LWRA.

In the area to the west, a native species of goldenrod has been identified, which is listed as a threatened or endangered plant and protected by the State. Therefore, the NYSDEC should be contacted prior to undertaking any activity in this vicinity. It was also noted that the Niagara River corridor is considered a significant resource because it is a designated winter waterfowl concentration area. The creeks in Sub-Area 2 are also home to native species of freshwater clams that are under threat by contaminants and invasive species, and are protected by the State.

The Town of Wheatfield waterfront areas do not contain any New York State designated significant coastal fish and wildlife habitats. Bull Creek (Sawyer Creek), in Sub-Area 2, is the only area identified as a habitat of local significance in the LWRA. Bull Creek is tributary to

Tonawanda Creek, with only the outlet area at the creek situated within the LWRA boundary. This creek has a far reach, extending through the Town of Wheatfield and into nearby townships. It supports a fish population, including rainbow trout, northern pike and sauger, and is popular with local anglers. As noted above, the creeks in Sub-Area 2 also provide habitat for freshwater clams. Aquatic life in Bull Creek is impaired by elevated nutrient levels. Municipal and industrial sources, as well as organic sewage wastes, have been identified as the sources. Urban runoff (non-point source pollution) also likely contributes to this problem.

### **2.7.3 Topography and Soils**

Niagara County borders the southern shoreline of Lake Ontario to the north, Tonawanda Creek (Erie Canal) to the south, Genesee and Orleans Counties to the east, and the Niagara River to the west. The Niagara Escarpment divides the County into two plains, the Ontario Plain to the north and the Huron Plain to the south. Drainage from the Huron Plain runs southward to Tonawanda Creek, which flows westward to the Niagara River. The escarpment is a steep northward slope, with perpendicular bluffs that are exposed in some places. As you move away from the escarpment, lands to the north and south become flat, with little topography as you move toward each shoreline.

- **Soils**

All of Sub-Area #2 and the eastern one-third of Sub-Area #1 is comprised of Raynham (RaA) soils. The remaining two-thirds of Sub-Area #1 includes Lakemont (Lc), Cosad (Cs) and Canandaigua (Ca and Cb) soils. The Raynham and Cosad soils are known to be potentially hydric (may contain hydric inclusions), while Canandaigua and Lakemont soils are hydric. Canandaigua and Lakemont soils are deep and poorly to very poorly drained. They are level and occupy broad areas in the southern parts of Niagara County. Raynham and Cosad soils are found at slightly higher elevations and are typically associated with Canandaigua soils. These soils are also deep and poorly to somewhat poorly drained.

### **2.7.4 Flooding and Erosion**

The Federal Emergency Management Agency (FEMA) developed a series of Flood Insurance Rate Maps (FIRM) for the Town of Wheatfield. The LWRA is covered by two Community Panels Numbers: 360513-0007D for Sub-Area 1 and 360513-0009B for Sub-Area 2. The FIRM maps delineate the final flood hazard boundaries which provide the basis for the implementation of the regular program phase of the National Flood Insurance Program within the Town. The FIRM maps for Wheatfield were updated in 2010.

Within Sub-Area 1, the flood hazard area (100-year floodplains) extends along portions of the riverfront; potentially affecting homes that are situated directly along the shoreline (see [Map 6A](#) and [Map 6B](#)). In Sub-Area 2, the 100-year flood plain encompasses the Tonawanda Creek corridor (Erie Canal), but does not extend beyond Lockport Avenue. Therefore, properties on the

west side of Niagara Falls Blvd. are located outside of this area. East of Niagara Falls Blvd., properties situated seaward of Lockport Avenue are affected. There is a small section of upland that has been designated in the B-Zone (areas located between 100-year and 500-year floodplains).

In order for property owners to take advantage of the National Flood Insurance Program (NFIP), the Town Board has adopted federally approved floodplain management regulations to manage land use and development within the designated flood hazard areas (Chapter 101 of the Town Code). Property owners within designated flood hazard areas are eligible to receive federal flood insurance and federally insured mortgage money is available to buyers. Areas of both sub-areas are located within the 100-year floodplain.

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

- "A" and "AE" Zones – (also called the special flood hazard area) is that area of land that would primarily experience still water flooding, without significant wave activity, during the 100-year storm. In Zone A no Base Flood Elevations or depths are shown, while in Zone AE Base Flood Elevations have been derived and are shown on the maps;
- "B" Zones – areas situated between the 100-year and 500-year floodplains, or areas in the 100-year floodplain where the average flood depth is less than one foot.
- "C" Zone – areas of minimal flooding.

Development in the floodplain in the Town of Wheatfield is regulated under Chapter 101 – Flood Damage Prevention of the Code of the Town of Wheatfield. This law is designed to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas, as designated on the Flood Insurance Rate Maps. Within the regulatory floodplain, Floodplain Development Permits are required for certain construction activities within the Regulated Floodway and Special Flood Hazard Area (Zones A and AE). Pursuant to Chapter 101, any development action proposed within the Special Flood Hazard Area requires review and possibly a permit from the Code Enforcement Officer, who is the designated Local Administrator of the Flood Damage Prevention Law.

In addition, the Town of Wheatfield Comprehensive Plan recognizes that stream corridors play an important role in drainage, flooding and erosion control. This plan recommends the establishment of buffer zones along the creeks to help minimize flooding and erosion.

### **2.7.5 Environmental Hazards and Constraints**

Sub-Area1 has traditionally been used for recreational and residential development. Although the waterfront has no history of industrial or wide scale commercial use, there are two known waste sites within the LWRA. One area is located at 2020 River Road and includes an approximate 4.2-

acre property that is owned by the Town of Wheatfield. The second site is the 15-acre Brzezinski property, which is located at 2040 River Road, immediately to the east. Both properties lie vacant and undeveloped.

The Brzezinski property was initially listed as an inactive hazardous waste site. Various investigations on the site identified industrial fill containing Polycyclic Aromatic Hydrocarbons (PAHs) and metals in the fill materials. However, according to the NYSDEC Division of Environmental Remediation (G. Sutton, January 2013), the site was delisted because the materials found there were either not significant enough to qualify the site as hazardous or there was not enough contamination found to represent a significant problem or threat to the public. The site does, however, contain industrial wastes that would need to be cleaned up and could restrict future use of the site (or portions of the site) for residential purposes.

The 4.2 -acre Town-owned site is listed as an inactive hazardous waste site (No. E932135) and was found to contain contamination from volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs) and Polychlorinated Biphenyls (PCBs) in soils that were above established standards. Historic filling of the property in the late 1970's and early 1980's occurred in various phases, raising the elevation of the site up to 10.5 feet in some places. The fill material consists of industrial wastes such as ash, cinders, firebrick, coal, foundry sand and slag. In addition, unknown slag-like material and an oily sheen on the groundwater surface and within the fill have been found, but not identified through laboratory analysis. It is also reported that the southern portion of the property was filled in with grinding wheel sand, extending the land approximately 100 feet to the south.

This property has been identified by the Town for remediation to enable the development of portions of the site for passive recreation and public access (much of the area would remain in its natural, wooded state). The Town applied to the NYSDEC for funding under the Environmental Restoration Program but there were no monies available and their application was terminated. The Town is currently working with Niagara County Office of Economic Development, who secured a grant from the U.S. Environmental Protection Agency and is conducting a second Phase II environmental audit as a part of the overall effort to investigate and remediate the site, as necessary. The Town is looking to redevelop this property for public access and limited passive recreation.

## **2.8 Historic, Cultural and Scenic Resources**

### **2.8.1 Historic Sites and Structures**

The Town of Wheatfield was formed in 1836 from the Town of Niagara. It is situated in the southwest part of Niagara County, surrounded by the Town of Lewiston and Town of Cambria to the north, Town of Pendleton to the east, City of North Tonawanda and Niagara River to the south, and the City of Niagara Falls and Town of Niagara to the west.

Prior to the formation of the Town, the first settlements in the area were made on the Niagara River, on and near the site of the City of North Tonawanda. Even in that vicinity, progress was slow, except for improving farm lands, until after the completion of the Erie Canal. There were few settlers within the limits of the Town prior to the war of 1812.

The first town meeting was held on June 6, 1836, in the schoolhouse of District No. 7, on the north line of the Town. The soil in the Town was generally clay loam and somewhat difficult to cultivate, but heavy crops of wheat could be grown on the land, thus giving the Town its name - Wheatfield.

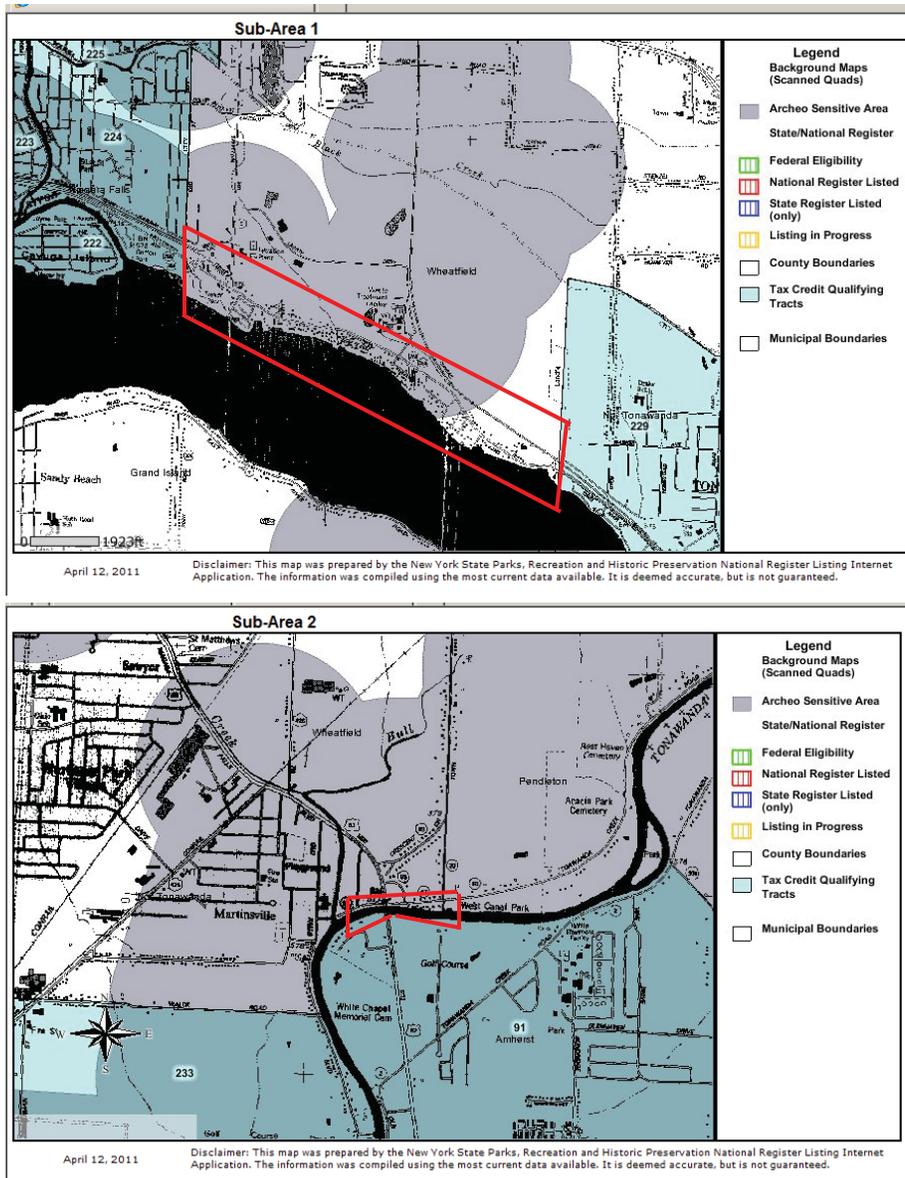
Within Wheatfield, starting in 1843, German immigrants established the communities of Bergholz, St. Johnsburg, Walmore, Martinsville, and Gratwick. The latter two communities are now part of North Tonawanda.

Later other communities were formed at railroad stops and along some well traveled highways. The River Road section of the Town, along the Niagara River, became a prosperous farm section in the 1920s that included the showplace "Wheatfield Farms". Along the river, there were vacation cottages, beaches, an amusement park, and nightclubs. Permanent housing has replaced many of the cottages and remnants of some bygone structures are still visible along River Road today.

Although this waterfront area in Sub-Area 1 enjoyed a rich past, there are no historic structures located within this area. There are also no historic sites in Sub-Area 2, which has been developed with residential uses in the mid to late 20<sup>th</sup> century.

### **2.8.2 Archaeological Resources**

The location of the Wheatfield waterfront along the calmer reaches of the Niagara River and on Tonawanda Creek indicates that these areas may have been attractive for Native American settlement. No known sites of archaeological significance have been identified or are known to exist in either area, and both sub-areas have been considerably disturbed by clearing and development over the years. However, the NYS Office of Parks, Recreation and Historic Preservation archaeological sensitivity mapping indicates that much of the Sub-Area 1 waterfront and all of Sub-Area 2 waterfront is designated as archaeologically sensitive. Therefore, this office should be contacted when considering development projects within these areas or in other undisturbed areas along these waterfronts.



### 2.8.3 Scenic Resources

There are no Scenic Areas of Statewide Significance (SASS) within the Wheatfield LWRA, as designated by the Secretary of State (SASS's are currently limited to 6 areas in the Hudson River Valley and on Long Island). Although not formally designated, the scenic resources along the waterfront areas in the Town of Wheatfield are locally important. These scenic resources consist primarily of the dramatic vistas of the Niagara River and its shoreline, as well as the Erie Canal. River Road (State Route 384/265) is a segment of the NYS Great Lakes Seaway Trail and a designated National and State Scenic By-Way. Efforts should be made to enhance and improve this corridor in recognition of this designation. Efforts should also be taken to protect, and where possible, improve the visual quality and visual accessibility of the waterfront areas in the LWRA. Improved signage and the enhancement of gateway features should be considered. Furthermore, in accordance with federal regulations, the erection of new off-premise signs along State and

National Scenic By-Ways is prohibited. The Town of Wheatfield sign regulations currently restrict off premises signs to directional signage for local businesses that cannot exceed three sq. ft. in size; billboards and other such off premises signage is prohibited. The Town should work to phase out any existing billboard signage along the River Road thoroughfare in Sub-Area 1 to improve visual quality. Scenic views of the river should also be protected and improved wherever possible through the Site Plan review process.

Within Sub-Area 1, views of the Niagara River are available from private residences along the shoreline. Many of the properties in the small residential enclaves in this area are narrow, with lot widths that do not meet Code requirements. In some instances, property owners have combined parcels to enable the construction of a new and larger structure. Although this is not discouraged, there is concern that new home construction should be consistent with the size and scale of homes in the immediate area. Furthermore, new homes should not adversely impact existing views of the river. The same concern extends to private docks constructed along the Niagara River shoreline.

Sub-Area 2 is also entirely residentially developed. Views are available from dwellings. West of Niagara Falls Blvd. the homes are situated north of Lockport Road. Here a narrow shoulder provides opportunities for scenic viewing for occasional pedestrians, but there are no places for parking cars and no formal sidewalk or trail in this area.

## **2.9 Public Infrastructure**

### **2.9.1 Water Supply**

The entire Town of Wheatfield is served by public water provided from the Niagara County Water District. Sub-Areas 1 and 2 are both located in the County's western service district. The source of water is the Niagara River. The Niagara County Water Treatment Plant is located on Williams Road, just north of River Road, outside of the LWRA boundary (see [Map 7A](#)). Intake pipes for the treatment plant extend through a narrow parcel owned by the Water District, which is situated along the west side of the large trailer park facility, at the western end of Sub-Area 1.

### **2.9.2 Wastewater Management**

The Niagara County Sewer District provides wastewater collection and treatment service to the entire Town. The wastewater treatment plant is located on Liberty Drive, just outside the Sub-Area 1 boundary. The treatment plant discharges directly into the Niagara River via an outfall pipe that extends approximately 1,500 feet from the plant. The outfall is routed through property that is owned by the district and situated at the western end of the York Road residential enclave.

Niagara County operates an activated sludge treatment plant with tertiary filtration facilities. Built in 1978, the wastewater treatment plant was designed to accommodate an average daily flow rate of 14 million gallons per day (mgd). The plant currently treats approximately 50 percent of its

design flow on an annual average, but experiences significant storm-related peak flows up to approximately 32 mgd. The Sewer District decided to initiate an upgrade of its existing gravity sand filters in 1998. The district replaced its existing mixed-media sand filters with deep bed, mono-media sand filters. Under this demonstration project, which was co-sponsored by NYSERDA, the district proceeded to install bypass piping to allow for the filtration of primary and combined sewer overflow/sanitary sewer overflow wastewater during wet weather storm events. This project was a success and provided an opportunity for a full-scale pilot study to address treatment issues, minimize capital investment, save energy and improve the environment. The project also received statewide recognition through a design excellence award.

### **2.9.3 Stormwater Management**

Stormwater is conveyed in the Town of Wheatfield through a combination of closed pipes and open ditches. As drainage has been a major issue in the Town, the Wheatfield Highway Department and Drainage Committee have been systematically and aggressively addressing all major drainage channels in the Town. Existing creeks and ditches have been cleared of debris and new drainage systems have been constructed, where required. The Town received grant funding from NYSDEC to clean out Bergholz and Sawyer Creek to improve drainage in those areas. Because of these improvements and an annual program to maintain and clean ditches, storm water runoff and drainage problems have been improved. Efforts must be continued to keep roadside ditches and culverts open and free from growth and debris. Furthermore, drainage considerations must be included in all development proposals. At present, there are no areas of significant flooding or with significant drainage concerns in the LWRA.

In November 2009, the Town prepared a Stormwater Management Plan. The Town is a partner in the Western New York Stormwater Coalition and developed this plan to comply with the NYSDEC General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems. This is a shared Plan that provides policy and management guidance for members of the coalition, as well as regulated municipalities and agencies. The Plan addresses public education and outreach, public participation, illicit discharge detection and elimination, control of runoff at construction sites, post-construction stormwater management and pollution prevention and best management practices. The Town will ensure that this plan is updated on an annual basis to take into consideration the latest technologies and other information to comply with the requirements of the General Permit.

### **2.9.4 Solid Waste Management**

The Town of Wheatfield Highway Department oversees the collection of municipal solid waste. The Town contracts with Modern Disposal for waste collection and disposal. The Town has an annual tire drop off day, which is usually held in the spring. The Town also requires that residents recycle as a part of the municipal waste collection arrangement with Modern. Accepted materials include paper (newsprint and office paper, junk mail, magazines/catalogs, cardboard, paperboard), metal cans and kitchen cookware, plastic (bags, containers, bottles), and clear glass.

The Niagara County landfill has a recycling center where Town residents can also dispose of certain waste materials, including electronics, appliances and certain household hazardous wastes.

### **2.9.5 Other Utilities**

Other utility services available in the waterfront area include electric, telephone and natural gas. Cable and satellite television service is also provided by private carriers.

### **2.9.6 Transportation Systems**

River Road (NYS Route 384 and 265) is principal arterial that extends in a north-south direction, from the City of Buffalo in Erie County to the City of Niagara Falls in Niagara County (in Wheatfield it actually runs in an east-west direction). It is one of several routes directly connecting the two cities. The southern terminus of Route 384 is at NYS Route 5 in downtown Buffalo (Route 384 is known as Delaware Avenue in Erie County), and the northern terminus is at the Rainbow Bridge in downtown Niagara Falls. Route 265 is also known as Military Road, which branches off to the north, just west of Sub-Area 1.

River Road, from the North Tonawanda border to Williams Road, has a pavement width measuring 42 feet wide, with 12-foot travel lanes and a posted speed limit of 45 miles per hour. From Williams Road to the Niagara Falls border the pavement measures 36 feet wide, with a posted speed limit of 35 miles per hour. GBNRTC data from 2010 reports the average annual daily traffic volume is 11,500 vehicles (4,400 for the stretch of River road, west of Williams road.) It should be noted that the pavement width through North Tonawanda, east of Sub-Area 1, measures 54 feet wide (accommodating four travel lanes).

As noted, River Road supports a significant amount of commuter traffic, which creates perceptions of safety hazards for neighborhood traffic and pedestrians on the part of local residents. The shoulders along this roadway are not perceived to be designed appropriately for pedestrian travel and roadway ditches further complicate conditions. Traffic calming through this area should be investigated as a means to address public safety concerns. The Town is also proposing the construction of a multi-use pathway that would separate bicycle and pedestrian traffic and provide a safer environment for such use.

There is one active railroad line that extends through eastern side of Sub-Area 1. This line is owned and operated by CSX. It supports approximately nine trains per day. It is also used by Amtrak for passenger service to Niagara Falls and Canada.

### **2.9.7 Emergency Services**

The Niagara County Sheriff's Department provides police patrols in the waterfront areas and

responds to emergencies. Back up support is provided by New York State Police or the Cities of Tonawanda or Niagara Falls, as required.

Niagara River waters are patrolled and protected by the U.S. Coast Guard, NYSDEC Marine Enforcement Unit and City of Tonawanda Police Marine Division. The Coast Guard and the County inspect vessels, conduct searches, assist stranded boaters, investigate accidents, and answer navigation complaint issues, among other duties. They also provide boater safety and education. The U.S. Border Patrol also cruises the Niagara River and patrol the upland in the vicinity of the railroad corridor that runs through North Tonawanda and the eastern portion of Sub-Area 1 in pursuit of illegal aliens.

Fire protection along the waterfront is provided by local volunteer fire companies. The Frontier Volunteer Fire Company services Sub-Area 1 ([Map 7A](#)). Sub-Area 2 receives service from the Adams Volunteer Fire Company. These fire companies provide fire protection and emergency medical services to their respective service areas.

## **SECTION III    Local Waterfront Revitalization Program Policies**

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

### **DEVELOPED WATERFRONT POLICIES**

#### **Policy 1**

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

#### **Policy 2**

Preserve historic resources

#### **Policy 3**

Enhance visual quality and protect outstanding scenic resources.

### **NATURAL WATERFRONT POLICIES**

#### **Policy 4**

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

#### **Policy 5**

Protect and improve water resources.

#### **Policy 6**

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

Policy 7

Protect and improve air quality.

Policy 8

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

**PUBLIC WATERFRONT POLICIES**

Policy 9

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

**WORKING WATERFRONT POLICIES**

Policy 10

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

Policy 11

Promote sustainable use of fish and wildlife resources.

Policy 12

Protect agricultural lands in the Wheatfield LWRP study area.

Policy 13

Promote appropriate use and development of energy and mineral resources.

## DEVELOPED WATERFRONT POLICIES

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

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

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

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

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

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

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

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

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

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

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

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

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

### Water-Dependent uses

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

### Water-Enhanced uses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **1.5 Protect stable residential areas**

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

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

## **POLICY 2 - Preserve historic resources**

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

### **2.1 Maximize the preservation and retention of historic resources**

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

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

## **2.2 Protect and preserve archaeological resources**

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

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

### **POLICY 3 - Enhance visual quality and protect outstanding scenic resources**

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

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

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

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

### **3.1 Protect and improve visual quality throughout the Wheatfield waterfront.**

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

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

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

## **NATURAL WATERFRONT POLICIES**

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

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

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

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

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

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

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

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

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

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

Anchoring -

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

Construction materials and methods -

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

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

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

Utilities -

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

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

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

Encroachments -

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

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

Non-residential construction –

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

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

Manufactured homes and recreational vehicles

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

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

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

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

#### **4.3 Preserve and restore natural protective features**

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

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

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

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

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

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

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

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

#### **POLICY 5 - Protect and improve water resources**

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

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

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

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

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

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

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

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

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

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

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

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

(1) Urban

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

(2) Hydromodifications

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

(3) Floatables and litter

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

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

### **5.3 Protect and enhance surface water quality**

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

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

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

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

### **6.1 Protect Locally Significant Waterfront Fish and Wildlife Habitats**

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

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

Significant fish and wildlife habitats are those habitat areas which:

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

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

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

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

### **6.3 Protect and restore freshwater wetlands**

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

## **POLICY 7 - Protect and improve air quality**

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

### **7.1 Control or abate existing, and prevent new air pollution**

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.2 Manage hazardous wastes to protect public health and control pollution**

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

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

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

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

### **8.4 Prevent and remediate discharge of petroleum products**

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

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

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

**PUBLIC WATERFRONT POLICIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **WORKING WATERFRONT POLICIES**

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

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

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

#### **10.1 Protect water-dependent uses**

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

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

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

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

### **10.3 Improve the economic viability of water-dependent uses**

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

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

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

**POLICY 11 - Promote sustainable use of living marine resources**

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

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

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

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

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

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

**POLICY 12 - Protect agricultural lands**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SECTION IV Proposed Land and Water Uses and Proposed Projects

This section of the LWRP describes the proposed land and water uses for the Town of Wheatfield waterfront area. Proposed projects are also briefly described in this section. The Proposed Land Use and Projects maps ([Map 8A](#) and [Map 8B](#)), illustrate the proposed land use patterns and identifies the general location of proposed projects within the LWRP area.

### 4.1 Proposed Land Uses

Land uses in the Wheatfield LWRA are proposed in a manner that will continue the general patterns of existing development in each sub-area. Any proposed land use changes are recommended to protect waterfront resources, maintain the existing character of the community, increase public access and properly accommodate future development. In addition, the proposed land uses take into account the vision set forth in the Town of Wheatfield's Comprehensive Plan. The generalized land use recommendations and the proposed projects shown on [Map 8A](#) and [Map 8B](#) are intended to support the Coastal Management Policies contained in Section III.

Recommendations have been included to improve opportunities for future public access to the shoreline, wherever possible. The Town's long range goal for the waterfront is to make necessary improvements for residents to maintain and improve the quality of life, enhance public access in appropriate places, and revitalize certain areas to bring about economic development in Sub-Area 1.

#### Sub-Area 1

Sub-Area 1 is primarily developed with a stable mix of residential and commercial uses, with limited areas of open space. Current land uses should be continued with minor changes in a few locations to accommodate additional residential uses or commercial development along River Road (primarily in-fill development).

There is one area at the western end of Sub-Area 1, south of River Road, where wider-scale change could bring about land use improvements that would benefit the area as a whole. There are two properties, which comprise almost 30 acres combined and have the potential for development and redevelopment with a mix of uses. The western-most property is vacant land (former industrial landfill) that would need some remediation for reuse; the other site presently supports a mobile home park, which is not the highest and best use for the land. Future redevelopment of these lands could provide opportunities for the development of a mix of commercial and residential uses, as well as public access along the waterfront (which is something that is lacking in this area). Any large-scale redevelopment of this area should include a component and/or provisions for public access along the riverfront to address this need. Furthermore, the Town of Wheatfield owns approximately 4.2 acres of land to the immediate

west of the aforementioned vacant land that is intended for passive recreational use and could compliment any future development on the larger properties and enhance public access and passive recreational opportunities. The Town land is a listed inactive hazardous waste site and the Town is currently working with Niagara County to investigate the need for remediation to enable the reuse of the site as planned.

In addition, the town also owns three contiguous vacant properties, totaling approximately 0.6 acres, which are located immediately to the west of the 4.2-acre Town-owned site, with frontage along River Road. It is proposed that these four Town-owned properties, along with additional privately-owned vacant properties that are situated west of the Town land, extending to the City of Niagara Falls border, could comprise a continuous area of open space. These lands would provide a connection to the adjacent lands in the City of Niagara Falls that are planned for future passive recreational use. This could ultimately provide a connection to the City's parklands (Griffon Park and Jayne Park) located further to the west.



The Town of Wheatfield owns a stretch of land along the north side of River Road, which is situated between two narrow parcels that are owned by Niagara County. Ultimately, this land should be combined with the County-owned parcel and utilized, along with additional Town and County-owned properties that run east of Liberty Drive, for the development of a multi-use pathway for pedestrian and bicycle traffic, providing a trail connection with the neighboring Cities of Niagara Falls and North Tonawanda. This pathway would allow the Town to become a visible portion of the Niagara River Greenway system.

Finally, there is a one-acre parcel owned by Niagara County Sewer District No. 2, located south of River Road, which is utilized for routing the outfall for the wastewater treatment plant. This property is situated immediately west of the York Road residential community and could provide an opportunity for public access to the Niagara River. This area could minimally improved for local residents for passive recreation and shoreline viewing. It is one of only two publicly-owned parcels that front along the river. The other is the Town-owned property located to the west (noted above), near the City of Niagara Falls boundary, which is also proposed to provide waterfront access and passive recreation opportunities.

#### Sub-Area 2

Sub-Area 2 primarily contains single-family residential uses. These uses are stable and should remain. The vacant parcel located at the northeast corner of Connecting Blvd. and Lockport Avenue will likely transition to residential use. The parcel situated along the border with the City of North Tonawanda is a commercial use and should remain as such.

### **4.2 Proposed Water Uses/Harbor Management**

Recreational boating and fishing is the primary water use along the Wheatfield waterfront. As described in the Inventory and Analysis section (Section II), due to shoreline conditions, there is no suitable and economically feasible location for a marina in the Town. There are no permanent public docking or boat launch facilities in the LWRA. There are no designated channels or other navigational infrastructure in the area, other than the federal navigation channel that extends through the center of the Niagara River, which is delineated by navigational lights and buoys. Access to the Niagara River and Erie Canal (Tonawanda Creek) is limited to private docks; public access can only be gained at park and marina facilities in nearby Niagara Falls or North Tonawanda in Sub-Area1 and the Town of Pendleton in Sub-Area 2. There are no plans for improving surface water usage or for the creation of harbor management infrastructure in the Town; emphasis is placed on opportunities for improved public access to the waterfront.

### **4.3 Proposed Town Projects and Studies**

There are a small number of projects proposed along the Town of Wheatfield waterfront to improve opportunities for public access and recreation. As noted in the previous discussion, much of the shoreline is developed with private residential uses, limiting the potential for the general public (particularly residents living in inland areas of the Town) to enjoy the waterfront.

Projects proposed along the Town of Wheatfield waterfront include the following.

- Waterfront Parkland – develop the 4.2-acre parcel in Sub-Area 1, as appropriate, for passive recreation (picnicking, shoreline viewing, etc.). Perhaps an interpretive trail could be constructed through the upland, with wooden walkways through wetland areas that may exist

on the site (which would have to be formally delineated to determine the full extent of potential wetlands). This property could be used in conjunction with the additional 0.6 acres of property that is located immediately to the west, along the south side of River Road, which is also owned by the Town.

- Great Lakes Seaway Trail Recognition - River Road in Sub-Area 1 is a segment of the New York State Great Lakes Seaway Trail and a State-designated Scenic By-Way. Gateway features at the east and west entrances to the Town should be improved to recognize this distinction. Furthermore, the Town should investigate opportunities to install additional interpretive signage that acknowledges the status of this roadway. Furthermore, the Town should restrict signage that is not in conformance with the scenic by-way designation in an effort to eliminate existing billboard structures and other advertising that impacts the visual quality of this roadway corridor.
- Niagara River Greenway Trail - River Road is a State-designated bicycle route, but this roadway accommodates a large volume of commuter traffic which can make pedestrians and bicyclists feel unsafe and discourage use. The Town desires to construct a multi-use pathway that would be a segment in the regional Niagara River Greenway system and provide a safe location for walking, biking and other recreational use. This trail is presently proposed to be constructed on lands located north of River Road that are owned by the Town and Niagara County. This trail would be a collaborative effort with assistance and consultation provided by the County, the NYSDOT and the Greater Buffalo Niagara Regional Transportation Council.
- Baisch Park Improvements - Undertake improvements to Baisch Park to improve drainage in this area of Sub-Area 2. Consideration should be given to developing a pathway connection from the park to Lockport Road and the waterfront (even if this was done by way of a sidewalk or improved roadway shoulder).
- Future Land Acquisition - At present, there is very little publicly-owned land along the Wheatfield waterfront. As a long-term strategy, the Town should develop a plan or policy to acquire waterfront land that may become available along the Niagara River and Tonawanda Creek that could offer future public access and recreation opportunities.

## SECTION V      **Techniques for Implementation of the Local Program**

This section of the LWRP sets out implementation strategies for the Town of Wheatfield LWRP. This section further considers existing laws and sections of Wheatfield Town Code that relate to the Policies. It also outlines new laws, amendments and other Town actions necessary to support the Policies. A management structure for implementation and consistency review is presented, along with an overview of financial resources that may be necessary to implement the LWRP.

### **5.1 Existing Laws**

- **Chapter 75, Campgrounds and Recreational Vehicle Parks**

Chapter 75 regulates the occupancy and maintenances of recreational vehicle (RV) parks and campgrounds. Land in the Town cannot be used as an RV park or campground unless a permit and certificate of occupancy has been obtained from the Town. In accordance with Chapter 75, any new RV park or campground requires a minimum of 10 acres of land, shall only be located within a C-1 Commercial District, must be an accessory use to a hotel or motel, and must set aside a minimum of 25 percent of the land area as open space and recreation. No RV park or campground may be used for permanent occupancy, and there must be adequate facilities for the provision of public water, refuse disposal and the management of sanitary waste.

- **Chapter 82, Drainage**

The intent of Chapter 82 is to protect and preserve the natural beauty and value of property and to minimize public and private losses by regulating the design and implementation of drainage structures. Chapter 82 requires the issuance of a permit for the installation or alteration of drainage structures within the physical limits of existing drainageways.

- **Chapter 101, Flood Damage Prevention**

The purpose of Chapter 101 of the Town Code is to protect public health, safety, and welfare and minimize public and private losses due to flood conditions in specific areas. In conformance with the requirements of the National Flood Insurance Program, and to qualify for participation in this program, this law outlines the standards for construction in areas of special flood hazard and restrictions on encroachments and other activities in designated floodways. The law also sets forth a process for obtaining a permit for this development in the floodplain.

- **Chapter 114, Mobile Home Parks**

Chapter 114 of the Town Code regulates mobile homes in courts and requires that all mobile homes in courts be properly licensed by the Town. Per Chapter 114, no premises in the Town shall be used for the parking or locating of a mobile home without a license (not including the storage of unoccupied mobile homes). The law sets forth setback standards and other bulk regulations and requires the provision of public water and wastewater disposal services.

- **Chapter 123, Parks and Recreation Areas**

The intent of Chapter 123 regulates activities in public parks and recreation areas, including the distribution of advertising materials, loitering, soliciting for money, and other acts that may annoy others or interfere with, encumber, obstruct or render public areas dangerous for public use. Animals, including horses, cannot run free in public parks and recreation areas. Other uses, including ice skating, sledding, boating, camping, use of snow mobiles, etc. are either regulated or prohibited.

- **Chapter 134, Property Maintenance**

This law recognizes the fact that rubbish, refuse, litter, noxious growths, inoperable or abandoned vehicles, or other debris that is abandoned or stored on private property, can constitute both a public and private nuisance and depreciates property values and community character. Therefore, Chapter 134 establishes basic and uniform property maintenance standards and a legal procedure for the storage of materials and removal of litter, weeds, debris and other refuse, as required.

- **Chapter 138, Public Improvements**

The intent of Chapter 138 is to regulate the construction of public improvements in the Town. Any work to be performed in relation to the installation and/or construction of any public improvements requires a permit. Permits are not issued until an applicant posts a surety bond in a sum equal to 25 percent of the work to be performed. Chapter 138 also outlines the requirements for the acceptance of working easements, where required.

- **Chapter 146, Sewers**

Chapter 146 requires land owners to connect into the public sanitary sewer system, where available, and sets forth requirements for the installation of private sanitary sewers in the Town. It establishes a Sewer Board of Review to handle hardships and grievances and requires the inspection of newly installed systems. Chapter 146 includes provisions for the proper handling of liquid wastes and prohibits the discharge of certain materials into the public sewer system.

- **Chapter 161, Solid Waste**

This law protects public health, safety and welfare and helps to protect property values by controlling the disposal of refuse in the Town. Chapter 161 includes provisions for the

proper storage of refuse and for waste collection and recycling. The accumulation and burning of solid waste in the Town is prohibited.

- **Chapter 163, Storm Sewer System**

Chapter 163 regulates non-stormwater discharges to the Town of Wheatfield municipal storm sewer system (MS4) as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the system in order to comply with the requirements of the SPDES General Permit for MS4s. Chapter 163 prohibits illicit discharges and activities that would contaminate stormwater runoff, and requires the implementation of best management practices to control such discharges and activities.

- **Chapter 164, Stormwater Management**

The intent of Chapter 164 is to establish minimum stormwater management requirements and controls to safeguard the general public health, safety and welfare. This law seeks to meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for stormwater discharges from municipal separate stormwater sewer systems (MS4s, Permit No. GP-0-01-002). This law requires that land development activities conform to the substantive requirements of the SPDES General Permit for Construction Activities so as to minimize increases in stormwater runoff, reduce flooding and siltation, control stream temperature and stream bank erosion and maintain the integrity of stream channels. It is also aimed at controlling the volume of stormwater runoff that flows from any specific site during and following development to the maximum extent possible.

- **Chapter 169, Subdivision of Land**

Chapter 169 authorizes the Wheatfield Planning Board to review and recommend approval, by the Town Board, of plats for the subdivision of land in conformance with the Town of Wheatfield Zoning Code and Comprehensive Plan. The subdivision regulations set forth application/review procedures, plan specifications, design standards and required land improvements (road, drainage and utilities) for the minor and major subdivision of land in the Town. In addition to outlining the process for subdivision, Chapter 169 sets forth design standards for public improvements and requires the preservation of trees and other natural features that add value to residential development and to the community, such as large trees or groves, watercourses, scenic vistas, historic sites, beaches and similar irreplaceable features. It should also be noted that for any property where an interest has been issued by the New York State Office of General Services for the use of underwater lands, Section 334(5) of the Real Property Law requires that riparian (or littoral) lines be included on the survey that is prepared for the subdivision of waterfront properties situated on navigable waters.

- **Chapter 194, Water**

The purpose of Chapter 194 is to promote the general health, safety and welfare of the inhabitants of the Town through the regulation, supervision and control of the water supply furnished by the Wheatfield Water District. Receipt of water from or connection to the district requires approval from the Town Water Division. Chapter 196 regulates such things as fire hydrants, water meters, private service lines, tapping charges, and the installation and maintenance of water facilities.

- **Chapter 198, Wind Energy Conversion Systems**

The Town recognizes that wind energy is an abundant, renewable and non-polluting energy resource and that its conversion to electricity can reduce dependence on non-renewable energy resources. Chapter 198 promotes the effective and efficient use of wind energy conversion systems and regulates the design, placement, construction, installation and/or modification of such systems for the purpose of protecting the health and safety of neighboring property owners and the general public, as well as the natural resources and aesthetics of the community. Upon the issuance of a Special Use Permit from the Town Board, wind energy conversion systems are restricted for commercial and residential use in certain zoning districts. The only zoning district in the LWRA where such a system would be permitted is the Industrial 1 (M-1) district in Sub-Area 1.

- **Chapter 200 – Zoning**

Chapter 200 regulates and restricts (by district) the location, construction, and use of buildings and structures, and the use of land in the Town of Wheatfield. The Zoning Code establishes districts, as well as uses and dimensional requirements for each district. Chapter 200 regulates signs, home occupations and telecommunications towers, and sets forth the procedures for obtaining special use permits, site plan review and zoning amendments. Chapter 200 outlines the duties and procedures of the Code Enforcement Officer and Zoning Board of Appeals. Clustered development, Planned Unit Development and other Supplemental Regulations are also provided in the Zoning Code. Industrial performance and stormwater control standards are also included in the law. The zoning districts found in the LWRA, and their corresponding allowable uses, are listed in more detail in Section II.

## **5.2 New or Revised Local Laws Necessary to Implement the LWRP**

### **5.2.1 LWRP Consistency Review Law**

Actions to be directly undertaken, funded or permitted within the local waterfront revitalization area must be consistent with the policies set forth in the Town of Wheatfield LWRP. Through the adoption of the consistency review law, the Town has established the legal framework necessary to ensure that direct and indirect actions proposed within the waterfront area are in keeping with

the intent of the LWRP. The LWRP Consistency Review Law and Waterfront Assessment Form are included in the Appendix A.

### **5.2.2 Waterfront Residential (R-W) District**

The residential areas on the north and south sides of River Road in Sub-Area 1 were developed many years ago, when the area accommodated a summer tourist trade. Over time, the small summer cottages have come into year-round use. These homes are situated on small lots that do not have sufficient area or width to meet the present day zoning requirements. This has led to continued requests for variances to enable structural improvements, making zoning enforcement a more difficult issue for the Town. To address this situation, the Town adopted a new waterfront residential zoning classification for this area, with reduced lot area and setback standards that bring the majority of the properties into compliance (see Appendix B). This eliminated the need for zoning relief, allowing property owners to improve their properties in a more streamlined fashion. Under this new zoning the minimum lot size for properties that do not meet the current 100-foot requirement is reduced to 50 feet. The subdivision of larger parcels, however, remains limited to 100-feet to prevent abuse of the regulations or the creation of additional new lots with sub-standard size or width.

### **5.2.3 Zoning**

The Town of Wheatfield regularly reviews and updates Chapter 200 as part of the implementation efforts for the Town of Wheatfield Comprehensive Plan, and to keep the Code current and in line with local need and trends. To support the policies set forth in Section III and to implement the proposed actions presented in Section IV, the town has enacted the following zoning changes, including amendments to the zoning map ([Maps 9A](#) and [Map 9B](#)).

#### Sub-Area 1

The entire western end of Sub-Area 1, in the vicinity of Williams Road, was zoned C-1 Commercial. This zoning did not support the land use vision for this area. The area north of River Road will remain zoned for commercial use. However, most of the parcels located on the south side of the road have been rezoned to R-W Residential district, as this zoning designation makes the existing dwellings in this area conforming uses and it allows for passive recreational use of the area, which is consistent with the long range planning for this portion of the waterfront.

The area at the western end of Sub-Area 1, south of River Road, also encompasses two properties that comprise almost 25 acres combined (11.1 acres and 13.7 acres, respectively). The vision for these lands is for potential development and redevelopment with a mix of uses. This area will remain zoned for commercial use, but the goal is for application of the Planned Unit Development floating zone to enable future mixed use development. The existing commercial classification allows for the development of commercial and residential uses, including multi-family residential, but it is restrictive in terms setbacks and for allowing a combination of these

uses on one site. The Planned Unit Development zoning would more readily provide the flexibility to achieve broader range of uses (residential, commercial and open space) on this land.

There are four parcels located on the north side of River Road, in the vicinity of York Road, that were zoned M-1 Light Industrial. These parcels are developed with residential dwellings and therefore the zoning designation of these parcels was changed to the R-W Residential district to allow these existing uses to be conforming (along with the remainder of the area as shown on [Map 9A](#)).

The area on the north side of River Road, at the eastern end of Sub-Area 1, is presently zoned for R-3 Residential use, which would allow for multi-family development. Due to the traffic safety concerns that exist in this area, where River Road narrows from four lanes in North Tonawanda to two travel lanes in the Town of Wheatfield (Sub-Area 1), there is concern that such higher density residential development could increase traffic volumes and create further conflicts in this area. The proximity to the active rail corridor also makes higher density residential use of this site less appealing. This area was down-zoned to the R-W Residential classification, which is consistent with what is proposed for the other residential areas in Sub-Area 1.

#### Sub-Area 2

The waterfront area in Sub-Area 2 is developed with single-family residential dwellings. This is a stable residential area and the character of this neighborhood is not expected to change. Lands along both sides of Niagara Fall Blvd. are zoned C-1 Commercial, however, commercial land uses only exist on the immediate east side of this roadway. Land uses to the west are, and historically have been, single-family residences. Therefore, the zoning to the west has been changed to R-2 Residential to be consistent with the rest of the area and to bring the existing dwellings into conformance with the Code.

In addition, the Niagara Falls Blvd. Zoning Overlay (NFBO) district extends over the residential uses to the west and the commercial and residential uses to the east. The NFBO was designed to better manage and accommodate increasing commercial growth along the Niagara Falls Blvd. corridor and applies guidelines to regulate traffic, signage and construction design. As much of the area that falls within the NFBO in Sub-Area 2 is residentially developed, and commercial development is not recommended or anticipated in the future, the extent of the NFBO coverage has been reduced in this area to only apply to the existing commercial development on the east side of Niagara Falls Blvd., which is currently zoned C-1.

### **5.3 Other Public and Private Actions Necessary to Implement the LWRP**

- Niagara County owns a small property adjacent to Willow Lane and York Road, which is utilized to route the outfall for the wastewater treatment plant to the Niagara River. This one-acre property has the potential to be used as an informal pocket park to provide public access to the river. This area could be improved on a small scale for limited public access, including

the addition of some benches and/or a gazebo for viewing and a few picnic tables. Parking would be required and would be limited in nature to primarily service local residents in the area.

- Work with the NYSDOT to study existing traffic conditions on River Road and investigate potential traffic calming measures. Local residents feel that River Road needs to be “tamed” through the study area because traffic conditions create hazards for motorists entering and exiting the residential neighborhoods and businesses along this stretch, as well as for pedestrians and others who this roadway. This could include measures such as narrowing of the existing travel lanes within the existing paved area of right-of-way to allow for the creation of a center turn lane and six foot shoulders for pedestrian and bicycle traffic (which could be as simple as restriping the roadway). This type of “context sensitive” improvement would create a safer environment for local motorists, who could utilize the center lane as a stacking or waiting area for turns, and it would force vehicles traveling on River Road to slow down when the sense of a wider road is removed (reducing the comfort zone for travel). The speed limit in this area could also be reduced to 40 miles per hour. Whether 40 or 45, the speed limit needs to be more diligently enforced to improve traffic and pedestrian safety.
- Work with the Greater Buffalo Niagara Regional Transportation Council (GBNRTC) and the NYSDOT to develop and advance plans, and secure funding, for the construction of a multi-use pathway on the Town and County-owned lands and abandoned railway right-of-way located north of River Road. This pathway would provide safe access through the Town and provide a connection with trails systems in Niagara Falls and North Tonawanda. Such a trail would enable the Town to become a more visible part of the Niagara River Greenway.

#### **5.4 Management Structure for Implementing the LWRP**

All State and Federal actions proposed within the Town of Wheatfield LWRA will be reviewed in accordance with the guidelines established by the New York State Department of State. The Procedural Guidelines for Coordinating NYSDOS and LWRP Consistency Review of Federal Agency Actions, Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs are in Effect, LWRP Consistency Review Law and Waterfront Assessment Form are included in the Appendices C and D.

Various local officials and boards are responsible for management and coordination of the LWRP and are directly involved in ensuring that consistency reviews are completed for projects within the LWRA. These include:

- Town Board – the Town Board, or their designee, will prioritize and advance LWRP projects and direct the appropriate Town agency or a grants writing consultant to prepare applications for funding from State, federal and other sources to finance LWRP projects.

- Planning Board – the Planning Board will be responsible for the determination of consistency for site plan review and land subdivision within the LWRA.
- Zoning Board of Appeals – the Zoning Board of Appeals is the designated agency for the determination of consistency for variance applications subject to Town LWRP Consistency Review Law. The Zoning Board of Appeals will hear and render decisions on variance applications and appeals involving properties or activities within the LWRA.
- Code Enforcement Officer – the Code Enforcement Officer will be responsible for coordinating review of actions in the LWRA for consistency with the LWRP. The Code Enforcement Office will advise, assist and make consistency recommendations to other Town agencies in the implementation of the LWRP, its policies and projects, and will coordinate with the New York State Department of State and other State agencies and/or federal agencies regarding their respective consistency review of actions in the LWRA.
- Town Clerk – the Town Clerk will maintain, and make available to the public, a copy of the LWRP for use during normal business hours. The Clerk will, as necessary, distribute copies of the Waterfront Assessment Form (WAF) to applicants proposing actions in the LWRA.

### **5.5 Financial Resources Necessary to Implement the LWRP**

It is recognized that the implementation of the proposed projects identified under Section IV will require funding from a combination of public and private sources. These costs may include capital outlays, maintenance costs and, in some cases, property acquisition. The costs for these projects are undetermined at this time. Where applicable, the Town will work diligently to secure funding through grants available through State and Federal program funds to support the implementation of the identified LWRP projects.

Private commercial and residential revitalization efforts are expected to occur in the future in areas along the north side of River Road and in the small residential enclaves south of River Road. The Town endorses these efforts and will ensure that they are undertaken in a manner that is consistent with the policies of the LWRP.

### **5.6 Local Regulatory Changes**

Zoning and local law changes will be the responsibility of the Town of Wheatfield, the majority of which would be included in the budget of the Town Attorney's Office.

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

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

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

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

**6.1 STATE PROGRAMS THAT SHOULD BE UNDERTAKEN IN A MANNER CONSISTENT WITH THE LOCAL WATERFRONT REVITALIZATION PROGRAM**

OFFICE FOR THE AGING

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

DIVISION OF ALCOHOLIC BEVERAGE CONTROL/ STATE LIQUOR AUTHORITY

- 1.00 Permit and Approval Programs:
  - 1.01 Ball Park - Stadium License
  - 1.02 Bottle Club License
  - 1.03 Bottling Permits
  - 1.04 Brewer's Licenses and Permits
  - 1.05 Brewer's Retail Beer License
  - 1.06 Catering Establishment Liquor License
  - 1.07 Cider Producer's and Wholesaler's Licenses
  - 1.08 Club Beer, Liquor, and Wine Licenses
  - 1.09 Distiller's Licenses
  - 1.10 Drug Store, Eating Place, and Grocery Store Beer Licenses
  - 1.11 Farm Winery and Winery Licenses
  - 1.12 Hotel Beer, Wine, and Liquor Licenses
  - 1.13 Industrial Alcohol Manufacturer's Permits
  - 1.14 Liquor Store License
  - 1.15 On-Premises Liquor Licenses
  - 1.16 Plenary Permit (Miscellaneous-Annual)
  - 1.17 Summer Beer and Liquor Licenses
  - 1.18 Tavern/Restaurant and Restaurant Wine Licenses
  - 1.19 Vessel Beer and Liquor Licenses
  - 1.20 Warehouse Permit
  - 1.21 Wine Store License
  - 1.22 Winter Beer and Liquor Licenses
  - 1.23 Wholesale Beer, Wine, and Liquor Licenses

DIVISION OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES

- 1.00 Facilities, construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Permit and approval programs:

- 2.01 Certificate of approval (Substance Abuse Services Program)
- 3.00 Permit and approval:
  - 3.01 Letter Approval for Certificate of Need
  - 3.02 Operating Certificate (Alcoholism Facility)
  - 3.03 Operating Certificate (Community Residence)
  - 3.04 Operating Certificate (Outpatient Facility)
  - 3.05 Operating Certificate (Sobering-Up Station)

#### COUNCIL ON THE ARTS

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

#### DEPARTMENT OF BANKING

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

- 1.25 Authorization Certificate (Subsidiary Trust Company Charter)
- 1.26 Authorization Certificate (Trust Company Branch)
- 1.27 Authorization Certificate (Trust Company – Change of Location)
- 1.28 Authorization Certificate (Trust Company Charter)
- 1.29 Authorization Certificate (Trust Company Public Accommodations Office)
- 1.30 Authorization to Establish a Life Insurance Agency
- 1.31 License as a Licensed Lender
- 1.32 License for a Foreign Banking Corporation Branch

OFFICE OF CHILDREN AND FAMILY SERVICES

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Homeless Housing and Assistance Program.
- 3.00 Permit and approval programs:
  - 3.01 Certificate of Incorporation (Adult Residential Care Facilities)
  - 3.02 Operating Certificate (Children's Services)
  - 3.03 Operating Certificate (Enriched Housing Program)
  - 3.04 Operating Certificate (Home for Adults)
  - 3.05 Operating Certificate (Proprietary Home)
  - 3.06 Operating Certificate (Public Home)
  - 3.07 Operating Certificate (Special Care Home)
  - 3.08 Permit to Operate a Day Care Center

DEPARTMENT OF CORRECTIONAL SERVICES

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

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

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

EMPIRE STATE DEVELOPMENT/ EMPIRE STATE DEVELOPMENT CORPORATION

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

EDUCATION DEPARTMENT

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

- 2.02 Private Business School Registration
- 2.03 Private School License
- 2.04 Registered Manufacturer of Drugs and/or Devices
- 2.05 Registered Pharmacy Certificate
- 2.06 Registered Wholesale of Drugs and/or Devices
- 2.07 Registered Wholesaler-Repacker of Drugs and/or Devices
- 2.08 Storekeeper's Certificate
- 3.00 Administration of Article 5, Section 233 of the Educational Law regarding the removal of archaeological and paleontological objects under the waters of the State.

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- 1.00 Acquisition, disposition, lease, grant of easement, and other activities related to the management of lands under the jurisdiction of the Department.
- 2.00 Classification of Waters Program; classification of land areas under the Clean Air Act.
- 3.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 4.00 Financial assistance/grant programs:
  - 4.01 Capital projects for limiting air pollution
  - 4.02 Cleanup of toxic waste dumps
  - 4.03 Flood control, beach erosion, and other water resource projects
  - 4.04 Operating aid to municipal wastewater treatment facilities
  - 4.05 Resource recovery and solid waste management capital projects
  - 4.06 Wastewater treatment facilities
- 6.00 Implementation of the Environmental Quality Bond Act of 1972, including:
  - (a) Water Quality Improvement Projects
  - (b) Land Preservation and Improvement Projects including Wetland Preservation and Restoration Projects, Unique Area Preservation Projects, Metropolitan Parks Projects, Open Space Preservation Projects, and Waterways Projects.
- 7.00 Marine Finfish and Shellfish Programs
- 9.00 Permit and approval programs

Air Resources

- 9.01 Certificate of Approval for Air Pollution Episode Action Plan
- 9.02 Certificate of Compliance for Tax Relief – Air Pollution Control Facility
- 9.03 Certificate to Operate: Stationary Combustion Installation; Incinerator; process, exhaust or Ventilation System

- 9.06 Permit for Restricted Burning
- 9.07 Permit to Construct; a Stationary Combustion Installation; Incinerator; Indirect Source of Air Contamination; Process, Exhaust or Ventilation System

Construction Management

- 9.08 Approval of Plans and Specifications for Wastewater Treatment Facilities

Fish and Wildlife

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

Hazardous Substances

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

Lands and Forest

- 9.28 Floating Object Permit
- 9.30 Navigation Aid Permit

Water Resources

- 9.49 Approval of Plans for Wastewater Disposal Systems
- 9.50 Certificate of Approval of Realty Subdivision Plans
- 9.51 Certificate of Compliance (Industrial Wastewater Treatment Facility)

- 9.52 Letters of Certification for Major Onshore Petroleum Facility Oil Spill Prevention and Control Plan
- 9.53 Permit Article 36, (Construction in Flood Hazard Areas)
- 9.56 State Pollutant Discharge Elimination System (SPDES) Permit
- 9.57 Approval – Drainage Improvement District
- 9.58 Approval – Water (Diversion for Power)
- 9.60 Permit – Article 15, (Protection of Water) – Dam
- 9.61 Permit – Article 15, Title 15 (Water Supply)
- 9.62 River Improvement District Permits
- 9.63 River Regulatory District approvals
- 9.65 401 Water Quality Certification
- 10.00 Preparation and revision of Air Pollution State Implementation Plan.
- 11.00 Preparation and revision of Continuous Executive Program Plan.
- 12.00 Preparation and revision of Statewide Environmental Plan.
- 13.00 Protection of Natural and Man-made Beauty Program.
- 14.00 Urban Fisheries Program.
- 15.00 Urban Forestry Program.
- 16.00 Urban Wildlife Program.

#### ENVIRONMENTAL FACILITIES CORPORATION

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

#### FACILITIES DEVELOPMENT CORPORATION

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

#### OFFICE OF GENERAL SERVICES

- 1.00 Administration of the Public Lands Law for acquisition and disposition of lands, grants of land and grants of easement of land under water, issuance of licenses for removal of materials from lands under water, and oil and gas leases for exploration and development.
- 2.00 Administration of Article 4 B, Public Buildings law, in regard to the protection and management of State historic and cultural properties and State uses of buildings of historic, architectural or cultural significance.
- 3.00 Facilities construction, rehabilitation, expansion, or demolition.
- 4.00 Administration of Article 5, Section 233, Subsection 5 of the Education Law on removal of archaeological and paleontological objects under the waters of the State.
- 5.00 Administration of Article 3, Section 32 of the Navigation Law regarding location of structures in or on navigable waters.

- 6.00 Section 334 of the State Real Estate Law regarding subdivision of waterfront properties on navigable waters to include the location of riparian lines.

GREATER BUFFALO-NIAGARA REGIONAL TRANSPORTATION COUNCIL  
(regional agency)

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Increases in special fares for transportation services to public water-related recreation resources.

DEPARTMENT OF HEALTH

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Permit and approval programs:
  - 2.01 Approval of Completed Works for Public Water Supply Improvements
  - 2.02 Approval of Plans for Public Water Supply Improvements.
  - 2.03 Certificate of Need (Health Related Facility except Hospitals)
  - 2.04 Certificate of Need (Hospitals)
  - 2.05 Operating Certificate (Diagnostic and Treatment Center)
  - 2.06 Operating Certificate (Health Related Facility)
  - 2.07 Operating Certificate (Hospice)
  - 2.08 Operating Certificate (Hospital)
  - 2.09 Operating Certificate (Nursing Home)
  - 2.10 Permit to Operate a Children's Overnight or Day Camp
  - 2.12 Permit to Operate as a Retail Frozen Dessert Manufacturer
  - 2.13 Permit to Operate a Service Food Establishment
  - 2.14 Permit to Operate a Temporary Residence/Mass Gathering
  - 2.15 Permit to Operate or Maintain a Swimming Pool or Public Bathing Beach
  - 2.16 Permit to Operate Sanitary Facilities for Realty Subdivisions
  - 2.17 Shared Health Facility Registration Certificate

DIVISION OF HOMES AND COMMUNITY RENEWAL and its subsidiaries and affiliates

- 1.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 2.00 Financial assistance/grant programs:
  - 2.01 Federal Housing Assistance Payments Programs (Section 8 Programs)
  - 2.02 Housing Development Fund Programs
  - 2.03 Neighborhood Preservation Companies Program
  - 2.04 Public Housing Programs
  - 2.05 Rural Initiatives Grant Program
  - 2.06 Rural Preservation Companies Program

- 2.07 Rural Rental Assistance Program
- 2.08 Special Needs Demonstration Projects
- 2.09 Urban Initiatives Grant Program
- 2.10 Urban Renewal Programs
- 3.00 Preparation and implementation of plans to address housing and community renewal needs.

HOUSING FINANCE AGENCY

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

JOB DEVELOPMENT AUTHORITY

- 1.0 Financing assistance programs for commercial and industrial facilities.

MEDICAL CARE FACILITIES FINANCING AGENCY

- 1.00 Financing of medical care facilities.

OFFICE OF MENTAL HEALTH

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

OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

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

DIVISION OF MILITARY AND NAVAL AFFAIRS

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

NATURAL HERITAGE TRUST

- 1.00 Funding program for natural heritage institutions.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY (regional agency)

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to

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

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

- 1.00 Acquisition, disposition, lease, grant of easement, or other activities related to the management of land under the jurisdiction of the Office.
- 2.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 3.00 Funding program for recreational boating, safety, and enforcement.
- 4.00 Funding program for State and local historic preservation projects.
- 5.00 Land and Water Conservation Fund programs.
- 6.00 Nomination of properties to the Federal and/or State Register of Historic Places.
- 7.00 Permit and approval programs:
  - 7.01 Floating Objects Permit
  - 7.03 Navigation Aide Permit
  - 7.04 Posting of Signs Outside State Parks
- 8.00 Preparation and revision of the Statewide Comprehensive Outdoor Recreation Plan and the Statewide Comprehensive Historic Preservation Plan and other plans for public access, recreation, historic preservation or related purposes.
- 9.00 Recreation services program.
- 10.00 Urban Cultural Parks Program.
- 11.00 Planning, construction, rehabilitation, expansion, demolition or the funding of such activities and/or projects funded through the Environmental Protection Fund (Environmental Protection Act of 1993) or Clean Water/Clean Air Bond Act of 1996.

POWER AUTHORITY OF THE STATE OF NEW YORK

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

NEW YORK STATE SCIENCE AND TECHNOLOGY FOUNDATION

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

DEPARTMENT OF STATE

- 2.00 Coastal Management Program.

- 2.10 Planning, construction, rehabilitation, expansion, demolition or the funding of such activities and/or projects funded through the Environmental Protection Fund (Environmental Protection Act of 1993) or Clean Water/Clean Air Bond Act of 1996.
- 3.00 Community Services Block Grant Program.
- 4.00 Permit and approval programs:
  - 4.01 Billiard Room License
  - 4.03 Uniform Fire Prevention and Building Code

STATE UNIVERSITY CONSTRUCTION FUND

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

STATE UNIVERSITY OF NEW YORK

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

DEPARTMENT OF TRANSPORTATION

- 1.00 Acquisition, disposition, lease, grant of easement, and other activities related to the management of land under the jurisdiction of the Department.
- 2.00 Construction, rehabilitation, expansion, or demolition of facilities, including but not limited to:
  - (a) Highways and parkways
  - (b) Bridges on the State highways system
  - (c) Highway and parkway maintenance facilities
  - (d) Rail facilities
- 3.00 Financial assistance/grant programs:
  - 3.01 Funding programs for construction/reconstruction and reconditioning/preservation of municipal streets and highways (excluding routine maintenance and minor rehabilitation)
  - 3.03 Funding programs for rehabilitation and replacement of municipal bridges
  - 3.04 Subsidies program for marginal branch lines abandoned by Conrail
  - 3.05 Subsidies program for passenger rail service
- 4.00 Permits and approval programs:
  - 4.02 Approval of municipal applications for Section 18 Rural and Small Urban Transit Assistance Grants (construction projects)
  - 4.03 Approval of municipal or regional transportation authority applications for funds for design, construction and rehabilitation of omnibus maintenance and storage facilities

- 4.04 Approval of municipal or regional transportation authority applications for funds for design and construction of rapid transit facilities
- 4.05 Certificate of Convenience and Necessity to Operate a Railroad
- 4.06 Highway Work Permits
- 4.09 Real Property Division Permit for Use of State Owned Property
- 5.00 Preparation or revision of the Statewide Master Plan for Transportation and sub-area or special plans and studies related to the transportation needs of the State.
- 6.00 Water Operation and Maintenance Program Activities related to the containment of petroleum spills and development of an emergency oil spill control network.

URBAN DEVELOPMENT CORPORATION and its subsidiaries and affiliates

- 1.00 Acquisition, disposition, lease, grant of easement, or other activities related to the management of land under the jurisdiction of the Corporation.
- 2.00 Planning, development, financing, construction, major renovation or expansion of commercial, industrial, and civic facilities and the provision of technical assistance or financing for such activities, including, but not limited to, actions under its discretionary economic development programs such as the following:
  - (a) Tax-Exempt Financing Program
  - (b) Lease Collateral Program
  - (c) Lease Financial Program
  - (d) Targeted Investment Program
  - (e) Industrial Buildings Recycling Program
- 3.00 Administration of special projects.
- 4.00 Administration of State funded capital grant programs.

DIVISION OF YOUTH

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

## 6.2. FEDERAL ACTIVITIES, AFFECTING LAND AND WATER USES AND NATURAL RESOURCES IN THE COASTAL ZONE OF NEW YORK STATE

*Note: This list of the federal agency activities is identical to the most recent version of the Table 2 list in the New York State Coastal Management Program as approved by the federal Office of Ocean and Coastal Resources Management on March 28, 2006. Please contact the New York State Department of State, Office of Planning and Development, at (518) 474-6000, for any updates to New York State Coastal Management Program Table 2 federal agency activities list that may have occurred post-approval of this LWRP.*

This list has been prepared in accordance with the consistency provisions of the federal Coastal Zone Management Act and implementing regulations in 15 CFR Part 930. It is not exhaustive of all activities subject to the consistency provisions of the federal Coastal Zone Management Act, implementing regulations in 15 CFR Part 930, and the New York Coastal Management Program. It includes activities requiring:

1. the submission of consistency determinations by federal agencies;
2. the submission of consistency certifications by entities other than federal agencies; and
3. the submission of necessary data and information to the New York State Department of State, in accordance with 15 CFR Part 930, Subparts C, D, E, F and I, and the New York Coastal Management Program.

### I. ACTIVITIES UNDERTAKEN DIRECTLY BY OR ON BEHALF OF FEDERAL AGENCIES

The following activities, undertaken directly by or on behalf of the identified federal agencies, are subject to the consistency provisions of the Coastal Zone Management Act, its implementing regulations in 15 CFR Part 930, Subpart C, and the New York Coastal Management Program.

#### **Department of Commerce, National Marine Fisheries Service:**

- Fisheries Management Plans

#### **Department of Defense, Army Corps of Engineers:**

- Proposed authorizations for dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities, and other projects with the potential to impact coastal lands and waters.
- Land acquisition for spoil disposal or other purposes.
- Selection of open water disposal sites.

#### **Department of Defense, Air Force, Army and Navy:**

- Location, design, and acquisition of new or expanded defense installations (active or reserve status, including associated housing, transportation or other facilities).
- Plans, procedures and facilities for handling or storage use zones.

- Establishment of impact, compatibility or restricted use zones.

**Department of Energy:**

- Prohibition orders.

**General Services Administration:**

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

**Department of Interior, Fish and Wildlife Service:**

- Management of National Wildlife refuges and proposed acquisitions.

**Department of Interior, National Park Service:**

- National Park and Seashore management and proposed acquisitions.

**Department of Interior, Minerals Management Service:**

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

**Department of Transportation, Coast Guard:**

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

**Department of Transportation, Federal Aviation Administration:**

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

**Department of Transportation, St. Lawrence Seaway Development Corporation:**

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

**Department of Transportation, Federal Highway Administration:**

- Highway construction

**II. FEDERAL LICENSES AND PERMITS AND OTHER FORMS OF APPROVAL OR AUTHORIZATION**

The following activities, requiring permits, licenses, or other forms of authorization or approval from Federal agencies, are subject to the consistency provisions of the Coastal Zone Management Act, its implementing regulations in 15 CFR Part 930, Subpart D, and the New York Coastal Management Program.

**Department of Defense, Army Corps of Engineers:**

- Construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).
- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).
- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).
- Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).
- Disposal of dredged materials into the waters of the U.S., pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).
- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972(33 U.S.C. 1413).
- Construction of artificial islands and fixed structures in Long Island Sound pursuant to Section 4 (f) of the River and Harbors Act of 1912 (33 U.S.C.).

**Department of Energy, Federal Energy Regulatory Commission:**

- Licenses for non-Federal hydroelectric projects and primary transmission lines under Sections 3 (11), 4 (e) and 15 of the Federal Power Act (16 U.S.C. 796 (11), 797 (11) and 808).
- Orders for interconnection of electric transmission facilities under Section 202 (b) of the Federal Power Act (15 U.S.C. 824 a (b)).
- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7 (c) of the Natural Gas Act (15 U.S.C. 717 f (c)).
- Permission and approval for the abandonment of natural gas pipelines and under Section 7(b) of the Natural Gas Act (15 U.S.C. 717 f (b)).

**Department of Energy, Economic Regulatory Commission:**

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

**Environmental Protection Agency:**

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

- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

**Department of Interior, Fish and Wildlife Service:**

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

**Department of Interior, Mineral Management Service:**

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

**Interstate Commerce Commission:**

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

**Nuclear Regulatory Commission:**

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

**Department of Transportation:**

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

**Department of Transportation, Federal Aviation Administration:**

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

**III. FEDERAL FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS**

The following activities, involving financial assistance from federal agencies to state and local governments, are subject to the consistency provisions of the Coastal Zone Management Act, its implementing regulations in 15CFR Part 930, Subpart F, and the New York Coastal Management Program. When these activities involve financial assistance for entities other than State and local governments, the activities are subject to the consistency provisions of 15 CFR Part 930, Subpart C.

**Department of Agriculture**

10.068 Rural Clean Water Program

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

**Department of Commerce**

- 11.300 Economic Development - Grants and Loans for Public Works and Development Facilities
- 11.301 Economic Development - Business Development Assistance
- 11.302 Economic Development - Support for Planning Organizations
- 11.304 Economic Development - State and Local Economic Development Planning
- 11.305 Economic Development - State and Local Economic Development Planning
- 11.307 Special Economic Development and Adjustment Assistance Program - Long Term  
Economic Deterioration
- 11.308 Grants to States for Supplemental and Basic Funding of Titles I, II, III, IV, and V Activities
- 11.405 Anadromous and Great Lakes Fisheries Conservation
- 11.407 Commercial Fisheries Research and Development
- 11.417 Sea Grant Support
- 11.427 Fisheries Development and Utilization-Research and Demonstration Grants and  
Cooperative Agreements Program
- 11.501 Development and Promotion of Ports and Intermodal Transportation
- 11.509 Development and Promotion of Domestic Water-borne Transport Systems

**Department of Housing and Urban Development**

- 14. 112 Mortgage Insurance - Construction or Substantial Rehabilitation of Condominium  
Projects
- 14. 115 Mortgage Insurance - Development of Sales Type Cooperative Agreements
- 14. 117 Mortgage Insurance - Homes

- 14. 124 Mortgage Insurance - Investor Sponsored Cooperative Housing
- 14. 125 Mortgage Insurance - Land Development and New Communities
- 14. 126 Mortgage Insurance - Manages ant Type Cooperative Projects
- 14. 127 Mortgage Insurance - Mobile Home Parks
- 14. 218 Community Development Block Grants/Entitlement Grants
- 14. 219 Community Development Block Grants/Small Cities Program
- 14. 221 Urban Development Action Grants
- 14. 223 Indian Community Development Block Grant Program

**Department of the Interior**

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

**Department of Transportation**

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

**General Services Administration**

- 39.002 Disposal of Federal Surplus Real Property

**Community Services Administration**

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

**Small Business Administration**

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

**Environmental Protection Agency**

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

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

## Table 2a: Interstate Activities

The following activities in coastal areas of another state are listed and are routinely subject to review for consistency with applicable enforceable policies of the New York CMP in accordance with 15 CFR Part 930, Subpart I and other applicable Parts of 15 CFR Part 930.

### 1. In the State of Connecticut:

#### Department of Defense, Army Corps of Engineers

- Construction of structures (e.g. bulkheads, revetments, groins, jetties, piers, docks, islands, etc.) or conduct of activities such as the mooring of vessels in navigable waters, or obstruction or alteration of navigable waters pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, et. seq.), in the Byram River within 50' of the Federal navigation channel in the Byram River or, where there is no Federal navigation channel in the Byram River, within the Byram River within 50' of the border of New York and Connecticut upstream to the US Route 1 bridge.
- Discharge of dredged and fill materials and other activities in the waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) in Long Island Sound and Fishers Island Sound waterward of the 20' bathymetric contour closest to the Connecticut shoreline.
- Activities subject to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) In Long Island Sound and Fishers Island Sound waterward of the 20' bathymetric contour closest to the Connecticut shoreline.

### 6.3 STATE AND FEDERAL PROGRAMS NECESSARY TO FURTHER THE LWRP

#### STATE PROGRAMS

- A. Department of Environmental Conservation
- Technical and funding assistance with planning studies and/or the design and construction of projects targeted to control and mitigate potential localized flooding problems or protect wetland areas along the waterfront.
  - Technical and funding assistance with planning studies and/or design and construction of projects to improve erosion protection along the shoreline.
  - Administration of other local permits and approvals
  - Implementation of the Environmental Quality Review Act of 1972.
  - Technical assistance for issues related to the diversion of water for the Robert Moses Power Project.
- B. Environmental Facilities Corp.
- Funding assistance for the planning, design and construction of sewer extensions or other improvement projects along the waterfront.
- C. Greater Buffalo-Niagara Regional Transportation Council
- Consultation and assistance with the planning, design, and construction of a multi-use pathway along the abandoned railway right-of-way located north of River Road in Sub-Area 1.
- D. Department of State
- Funding approval and technical assistance for LWRP implementation of various planning, design and construction projects, as outlined in Section IV of this Program.
- E. New York State Energy Research and Development Authority
- Funding and technical assistance with energy efficiency studies and projects.
- F. New York State Department of Transportation
- Consultation and technical assistance to develop traffic calming improvements to River Road in Sub-Area 1 to address neighborhood perceptions of unsafe conditions.
  - Consultation with the Town before making any major improvements to bridges or State roads in the waterfront area.
  - Technical and funding assistance for the development of a multi-use pathway along the abandoned railway right-of-way located north of River Road in Sub-Area 1.

- Administration of highway work permits and other local permits and approvals.
- G. New York State Canal Corporation (NYS Thruway Authority) and Canal Recreation Commission
- Approval for the leasing of open shore lands for use and development as public docking space and parkland in Sub-Area 2.
  - Consultation with respect to the State’s real property interest in proposals affecting the lands under water or formerly under water (filled areas) in the Niagara River or Tonawanda Creek.
- H. Department of Economic Development / Empire State Development Corporation
- I. Office of General Services
- Prior to any development occurring in the water or on the immediate waterfront, OGS will be contacted for a determination of the State’s interest in underwater or formerly underwater lands and for authorization to use and occupy such lands.
- J. Office of Parks, Recreation, and Historic Preservation
- Planning, development, construction, renovation or expansion of recreational facilities or the provision of funding for such facilities, including but not limited to parks and trails, and waterfront access areas.

#### FEDERAL PROGRAMS

- A. Department of Defense  
Army Corps of Engineers
- Permit decisions and assistance with funding regarding dredging, the construction or reconstruction of erosion protection structures, ice management issues or waterfront development/redevelopment.
- B. Federal Highway Administration
- Provision of funding for transportation improvements, including but not limited to improvements that increase pedestrian and bicycle access or improve safety in Sub-Area 1.
  - Provision of funding for the long-term construction of the LaSalle Expressway extension in Sub-area 1.

## SECTION VII Local Commitment and Consultation

### 7.1 Local Commitment

The Town Wheatfield initiated its efforts to prepare a Local Waterfront Revitalization Program (LWRP) in August 2009, at which time the Town established the Waterfront Advisory Committee to oversee and assist with the updating the existing program. The Waterfront Advisory Committee was comprised of representatives from the Town and local community, including liaisons from the Wheatfield Town Board and Planning Board, the Town Attorney, the Superintendent of Parks and Recreation, the Town grants writer and a community representative. The efforts of this Committee were supported by the New York State Department of State and the New York State Department of Environmental Conservation. This Committee met 10 times during the course of the planning process to assist with the preparation of the LWRP.

To strengthen local commitment for the Town's planning efforts, the Waterfront Advisory Committee held two public meetings to provide local citizens an opportunity to comment on significant issues and opportunities in the Town's two waterfront areas. These meetings were held on November 9, 2009 and February 10, 2011. The first Public Information Meeting was held to introduce the LWRP to the public and provide an opportunity for local residents and stakeholders to offer input on the issues and opportunities they felt were important in the waterfront area. This meeting was well attended and numerous comments were gathered (see meeting summary). The second Community Focus Meeting provided an opportunity for additional public comments on the policies, proposed projects and other proposed actions for implementing the LWRP (see meeting summary). The information gathered at these meetings was utilized to further shape and finalize the LWRP findings and policies, as well as the proposed projects and implementation actions outlined in the program.

Prior to the adoption of the LWRP, the Wheatfield Town Board held a public hearing on the action. This hearing provided the public with an opportunity to hear a presentation on the draft LWRP, as well as to provide the Town Board with final input on the proposed program.

### 7.2 Consultation

During the course of preparing the Wheatfield LWRP, the Waterfront Advisory Committee forwarded draft sections of the revised program to the Department of State for their review and comments. In addition, draft documents were distributed to a number of involved and interested agencies to gather their comments on program findings, policies and recommendations. The local agencies that were

contacted for their input included the Niagara County Department of Economic Development and Planning, the New York State Department of Environmental Conservation, and the surrounding municipalities (City of North Tonawanda and City of Niagara Falls).

The draft LWRP was reviewed and accepted by the Wheatfield Town Board and forwarded to the New York State Department of State. The Department of State initiated a 60-day public review period for the draft program, pursuant to the requirements of the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of NYS Executive Law) and the State Environmental Quality Review Act. Copies of the draft LWRP were distributed to all potentially affected Federal State and local agencies, as well as Niagara County and the Cities of Niagara Falls and North Tonawanda. Comments received on the draft document were reviewed by the Town and the Department of State, and changes were made, as required, to reflect the substantive comments. Thereafter, the final draft LWRP adopted by the Wheatfield Town Board, presented to the New York State Secretary of State for approval and submitted to the National Oceanic and Atmospheric Administration for concurrence.

# TOWN OF WHEATFIELD LOCAL WATERFRONT REVITALIZATION PROGRAM

*HELP US PLAN FOR YOUR FUTURE*

**Economic Development  
Flooding and Erosion**

**Water Quality  
Community Character**



**Stormwater Management  
Public Access and Recreation**

**Scenic Resources  
Public Access and Recreation**

**PUBLIC INFORMATION MEETING**

November 9, 2009 at 7:00 PM  
AT WHEATFIELD COMMUNITY CENTER

***COME AND PROVIDE YOUR INPUT  
TO HELP GUIDE THE  
FUTURE OF THE WATERFRONT***

**Town of Wheatfield  
Local Waterfront Revitalization Program  
PUBLIC INFORMATION MEETING - MEETING SUMMARY**

---

**Date of Meeting:** November 9, 2009

- **Welcome and Introductions**

Introductions were made Town Councilman Larry Helwig, who introduced the project and briefly explained the purpose of the meeting. Councilman Helwig introduced the members of the Waterfront Advisory Committee, including himself, Robert O'Toole (Town Attorney), Richard Muscatello (Planning Board Chairman), Ed Sturgeon (Parks and Recreation), Joseph Gargas (Citizen Representative), Bernie Rotella (Town grants writer, who was not present) and Wendy Salvati who is the consultant from Wendel Duchscherer who was retained by the Town to help prepare the Local Waterfront Revitalization Program (LWRP). Handouts describing what an LWRP is, a list of possible issues and opportunities and a form for written comments was handed out to the audience. It was also noted that the Town is setting up a webpage on their website for the LWRP.

Wendy Salvati provided a brief presentation to explain what an LWRP is (taking the existing Coastal Management Program that currently applies to the waterfront and revising it to reflect local conditions and concerns) and how it benefits the Town by providing the community with additional control over waterfront actions and activities (a copy of PowerPoint presentation attached). Wendy as part of the preparation of the LWRP it is important to gather public input to ensure that the program properly addresses the issues and opportunities that exist in the waterfront. The meeting was opened up to the public and the following comments were noted.

- The question was asked "What if I put in a dock, in addition to the permit required from the Army Corps (ACOE) and NYSDEC, will the LWRP add another layer of approvals to the process? Wendy noted that this would not be the case. Because the LWRP is essentially replacing the State program, the Waterfront Assessment Form that is currently prepared for the State would not be prepared for the Town instead. Therefore, the Town would do the consistency review rather than the State. No additional layer of permitting or level of bureaucracy would be added to the process.
- There was a concern that because the program promotes public access that people will have access to the waterfront through private property. Wendy explained that public access should be located in locations where it can feasibly allow access to the waterfront and it should be improved in locations where it exists now. It does not mean that the public would have the right to enter onto private land or that private land would have to be opened to the public. The idea is to provide access wherever possible. One potential location is the land that the Town acquired in the vicinity of the existing trailer park. This site has the potential for new waterfront access. Also, the development of a multi-use pathway that would cross the Town to make a connection between existing or proposed pathways in Niagara Falls and North Tonawanda is another example of access. It was noted that there is no plan to have such a pathway cross or "take" private land. The current proposal would be for the pathway to continue the proposed path from Niagara Fall, following the southern right-of-way of the LaSalle Expressway. It would run up Williams Road to the abandoned railway corridor and follow that corridor to the City of North Tonawanda. The meeting participants indicated that they supported this idea.
- The comments was made that after the last big storm, the Black Rock Channel was opened allowing the stockpile of floating debris that had accumulated there to flow downstream. The result was that a large amount of logs and other such debris was deposited along the Wheatfield waterfront and it was difficult and costly for local residents to have to remove this debris. Can the LWRP have some say in

this regard so that the ACOE does not do this type of thing in the future (or at least plans better for it)?

- Comments were offered about the daily fluctuation in water level that occurs along the waterfront due to the withdrawals and discharges that occur at the Lewiston Power Plant (it is locally referred to as the NIMO tide). Tim Walck stated that the amount of water that is withdrawn from the river is regulated under an international joint treaty and that the LWRP would likely have little, if any, impact on this issue.
- Comments were made about the sedimentation problems that are occurring along the waterfront, which makes it appear as if the water level were dropping. The current in the mid section of the Niagara River is swift, but as you move off to the sides of the river the current slows allowing for the buildup of sediment that is sloughed off to the shoreline areas. This is affecting the ability to launch vessels along the shoreline (have to go out further from shore to launch). This is a particular problem in the York, Hird and Sunset areas). Sedimentation is also creating more significant shoreline icing problems in the winter.
- A question was asked about the FEMA mapping along the waterfront. Tim Walck noted that the Town is still waiting to hear back on their challenge and request to revise the mapping.
- It was mentioned that the land that the Town purchased on the waterfront is a former dump site; who will be paying for the cleanup of the hazardous wastes? Bob O'Toole explained that the property was investigated and it does not contain hazardous wastes; traces of heavy metals were identified. The Town is expecting to receive stimulus monies from the County to fund site remediation and redevelopment as public parkland.
- In general, residents want the dump sites along the river cleaned up, such as the Calamar site.
- It was asked if the LWRP can address noise issues along the river, such as that caused by speed boats with loud motors. Wendy said that, in general, noise is difficult to regulate and laws are tough to enforce because you have to secure readings to demonstrate that noise exceeded regulated limits and you have to be able to catch the violator (no easy with moving vessels). Noise is not something that is typically addressed in an LWRP.
- Residents indicated that shoreline erosion is a problem. About 80 percent of the shoreline is armored with seawalls, bulkheading or other erosion protection devices. Some of these structures are about 40 years old and failing. It was asked if homeowners could get funding for shoreline stabilization. Wendy said that it is not likely that individual homeowners would be such help; it may be possible if the Town undertook an area wide improvement project.
- Gratwick Park, along the North Tonawanda shoreline, at the municipal boundary with Wheatfield is a location for public access.
- There are drainage issues along the waterfront; ponding water is a problem due to poor grading and new builds. York Road has been raised from resurfacing and repairs over the years that have affected drainage in the immediate vicinity (when the crown of the road gets too high, stormwater runoff becomes a bigger issue).
- How does the proposed multi-use pathway conflict or compliment the proposed extension of LaSalle Expressway with the Oz project? What is the status of that project? A representative for the project, who was present in the audience, stated that the Oz project is still moving through the SEQR process and a public hearing is still month away. He said that they are making a point of attending all public meetings, such as this one, to keep people informed about the project and to stay informed on other

relevant issues in the area. They want to coordinate with the Town and the waterfront association so that everyone is working together.

- There are not official or designated community or neighborhood associations along the waterfront. The Wheatfield Waterfront Association was formed to advocate a proper location for the proposed greenway connections between Niagara Falls and North Tonawanda (multi-use pathway). This group represents the three neighborhood areas (Sunset, Hird and York), but does not actually do specific things besides what they were originally formed to do (visit "wheatfieldwaterfrontassociation.com").
- River Road is dangerous for pedestrians and bicyclists. This road is a State-designated bike route (posted with signage) but is not safe for this purpose. Motor vehicles drive too fast and use the bike lane as a passing lane to move around cars making left-hand turns. Also, the shoulders along this roadway are not wide enough for safe bike travel.
- There are no easements in any of the residential neighborhoods for public access. These residential areas were originally established as summer resort areas for the affluent (summer cottages). Most, if not all (about 95 percent), have transitioned over to year-round residences for middle class families.
- There is a navigable channel in the Niagara River that extends all the way up to the Occidental Petroleum dock.
- Will the LWRP do anything about invasive species; we should have some kind of language included to protect the local recreational fishing industry.
- The local residents and other Town residents use the river for recreational fishing. There is also use of personal watercraft from private properties. Residents and others currently use the boat launch ramps that are available in Niagara Falls (in close proximity to the Wheatfield waterfront) and at the North Tonawanda marina (but there were complaints that this ramp is too expensive). There was much support for a Town launch ramp.
- There is also swimming that occurs from private properties.
- The Niagara River is patrolled by a number of entities, including the Border Patrol, the Erie and Niagara County Sheriffs, the US Coast Guard, the State Police and the DEC.

With no further comments being offered, the meeting was closed. The audience was encouraged to monitor the Town's website to learn more about the LWRP and to keep up to date on its progress. Also, written comment forms were provided and anyone with additional comments or concerns was encouraged to mail the form to Wendy or contact her by email.

Meeting closed at 8:20 PM.

Respectfully submitted,



Wendy E. Weber Salvati, AICP

TOWN OF WHEATFIELD  
LOCAL WATERFRONT  
REVITALIZATION PROGRAM

*COMMUNITY FOCUS MEETING*

Thursday - February 10, 2011

7:00 PM

Frontier Volunteer Fire Hall



***COME AND DISCUSS  
ISSUES AND OPPORTUNITIES  
AND HELP GUIDE THE  
FUTURE OF THE WATERFRONT***

**Town of Wheatfield  
Local Waterfront Revitalization Program  
COMMUNITY FOCUS MEETING - MEETING SUMMARY**

---

**Date of Meeting:** February 10, 2011

- **Welcome and Introductions**

Introductions were made Town Councilman Larry Helwig, who introduced the project and briefly explained the purpose of the meeting. Councilman Helwig introduced the members of the Waterfront Advisory Committee, including himself, Robert O'Toole (Town Attorney), Ed Sturgeon (Parks and Recreation), Joseph Gargas (Citizen Representative), and Wendy Salvati who is the consultant from Wendel who was retained by the Town to help prepare the Local Waterfront Revitalization Program (LWRP).

Wendy Salvati welcomed the attendees and provided a brief PowerPoint presentation to explain what an LWRP is (taking the existing NYS Coastal Management Program that currently applies to the waterfront and revising it to reflect local conditions and concerns) and how it benefits the Town by providing the community with additional control over waterfront actions and activities (a copy of PowerPoint presentation attached). Wendy noted that as part of the preparation of the LWRP it is important to gather public input to ensure that the program properly addresses the issues and opportunities that exist in the waterfront. She noted that the Town held a public information meeting in late 2009 to identify important issues and opportunities to be addressed in the LWRP. Now the Town is looking for feedback on recommendations, particularly for Sub-Area #1, which included the Niagara River waterfront.

Wendy reviewed the maps that illustrated the land use and zoning recommendations for Sub-Area #1. It was explained that the area is presently zoned primarily for residential use, with some commercial zoning at the west end of River Road. Most of the area is zoned R-2, which allows one and two story homes. The area along the north side of River Road, at the east end, is zoned R-3, which also allows multi-family housing. The area possesses a rural atmosphere, with residential enclaves situated along the waterfront and some commercial uses along River Road, most at the west end. The vision for the area is seen as allowing some in-fill residential development (development of vacant properties), the continuation of the commercial uses to the west, and greenspace to the north. The western end of the waterfront, which is zoned primarily commercial is recommended for rezoning, to limit commercial use south of River Road (rezone to R-1 or R-2, and/or parkland). The area where the mobile home park is situated is proposed for long term reuse as a mixed-use development (waterfront greenspace, offices, residential, small retail establishments). The property would be rezoned Planned Unit Development (PUD), to allow for this. The abandoned railway corridor along the north side of River Road would be redeveloped as a multi-use pathway to create a connection between Niagara Falls and North Tonawanda and complete a segment in the larger regional trail system. Also, the small property that is owned by the Niagara County Sewer District (where the treatment plant outfall is routed) is proposed for use as passive parkland to serve the local neighborhood. Once Wendy finished explaining these recommendations, the following comments were offered:

- The fact that the area along the waterfront, at the end of Williams Road, was once a beach (known as Neptune Beach) but it was allowed to be used by Carborundum as a waste disposal area. The

area includes the land that is owned by the Town. It was noted that this area is not known to be contaminated with toxic waste.

- A general comment about plans that are put together and never implemented was raised. How often will the LWRP have to be redone before something happens?
- Concern was raised about the 45 mile per hour (mph) speed limit on River Road; people cannot get out of their driveways during rush hour. It is very dangerous and the speed limit needs to be reduced through this area.
- It was asked when the LaSalle Expressway would be extended? It was noted that the plan appears to have been shelved; the Town was not aware of any forthcoming project to undertake this construction. Most in the audience expressed a strong desire to see this roadway be constructed so that there was a connection between the four-lane portion of River Road (in North Tonawanda) and the terminus of the existing expressway. This would enable River Road to become a local connector roadway that services the residential areas along the waterfront, with a reduced speed limit. Commuter traffic could use the LaSalle extension. Furthermore, a multi-use pathway could be built along the extension.
- At present, the eastern end of the sub-area, where the four-lane road is reduced to two lanes, is dangerous for commercial use. There is a blind spot in the vicinity of the curve and the public did not support land use changes that would result in any additional traffic in this area.
- If the LaSalle extension were constructed, then commercial use at the east end of the sub-area would be acceptable. Hence, this would be a long term recommendation that would be connected to future roadway improvements.
- Until such time that LaSalle extension is complete, traffic calming on River Road is essential, starting with the reduction and enforcement of the speed limit.
- The majority of those present agreed that R-3 zoning on the north side of the road should be changed to R-2 so that the residential zoning is consistent throughout the area. There was no support for down zoning to R-1 anywhere along the waterfront.
- It was asked if an “R-1A” zone should be established to address the issue of non-conformities in the zoning (most of the properties are non-conforming and don’t meet current zoning requirements). This might eliminate the need for variances when homes are improved. The public felt that the zoning should be kept the same and that the variance process should be continued. The general consensus was that they do not want any more restrictions.
- There was general support for the long-term reuse of the mobile home park for mixed use development and rezoning of the area to PUD.
- In response to a question about maintaining the character of the community, most agreed that they did not want it to change, but were not against more or bigger homes.
- When asked if the overall size of residences was a concern, one person stated that the construction of bigger, more expensive homes will cause his taxes to increase. However, most people were okay with such redevelopment (“it’s a free country”). If someone were to purchase four lots, combine them and construct a home that was not in keeping with other homes in the neighborhood, most of those present would not be concerned.
- In response to the question of boat houses and the concern that they may block views of the river, it was noted that the Army Corps. no longer allows boat house construction.
- In response to the question regarding maintaining views of the river, it was felt that residents, in general, should not block the view of the river for others.
- In response to a question about the height of fences, it was felt that fences should not block views of the river. However, there may be specific instances where someone may need a fence to screen a neighbor’s unsightly property (in most cases such fences would extend perpendicular to the river and not necessarily block views).

- In response to the question of having new policies or standards for controlling development or protecting view, the general response was no.
- The issue of sedimentation of the shoreline and the reduction in water depth was raised. Residents are concerned that sediment and other debris carried in the river current is deposited along the Wheatfield waterfront and it is adversely impacting use of docks and the shoreline in general. It is evident each time NYPA withdraws river water and the river bottom is exposed for a significant distance off shore. What can be done to remedy the shoaling that is occurring? Would a break wall help? This problem gets worse each year.
- The area should be designated a “neighborhood watch” community, with signs and a phone number to call in case someone sees problems occurring, such as drug smuggling off local docks, etc.
- In general residents thought it would be a good idea to have a small pocket park on the Niagara County Sewer District property, with a few picnic tables and perhaps a gazebo. However, it was noted that this property experiences subsidence problems and may not be safe. Others said that they did not want something that required a lot of parking. They want an amenity that is good for the local community. It was also mentioned that this property may have some issues with unstable ground or subsidence that could limit public use. This would have to be investigated in the future.
- At the end of the evening, it was agreed that the biggest issue of concern in this area is traffic and public safety on River Road.

With no further comments being offered, the meeting was closed. The audience was encouraged to monitor the Town’s website to keep up to date on its progress; the PowerPoint presentation would also be posted there. Anyone with additional comments or concerns was encouraged to contact the Town (Bob O’Toole or Larry Helwig), Tim Walck or Wendy.

Meeting closed at 8:45 PM.

Respectfully submitted,



Wendy E. Weber Salvati, AICP

**Appendix A**

LWRP Consistency Review Law and Waterfront Assessment Form



# TOWN OF WHEATFIELD NIAGARA COUNTY

2800 Church Road  
North Tonawanda, NY 14120-1099  
Phone: (716) 694-6440 Fax: (716) 694-5419

Kathleen M. Harrington  
*Town Clerk  
Registrar of Vital Statistics  
Records Management Officer  
Marriage Officer*

## Town of Wheatfield

### AUTHORIZING RESOLUTION

I, Kathleen Harrington-McDonnell, elected Town Clerk of The Town of Wheatfield, 2800 Church Road, North Tonawanda, NY 14120, do hereby certify that the following resolution was adopted at the regular meeting of the Town of Wheatfield held on March 25, 2013 at 7:30 pm, and is incorporated in the original minutes of said meeting and that said resolution has not been altered, amended or revoked and is in full force and effect.

Resolved:

Moved by Councilman Helwig and seconded by Councilman to adopt Local Law 5-2013, concerning an amendment to the Town's Zoning Law to provide for consistency review for properties located within the LWRP District.

**This motion was CARRIED: AYES 5 – NAYS 0.**

Kathleen M. Harrington-McDonnell  
Town Clerk

Seal of Municipality

# Local Law Filing

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

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

County  City  Town  Village  
(Select one.)

of Wheatfield

Local Law No. 5-2013 of the year 2013

A local law amendment to Town's Zoning Law to provide for consistency review for properties located  
(Insert Title)  
within the LWRP District.

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Wheatfield as follows:

see attached

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 5-2013 of 2013 of the ~~(County)(City)~~(Town)(Village) of Wheatfield was duly passed by the Town Board on March 25, 2013, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local *(Elective Chief Executive Officer\*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

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

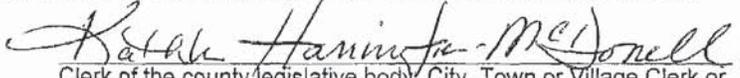
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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

  
Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

Date: 04-16-2013

(Seal)

## GENERAL PROVISIONS

### I. Title

This local law will be known as the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) Consistency Review Law.

### II. Authority and Purpose

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

### III. Definitions

- A. "Actions" include all the following, except minor actions:
- (1) projects or physical activities, such as construction or any other activities that may affect natural, manmade or other resources in the coastal area or the environment by changing the use, appearance or condition of any resource or structure, that:
    - (i) are directly undertaken by an agency; or
    - (ii) involve funding by an agency; or

- (iii) *require one or more new or modified approvals, permits, or review from an agency or agencies;*
  - (2) agency planning and policymaking activities that may affect the environment and commit the agency to a definite course of future decisions;
  - (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect coastal resources or the environment; and
  - (4) any combination of the above.
- B. "Agency" means any board, agency, department, office, other body, or officer of the Town of Wheatfield.
- C. "Coastal area" means that portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the Town of Wheatfield, as shown on the coastal area map on file in the office of the Secretary of State and as delineated in the Town of Wheatfield Local Waterfront Revitalization Program (LWRP).
- D. "Code Enforcement Officer" means the Building Inspector and/or Code Enforcement Officer of the Town of Wheatfield.
- E. "Consistent" means that the action will fully comply with the LWRP policy standards, conditions and objectives and, whenever practicable, will advance one or more of them.
- F. "Direct Actions" mean actions planned and proposed for implementation by an applicant or agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.
- G. "Environment" means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.
- H. "Local Waterfront Revitalization Program (LWRP)" means the Local Waterfront Revitalization Program of the Town of Wheatfield, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the Office of the Town Clerk of the Town of Wheatfield.
- I. "Minor actions" include the following actions, which are not subject to review under this chapter:
  - (1) maintenance or repair involving no substantial changes in an existing structure or facility;

- (2) replacement, rehabilitation or reconstruction of a structure or facility, in-place and in-kind, on the same site, including upgrading buildings to meet building or fire codes,
- (3) repaving or widening of existing paved highways not involving the addition of new travel lanes;
- (4) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
- (5) maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected, or within Significant Coastal Fish and Wildlife Habitat areas;
- (6) granting of individual setback and lot line variances, except in relation to a regulated natural feature or a bulkhead or other shoreline erosion protection structure;
- (7) minor temporary uses of land having negligible or no permanent impact on coastal resources or the environment;
- (8) installation of traffic control devices on existing streets, roads and highways;
- (9) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (10) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any action;
- (11) official acts of a ministerial nature involving no exercise of discretion, including building permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code;
- (12) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (13) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (14) collective bargaining activities;
- (15) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;

- (16) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- (17) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, storage of road de-icing substances, or other hazardous materials;
- (18) adoption of regulations, policies, procedures and local legislative decisions in furtherance of any action on this list;
- (19) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
- (20) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
- (21) adoption of a moratorium on land development or construction;
- (22) interpreting an existing code, rule or regulation;
- (23) designation of local landmarks or their inclusion within historic districts;
- (24) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to coastal resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;
- (25) local legislative decisions such as rezoning where the Town of Wheatfield determines the action will not be approved.

J. "Waterfront Assessment Form (WAF)" means the form, a sample of which is appended to this local law, used by an agency to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.

#### **IV. Management and Coordination of the LWRP**

- A. The Town of Wheatfield Code Enforcement Officer shall be responsible for coordinating review of actions in the Town's coastal area for consistency with the LWRP, and will advise, assist and make consistency recommendations to other Town agencies in the implementation of the LWRP, its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program.
- B. The Town Code Enforcement Officer shall coordinate with the New York State Department of State regarding consistency review of actions by Federal agencies and with State agencies regarding consistency review of their actions.
- C. The Town Code Enforcement Officer shall assist the Town Board, or their designee, in making applications for funding from State, Federal, or other sources to finance projects under the LWRP.
- D. The Town Code Enforcement Officer shall perform other functions regarding the coastal area and direct such actions or projects, as the Town Board may deem appropriate, to implement the LWRP.

**V. Review of Actions.**

- A. Whenever a proposed action is located within the Town's waterfront areas, each Town agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards summarized in Subparagraph I herein. No action in the coastal area shall be approved, funded or undertaken by that agency without such a determination.
- B. Whenever a Town agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action to be located in the coastal area, the agency shall refer a copy of the completed Waterfront Assessment Form (WAF) to the Town Code Enforcement Officer within ten (10) days of its receipt and prior to making its determination shall consider the recommendation of the Town Code Enforcement Officer with reference to the consistency of the proposed action.
- C. After referral from an agency, the Town Code Enforcement Officer shall consider whether the proposed action is consistent with the LWRP policy standards set forth in Subparagraph I herein. The Town Code Enforcement Officer shall require the applicant to submit all completed applications, WAF, Environmental Assessment Form (EAF), and any other information deemed necessary to its consistency recommendation.

The Town Code Enforcement Officer shall render its written recommendation to the agency within thirty (30) days following referral of the WAF from the agency, unless extended by mutual agreement of the Town Code Enforcement Officer and the applicant or in the case of a direct action, the agency. The Town Code Enforcement Officer's recommendation shall indicate whether the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and shall elaborate in writing the basis for its opinion. The Town Code Enforcement Officer shall, along with a

consistency recommendation, make any suggestions to the agency concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards or to greater advance them.

In the event that the Town Code Enforcement Officer's recommendation is not forthcoming within the specified time, the agency shall make its consistency decision without the benefit of the Town Code Enforcement Officer's recommendation.

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

- D. If an action requires approval of more than one Town agency, decision making will be coordinated between the agencies to determine which agency will conduct the final consistency review, and that agency will thereafter act as designated consistency review agency for the specific action being reviewed. Only one WAF per action will be prepared. If the agencies cannot agree, the Town Code Enforcement Officer shall designate the consistency review agency.
- E. Upon receipt of the Town Code Enforcement Officer's recommendation, the agency shall consider whether the proposed action is consistent with the LWRP policy standards summarized in Subparagraph I herein. The agency shall consider the consistency recommendation of the Town Code Enforcement Officer, the WAF and other relevant information in making its written determination of consistency. No approval or decision shall be issued for an action in the coastal area without a written determination of consistency having first been rendered by a Town agency.
- F. The Zoning Board of Appeals is the designated agency for making the determination of consistency for variance applications subject to this law. The Zoning Board of Appeals shall consider the written consistency recommendation of the Town Code Enforcement Officer in the event and at the time it makes a decision to grant such a variance and may impose appropriate conditions on the variance to make the activity consistent with the objectives of this law.
- G. Where an Environmental Impact Statement (EIS) is being prepared or required, the draft EIS must identify applicable LWRP policies standards in Subparagraph I and include a thorough discussion of the effects of the proposed action on such policy standards.
- H. In the event the Town Code Enforcement Officer's recommendation is that the action is inconsistent with the LWRP, and the agency makes a contrary determination of consistency, the agency shall elaborate in writing the basis for its disagreement with the recommendation and state the manner and extent to which the action is consistent with the LWRP policy standards.
- I. Actions to be undertaken within the coastal area shall be evaluated for consistency in accordance with the following summary of LWRP policy standards, which are derived

from and further explained and described in Section III of the LWRP, a copy of which is on file in the Town Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions must also consult with Section IV, in making their consistency determination. The action must be consistent with the policies to:

As appropriate, an action shall be consistent with the policy to:

1. Foster a pattern of development in the waterfront area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development (Policy 1);
2. Preserve historic resources in the waterfront area (Policy 2);
3. Enhance visual quality and protect outstanding scenic resources (Policy 3);
4. Minimize loss of life, structures, and natural resources from flooding and erosion (Policy 4);
5. Protect and improve water resources (Policy 5);
6. Protect and restore ecological resources, including locally significant fish and wildlife habitats, wetlands and rare ecological communities (Policy 6);
7. Protect and improve air quality in the waterfront area (Policy 7);
8. Minimize environmental degradation in the local waterfront area from solid waste and hazardous substances (Policy 8);
9. Provide for public access to, and recreational use of, canal waters, public lands, and public resources of the waterfront area (Policy 9);
10. Protect water-dependent uses and promote siting of new water-dependent uses in suitable locations (Policy 10);
11. Promote the sustainable use of living aquatic resources (Policy 11);
12. Promote appropriate use and development of energy and mineral resources.

## **VI. Enforcement**

No action within the Town of Wheatfield coastal area, which is subject to review under this Chapter, shall proceed until a written determination has been issued from a Town agency that the action is consistent with the Town's LWRP policy standards. In the event that an activity is being performed in violation of this law or any conditions imposed thereunder, the Town Code Enforcement Officer or any other authorized official of the Town shall issue a stop work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect. The Code Enforcement Officer and Town Attorney shall be responsible for enforcing this Chapter.

**VII. Violations**

- A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this Chapter shall have committed a violation punishable by a fine not exceeding three hundred and fifty dollars (\$350.00) for a conviction of a first offense and punishable by a fine of two thousand dollars (\$2,000.00) for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.
- B. The Town Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this local law. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty. The Town may also enforce this local law by injunction or other civil proceeding.

**VIII. Severability**

The provisions of this local law are severable. If any provision of this local law is found invalid, such finding shall not affect the validity of this local law as a whole or any part or provision hereof other than the provision so found to be invalid.

**IX. Effective Date**

This local law shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

**TOWN OF WHEATFIELD**  
**Waterfront Assessment Form**

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions, Town of Wheatfield agencies, shall complete this Waterfront Assessment Form (WAF) for proposed actions which are subject to the consistency review law. This assessment is intended to supplement other information used by the designated Town of Wheatfield agency in making a determination of consistency.
2. Before answering the questions in Section C, the preparer of this form should review the policies and explanations of policy contained in the Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the Wheatfield Town Clerk's office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the coastal area.
3. If any questions in Section C on this form are answered "yes", then the proposed action may affect the achievement of the LWRP policy standards contained in the consistency review law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a determination regarding its consistency with the LWRP policy standards. If an action cannot be certified as consistent with the LWRP policy standards, it shall not be undertaken.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of agency action (check appropriate response):  
  
\_\_\_\_\_ (a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction)  
  
\_\_\_\_\_ (b) Financial assistance (e.g. grant, loan, subsidy)  
  
\_\_\_\_\_ (c) Permit, approval, license, certification  
  
\_\_\_\_\_ (d) Agency undertaking action
  
2. Type of Approval Action Requested (check all that apply)  
  

<input type="checkbox"/> Site Plan Approval	<input type="checkbox"/> Variance
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Building Permit
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Special Use Permit
<input type="checkbox"/> Other	

3. Describe nature and extent of action:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Location: \_\_\_\_\_  
\_\_\_\_\_

5. Size of site: \_\_\_\_\_

6. Present land use: \_\_\_\_\_

7. Present zoning classification: \_\_\_\_\_

8. Describe any unique or unusual land forms on the project site (i.e. steep slopes, swales, ground depressions, other geological formations):

\_\_\_\_\_  
\_\_\_\_\_

9. Percentage of site which contains slopes of 15% or greater: \_\_\_\_\_

10. Streams, lakes, ponds or wetlands existing within or contiguous to the project area?

(1) Name: \_\_\_\_\_

(2) Size (in acres): \_\_\_\_\_

11. If an application for the proposed action has been filed with the agency, the following information shall be provided:

(a) Name of applicant

\_\_\_\_\_

(b) Mailing address:

\_\_\_\_\_

(c) Telephone number: (        ) \_\_\_\_\_

12. Will the action be directly undertaken, require funding, or approval by a state or federal agency?

Yes \_\_\_ No \_\_\_ If yes, which agency \_\_\_\_\_

C. Waterfront ASSESSMENT (Check either "Yes" or "No" for each of the following questions)

- |    |  |                      |
|----|--|----------------------|
| 1. | Will the proposed action have a <u>significant effect</u> upon:  | <u>YES</u> <u>NO</u> |
|    | (a) Commercial or recreational use of fish and wildlife resources?   | ___ ___              |
|    | (b) Scenic quality of the waterfront environment?  | ___ ___              |
|    | (c) Development of future, or existing water dependent uses?   | ___ ___              |
|    | (d) Stability of the shoreline?  | ___ ___              |
|    | (e) Surface or groundwater quality?  | ___ ___              |
|    | (f) Existing or potential public recreation opportunities?   | ___ ___              |
|    | (g) Structures, sites or districts of historic, archeological or cultural significance to the Town of Wheatfield, State or nation? | ___ ___              |
| 2. | Will the proposed action <u>involve</u> or <u>result in</u> any of the following:  | <u>YES</u> <u>NO</u> |
|    | (a) Physical alteration of land along the shoreline, land under water or waterways?  | ___ ___              |
|    | (b) Physical alteration of two (2) acres or more of land located elsewhere in the waterfront area?                                 | ___ ___              |
|    | (c) Expansion of existing public services or infrastructure in undeveloped or low density areas of the waterfront?                 | ___ ___              |
|    | (d) Energy facility not subject to Article VII or VIII of the Public Service Law?  | ___ ___              |
|    | (e) Mining, excavation, filling or dredging?   | ___ ___              |
|    | (f) Reduction of existing or potential public access to or along the shore?  | ___ ___              |
|    | (g) Sale or change in use of publicly-owned lands located on the shoreline or under water?   | ___ ___              |
|    | (h) Development within a designated flood hazard area?   | ___ ___              |
|    | (i) Development on a natural feature that provides protection against flooding or erosion?   | ___ ___              |
|    | (j) Diminished surface or groundwater quality?   | ___ ___              |
|    | (k) Removal of ground cover from the site?   | ___ ___              |

3. <u>PROJECT</u>	<u>YES</u> <u>NO</u>
(a) If a project is to be located adjacent to shore:	
(1) Will water-related recreation be provided?	___ ___
(2) Will public access to the foreshore be provided?	___ ___
(3) Does the project require a waterfront site?	___ ___
(4) Will it supplant a recreational or maritime use?	___ ___
(5) Do essential public services and facilities presently exist at or near the site?	___ ___
(6) Is it located in a flood prone area?	___ ___
(7) Is it located in an area of high erosion?	___ ___
(b) If the project site is publicly owned:	
(1) Will the project protect, maintain and/or increase the level and types of public access to water-related recreation resources and facilities?	___ ___
(2) If located in the foreshore, will access to those and adjacent lands be provided?	___ ___
(3) Will it involve the siting and construction of major energy facilities?	___ ___
(4) Will it involve the discharge of effluents from major steam electric generating and industrial facilities into waterfront facilities?	___ ___
(c) Is the project site presently used by the community neighborhood as an open space or recreation area?	___ ___
(d) Does the present site offer or include scenic views or vistas known to be important to the community?	___ ___
(e) Is the project site presently used for commercial fishing or fish processing?	___ ___
(f) Will the surface area of any waterways or wetland areas be increased or decreased by the proposal?	___ ___
(g) Does any mature forest (over 100 years old) or other locally important vegetation exist on this site which will be removed by the project?	___ ___
(h) Will the project involve any waste discharges into waterfront waters?	___ ___
(i) Does the project involve surface or subsurface liquidwaste disposal?	___ ___

- (j) Does the project involve transport, storage, treatment or disposal of solid waste or hazardous materials? \_\_\_ \_\_\_
- (k) Does the project involve shipment or storage of petroleum products? \_\_\_ \_\_\_
- (l) Does the project involve discharge of toxics, hazardous substances or other pollutants into the waterway? \_\_\_ \_\_\_
- (m) Will the project affect any area designated as a tidal or freshwater wetland? \_\_\_ \_\_\_
- (n) Will the project alter drainage flow, patterns or surface water runoff on or from the site? \_\_\_ \_\_\_
- (o) Will best management practices be utilized to control stormwater runoff into waterfront waters? \_\_\_ \_\_\_
- (p) Will the project utilize or affect the quality or quantity of sole source or surface water supplies? \_\_\_ \_\_\_
- (q) Will the project cause emissions which exceed federal or state air quality standards or generate significant amounts of nitrates or sulfates? \_\_\_ \_\_\_

D. REMARKS OR ADDITIONAL INFORMATION: (Add any additional sheets to complete this form.)

If assistance or further information is needed to complete this form, please contact Town of Wheatfield Code Enforcement Officer at (716) 694-1026

Preparer's Name: \_\_\_\_\_

Title: \_\_\_\_\_ Agency: ) \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Date: \_\_\_\_\_

**Appendix B**  
Zoning Amendment



# TOWN OF WHEATFIELD NIAGARA COUNTY

2800 Church Road  
North Tonawanda, NY 14120-1099  
Phone: (716) 694-6440 Fax: (716) 694-5419

**Kathleen M. Harrington**  
*Town Clerk  
Registrar of Vital Statistics  
Records Management Officer  
Marriage Officer*

## Town of Wheatfield

### AUTHORIZING RESOLUTION

I, Kathleen Harrington-McDonell, elected Town Clerk of The Town of Wheatfield, 2800 Church Road, North Tonawanda, NY 14120, do hereby certify that the following resolution was adopted at the regular meeting of the Town of Wheatfield held on March 25, 2013 at 7:30 pm, and is incorporated in the original minutes of said meeting and that said resolution has not been altered, amended or revoked and is in full force and effect.

Resolved:

Moved by Councilman Helwig and seconded by Councilman to adopt Local Law 4-2013, concerning an amendment to the Town's Zoning code to provide for specific regulations in the Town's LWRP District.

**This motion was CARRIED: AYES 5 – NAYS 0.**

Kathleen M. Harrington-McDonell  
Town Clerk

Seal of Municipality

# Local Law Filing

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

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

County  City  Town  Village  
(Select one.)

of Wheatfield \_\_\_\_\_

Local Law No. 4-2013 of the year 2013

A local law amendment to Town's Zoning code to provide for specific regulations in the Town's LWRP  
(Insert Title)  
District.  
\_\_\_\_\_  
\_\_\_\_\_

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Wheatfield \_\_\_\_\_ as follows:

see attached

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 4-2013 of 2013 of the ~~(County)(City)~~(Town)(Village) of Wheatfield was duly passed by the Town Board on March 25, 2013, in accordance with the applicable ~~(Name of Legislative Body)~~ provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) ~~(Name of Legislative Body)~~ (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted ~~(Name of Legislative Body)~~ (Elective Chief Executive Officer\*) on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) ~~(Name of Legislative Body)~~ (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. ~~(Name of Legislative Body)~~ (Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) ~~(Name of Legislative Body)~~ (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local ~~(Name of Legislative Body)~~ (Elective Chief Executive Officer\*) law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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

*Kathleen Harrington-McDonnell*  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 04-16-2013

(Seal)

**§ 200-13.2 R-W Residential Waterfront District.**

A. Permitted principal uses. The permitted principal uses shall be as follows:

- (1) Uses as permitted in the R-1 District.
- (2) Two-family dwellings.

B. Permitted accessory uses. Permitted accessory uses shall be as permitted in the R-1 District.

C. Uses permitted upon issuance of a special use permit. The following uses shall be permitted upon issuance of a special use permit.

- (1) Golf courses.
- (2) Buildings for parks, recreation, clubs and fraternal organizations.
- (3) Nursing homes.

D. Minimum lot area and width.

(1) Minimum lot area for single-family and two-family dwellings.

- (a) Area for existing lots of record: 10,000 square feet.
- (b) Area for the creation of new lots: 20,000 square feet.

(2) Minimum lot width.

- (a) Interior lot width for existing lots of record: 50 feet.
- (b) Corner lot width for existing lots of record: 50 feet.
- (c) Interior lot width for the creation of new lots: 100 feet
- (d) Corner lot width for the creation of new lots: 100 feet

(3) Cluster provisions: as set forth in Article VI.

E. Minimum yards. For minimum yards, the following shall apply:

- (1) Front: 40 feet, except as provided under Article IV, § 200-23.
- (2) Side: 10 feet each.
- (3) Rear: 30 feet.

F. Buildings.

(1) Principal. For principal buildings, the following shall apply:

(a) Maximum height.

[1] Dwellings: 35 feet.

[2] Other: 40 feet.

(b) Minimum floor area per dwelling unit.

[1] One-story: 1,000 square feet.

[2] Two-story: 1,200 square feet.

(2) Accessory. For accessory buildings the following shall apply:

(a) Maximum height: 14 feet

(b) Yards and setbacks: as regulated under Article IV, § 200-21.

(3) Lot coverage. The maximum lot coverage by all buildings shall be 35%.

G. Buffers, landscaping. (reserved).

H. Site plan review. Site plan reviews shall be as set forth under the provisions of Article XII.

**Appendix C**  
Standards for Docks on the Canal System

NEW YORK STATE THRUWAY AUTHORITY/  
NEW YORK STATE CANAL CORPORATION

STANDARDS FOR DOCKS  
ON THE CANAL SYSTEM



NEW YORK STATE CANAL CORPORATION

MAY 2001

BUREAU OF MANAGEMENT ANALYSIS AND PLANNING

TAP-915 (05/01)

## TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. Introduction .....	1
II. Application .....	1
III. Standards .....	1
A. Navigation.....	1
B. General.....	2
C. Environmental.....	3
IV. Appendix.....	4
V. Distribution.....	5

# STANDARDS FOR DOCKS ON THE CANAL SYSTEM

## I. INTRODUCTION

Section 100 of the Canal Law authorizes the Canal Corporation to "issue revocable permits granting certain limited privileges therein, whenever the same can be done without detriment to Canal navigation or damage to the banks or other structures thereof." The purpose of this document (the "Standards") is to provide specific standards for docks on the Canal System.

## II. APPLICATION

The Standards shall apply to residential/non-commercial docks, which can accommodate four or fewer boats, each of which shall not exceed 40 feet in length, with a maximum dock length of 100 feet.

Commercial docks, as well as docks larger than the size standard established above, will be analyzed on a case-by-case basis.

The Standards apply to the Erie, Champlain, Oswego and Cayuga/Seneca Canals (i.e., the areas under Canal Corporation jurisdiction). Docks on reservoirs and feeder canals will be considered by the Canal Corporation on a case-by-case basis.

Any new dock installations or extensions to current docks will require a work permit.

## III. STANDARDS

### A. NAVIGATION

No dock shall interfere with Canal navigation, by either physically impeding navigation or obstructing the vision of boaters traveling on the Canal System.

1. Minimum offset from edge of navigation channel (bottom angle):
  - a. River section: 50 feet minimum offset.
  - b. Land cut section: 24 feet minimum offset (16 feet clear area plus 8 feet nominal boat width). Where a 24 feet offset is physically impossible, a dock with 4 feet maximum projection from the shoreline is allowable.
  - c. On curved sections of the Canal, the Canal Corporation may require greater offsets than the offsets set forth in a. and b., to account for sight distance or vessel maneuverability considerations. The Division Canal Engineer may designate certain limited areas where docks are prohibited for navigation reasons.

## STANDARDS FOR DOCKS ON THE CANAL SYSTEM

2. Docks shall be parallel to shore in land cut areas.
3. Docks shall be at least 50 feet from Canal Corporation navigation aids.
4. Docks and moored boats shall not hinder boaters' views of navigation aids or structures on the Canal System.
5. Protection of the dock and moored boats from passing boat wakes is the permittee's responsibility. Boats shall not be moored on the outer (Canal) side of wake protection devices.
6. Docks and slips shall have their design approved by the Division Canal Engineer. A standard approved dock design is attached as Appendix A.
7. Excavated slips are not permitted where:
  - a. The Canal is in an embankment section;
  - b. An unstable or unsafe condition would be created; or
  - c. The Division Canal Engineer determines that there is insufficient Canal Right-of-Way, or a future trail would be impeded.
8. No dock installation will be permitted which may impair the integrity of an embankment.
9. Slips, cuts, etc., must be lined with stone bank protection, riprap, or other method for protection against erosion and wave action as approved by the Canal Corporation.

### **B. GENERAL**

1. One dock per property owner (residential) is permitted. More than one dock shall be treated as a commercial dock installation.
2. Docks and decks shall not restrict access (e.g., for trails, maintenance or operations) across Canal lands.
3. Docks shall be set back at least 10 feet from property lines of adjacent upland owners. Extensions of property lines across Canal Corporation property to the water shall be as determined by the Canal Corporation.
4. No new boathouses will be permitted.
5. Covered slips may have a roof only – no sides are permitted.

## STANDARDS FOR DOCKS ON THE CANAL SYSTEM

6. Excavated slips, where permitted, shall be no larger than 1,000 sq. feet.
7. All electrical and plumbing services to docks, slips and decks shall meet all applicable local, state and federal codes.
8. No enclosed storage shall be permitted on docks or decks.
9. Flotation devices for docks shall be foam blocks, pontoons or other material manufactured specifically for flotation. Metal barrels, drums, or other containers that are not specifically made for flotation are prohibited.
10. Retaining walls, when a part of a dock request, shall be constructed of stone, concrete blocks, poured concrete or other materials acceptable to the Canal Corporation. Railroad ties, vehicle tires, creosote timbers, guide railing, and asphalt are not permitted.

### C. ENVIRONMENTAL

1. Any dock with more than four boat moorings or 100 linear feet of dockage will require an independent environmental review under the State Environmental Quality Review Act (SEQRA).
2. No creosote or pentachlorophenol shall be allowed.
3. Slips or other excavations shall require a letter of no effect from the State Historic Preservation Office before permit issuance.
4. Slips or other excavations will require appropriate sampling and disposal of materials as directed by the Canal Corporation.
5. Fills are prohibited within the limits of an established floodway, flowage easement or flood plain, unless mitigation measures approved by the Canal Corporation and all other appropriate state and federal agencies are included.

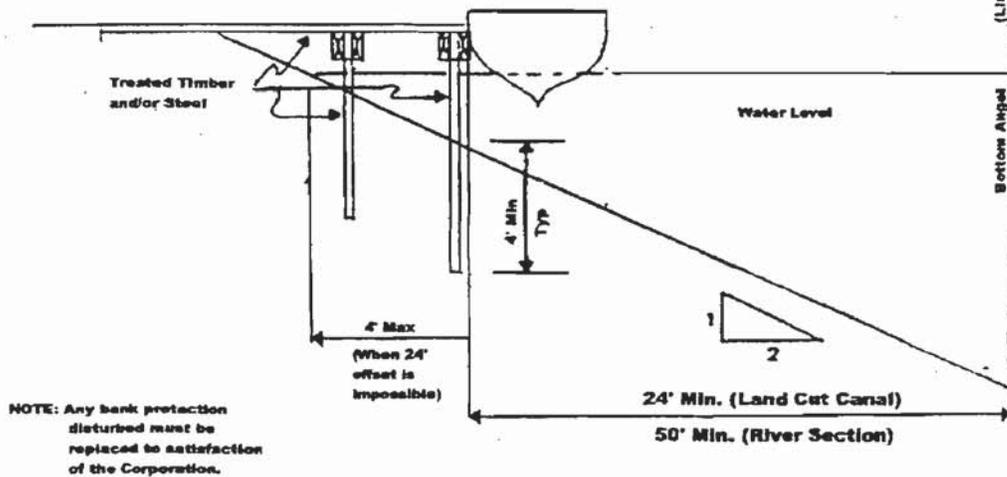
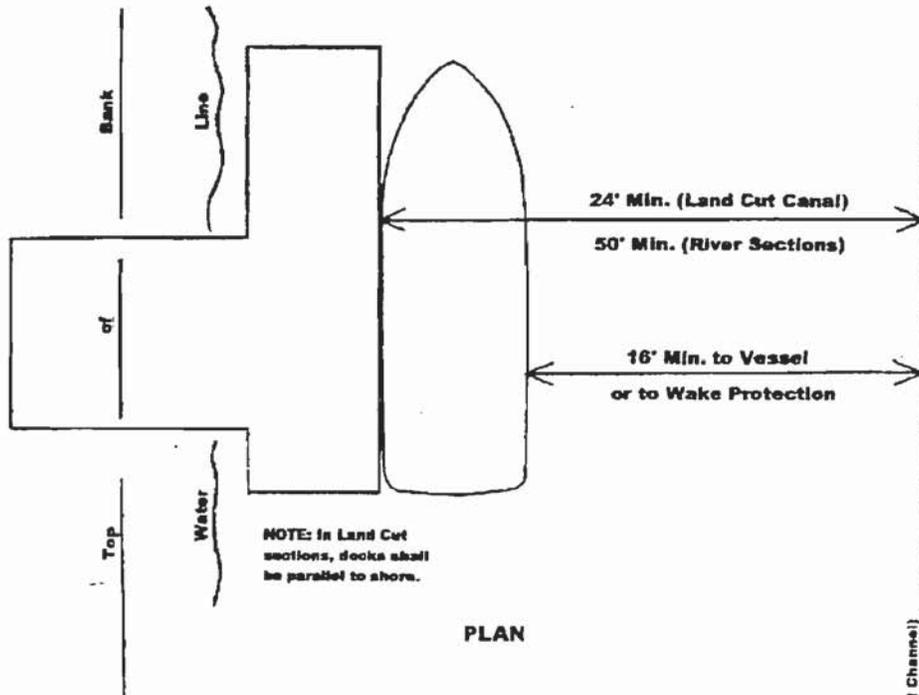
STANDARDS FOR DOCKS  
ON THE CANAL SYSTEM

IV. APPENDIX

**APPENDIX A**

(Reduced from Sheet Size 8-1/2" x 11")

APPENDIX A - DOCK ALONG CANAL



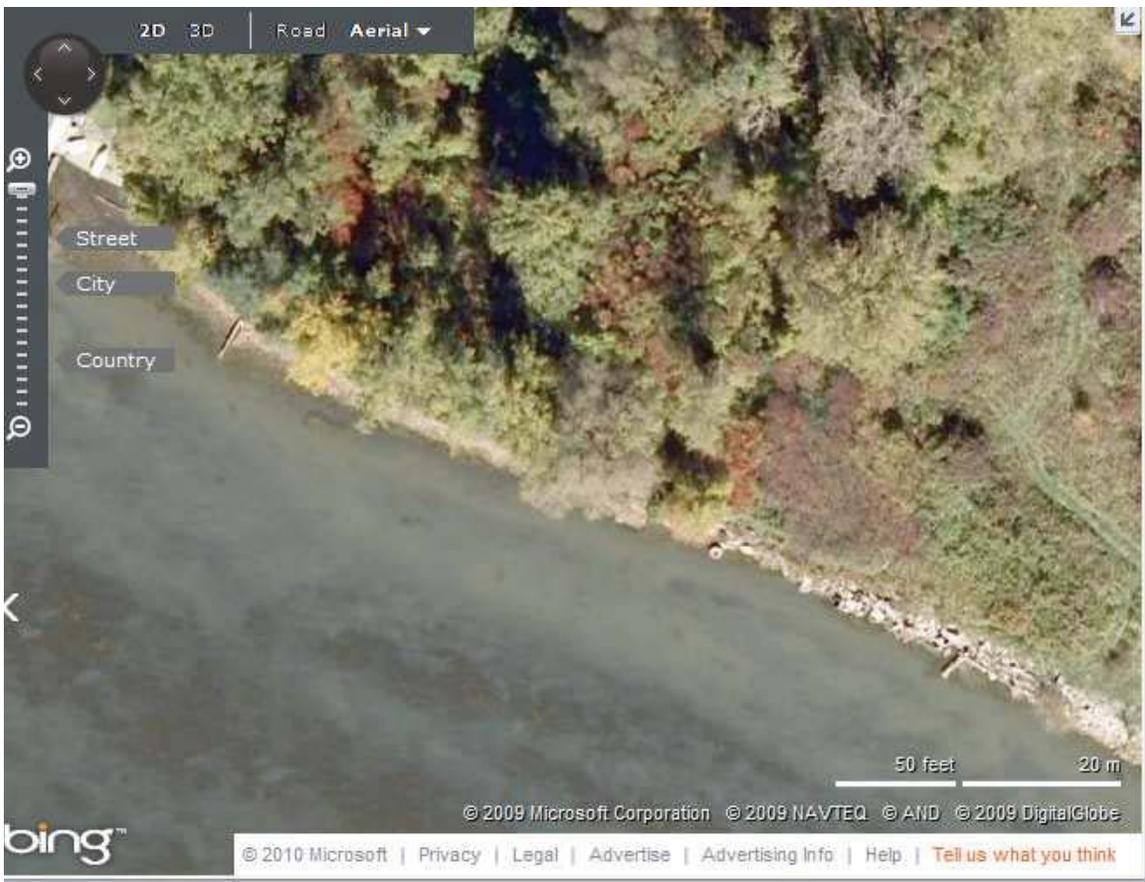
**V. DISTRIBUTION**

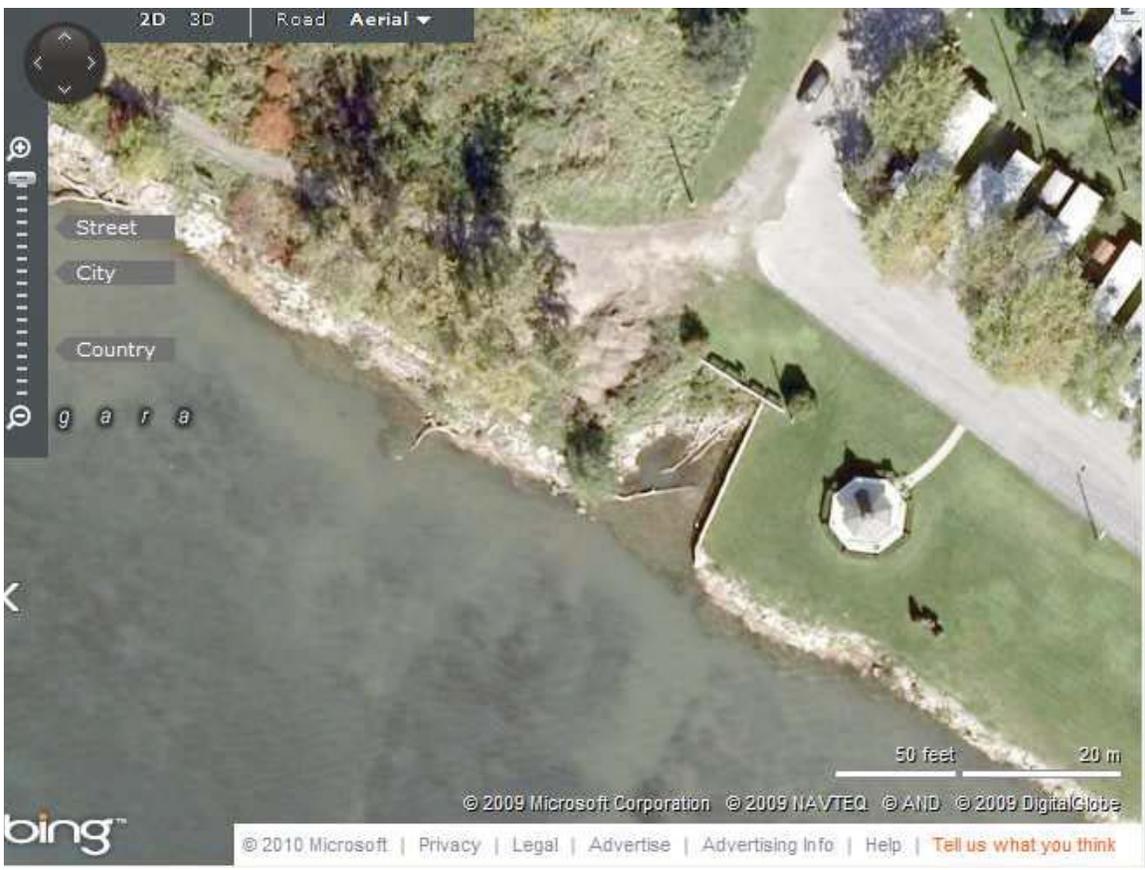
Executive Director  
Deputy Executive Director  
Department Heads  
Deputy General Counsel  
Chief Assistant Counsel, Legal Services  
Assistant Counsels, Legal Services (4)  
Director of Human Resource Management  
Director of Labor Relations  
Director of Investments and Asset Management  
Supervisor of the Bureau of Real Property Management  
Director of Design  
Director of Canal Design  
Director of Canals Maintenance and Operations  
Canals Administrative Officer  
Supervisor, Canal Engineering and Capital Program  
Director of the Bureau of Environmental Management and Historic Preservation  
Director of Canal Development  
Director of Canal Marketing  
Director of Canal Policy Implementation  
Division Directors  
Division Canal Engineers  
Division Canal Section Superintendents  
Division Canal Permit Coordinators  
Division Canal Right-of-Way Agents

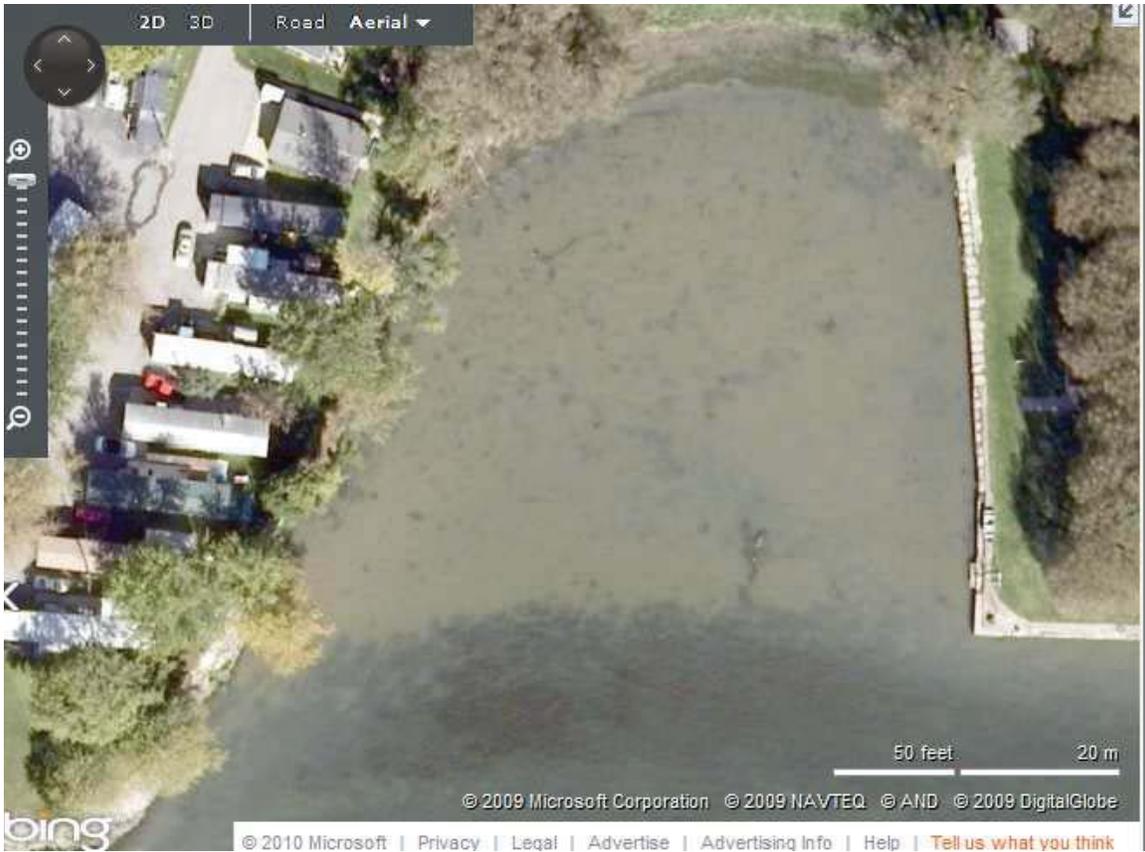
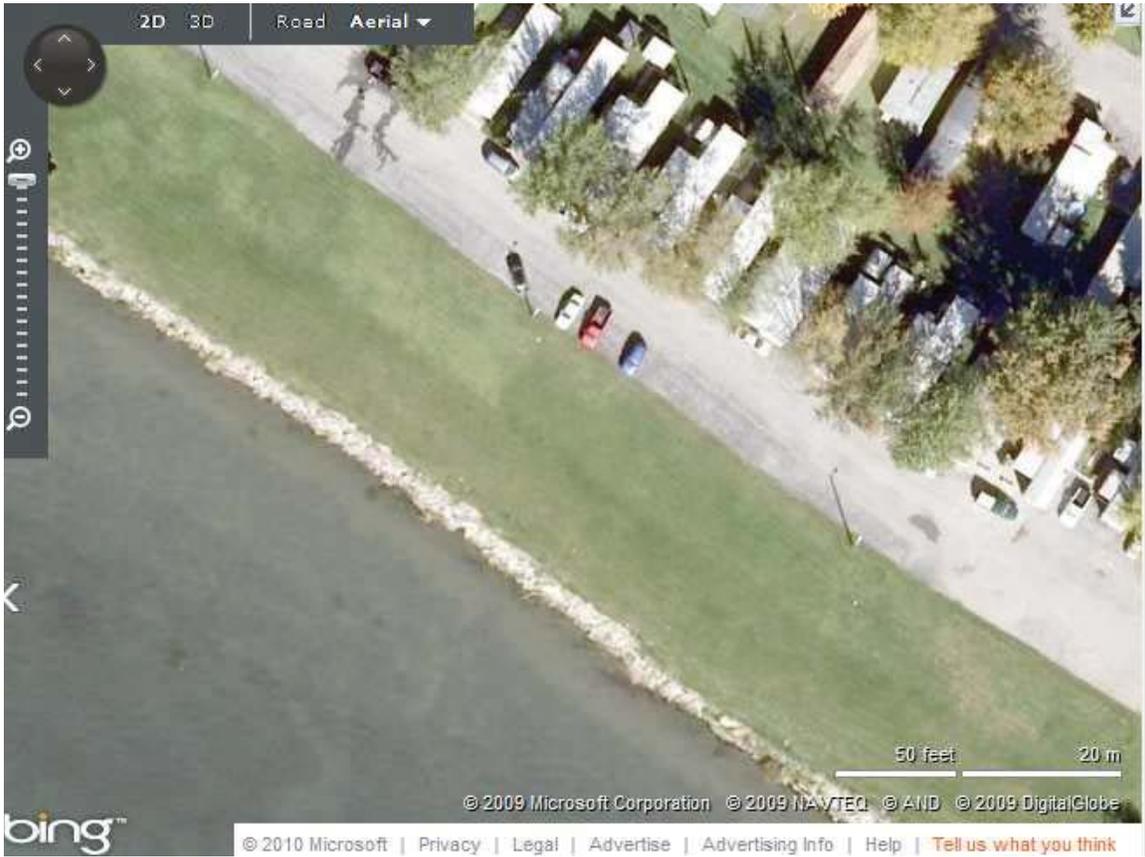
**Appendix D**  
Aerial Photographs of the Wheatfield Shoreline

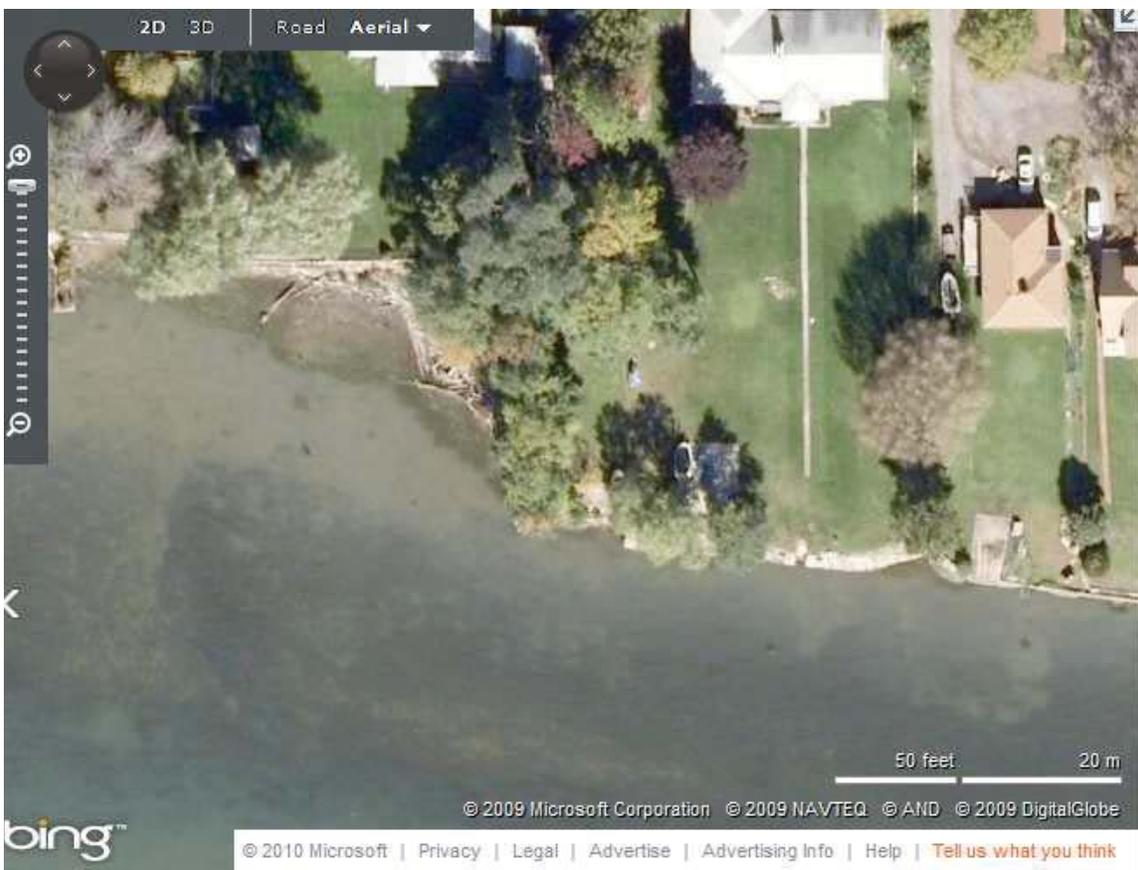
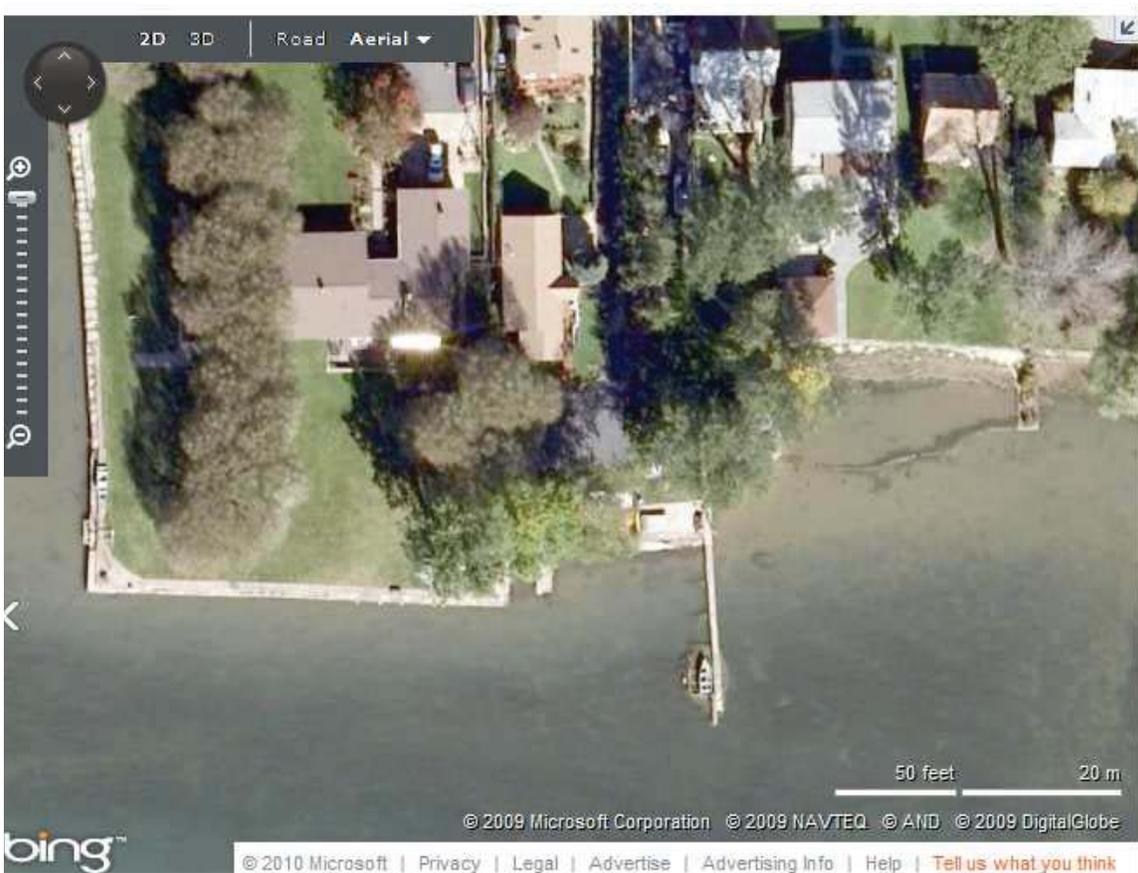
# Sub-Area 1: Niagara River

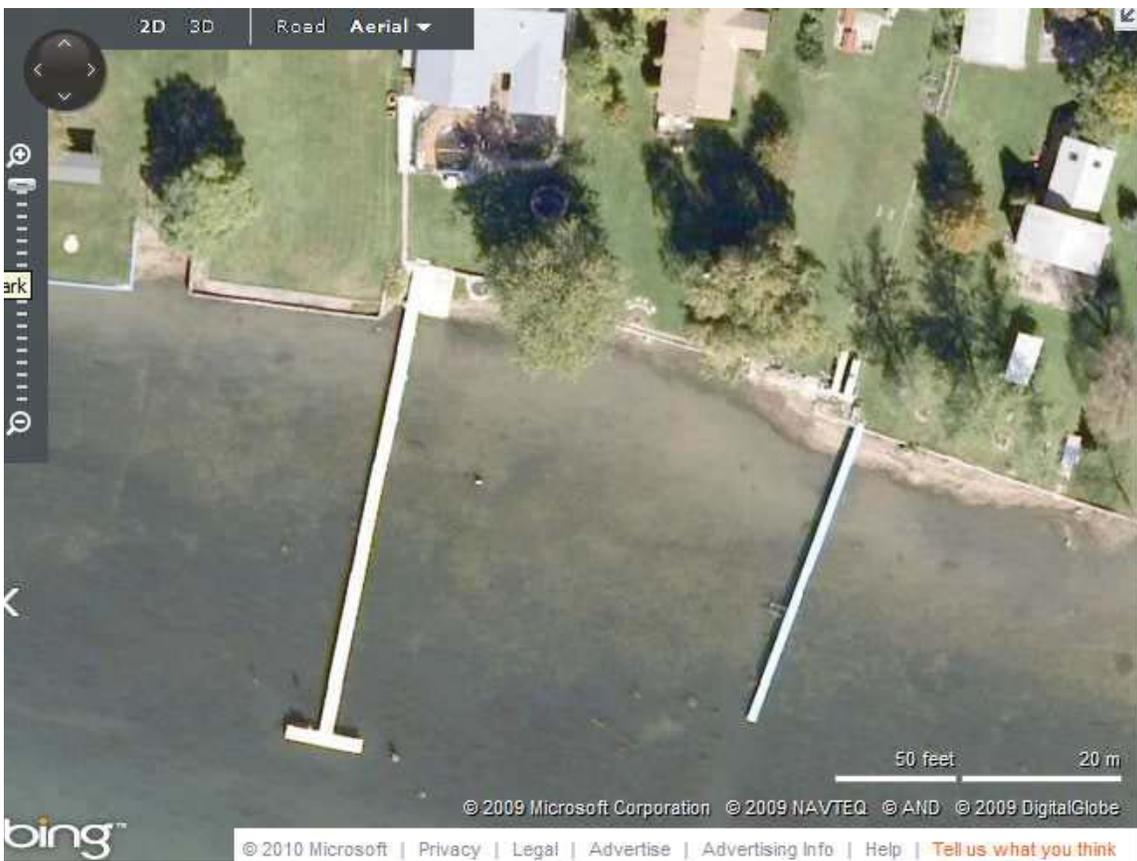




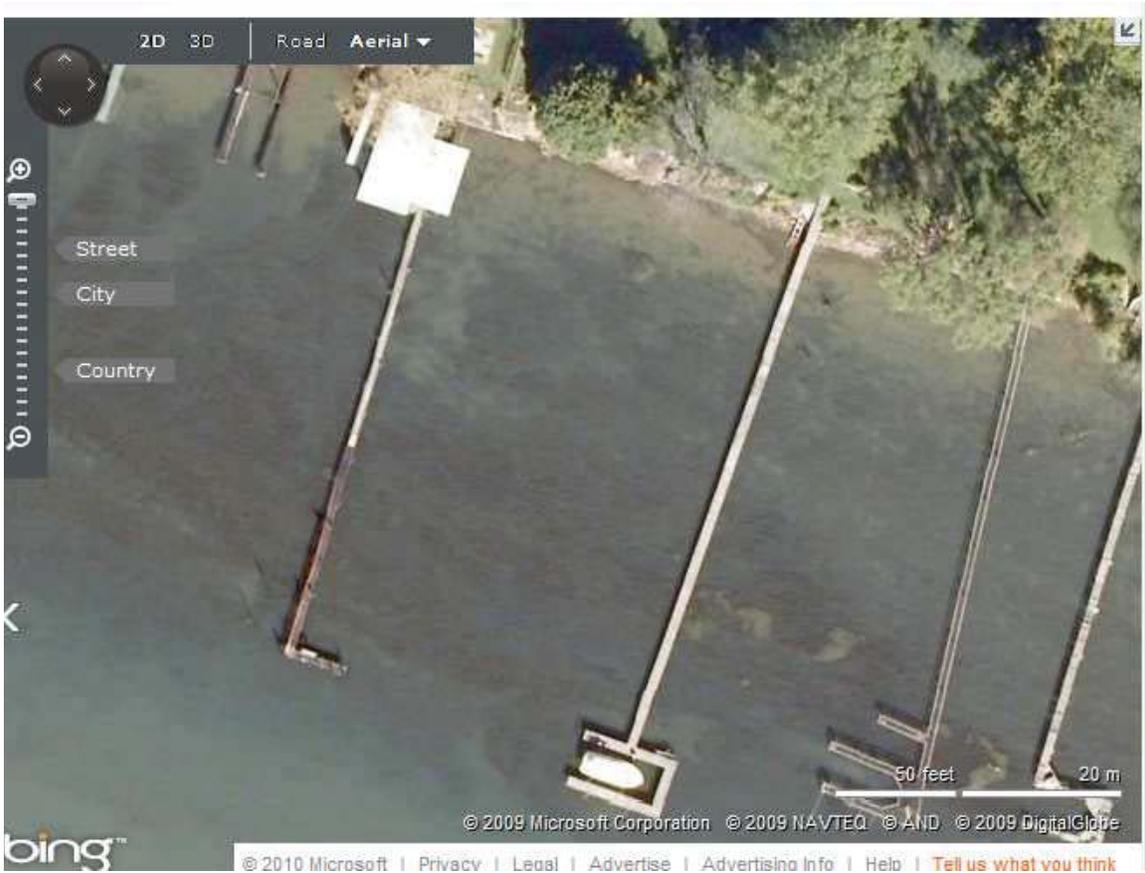
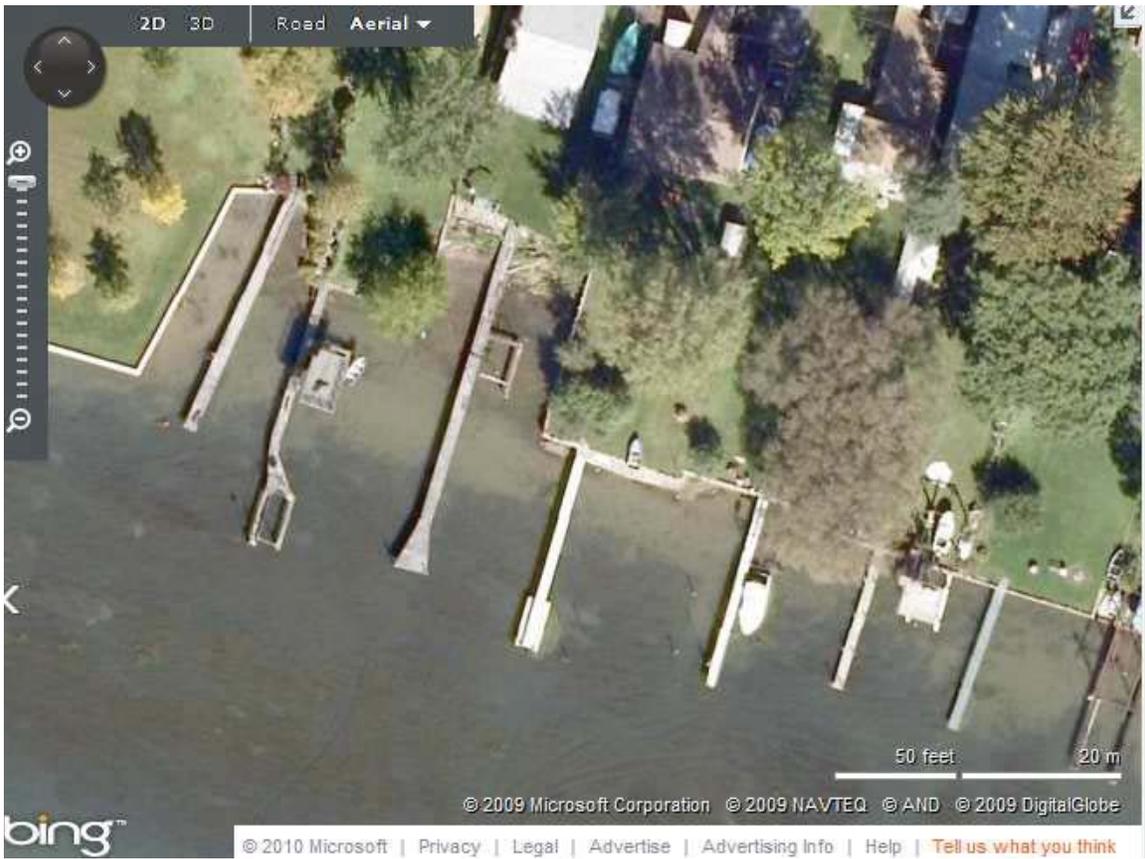


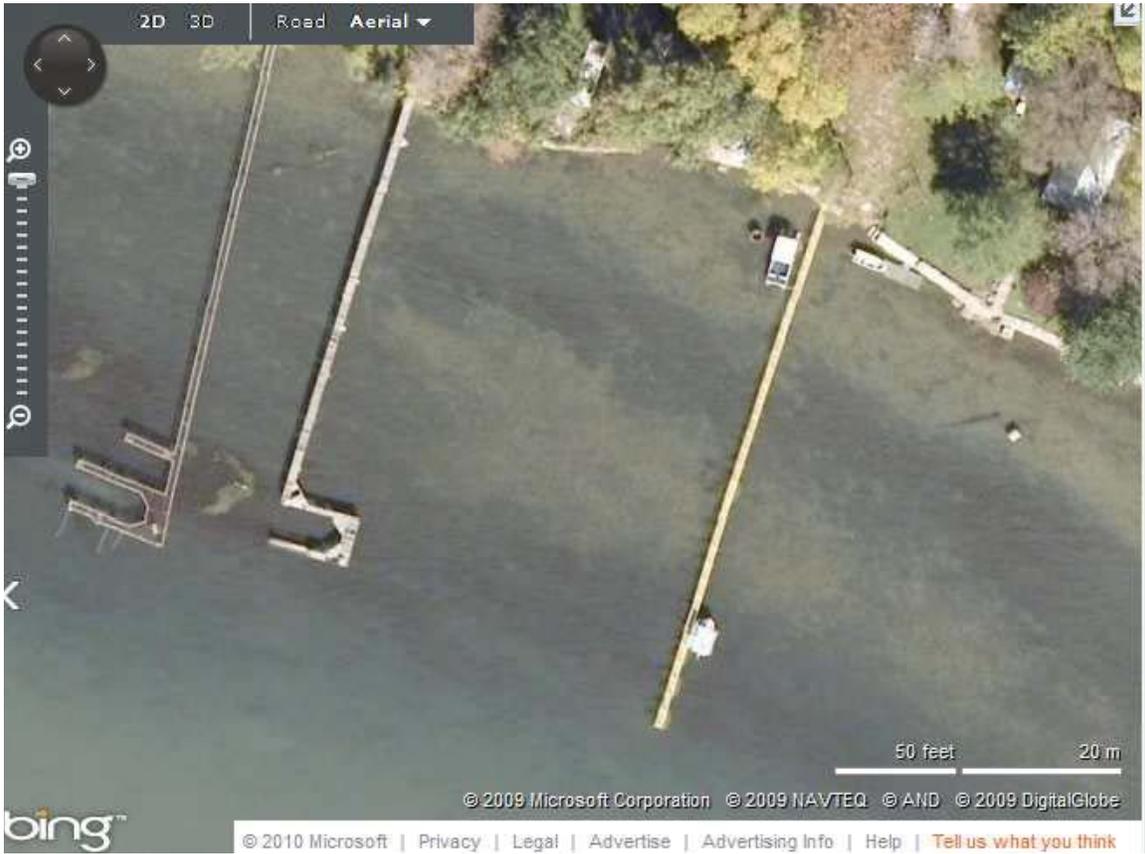


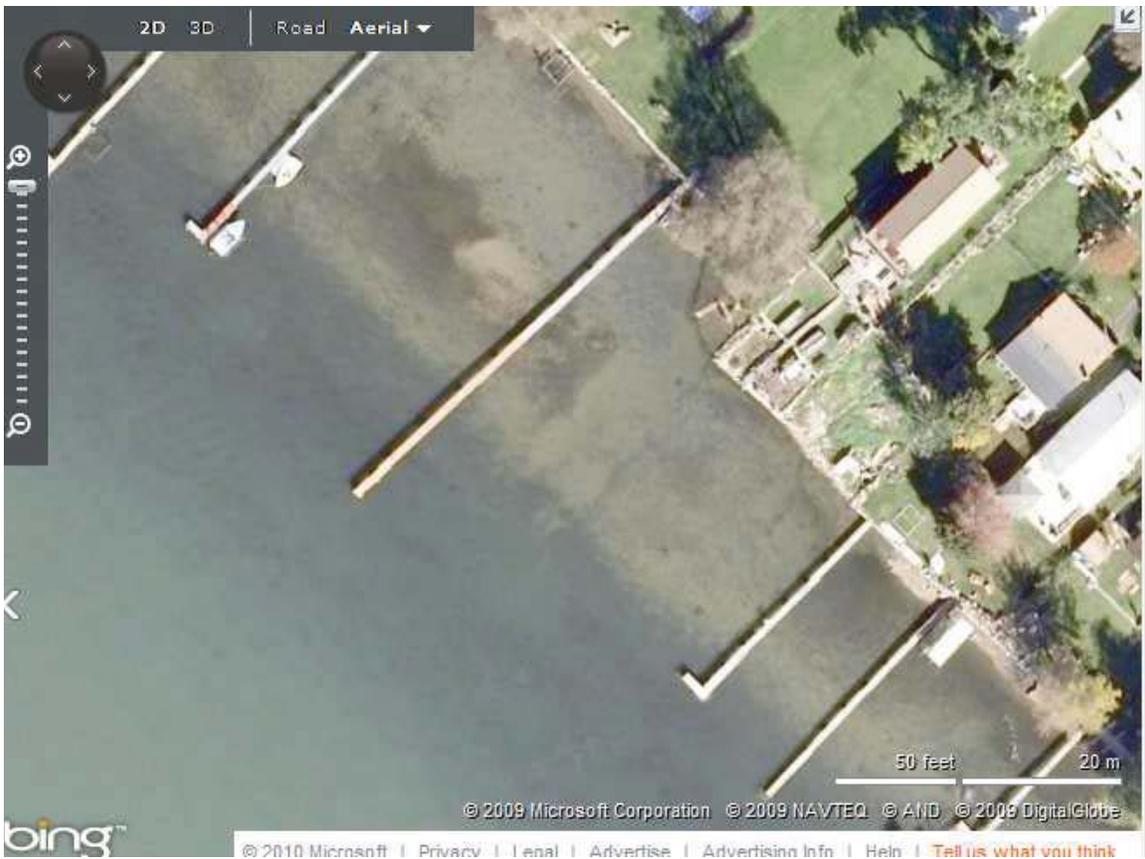
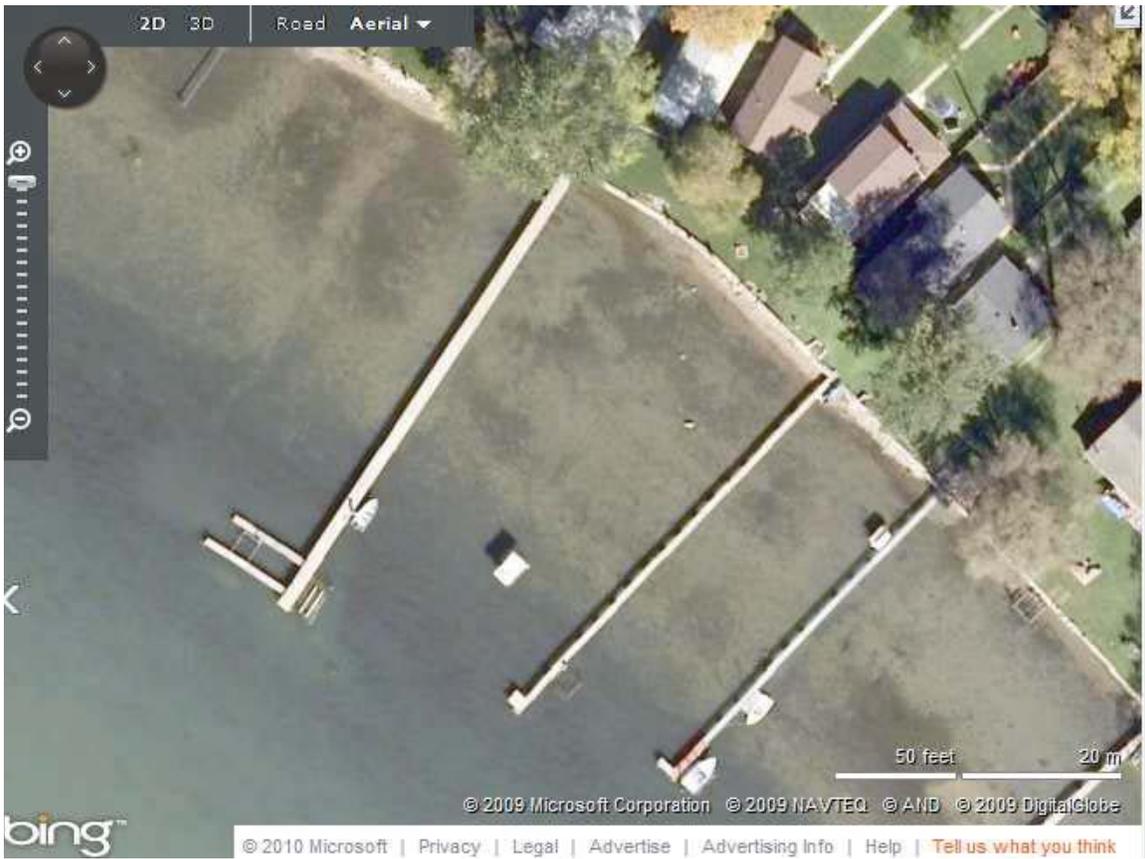


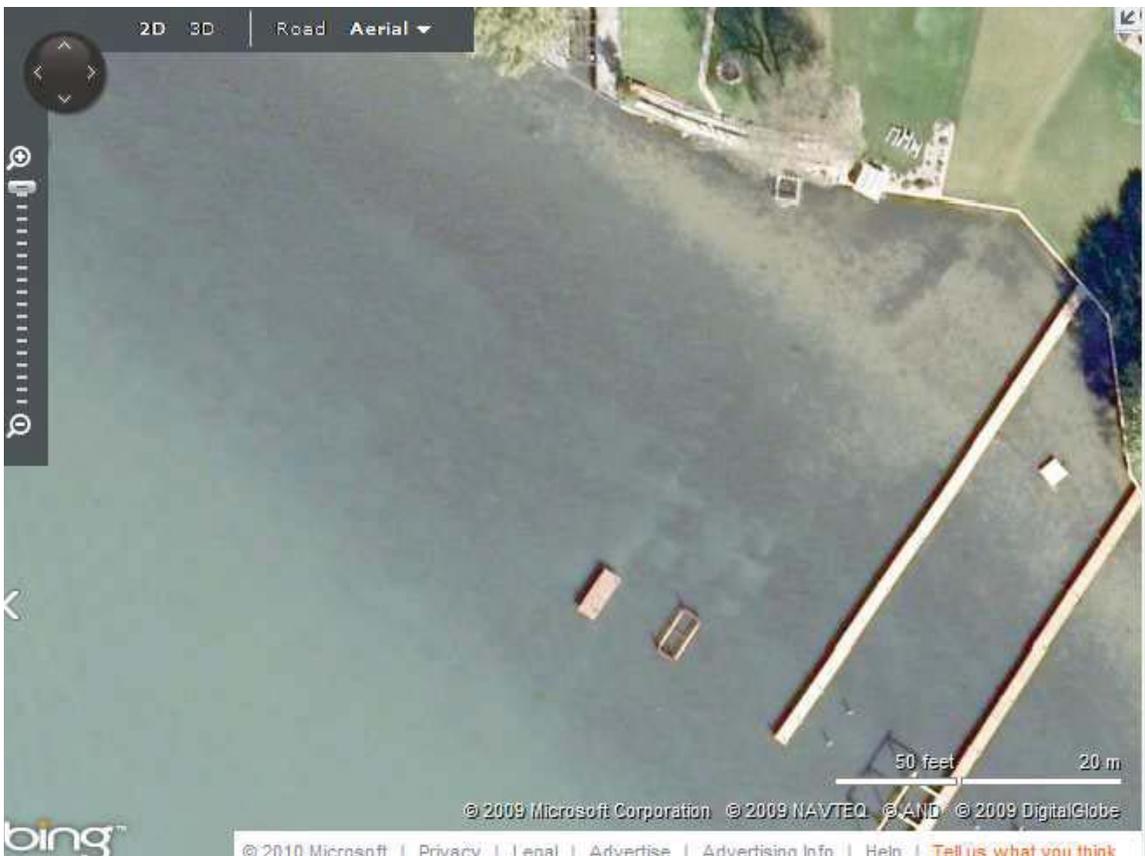
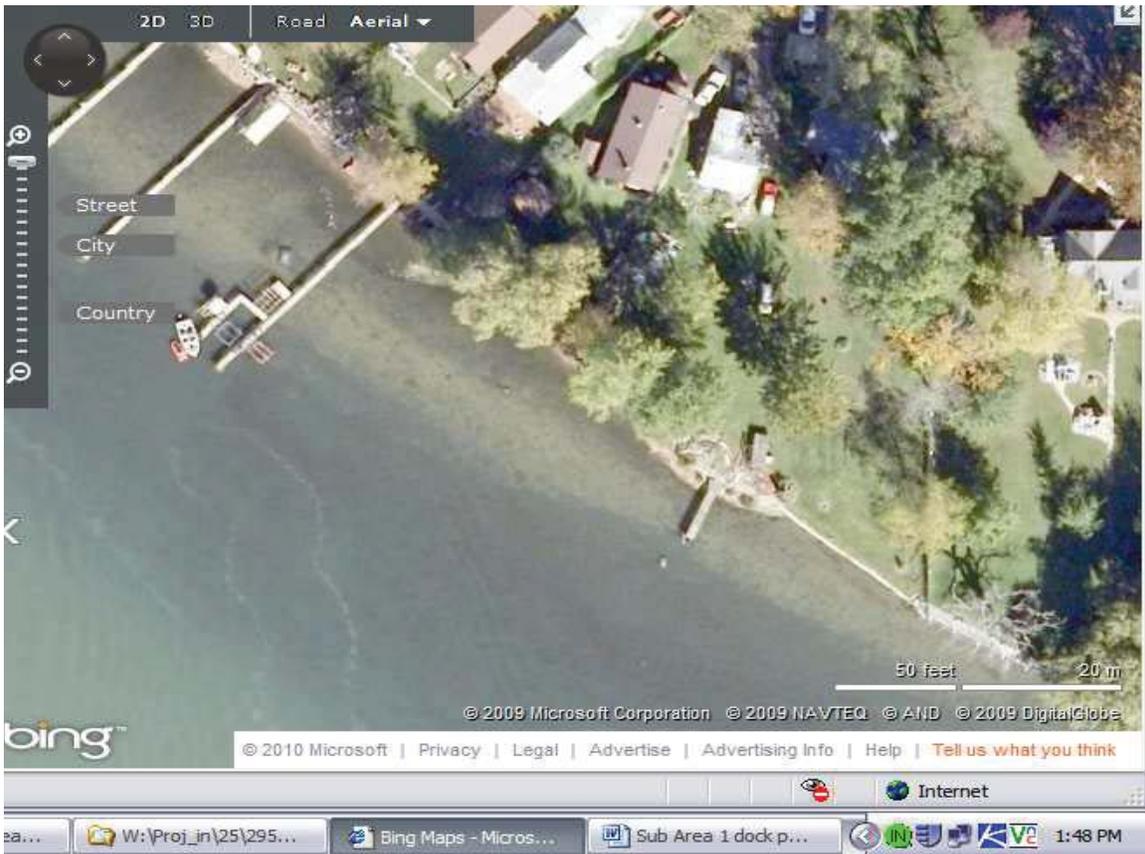


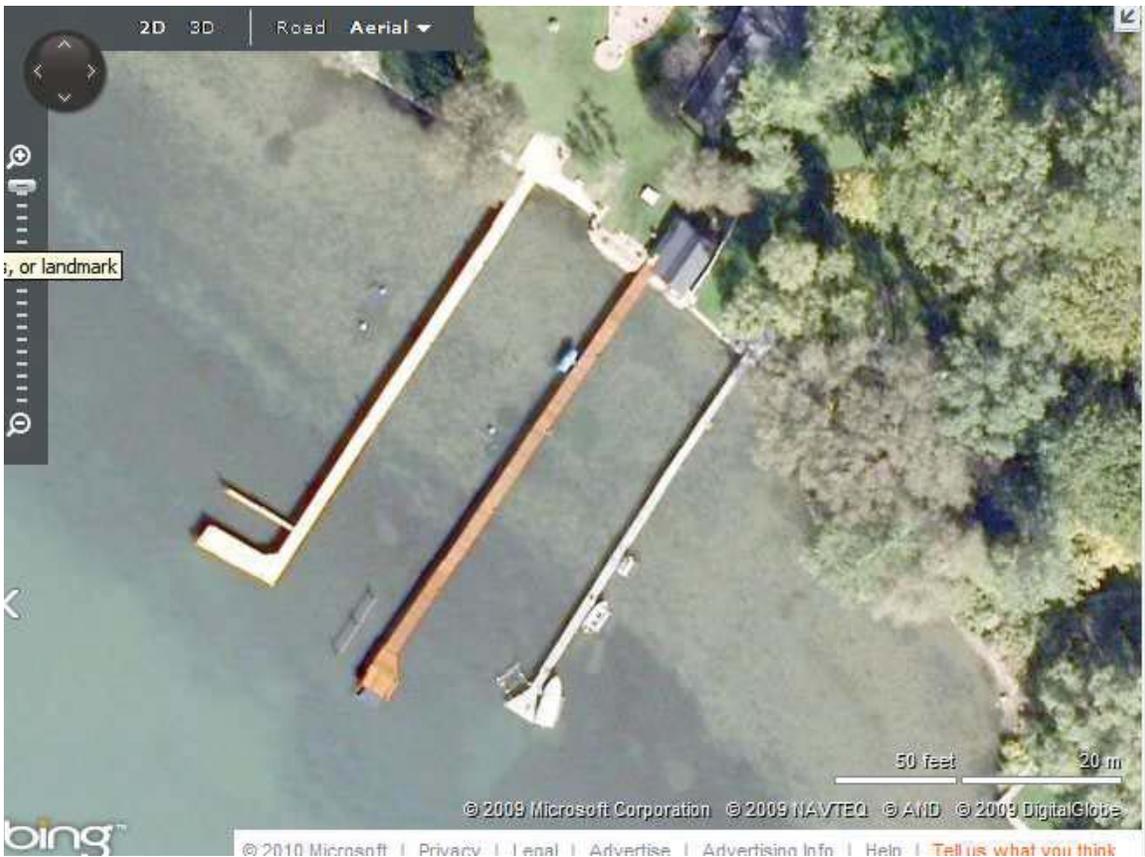
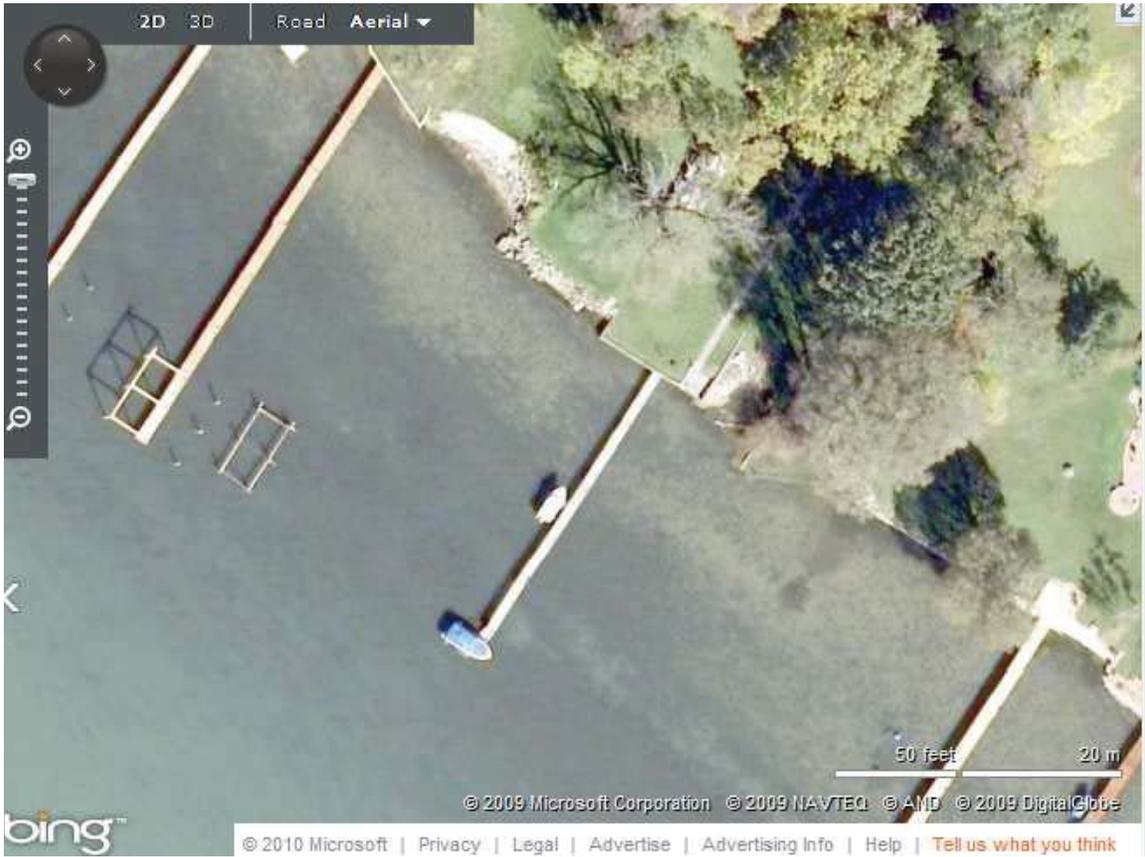


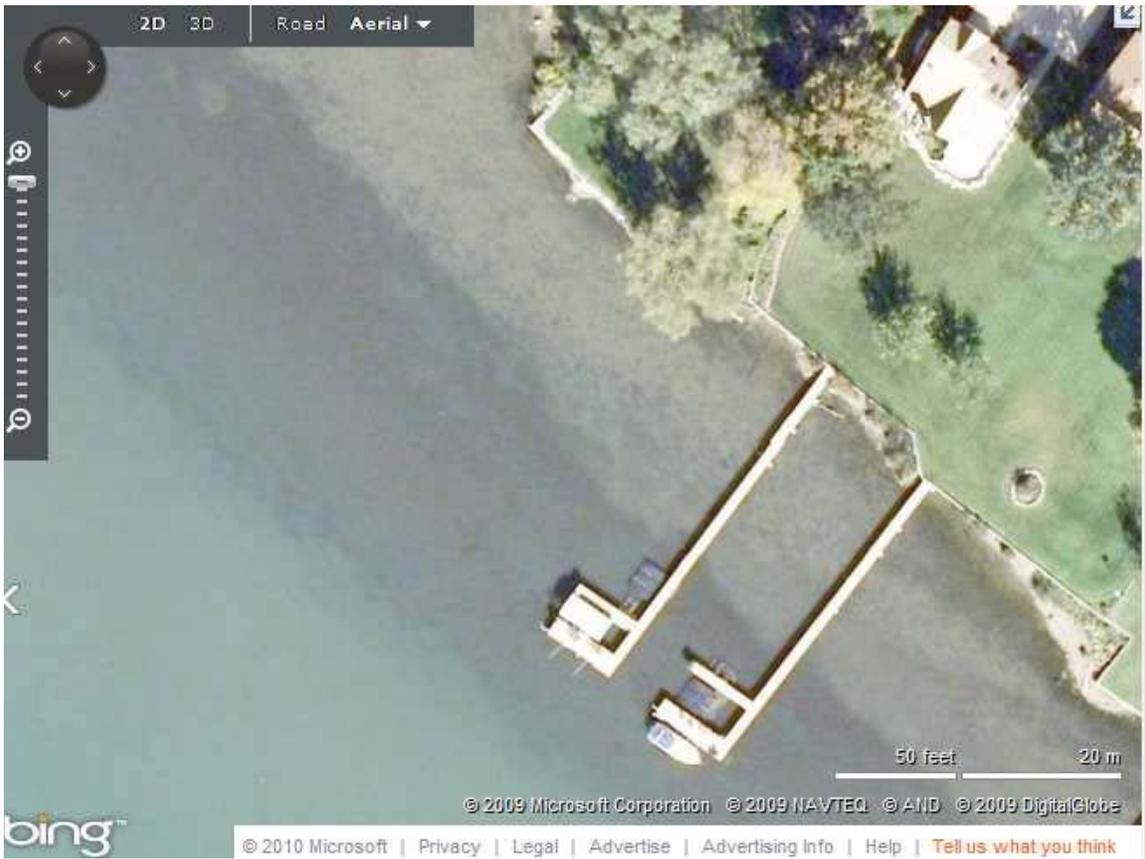


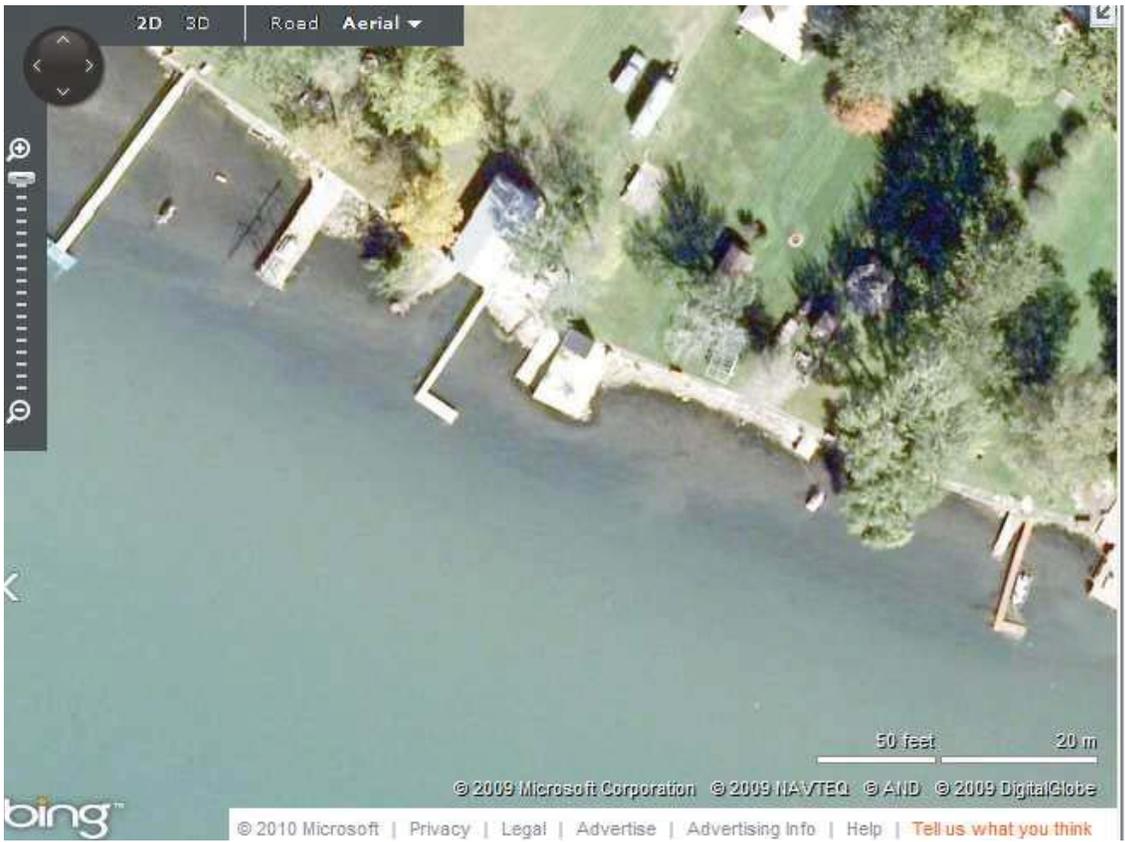




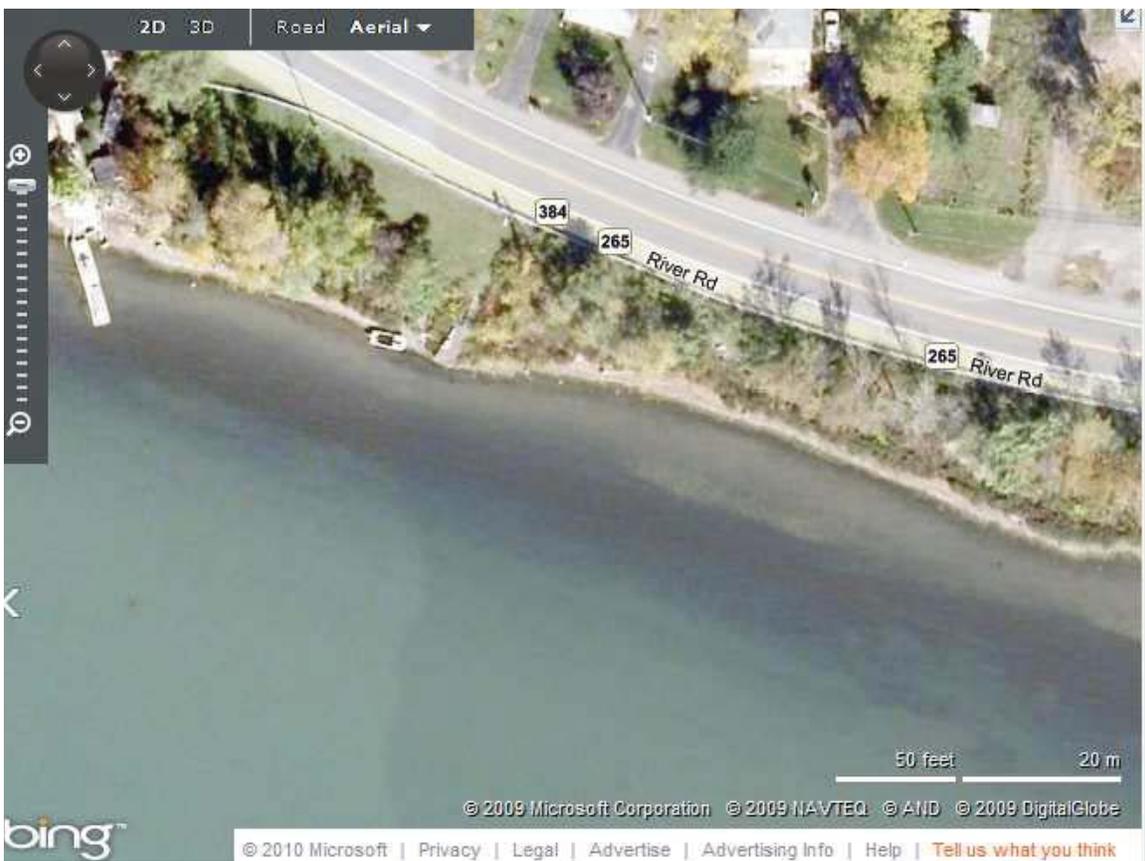










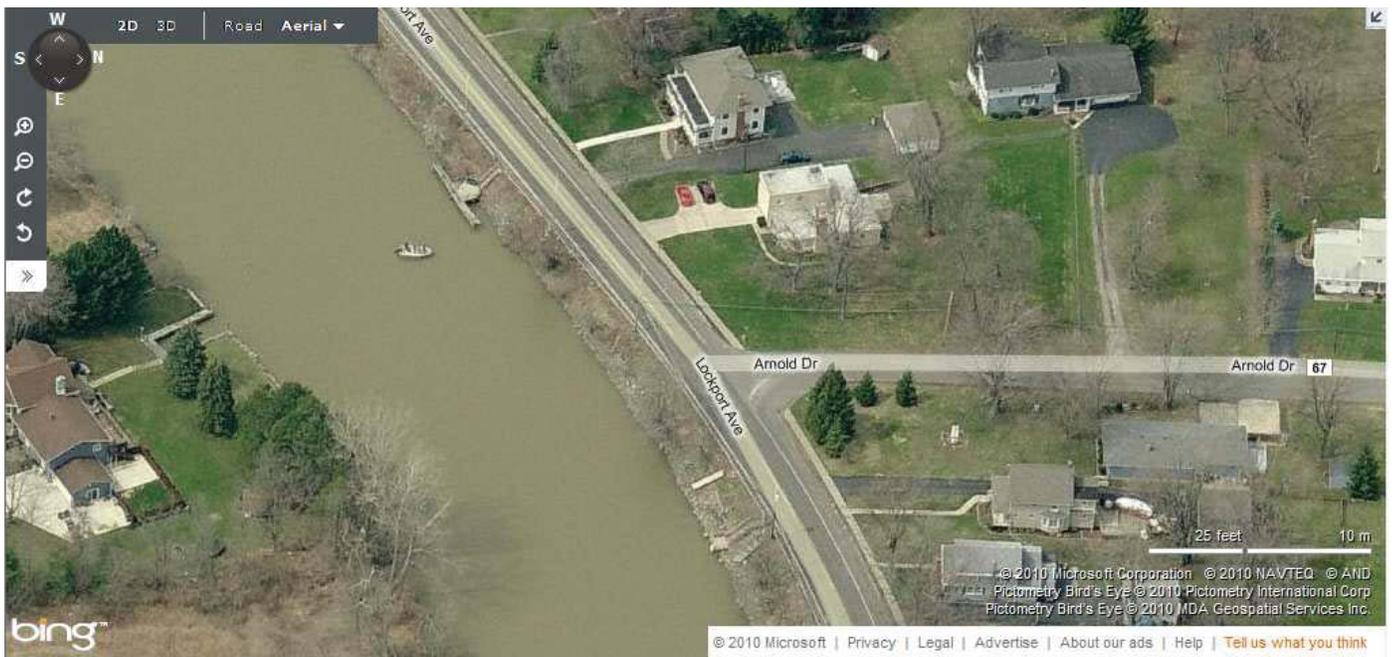




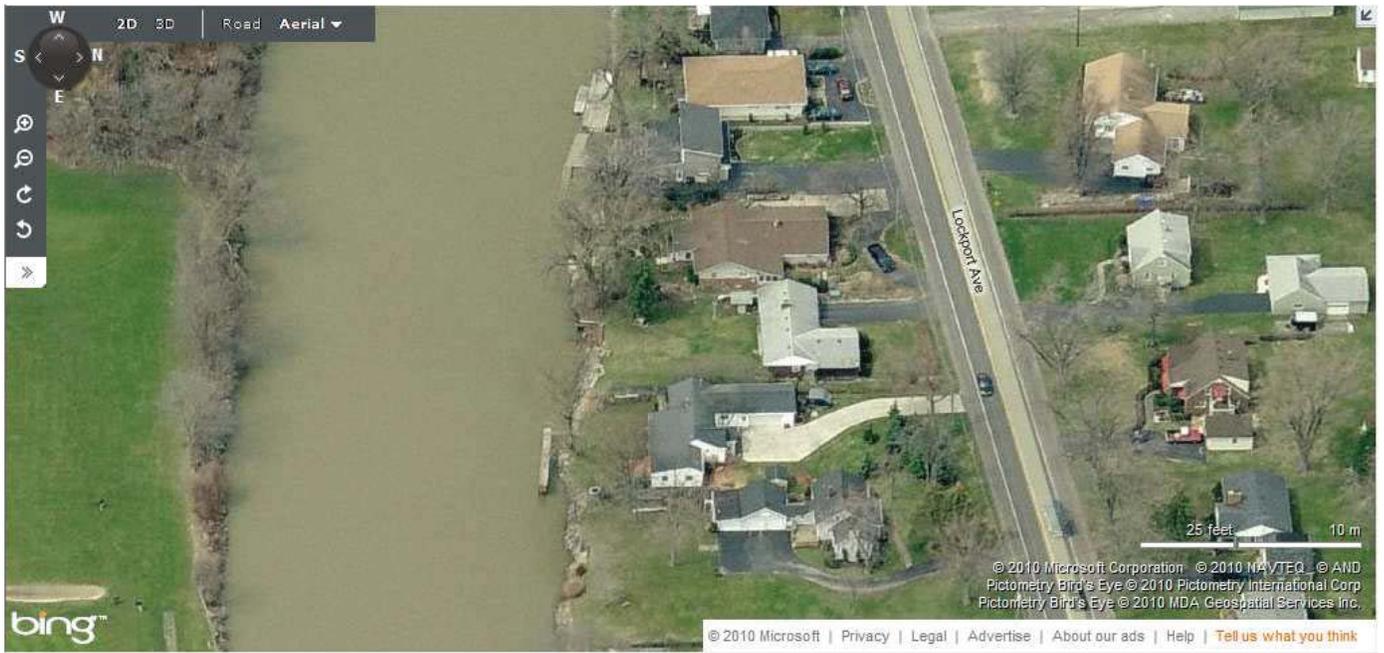


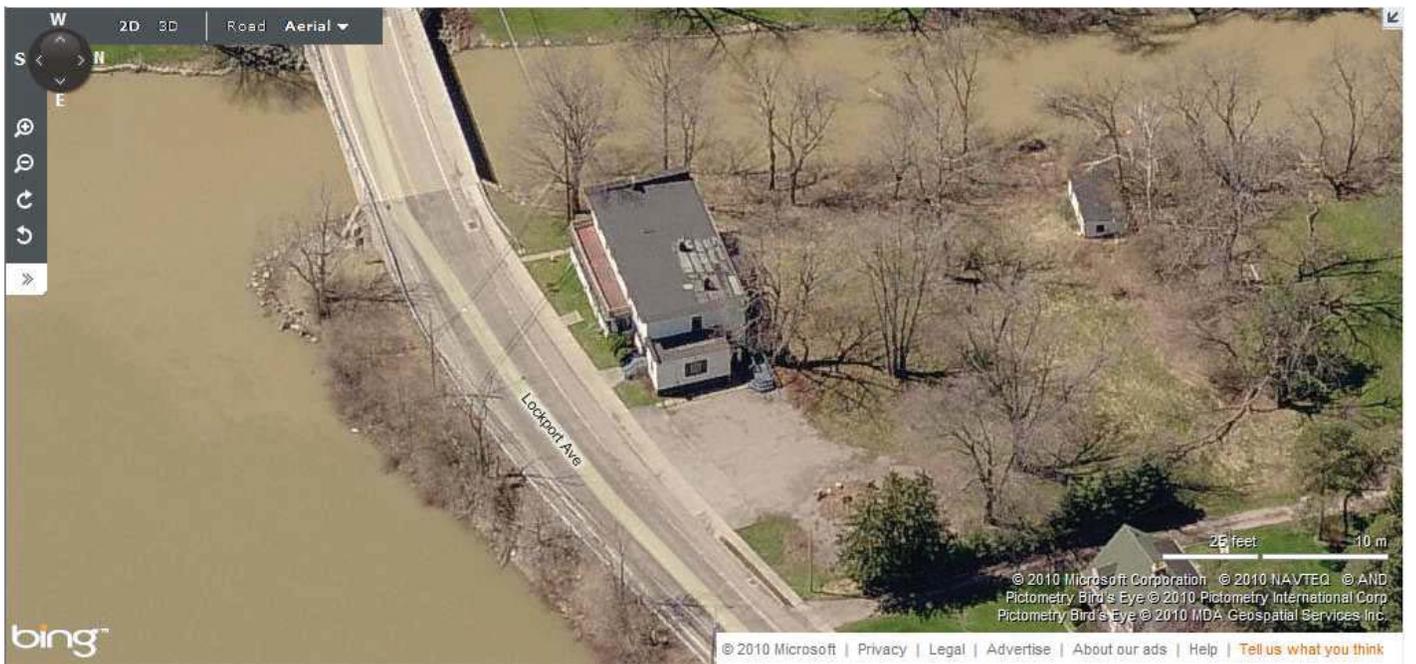
# Sub -Area 2: Tonawanda Creek (Erie Canal)

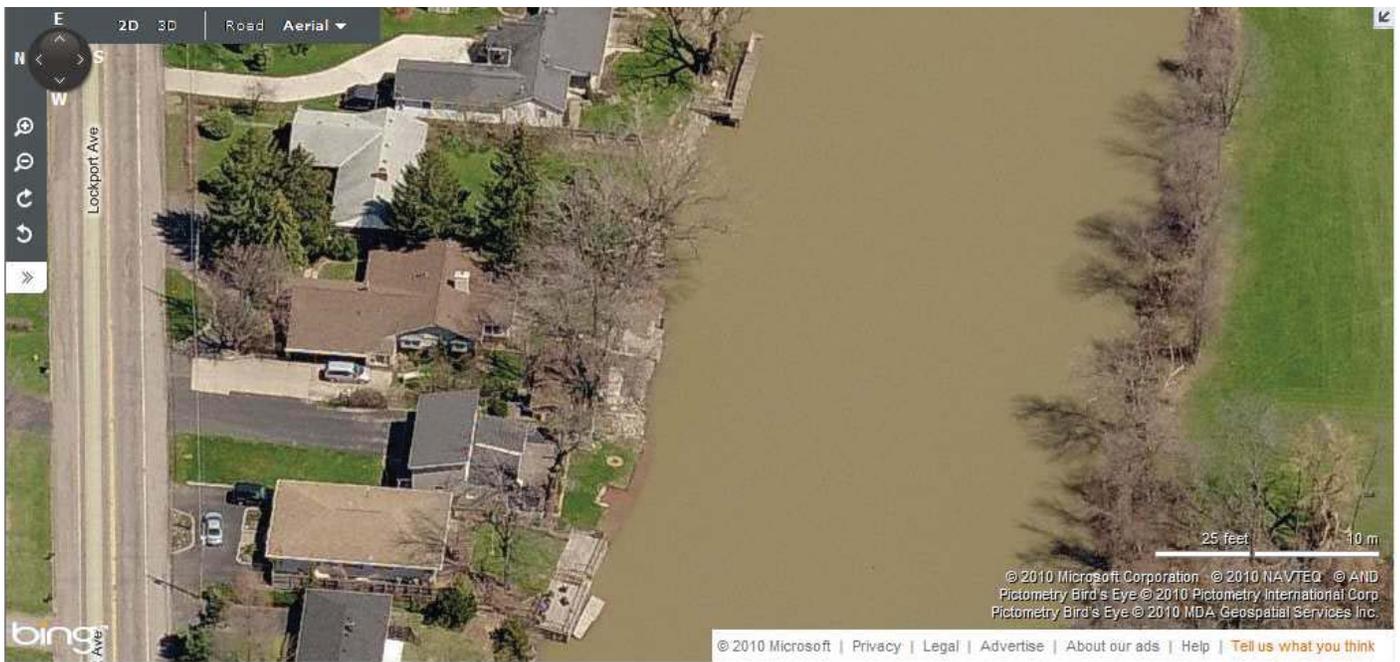
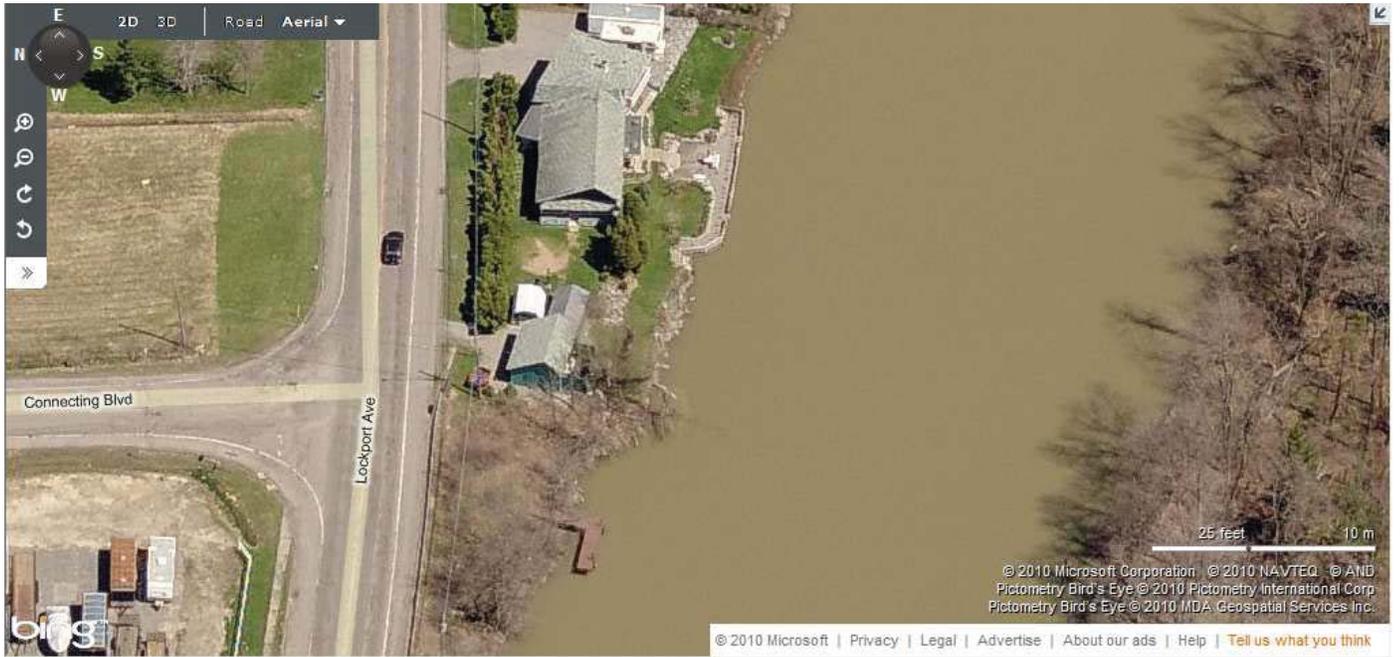


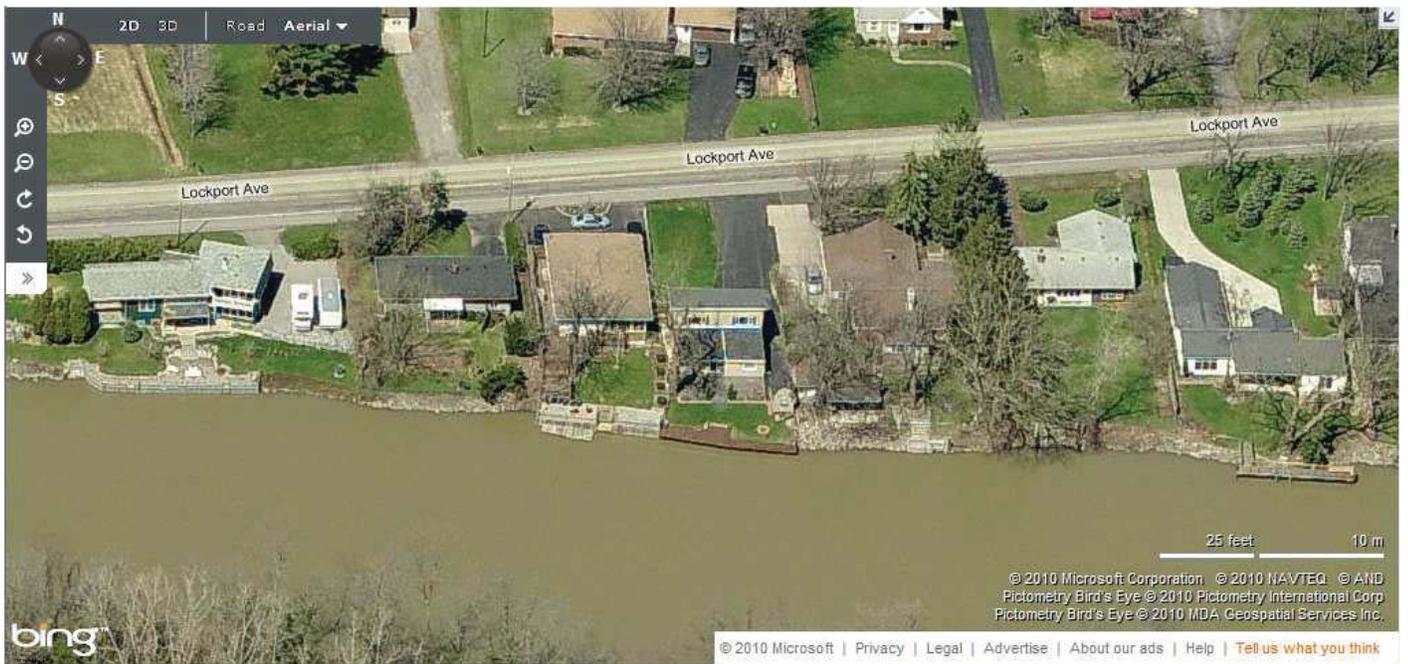














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**Appendix E**  
Guidelines for Notification and Review of State and  
Federal Agency Actions

# New York State Department Of State Coastal Management Program - Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs are in Effect

## I. Purposes of Guidelines

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

## II. Definitions

- A. Action means:
  - 1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
  - 2. Occurring within the boundaries of an approved LWRP; and
  - 3. Being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.
- B. Consistent to the maximum extent practicable means that an action will not substantially hinder the achievement of any of the policies and purposes of an approved LWRP and, whenever practicable, will advance one or more of such policies. If an action

will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:

1. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
  2. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and
  3. That will result in an overriding regional or statewide public benefit.
- C. Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water and man-made resources, proposed land uses and specific projects that are essential to program implementation.

### III. NOTIFICATION PROCEDURE

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

### IV. Local Government Review Procedure

- A. Upon receipt of notification from a state agency, the situs local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local official identified in the LWRP, the state agency should promptly provide the situs local government with whatever additional

information is available which will assist the situs local government to evaluate the proposed action.

- B If the situs local government cannot identify any conflicts between the proposed action and the applicable policies and purposes of its approved LWRP, it should inform the state agency in writing of its finding. Upon receipt of the local government's finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
- C. If the situs local government does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the municipality's approved LWRP.
- D. If the situs local government notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the Resolution of Conflicts procedure established in V below shall apply. The local government shall forward a copy of the identified conflicts to the Secretary of State at the time when the state agency is notified. In notifying the state agency, the local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

## **V. Resolution of Conflicts**

- A. The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP:
  - 1. Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.
  - 2. If the discussion between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

3. If the consultation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the situs local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
4. Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.
5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations~
6. The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.

# PROCEDURAL GUIDELINES FOR COORDINATING NYS DEPARTMENT OF STATE (DOS) & LWRP CONSISTENCY REVIEW OF FEDERAL AGENCY ACTIONS

## Direct Actions

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

## Permit and License Actions

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

4. Within thirty (30) days of receiving the requested additional information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with local coastal policies.
5. After the notification, the program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed action with local coastal policies.
6. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" letter to the applicant.
7. A copy of DOS' "concurrence" or "objective" letter to the applicant will be forwarded to the program coordinator.

## **Financial Assistance Actions**

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

discuss any differences of opinion or questions prior to notifying the applicant of DOS' consistency decision.

6. A copy of DOS' consistency decision letter to the applicant will be forwarded to the program coordinator.

**Appendix F**  
SEQRA documents

## NOTICE

### SEQR: LEAD AGENCY DESIGNATION TOWN OF WHEATFIELD TOWN BOARD

May 25, 2012

This notice is filed pursuant to Part 617 6NYCRR, Article 8 of the Environmental Conservation Law (SEQRA) and Local Law 1979-2.

**The Town of Wheatfield has received a complete application from:**

**Name:** Town of Wheatfield  
**Address:** Town Hall  
2800 Church Road  
Wheatfield, NY 14120

**Contact Person:** Robert O'Toole, Town Attorney  
**Telephone:** (716) 504-0494

**Regarding:** Town of Wheatfield Local Waterfront Revitalization Program (LWRP)

**Description and Location of Action:**

The Town of Wheatfield intends to adopt a Local Waterfront Revitalization Program (LWRP) for designated areas adjacent to the Niagara River and Tonawanda Creek shorelines. The LWRP is a locally prepared, comprehensive land and water use plan that addresses issues relevant to the protection of community character, improved public access and recreation, environmental resource protection, protection and enhancement of water quality, flooding and erosion, and scenic and historic resources.

This action also includes adoption of LWRP Consistency Review Law to establish procedures for determining if proposed actions, as defined in the law, to be directly undertaken, funded or permitted within the designated Local Waterfront Revitalization Area are consistent with the policies set forth in the Town of Wheatfield LWRP as well as zoning changes along the Niagara River shoreline to bring local zoning into conformance with proposed land uses identified in the LWRP document.

**As the local agency with permitting authority, the Town Board wishes to declare Lead Agency for this action.**

**Other potential permitting agencies identified are: (check each)**

- Town Board
- Planning Board
- Zoning Board of Appeals
- Highway Department Superintendent
- Town Code Enforcement Office and Fire Council
- Water Department
- Niagara County Department of Economic Development
- NYS DOS, Division of Coastal Resources
- State Department of Environmental Conservation
- State Department of Transportation
- State Department of Health
- Others: Federal Aviation Administration, NYADO

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**Other interested agencies may be:**

- School District
- Army Corp of Engineers
- NYS Office of Parks, Recreation and Historic Preservation
- Western New York Land Conservancy, Inc.
- Other – Adjacent Municipalities; City of Niagara Falls, City of North Tonawanda

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**A preliminary review of the proposed action indicates that it is a SEQRA**

TYPE 1

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Adoption of Comprehensive Plan,<br>Resource Management Plan or Zoning | <input type="checkbox"/> Agricultural District, exceed<br>25% Above |
| <input type="checkbox"/> Zoning, Change of allowable uses<br>greater than 25 acres                        | <input type="checkbox"/> Historic Site                              |
|   | <input type="checkbox"/> Public Park Land                           |
| <input type="checkbox"/> Zoning or Site Plan change exceeding:  | <input type="checkbox"/> Critical Environmental Area<br>(SEE BELOW) |
| <input type="checkbox"/> 10 Acres   | <input type="checkbox"/> Wetland                                    |
| <input type="checkbox"/> 2 MGD Water Use  | <input type="checkbox"/> Floodplain                                 |
| <input type="checkbox"/> 1000 Cars Parking  | <input type="checkbox"/> Protected Stream                           |
| <input type="checkbox"/> 100,000 SF Gross, Non-<br>Residential  | <input type="checkbox"/> Navigable Waterway                         |
| <input type="checkbox"/> 250 Residential Units  | <input type="checkbox"/> Other _____                                |
| <input type="checkbox"/> 100 Ft. Above Grade  |   |
| <input type="checkbox"/> Telecommunication Tower Facility   |   |

OR:

UNLISTED ACTION (Coordinated Review Option)

The attached Environmental Assessment Form has been filed by the applicant. A full copy of the Draft LWRP will be provided by the NYSDOS as part of the forthcoming 60-day review.

Please notify me at the address below by June 15, 2012 if your agency objects to our acting as lead agency, or June 25, 2012 with any information or concerns pertinent to this matter. If no response is received by the latter date, we will assume your agency has no specific concerns about the action and we will proceed with our review and determination of significance.

Please respond in writing to:

Wendy E. Salvati, AICP  
Wendel  
140 John James Audubon Pkwy.  
Amherst, New York, 14228  
Phone: (716) 688-0766  
Fax: (716) 625-6825  
wsalvati@wd-ae.com

Mailing List:

Niagara County Planning Board  
Vantage Center – Suite One  
6311 Inducon Corporate Drive  
Sanborn, NY 14132

David Denk  
Regional Permit Administrator  
NYS Department of Environmental Conservation  
Region 9  
270 Michigan Avenue  
Buffalo, NY 14203-2915



# TOWN OF WHEATFIELD NIAGARA COUNTY

2800 Church Road  
North Tonawanda, NY 14120-1099  
Phone: (716) 694-6440 Fax: (716) 694-5419

## Town of Wheatfield AUTHORIZING RESOLUTION

Kathleen M. Harrington  
Town Clerk  
Registrar of Vital Statistics  
Records Management Officer  
Marriage Officer

**RECEIVED**

JUN 14 2012

**WENDEL**

I, Kathleen Harrington, elected Town Clerk of The Town of Wheatfield, 2800 Church Road, North Tonawanda, NY 14120, do hereby certify that the following resolution was adopted at the regular meeting of the Town of Wheatfield held on June 11, 2012 at 7:30 pm, and is incorporated in the original minutes of said meeting and that said resolution has not been altered, amended or revoked and is in full force and effect.

**Resolved:** Moved by Councilman Retzlaff and seconded by Councilman Helwig as follows:

WHEREAS, the Town of Wheatfield has prepared a Draft Local Waterfront Revitalization Program (LWRP), pursuant to the guidelines and requirements of Article 42 of the New York State Executive Law; and

WHEREAS, the draft LWRP has been prepared under the review and guidance of the Town of Wheatfield Waterfront Advisory Committee, with consultant planning assistance provided by Wendel, the Town Engineer; and

WHEREAS, the Wheatfield Town Board prepared an Environmental Assessment Form to identify and evaluate the potential impacts of adopting the LWRP and to conduct a coordinated review, in accordance with the requirements of the State Environmental Quality Review Act (SEQRA) and Part 617 of the implementing regulations of Article 8 of the New York State Environmental Conservation Law (ECL); and

WHEREAS, pursuant to Part 617 of the ECL implementing regulations, the Wheatfield Town Board wishes to designate themselves as the SEQR Lead Agency for this action.

NOW, THEREFORE, BE IT RESOLVED, that the Wheatfield Town Board establishes SEQR Lead Agency status for the SEQR review of the Draft LWRP, and

BE IT FURTHER RESOLVED, that the Town Board authorizes the Town Engineer undertake the necessary notices and filings for this action, and

BE IT FURTHER RESOLVED, that two certified copies of this Lead Agency resolution be provided to the Town Engineer for the required distribution and filings.

**This motion was CARRIED: AYES 5 - NAYS 0.**

Kathleen M. Harrington  
Town Clerk

**617.20  
Appendix A  
State Environmental Quality Review  
FULL ENVIRONMENTAL ASSESSMENT FORM**

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

**DETERMINATION OF SIGNIFICANCE – Type 1 and Unlisted Actions**

Identify the Portions of EAF completed for this project:      Part 1      Part 2      Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have significant impact on the environment, therefore a **negative declaration will be prepared**.
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in Part 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.\***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared**.

\* A conditioned Negative Declaration is only valid for Unlisted Actions

**Town of Wheatfield Local Waterfront Revitalization Program (LWRP)**

Name of Action

**Town of Wheatfield Town Board**

Name of Lead Agency

**Robert B. Cliff**

Print or Type Name of Responsible Officer in Lead Agency

Signature of Responsible Officer in Lead Agency

**Supervisor**

Title of Responsible Officer

Signature of Preparer (if different from responsible officer)

**7/9/12**

Date



3. What is predominant soil type(s) on project site? varies
- a. Soil Drainage:  Well drained \_\_\_\_\_ % of site  Moderately well drained \_\_\_\_\_ % of site  
 Poorly drained \_\_\_\_\_ % of site
- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? N/A acres. (See NYCRR 370)
4. Are there bedrock outcroppings on project site?  Yes  No
- a. What is depth to bedrock? varies (in feet)
5. Approximate percentage of proposed project site with slopes:  0-10% 100 %  10-15% \_\_\_\_\_ %  
 15% or greater \_\_\_\_\_ %
6. Is project substantially contiguous to, or contain a building, or district, listed on the State or the National Registers of Historic Places?  Yes  No
7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks?  Yes  No
8. What is the depth of the water table? varies (in feet)
9. Is site located over a primary, principal, or sole source aquifer?  Yes  No
10. Do hunting, fishing or shell fishing opportunities presently exist in the project area?  Yes  No
11. Does project site contain any species of plant or animal life that is identified as threatened or endangered?  
 Yes  No According to: NYSDEC  
 Identify each species Sub-Area 1 – native species of Goldenrod; Sub-Area 2 – freshwater clams in Tonawanda Creek
12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations)  
 Yes  No Describe: \_\_\_\_\_
13. Is the project site presently used by the community or neighborhood as an open space or recreation area?  
 Yes  No If yes, explain: RB Uren Park in Sub-Area 1 and Baisch Memorial Park in Sub-Area 2
14. Does the present site include scenic views known to be important to the community?  Yes  No
15. Streams within or contiguous to project area: Niagara River (Sub-Area 1), Tonawanda Creek and Bull Creek (Sub-Area 2)
- a. Name of Stream and name of River to which it is tributary: Niagara River flows into Lake Ontario  
 Tonawanda Creek and a tributary to Black Creek flow into the Niagara River  
 Bull Creek is a tributary of Tonawanda Creek
16. Lakes, ponds, wetland areas within or contiguous to project area: various inland locations in Sub-Area 1 and along Tonawanda and Bull Creeks in Sub-Area 2
- a. Name: \_\_\_\_\_ b. Size (In acres): varies
17. Is the site served by existing public utilities?  Yes  No  
 a. If Yes, does sufficient capacity exist to allow connection?  Yes  No  
 b. If Yes, will improvements be necessary to allow connection?  Yes  No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  
 Yes  No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617?  
 Yes  No
20. Has the site ever been used for the disposal of solid or hazardous wastes?  Yes  No

**B. Project Description**

1. Physical dimensions and scale of project (fill in dimensions as appropriate) **N/A**
  - a. Total contiguous acreage owned or controlled by project sponsor \_\_\_\_\_ acres.
  - b. Project acreage to be developed: \_\_\_\_\_ acres initially; \_\_\_\_\_ acres ultimately.
  - c. Project acreage to remain undeveloped **0** acres.
  - d. Length of project, in miles: \_\_\_\_\_ (If appropriate)
  - e. If the project is an expansion, indicate percent of expansion proposed \_\_\_\_\_ %;
  - f. Number of off-street parking spaces existing \_\_\_\_\_ ; proposed \_\_\_\_\_
  - g. Maximum vehicular trips generated per hour \_\_\_\_\_ (upon completion of project)?
  - h. If residential: Number and type of housing units: **N/A**

	One Family	Two Family	Multiple Family	Condominium
Initially	_____	_____	_____	_____
Ultimately	_____	_____	_____	_____
  - i. Dimensions (in feet) of largest proposed structure \_\_\_\_\_ height; \_\_\_\_\_ width; \_\_\_\_\_ length.
  - j. Linear feet of frontage along a public thoroughfare project will occupy is? \_\_\_\_\_ ft.
2. How much natural material (i.e., rock, earth, etc.) will be removed from the site? **N/A** tons/cubic yards
3. Will disturbed areas be reclaimed?
 

		Yes		No		<b>X</b>		N/A
--	--	-----	--	----	--	----------	--	-----

  - a. If yes, for what intended purpose is the site being reclaimed?
  - b. Will topsoil be stockpiled for reclamation
 

		Yes		No
--	--	-----	--	----
  - c. Will upper subsoil be stockpiled for reclamation?
 

		Yes		No
--	--	-----	--	----
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? **N/A** acres.
5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project? **N/A**

		Yes		No
--	--	-----	--	----
6. If single phase project: Anticipated period of construction **N/A** months, (including demolition).
7. If multi-phased:
  - a. Total number of phases anticipated \_\_\_\_\_ (number)
  - b. Anticipated date of commencement phase 1 \_\_\_\_\_ month \_\_\_\_\_ year, (including demolition)
  - c. Approximate completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year.
  - d. Is phase 1 functionally dependent on subsequent phases?
 

		Yes		No
--	--	-----	--	----
8. Will blasting occur during construction? **N/A**

		Yes		No
--	--	-----	--	----
9. Number of jobs generated: during construction **N/A** ; after project is complete \_\_\_\_\_ .
10. Number of jobs eliminated by this project **N/A**
11. Will project require relocation of any projects or facilities? **N/A**

		Yes		No
--	--	-----	--	----

If yes, explain: \_\_\_\_\_

12. Is surface liquid waste disposal involved?  Yes  No
- a. If yes, indicate type of waste (sewage, industrial, etc.) and amount \_\_\_\_\_
- b. Name of water body into which effluent will be discharged \_\_\_\_\_
13. Is subsurface liquid waste disposal involved?  Yes  No  
Type: \_\_\_\_\_
14. Will surface area of an existing water body increase or decrease by proposal?  Yes  No  
Explain: \_\_\_\_\_
15. Is project or any portion of project located in a 100-year flood plain?  Yes  No
16. Will the project generate solid waste?  Yes  No
- a. If yes, what is the amount per month \_\_\_\_\_ tons
- b. If yes, will an existing solid waste facility be used?  Yes  No
- c. If yes, give name \_\_\_\_\_ ; location \_\_\_\_\_
- d. Will any wastes not go into a sewage disposal system or into a sanitary landfill:  Yes  No
- e. If Yes, explain: \_\_\_\_\_
17. Will the project involve the disposal of solid waste?  Yes  No
- a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.
- b. If yes, what is the anticipated site life? \_\_\_\_\_ years.
18. Will project use herbicides or pesticides?  Yes  No
19. Will project routinely produce odors (more than one hour per day)?  Yes  No
20. Will project produce operating noise exceeding the local ambient noise levels?  Yes  No
21. Will project result in an increase in energy use?  Yes  No  
If yes, indicate type(s) \_\_\_\_\_
22. If water supply is from wells, indicate pumping capacity  gallons/minute.
23. Total anticipated water usage per day \_\_\_\_\_ gallons/day.
24. Does project involve local, state, or federal funding?  Yes  No  
If Yes, explain: \_\_\_\_\_

**25. Approvals Required:**

					Type	Submittal Date
City, Town, Village Board	<b>Town Board</b>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	<u>adoption</u>	_____
City, Town, Village Planning Board		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	_____	_____
City, Town Zoning Board		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	_____	_____
City, County Health Department		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	_____	_____
Other Local Agencies		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	_____	_____
Other Regional Agencies	<b>Niagara County DEP</b>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	<u>review</u>	_____
State Agencies	<b>NYS DOS</b>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	<u>approval</u>	_____
Federal Agencies	<b>NOAA OCRM</b>	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	<u>concurrence</u>	_____

**C. Zoning and Planning Information**

1. Does proposed action involve a planning or zoning decision?  Yes  No
- If Yes, indicate decision required:
- |  |   |   |                                      |
|--|---|---|--------------------------------------|
| <input checked="" type="checkbox"/> zoning amendment | <input type="checkbox"/> zoning variance                        | <input type="checkbox"/> special use permit       | <input type="checkbox"/> subdivision |
| <input type="checkbox"/> site plan                   | <input checked="" type="checkbox"/> new/revision of master plan | <input type="checkbox"/> resource management plan | <input type="checkbox"/> other       |

2. What is the zoning classification(s) of the site: Sub-area 1: Commercial, Light Industrial, Residential-2, Residential-3  
Sub-area 2: Commercial, Residential-2, Niagara Falls Blvd. Overlay
3. What is the maximum potential development of the site if developed as permitted by the present zoning? N/A
4. What is the proposed zoning of the site? Sub-area 1 - Change existing residential areas to Waterfront Residential District R-W.  
Sub-area 2 - Change portion of Commercial District to Residential-2 and remove from Niagara Falls Blvd. Overlay to reflect existing land use.
5. What is the maximum potential development of the site if developed as permitted by the proposed zoning? N/A
6. Is the proposed action consistent with the recommended uses in adopted local land use plans? |  | Yes | | No
7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action? Residential, commercial, parkland, public and private utilities
8. Is the proposed action compatible with adjoining/surrounding land uses within a ¼ mile? |  | Yes | | No
9. If the proposed action is the subdivision of land, how many lots are proposed? N/A  
What is the minimum lot size proposed? \_\_\_\_\_
10. Will proposed action require any authorization(s) for the formation of sewer or water districts? | | Yes |  | No
11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?  
If yes, is existing capacity sufficient to handle projected demand? | | Yes |  | No
12. Will the proposed action result in the generation of traffic significantly above present levels?  
If yes, is the existing road network adequate to handle the additional traffic? | | Yes |  | No

**D. Information Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Wendy E. Weber Salvati, AICP Date 5-26-12  
Signature Wendy E. Weber Salvati Title Town Planning Consultant

If the action is in the Coastal area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.



**IMPACT ON WATER**

3. Will proposed action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)  
 No  Yes

**Examples that would apply to column 2**

- Developable area of site contains protected water body.
- Dredging more than 100 cubic yards of material from channel of a protected stream.
- Extension of utility distribution facilities through a protected water body.
- Construction in a designated freshwater or tidal wetland.
- Other impacts: LWRP policies are aimed at protecting local surface waters

4. Will proposed action affect any non-protected existing or new body of water?  
 No  Yes

**Examples that would apply to column 2**

- A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.
- Construction of a body of water that exceeds 10 acres of surface area
- Other impacts: \_\_\_\_\_

5. Will proposed action affect surface or groundwater quality or quantity?  
 No  Yes

**Examples that would apply to column 2**

- Proposed Action will require a discharge permit.
- Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.
- Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.
- Construction or operation causing any contamination of a water supply system.
- Proposed Action will adversely affect groundwater.
- Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.
- Proposed Action would use water in excess of 20,000 gallons per day.
- Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.
- Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.
- Proposed Action will allow residential uses in areas without water and/or sewer services.
- Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.
- Other impacts: LWRP policies include guidance to protect water quality and limit non-point source pollution

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**IMPACT ON WATER (cont'd)**

6. Will proposed action alter drainage flow or patterns or surface water runoff? | | No |  | Yes

**Examples** that would apply to column 2

- Proposed Action would change flood water flows.
- Proposed Action may cause substantial erosion.
- Proposed Action is incompatible with existing drainage patterns.
- Other impacts: The LWRP promotes the Town's stormwater management standards and addresses flooding and erosion

**IMPACT ON AIR**

7. Will proposed action affect air quality? |  | No | | Yes

**Examples** that would apply to column 2

- Proposed Action will induce 1,000 or more vehicle trips in any given hour.
- Proposed action will result in the incineration of more than 1 ton of refuse per hour.
- Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour.
- Proposed action will allow an increase in the amount of land committed to industrial use.
- Proposed action will allow an increase in the density of industrial development within existing industrial areas.
- Other impacts: \_\_\_\_\_

**IMPACT ON PLANTS AND ANIMALS**

8. Will Proposed Action affect any threatened or endangered species? | | No |  | Yes

**Examples** that would apply to column 2

- Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site or found on the site.
- Removal of any portion of a critical or significant wildlife habitat.
- Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.
- Other impacts: The LWRP recognizes protected species and includes standards and policies to protect these resources

9. Will Proposed Action substantially affect non-threatened or non-endangered species? |  | No | | Yes

**Examples** that would apply to column 2

- Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.
- Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.
- Other impacts: \_\_\_\_\_

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
6.			
·	NO		Yes   No
·	NO		Yes   No
·	NO		Yes   No
·	<input checked="" type="checkbox"/>		Yes   No
7.			
·	NO		Yes   No
·	NO		Yes   No
·	NO		Yes   No
·	NO		Yes   No
·	NO		Yes   No
·			Yes   No
8.			
·	NO		Yes   No
·	NO		Yes   No
·	NO		Yes   No
·	<input checked="" type="checkbox"/>		Yes   No
9.			
·	NO		Yes   No
·	NO		Yes   No
·			Yes   No

**IMPACT ON AGRICULTURAL LAND RESOURCES**

10. Will the Proposed action affect agricultural land resources?  No  Yes

Examples that would apply to column 2

- The proposed action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)
- Construction activity would excavate or compact the soil profile of agricultural land.
- The proposed action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.
- The proposed action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g., cause a farm field to drain poorly due to increased runoff)
- Other impacts: There are no agricultural resources in the local waterfront revitalization area

**IMPACT ON AESTHETIC RESOURCES**

11. Will proposed action affect aesthetic resources?  No  Yes (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

Examples that would apply to column 2

- Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural
- Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of the resource.
- Project components that will result in the elimination or significant screening of scenic views known to be important to the area.
- Other impacts: The LWRP promotes the protection of important scenic views and resources in the LWRA

12. Will proposed Action impact any site or structure of historic, pre-historic, or paleontological importance?  No  Yes

Examples that would apply to column 2

- Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or Nation Register of historic places.
- Any impact to an archaeological site or fossil be located within the project site.
- Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.
- Other impacts: The LWRP recognizes important cultural resources and promotes their protection

**IMPACT ON OPEN SPACE AND RECREATION**

13. Will Proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?  No  Yes

Examples that would apply to column 2

- The permanent foreclosure of a future recreational opportunity.
- A major reduction of an open space important to the community.
- Other impacts: The LWRP promotes new opportunities for public recreation and open space protection

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
10. Will the Proposed action affect agricultural land resources? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
Examples that would apply to column 2			
· The proposed action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)			Yes     No
· Construction activity would excavate or compact the soil profile of agricultural land.			Yes     No
· The proposed action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.			Yes     No
· The proposed action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g., cause a farm field to drain poorly due to increased runoff)			Yes     No
· Other impacts: <u>There are no agricultural resources in the local waterfront revitalization area</u>			Yes     No
<b>IMPACT ON AESTHETIC RESOURCES</b>			
11. Will proposed action affect aesthetic resources? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)			
Examples that would apply to column 2			
· Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural	NO		Yes     No
· Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of the resource.	NO		Yes     No
· Project components that will result in the elimination or significant screening of scenic views known to be important to the area.	NO		Yes     No
· Other impacts: <u>The LWRP promotes the protection of important scenic views and resources in the LWRA</u>	X		Yes     No
12. Will proposed Action impact any site or structure of historic, pre-historic, or paleontological importance? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes			
Examples that would apply to column 2			
· Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or Nation Register of historic places.	NO		Yes     No
· Any impact to an archaeological site or fossil be located within the project site.	NO		Yes     No
· Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	NO		Yes     No
· Other impacts: <u>The LWRP recognizes important cultural resources and promotes their protection</u>	X		Yes     No
<b>IMPACT ON OPEN SPACE AND RECREATION</b>			
13. Will Proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes			
Examples that would apply to column 2			
· The permanent foreclosure of a future recreational opportunity.	NO		Yes     No
· A major reduction of an open space important to the community.	NO		Yes     No
· Other impacts: <u>The LWRP promotes new opportunities for public recreation and open space protection</u>	X		Yes     No

**IMPACT ON CRITICAL ENVIRONMENTAL AREA**

14. Will Proposed Action impact the exceptional or unique characteristics of critical environmental area (CEA) established pursuant to subdivision 6 NYCRR 617.14(g)?  No  Yes

List the environmental characteristics that caused the designation of the CEA.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Example** that would apply to column 2

Proposed Action to locate within the CEA?

Proposed Action will result in a reduction in the quantity of the resource?

Proposed Action will result in a reduction in the quality of the resource?

Proposed Action will impact the use, function or enjoyment of the resource?

Other impacts: \_\_\_\_\_

**IMPACT ON TRANSPORTATION**

15. Will there be an effect to existing transportation systems?  No  Yes

**Examples** that would apply to column 2

Alteration of present patterns of movement of people and/or goods.

Proposed action will result in major traffic problems.

Other impacts: The LWRP promotes traffic calming along River Road in an effort to improve traffic safety in the LWRA

**IMPACT ON ENERGY**

16. Will proposed action affect the community's sources of fuel or energy supply?  No  Yes

**Examples** that would apply to column 2

Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality

Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.

Other impacts: \_\_\_\_\_

**NOISE AND ODOR IMPACTS**

17. Will there be objectionable odors, noise, vibration as a result of the Proposed Action?  No  Yes

**Examples** that would apply to column 2

Blasting within 1,500 feet of a hospital, school or other sensitive facility.

Odors will occur routinely (more than one hour per day).

Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.

Other impacts: \_\_\_\_\_

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
14. Will Proposed Action impact the exceptional or unique characteristics of critical environmental area (CEA) established pursuant to subdivision 6 NYCRR 617.14(g)? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
List the environmental characteristics that caused the designation of the CEA.			
<b>Example</b> that would apply to column 2			
Proposed Action to locate within the CEA?			Yes     No
Proposed Action will result in a reduction in the quantity of the resource?			Yes     No
Proposed Action will result in a reduction in the quality of the resource?			Yes     No
Proposed Action will impact the use, function or enjoyment of the resource?			Yes     No
Other impacts: _____			Yes     No
<b>IMPACT ON TRANSPORTATION</b>			
15. Will there be an effect to existing transportation systems? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes			
<b>Examples</b> that would apply to column 2			
Alteration of present patterns of movement of people and/or goods.	NO		Yes     No
Proposed action will result in major traffic problems.	NO		Yes     No
Other impacts: <u>The LWRP promotes traffic calming along River Road in an effort to improve traffic safety in the LWRA</u>	X		Yes     No
<b>IMPACT ON ENERGY</b>			
16. Will proposed action affect the community's sources of fuel or energy supply? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
<b>Examples</b> that would apply to column 2			
Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality	NO		Yes     No
Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.	NO		Yes     No
Other impacts: _____			Yes     No
<b>NOISE AND ODOR IMPACTS</b>			
17. Will there be objectionable odors, noise, vibration as a result of the Proposed Action? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
<b>Examples</b> that would apply to column 2			
Blasting within 1,500 feet of a hospital, school or other sensitive facility.	NO		Yes     No
Odors will occur routinely (more than one hour per day).	NO		Yes     No
Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.	NO		Yes     No
Other impacts: _____			Yes     No

**IMPACT ON PUBLIC HEALTH**

18. Will Proposed Action affect public health and safety?  
 No  Yes

**Examples that would apply to column 2**

- Proposed Action may cause a risk of explosion or release of hazardous substances (i.e., oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.
- Proposed Action may result in the burial of "hazardous wastes" in any form (i.e., toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)
- Storage facilities for one million or more gallons of liquified natural gas or other flammable liquids.
- Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste/
- Other impacts: \_\_\_\_\_

**IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD**

19. Will proposed action affect the character of the existing community?  
 No  Yes

**Examples that would apply to column 2**

- The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.
- The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.
- Proposed Action will conflict with officially adopted plans or goals.
- Proposed Action will cause a change in the density of land use.
- Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.
- Development will create a demand for additional community services (e.g., schools, police and fire, etc.)
- Proposed Action will set an important precedent for future projects.
- Proposed Action will create or eliminate employment.
- Other impacts: \_\_\_\_\_

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
18. Will Proposed Action affect public health and safety? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
· Proposed Action may cause a risk of explosion or release of hazardous substances (i.e., oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.	NO		Yes   No
· Proposed Action may result in the burial of "hazardous wastes" in any form (i.e., toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)	NO		Yes   No
· Storage facilities for one million or more gallons of liquified natural gas or other flammable liquids.	NO		Yes   No
· Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste/	NO		Yes   No
· Other impacts: _____			Yes   No
19. Will proposed action affect the character of the existing community? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
· The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.	NO		Yes   No
· The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.	NO		Yes   No
· Proposed Action will conflict with officially adopted plans or goals.	NO		Yes   No
· Proposed Action will cause a change in the density of land use.	NO		Yes   No
· Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.	NO		Yes   No
· Development will create a demand for additional community services (e.g., schools, police and fire, etc.)	NO		Yes   No
· Proposed Action will set an important precedent for future projects.	NO		Yes   No
· Proposed Action will create or eliminate employment.	NO		Yes   No
· Other impacts: _____			Yes   No

20. Is there, or is there likely to be, public controversy related to potential adverse environmental impacts?  
 No  Yes

**IF ANY ACTION IN PART 2 IS IDENTIFIED AS A POTENTIAL LARGE IMPACT OR IF YOU CANNOT DETERMINE THE MAGNITUDE OF IMPACT, PROCEED TO PART 3**

**PART 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS**

**Responsibility of Lead Agency**

**Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.**

**Instructions**

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.  
To answer the question of importance, consider:
  - The probability of the impact occurring
  - The duration of the impact
  - Its irreversibility, including permanently lost resources of value
  - Whether the impact can or will be controlled
  - The regional consequence of the impact
  - Its potential divergence from local needs and goals
  - Whether known objections to the project relate to this impact.

(Continue on attachments)





## ENB - Region 9 Notices 7/18/2012

### Public Notice

The New York State Department of Environmental Conservation (NYS DEC) has determined that site ID # 907003 known as the Dunkirk Landfill site, may be deleted from the New York State Registry of Inactive Hazardous Waste Disposal Sites. This site is located on South Roberts Road in the Town of Dunkirk, Chautauqua County. **Comments regarding this action must be submitted no later than August 20, 2012.** [Information regarding the site](#), the proposed delisting, and how to submit comments electronically can be found at: <http://www.dec.ny.gov/chemical/60063.html> or send comments to: Michael Cruden, NYS DEC - Division of Environmental Remediation, Bureau E, 625 Broadway, 12th Floor, Albany, NY 12233-7017 Phone: (518) 402-9814, E-mail: [mjcruden@gw.dec.state.ny.us](mailto:mjcruden@gw.dec.state.ny.us).

To have information such as this notice sent right to your e-mail, sign up with county [e-mail listservs](#) available at: [www.dec.ny.gov/chemical/61092.html](http://www.dec.ny.gov/chemical/61092.html).

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### Negative Declaration

**Niagara County** - The Town of Wheatfield Town Board, as lead agency, has determined that the proposed Local Waterfront Revitalization Program will not have a significant adverse environmental impact. The action involves the adoption by the Town of Wheatfield for a Local Waterfront Revitalization Program (LWRP) for designated areas adjacent to the Niagara River and Tonawanda Creek shorelines. The LWRP is a locally prepared, comprehensive land and water use plan that addresses issues relevant to the protection of community character, improved public access and recreation, environmental resource protection, protection and enhancement of water quality, flooding and erosion, and scenic and historic resources.

This action also includes adoption of LWRP Consistency Review Law to establish procedures for determining if proposed actions, as defined in the law, to be directly undertaken, funded or permitted within the designated Local Waterfront Revitalization Area are consistent with the policies set forth in the Town of Wheatfield LWRP, as well as zoning changes along the Niagara River shoreline to bring local zoning into conformance with proposed land uses identified in the LWRP document.

The project is located on the Niagara River and Tonawanda Creek shorelines in the Town of Wheatfield, New York.

**Contact:** Robert O'Toole, Town of Wheatfield, 2800 Church Street, Wheatfield, NY 14120, Phone: (716) 504-0494, E-mail: [bobo@wheatfield.ny.us](mailto:bobo@wheatfield.ny.us).

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**Niagara County** - The New York State Office of Parks, Recreation and Historic Preservation (NYS OPRHP), as lead agency, has determined that the proposed Avian Habitat Restoration at Joseph Davis State Park will not have a significant adverse environmental impact. The action involves approval of avian habitat restoration work on 132 acres in the eastern area of Joseph Davis State Park by the Buffalo Audubon Society. The project will remove invasive species and plant appropriate native

species consistent with the habitat restoration and management plan; enhance and protect approximately 75 acres of critical bird habitat along the upper Niagara River Corridor and restore sensitive bird habitat that will further improve the ability of the Corridor to attract resident and migratory bird populations; enhance and perpetuate the site as a Bird Conservation Area (BCA) by providing habitats for the breeding, shelter, migration, and sustenance of resident and neotropical migratory wild bird populations; and implement an invasive species control and management plan based on site surveys and mapping. The project is located in the Joseph Davis State Park on River Road in the Town of Lewiston, New York.

**Contact:** Karen Terbush, NYS OPRHP, 625 Broadway, Albany, NY 12238, Phone: (518) 474-8765, E-mail: karen.terbush@parks.ny.

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## Positive Declaration

**Erie County** - The City of Buffalo Common Council, as lead agency, has determined that the proposed Buffalo Consolidated Development Framework may have a significant adverse impact on the environment and a Draft Environmental Impact Statement must be prepared. The action involves the adoption of the Buffalo Consolidated Development Framework (BCDF) which will consist of the following:

- Unified Development Ordinance (UDO) which encompasses a future land use plan that accommodates appropriate uses and forms and reinforces the existing character of the City, a form based zoning code that will prioritize form over defined uses, as well as revised subdivision and sign ordinances;
- A Local Waterfront Revitalization Plan that will guide development along the City's coastal areas;
- Revisions to Urban Renewal Areas to encourage development in these areas; and
- Planning and the zoning for the South Buffalo, Buffalo River Corridor, Buffalo Harbor, and Tonawanda Street Corridor Brownfield Opportunity Areas, including the River Bend Master Plan.

The project is located throughout the City of Buffalo, New York.

**Contact:** Kevin Linder, City of Buffalo, 1413 City Hall, Buffalo, NY 14202, Phone: (716) 851-5161.

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# TOWN OF WHEATFIELD NIAGARA COUNTY

2800 Church Road  
North Tonawanda, NY 14120-1099  
Phone: (716) 694-6440 Fax: (716) 694-5419

Kathleen M. Harrington  
Town Clerk  
Registrar of Vital Statistics  
Records Management Officer  
Marriage Officer

## Town of Wheatfield AUTHORIZING RESOLUTION

I, Kathleen Harrington, elected Town Clerk of The Town of Wheatfield, 2800 Church Road, North Tonawanda, NY 14120, do hereby certify that the following resolution was adopted at the regular meeting of the Town of Wheatfield held on July 9, 2012 at 7:30 pm, and is incorporated in the original minutes of said meeting and that said resolution has not been altered, amended or revoked and is in full force and effect.

Resolved: Resolution for the Town Board Issuance of the SEQR Negative Declaration

WHEREAS, the Town of Wheatfield has prepared a Draft Local Waterfront Revitalization Program (LWRP), pursuant to guidelines and requirements of Article 42 of the New York State Executive Law; and  
WHEREAS, the draft LWRP has been prepared under the review and guidance of the Town of Wheatfield Waterfront Advisory Committee, with consultant planning assistance provided by Wendel, the Town Engineer; and

WHEREAS, in accordance with Part 617 of the implementing regulations of Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), the Wheatfield Town Board was designated as the SEQR Lead Agency and prepared an Environmental Assessment Form to identify and evaluate the potential impacts of adopting the LWRP and associated Local Consistency Review Law and proposed Residential Waterfront (R-W) zoning classification; and

WHEREAS, the Town Board, as SEQR Lead Agent, conducted a coordinated review of the Draft LWRP and has appropriately acknowledged and addressed all comments received from interested and involved agencies; and

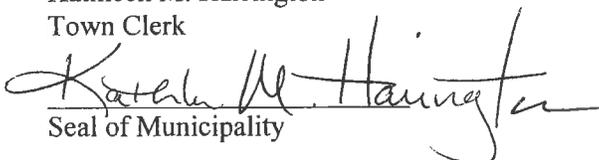
WHEREAS, the findings of the environmental review indicated that the adoption of the Town of Wheatfield Local Waterfront Revitalization Program, the Consistency Review Law and the creation of the proposed R-W Zoning District, will not adversely affect the natural resources of the State and/or the health, safety and welfare of the public, and is consistent with all associated social and economic considerations.

NOW, THEREFORE BE IT RESOLVED, that the Wheatfield Town Board, acting as the lead government entity for this action, has determined that the adoption of the Local Waterfront Revitalization Program, Local Consistency Review Law and R-W Zoning classification is not anticipated to result in any significant adverse impacts on the environment, and that a Negative Declaration is hereby issued based on the findings set forth in the Negative Declaration Notice of Determination of Non-Significance ; and

BE IT FURTHER RESOLVED, that the Supervisor is authorized to sign the Environmental Assessment Form and direct the Town Engineer to undertake the necessary filings and notifications; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be provided to the Town Engineer for required distribution and filing.

Kathleen M. Harrington  
Town Clerk

  
Seal of Municipality

**State Environmental Quality Review**  
**NEGATIVE DECLARATION**  
Notice of Determination of Non-Significance

**Date** June 25, 2012

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act SEQR) of the Environmental Conservation Law.

The Town of Wheatfield, as SEQR Lead Agency, has determined that the proposed action described below will not have a significant adverse effect on the environment and that a Draft Environmental Impact Statement will, therefore, not be prepared.

**Applicant Name:** Town of Wheatfield  
**Phone:** (716) 694-6440  
**Address:** 2800 Church Road  
Wheatfield, New York 14120

**Name of Action:** Adoption of the Town of Wheatfield Local Waterfront Revitalization Program (LWRP) pursuant to the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, adoption of the Town of Wheatfield Local Waterfront Revitalization Program Consistency Review Law, and adoption of the Residential Waterfront (R-W) Zoning classification.

**SEQR Status:**

Type 1  
 Unlisted

**Conditioned Negative Declaration:**

Yes  
 No

**Location:** Town of Wheatfield, Niagara County, New York

**Description of Action:** The Wheatfield Town Board, as Lead Agency, intends to adopt a Local Waterfront Revitalization Program (LWRP) as a comprehensive planning program for the waterfront to addresses issues relevant to waterfront revitalization, environmental resource protection, public access and recreation, commercial and recreation surface water uses, and flooding and erosion. The LWRP amendment was prepared under the guidelines established by the New York State Department of State and includes: (1) delineation of the waterfront revitalization area boundary for the Niagara River and Erie Canal (Tonawanda Creek); (2) an inventory of existing natural and man-made resources within the waterfront area, as well as an analysis of the opportunities and constraints to future development and redevelopment; (3) Preparation of coastal management policies for the use, protection, and development of waterfront resources; (4) recommended land and water uses for the waterfront area, and specific

projects to implement the local program; (5) a description of local laws, regulations, and other local techniques necessary for implementation of the LWRP; (6) a description of the State and Federal programs likely to affect, and are necessary to further the implementation of the LWRP; (7) a description of the consultation efforts undertaken with affected State and local agencies during the preparation of the LWRP amendment; and (8) a description of the local commitment identified for the preparation of the LWRP amendment. Upon adoption of the LWRP by the Town of Wheatfield, and its subsequent approval by the New York State Secretary of State and incorporation into the State's Coastal Management Program, all local, State and Federal actions are to be undertaken in a manner consistent with the Town of Wheatfield LWRP, to the maximum extent practicable.

The proposed LWRP Consistency Review Law will establish procedures for determining the consistency of proposed actions with the Town of Wheatfield LWRP, will require a consistency determination for all Type I and Unlisted SEQR actions proposed within the boundaries of the Town's Local Waterfront Revitalization Area, and provides for the prosecution of violations of these requirements. The proposed local law would take effect immediately upon its filing with the New York State Secretary of State.

#### **Reasons Supporting this Documentation:**

- 1. Impact on Land:** The local program will manage land use along the waterfront and aid in better land use decision making. The LWRP sets forth future land uses and zoning to maintain community character, protect private help achieve LWRP policies for the waterfront areas. Therefore, no significant adverse land use impacts are expected to result from this action.
- 2. Impact on Water:** The local program will help to protect important water resources and allow the Town to better manage surface waters, drainage, and other development impacts that could affect water resources. Therefore, no significant adverse impacts to water resources are anticipated.
- 3. Impact on Plants and Animals:** The local program includes policies to recognize and strengthen the protection of significant flora and fauna, particularly in the vicinity of the Niagara River and Tonawanda Creek. Therefore, no significant adverse ecological impacts at expected.
- 4. Impact on Archaeological and Historic Resources:** There are no historic structures located along the waterfront and no known sites of archaeological significance have been identified or are known to exist in either of the waterfront areas. Therefore, adoption of the local program will not adversely impact cultural resources.
- 5. Impacts on Scenic Resources:** There are no Scenic Areas of Statewide Significance within the LWRA. Adoption and implementation of the LWRP will help to protect and enhance vistas of the Niagara River and Erie Canal. River Road is also part of the NY Great Lakes Seaway Trail and a National Scenic By-Way. The LWRP recognizes this designation and sets forth policy provisions to enhance and improve this corridor. Therefore, the proposed action is not anticipated to adversely impact important scenic resources in the waterfront area.
- 6. Impact on Transportation:** The local program recognizes the need for traffic calming and safety improvements along River Road (NYS Route 382/265). The program also supports the

development of a multi-use trail on abandoned rail right-of-way, north of River Road, separating bicycle activity and other activity from this busy roadway. No significant adverse traffic impacts are expected to result from this action.

7. **Impact on Flooding and Erosion:** The LWRP policies recognize and address areas subject to shoreline erosion and flooding. Consistency with policy standards will help to avoid potential adverse environmental impacts.
8. **Impact on Energy:** There will be no significant impacts on energy or the use of energy resources. Land use management policies will help to ensure controlled development with focus on uses that are in keeping with waterfront character, conservation of energy resources, and promotion of alternative, self-sustaining energy sources.
9. **Noise and Odor Impacts:** This local program will have no significant noise or odor impacts.
10. **Impact on Public Health:** The local program will not adversely affect public health and safety. LWRP policies include provisions for the protection of public health and safety, including traffic calming for River Road and the construction of a multi-use pathway that is separated from this roadway.
11. **Impact on Growth and Character of the Community:** No significant growth is anticipated in the waterfront area as a result of the adoption of the LWRP amendment. The local program will help to guide future growth and protect community character to enable waterfront protection and revitalization.
12. **Consistency Review:** The Town of Wheatfield LWRP will constitute a comprehensive management plan for the beneficial use, protection, and management of the Town's waterfront areas. The local program reflects and addresses existing conditions along the waterfront. State, Federal and local agencies will be required to undertake their respective actions along the waterfront in a manner consistent with the policies and purposes of the Town's LWRP, as provided by law. The implementation of the LWRP will result in positive impacts to the natural, institutional, economic, developmental, and social resources of the Town.

The Town of Wheatfield, therefore, concludes that this action will not adversely affect the natural resources of the State and/or health, safety, and welfare of the public, and is consistent with all associated social and economic considerations. In reaching this decision, the Town carefully considered all Criteria for Determination of Significance, as listed in the SEQR Regulations (6 NYCRR 617.11)

#### **For Further Information:**

Contact Person:	Wendy E. Weber Salvati, AICP Wendel 140 John James Audubon Pkwy., Ste. 201 Amherst, New York 14228 (716) 688-0766	Robert O'Toole, Esq. Wheatfield Town Hall 2800 Church Road Wheatfield, NY 14120 (716) 694-6440
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**Date:** July 9, 2012 (as adopted by the Wheatfield Town Board, as Lead Agency)