

Coastal Policies Refined for Use with LWRPs on Inland Waterways Designated in Article 42 of the Executive Law

Section III- Local Waterfront Revitalization Program Policies

The policies and sub-policies presented in this section of the LWRP, collectively referred to as “policies”, consider the economic, environmental and cultural characteristics of a community's waterfront located contiguous to an inland waterway designated in Article 42, Section 911.4 of the Executive Law. The policies represent a balance between economic development and preservation that will permit beneficial use of and prevent adverse effects on waterfront 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 communities’ concerns; and they will be enforced through use of State laws and authorities, and local laws and regulations. The policies are the basis for State consistency determinations for activities affecting the waterfront area. Definitions of terms used in the policies appear at the end of this section.

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Development Policies

Policy 1

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

Explanation of Policy

State and local agencies must ensure that their actions further the revitalization of urban waterfront areas. The transfer and purchase of property; the construction of a new office building, highway or park; the provision of tax incentives to businesses; and establishment of enterprise zones, are all examples of governmental means for spurring economic growth. When any such action or similar action is proposed,

it must be analyzed to determine if the action would contribute to or adversely affect a waterfront revitalization effort.

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

In responding to this policy, several other policies must be considered: (1) Uses requiring a location abutting the waterfront must be given priority in any redevelopment effort. (Refer to Policy 2 for the means to effectuate this priority); (2) As explained in Policy 5, one reason for revitalizing previously dynamic waterfront areas is that the costs for providing basic services to such areas is frequently less than providing new services to areas not previously developed; (3) The likelihood for successfully simplifying permit procedures and easing certain requirements (Policy 6) will be increased if a discrete area and not the entire urban waterfront is the focus for this effort. In turn, ease in obtaining permits should increase developers' interest to invest in these areas. Further, once this concentrated effort has succeeded, stabilization and revitalization of surrounding areas is more likely to occur.

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

1. When a State or local action is proposed to take place in an urban waterfront area regarded as suitable for redevelopment, the following guidelines will be used:
 - a. Priority should be given to uses which are dependent on a location adjacent to the water;
 - b. The action should enhance existing and anticipated uses. For example, a new highway should be designed and constructed so as to serve the potential access needs for desirable industrial development;
 - c. The action should serve as a catalyst to private investment in the area;
 - d. The action should improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration. For example, a building could not be abandoned without protecting it against vandalism and/or structural decline;
 - e. The action must lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use;
 - f. The action should have the potential to improve the existing economic base of the community and, at a minimum, must not jeopardize this base. For example, waterfront development meant to serve consumer needs would be inappropriate in an area where no increased consumer demands is expected and existing development is already meeting demand;

- g. The action should improve adjacent and upland views of the water, and, at a minimum, must not affect these views in an insensitive manner;
 - h. The action should have the potential to improve the potential for multiple uses of the site.
2. If a State or local action is proposed to take place outside of a given deteriorated, underutilized urban waterfront area suitable for redevelopment, and is either within the relevant community or adjacent waterfront community, the agency proposing the action must first determine if it is feasible to take the action within the deteriorated, underutilized urban waterfront area in question. If such an action is feasible, the agency should give strong consideration to taking the action in that area. If not feasible, the agency must take the appropriate steps to ensure that the action does not cause further deterioration of that area.

Policy 2

Facilitate the siting of water dependent uses and facilities on or adjacent to inland waterways.

Explanation of Policy

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

The traditional method of land allocation, i.e., the real estate market, with or without local land use controls, offers little assurance that uses which require waterfront sites will, in fact, have access to the State's inland waterways. To ensure that such "water-dependent" uses can continue to be accommodated within the State, State agencies will avoid undertaking, funding, or approving non-water-dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses; furthermore, agencies will utilize appropriate existing programs to encourage water dependent activities.

Water dependent activities shall not be considered a private nuisance, provided such activities were commenced prior to the surrounding activities and have not been determined to be the cause of conditions dangerous to life or health and any disturbance to enjoyment of land and water has not materially increased.

A water dependent use is an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

The following uses and facilities are considered as water-dependent:

1. Uses which depend on the utilization of resources found in inland waterways (for example: fishing, mining of sand and gravel, aquaculture activities);

2. Recreational activities which depend on access to inland waterways (for example: swimming, fishing, boating, wildlife viewing);
3. Uses involved in the waterway/land transfer of goods (for example: docks, loading areas, pipelines, short-term storage facilities);
4. Structures needed for navigational purposes (for example: dams, locks, lighthouses);
5. Flood and erosion protection structures (for example: breakwaters, bulkheads);
6. Facilities needed to store and service boats and ships (for example: marinas, boat repair, boat construction yards);
7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);
8. Uses that rely heavily on the waterborne transportation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near to shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);
9. Uses which operate under such severe time constraints that proximity to shipping facilities become critical (for example: firms processing perishable foods);
10. Scientific/educational activities which, by their nature, require access to inland waterways (for example: certain meteorological and scientific activities);
11. Support facilities which are necessary for the successful functioning of permitted water-dependent uses (for example: parking lots, snack bars, first aid stations, short-term storage facilities). Though these uses must be near the given water dependent use they should, as much as possible, be sited inland from the water dependent use rather than on the shore.

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

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

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

1. Competition for space - competition for space, or the potential for it, should be indicated before any given site is promoted for water dependent uses. The intent is to match water dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a water dependent use area. The choice of a site should be made with some meaningful impact on the real estate market anticipated. The anticipated impact could either be one of increased protection to existing water dependent activities or else the encouragement of water dependent development.
2. In-place facilities and services - most water dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water-dependent uses, consideration should be given to the following factors:
 - a) The availability of public sewers, public water lines and adequate power supply;
 - b) Access to the area for trucks and rail, if heavy industry is to be accommodated; and
 - c) Access to public transportation, if a high number of person trips are to be generated.
3. Access to navigational channels - if commercial shipping, commercial fishing, or recreational boating are planned, the locality should consider setting aside a site, within a sheltered harbor, from which access to adequately sized navigation channels would be assured.
4. Compatibility with adjacent uses and the protection of other inland waterway resources – water dependent uses should be located so that they enhance, or at least do not detract from, the surrounding community. Consideration should also be given to such factors as the protection of nearby residential areas from odors, noise and traffic. Affirmative approaches should also be employed so that water-dependent use and adjacent uses can serve to complement one another. For example, a recreation-oriented water dependent use area could be sited in an area already oriented towards tourism. Clearly, a marina, fishing pier or swimming area would enhance, and in turn be enhanced by, nearby restaurants, motels and other non-water-oriented tourist activities. Water dependent uses must also be sited so as to avoid adverse impacts on the significant inland waterway resources.
5. Preference to underutilized sites: The promotion of water-dependent uses should serve to foster development as a result of the capital programming, permit expediting and other State and local actions that will be used to promote the site. Nowhere is such a stimulus needed more than in those portions of the State's waterfront areas which are currently underutilized.

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

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

1. Favored treatment to water dependent use areas with respect to capital programming. Particular priority should be given to the construction and maintenance of port or harbor facilities, roads, railroad facilities, and public transportation within areas suitable for water dependent uses.
2. When areas suitable for water dependent uses are publicly owned, favored leasing arrangements should be given to water dependent uses.
3. Where possible, consideration should be given to providing water dependent uses with property tax abatements, loan guarantees, or loans at below market rates.
4. State and local planning and economic development agencies should actively promote water dependent uses. In addition, a list of sites available for non-water-dependent uses should be maintained in order to assist developers seeking alternative sites for their proposed projects.
5. Local and State agencies should work together to streamline permitting procedures that may be burdensome to water dependent uses. This effort should begin for specific uses in a particular area.
6. Local land use controls, especially the use of zoning districts exclusively for waterfront uses, can be an effective tool of local government in assuring adequate space for the development of water dependent uses.

Policy 3

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

Explanation of Policy

Under the current conditions this policy does not apply to the town/city/village of [XXXXX].

The aim of this policy is to support port development in New York, Albany, Buffalo, Ogdensburg, and Oswego.

Policy 4

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

Explanation of Policy

This policy recognizes that the traditional activities occurring in and around numerous smaller harbors throughout the State's inland waterways contribute much to the economic strength and attractiveness of these harbor communities. Thus, efforts of state agencies shall center on promoting such desirable activities as recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits, and other compatible activities which have made smaller harbor areas appealing as tourist destinations and as commercial and residential areas. Particular consideration will be given to the visual appeal and social benefits of smaller harbors which, in turn, can make significant contributions to the State's tourism industry.

The following guidelines shall be used in determining consistency:

1. The action shall give priority to those traditional and/or desired uses which are dependent on or enhanced by a location adjacent to the water.
2. The action will enhance or not detract from or adversely affect existing traditional and/or desired anticipated uses.
3. The action shall not be out of character with, nor lead to development which would be out of the character with, existing development in terms of the area's scale, intensity of use, and architectural style.
4. The action must not cause a site to deteriorate, e.g., a structure shall not be abandoned without protecting it against vandalism and/or structural decline.
5. The action will not adversely affect the existing economic base of the community e.g., waterfront development designed to promote residential development might be inappropriate in a harbor area where the economy is dependent upon tourism and commercial fishing.
6. The action will not detract from views of the water and smaller harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity.
7. In applying the above guidelines, the information in harbor management plans being developed by local governments pursuant to Article 42 of the Executive Law and local laws that would implement them shall be considered.

Policy 5

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

Explanation of Policy

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

The above policy is intended to accomplish the following:

- strengthen existing residential, industrial and commercial centers;
- foster an orderly pattern of growth where outward expansion is occurring;
- increase the productivity of existing public services and moderate the need to provide new public services in outlying areas;
- preserve open space in sufficient amounts and where desirable
- foster energy conservation by encouraging proximity between home, work, and leisure activities.

For any action that would result in large scale development or an action which would facilitate or serve future development, a determination shall be made as to whether the action is within, contiguous to, or in close proximity to an area of concentrated development where infrastructure and public services are adequate. The following guidelines shall be used in making that determination:

1. Cities, built-up suburban towns and villages, and rural villages in the shorefront area are generally areas of concentrated development where infrastructure and public services are adequate.
2. Other locations in the shorefront area may also be suitable for development, if three or more of the following conditions prevail:
 - a. Population density of the area surrounding or adjacent to the proposed site exceeds 1,000 persons per square mile;
 - b. Fewer than 50% of the buildable sites (i.e., sites meeting lot area requirements under existing local zoning regulations) within one-mile radius of the proposed site are vacant;
 - c. Proposed site is served by or is near to public or private sewer and water lines;
 - d. Public transportation service is available within one mile of the proposed site; and

- e. A significant concentration of commercial and/or industrial activity is within one-half mile of the proposed site.
3. The following points shall be considered in assessing the adequacy of an area's infrastructure and public services:
 - a. Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;
 - b. Development's water needs (consumptive and firefighting) can be met by the existing water supply system;
 - c. Sewage disposal system can accommodate the wastes generated by the development;
 - d. Energy needs of the proposed land development can be accommodated by existing utility systems;
 - e. Stormwater runoff from the proposed site can be accommodated by on-site and/or off-site facilities; and
 - f. Schools, police and fire protection, and health and social services are adequate to meet the needs of the population expected to live, work, shop, or conduct business in the area as a result of the development.

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

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

In certain urban areas where development is encouraged by this policy, the condition of existing public water and sewage infrastructure may necessitate improvements. Those State and local agencies charged with allocating funds for investments in water and sewer facilities should give high priority to the needs of such areas so that full advantage may be taken of the rich array of their other infrastructure components in promoting waterfront revitalization.

Policy 6

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

Explanation of Policy

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

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

Fish and Wildlife Policies

Policy 7

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

Explanation of Policy

Under the current conditions this policy does not apply to the town/city/village of [XXXXX].

This policy applies only to significant fish and wildlife habitats designated by the State and located in the State's coastal area.

Policy 8

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

Explanation of Policy

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

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

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

Policy 9

Expand recreational use of fish and wildlife resources in the waterfront revitalization area by increasing access to existing resources, supplementing existing stocks, and developing new resources.

Explanation of Policy

Recreational uses of fish and wildlife resources include consumptive uses such as fishing and hunting, and non-consumptive uses such as wildlife photography, bird watching, and nature study.

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

The following additional guidelines should be considered by State and local agencies as they determine the consistency of their proposed action with the above policy:

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

Policy 10

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

Explanation of Policy

Commercial fishery development activities must occur within the context of sound fishery management principals developed and enforced within the State's waters by the New York State Department of Environmental Conservation and the management plans developed by the Regional Fisheries Management Councils (Mid-Atlantic and New England) and enforced by the U.S. National Marine Fisheries Service within the Fishery Conservation Zone. (The Fishery Conservation Zone is the area of coastal waters extending from the three-mile State waters boundary to the 200-mile offshore boundary of the U.S. waters. The Conservation Zone is authorized by the U.S. Fishery Conservation and Management Act of 1976.) Sound resource management considerations include optimum sustained yield levels developed for specific commercial fish species, harvest restrictions imposed by State and federal governments, and the economic, political (uses conflicts), and technological constraints to utilizing these resources.

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

1. A public agency's commercial fishing development initiative should not preempt or displace private sector initiative.
2. A public agency's efforts to expand existing or create new on-shore commercial fishing support facilities should be directed towards unmet development needs rather than merely displacing existing

commercial fishing activities from a nearby port. This may be accomplished by taking into consideration existing State or regional commercial fishing development plans.

3. Consideration should be made by State and Federal agencies whether an action will impede existing utilization or future development of the state's commercial fishing resources.

4. Commercial fishing development efforts should be made in a manner which ensures the maintenance and protection of the renewable fishery resources.

Flooding and Erosion Hazards Policies

Policy 11

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

Explanation of Policy

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

In high risk areas, identified as being subject to high velocity waters caused by hurricanes or other storm events, walled and roofed buildings or fuel storage tanks shall be sited landward, and no mobile home shall be sited in such area. In areas identified as floodways, no mobile homes shall be sited other than in existing mobile home parks.

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

Policy 12

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

Explanation of Policy

Beaches, dunes, barrier islands, bluffs, and other natural protective features help safeguard shorefront lands and property from damage, as well as reduce the danger to human life, resulting from flooding and erosion. Excavation of shorefront features, improperly designed structures, inadequate site planning, or other similar actions which fail to recognize their fragile nature and high protective values, lead to the weakening or destruction of those landforms. Activities or development in, or in proximity to, natural protective features must ensure that all such adverse actions are minimized. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

Policy 13

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

Explanation of Policy

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

Policy 14

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

Explanation of Policy

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

Policy 15

Mining, excavation, or dredging in inland waterways shall not significantly interfere with the natural inland waterway processes which supply beach materials to land adjacent to such

waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

Explanation of Policy

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

Policy 16

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

Explanation of Policy

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

Policy 17

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

Explanation of Policy

1. This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the inland waterway or coastal area, as well as the costs of protection against those hazards which structural measures entail.
2. "Non-structural measures" shall include, but not be limited to: (1) within coastal erosion hazard areas identified under Section 0104 of Coastal Erosion Hazard Areas law, (Environmental Conservation Law Article 34), and subject to the permit requirements on all regulated activities and development established under that Law, (a) the use of minimum setbacks as provided for in Section 0108 of Environmental Conservation Law Article 34; and (b) the strengthening of coastal landforms by the

planting of appropriate vegetation on dunes and bluffs, the installation of sand fencing on dunes, the reshaping of bluffs to achieve an appropriate angle of repose so as to reduce the potential for slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce runoff and internal seepage of waters which erode or weaken the landforms; and (2) within identified flood hazard areas, (a) the avoidance of risk or damage from flooding by the siting of buildings outside the hazard area, and (b) the flood-proofing of buildings or their elevation above the base flood level.

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

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

General Policy

Policy 18

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

Explanation of Policy

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

Public Access Policies

Policy 19

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

Explanation of Policy

This policy calls for achieving balance among the following factors: the level of access to a resource or facility, the capacity of a resource or facility, and the protection of natural resources. The imbalance among these factors is the most significant in the State's urban areas. Because this is often due to access-related problems, priority will be given to improving physical access to existing and potential shorefront recreation sites within the heavily populated urban shorefront areas of the State and to increasing the ability of urban residents to get to shorefront recreation areas by improved public transportation. The particular water-related recreation resources and facilities which will receive priority for improved access are public beaches, boating facilities, fishing areas and waterfront parks. In addition, because of the greater competition for waterfront locations within urban areas, the Waterfront Revitalization of Coastal Areas and Inland Waterways Program will encourage mixed use areas and multiple use of facilities to improve access. Specific sites requiring access improvements and the relative priority the program will accord to each will be identified in the Public Access Planning Process.

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

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

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

- a) Access - the ability and right of the public to reach and use public inland waterway lands and waters.
- b) Public water related recreation resources of facilities - all public lands or facilities that are suitable for passive or active recreation that requires either water or a waterfront location or is enhanced by a waterfront location.

- c) Public lands or facilities - lands or facilities held by State or local government in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands and the foreshore.
 - d) A reduction in the existing level of public access - includes, but is not limited to, the following:
 - (1) The number of parking spaces at a public water-related recreation resource or facility is significantly reduced.
 - (2) The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use and such reduction cannot be reasonably justified in terms of meeting system-wide objectives.
 - (3) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
 - (4) There are substantial increases in the following: already existing special fares (not to include regular fares in any instance) of public transportation to a public water-related recreation resource or facility; and/or admission fees to such a resource or facility except where the public body having jurisdiction over such fares determines that such substantial fare increases are necessary and an analysis shows that such increases will significantly reduce usage by individuals or families and incomes below the State government established poverty level.
 - e) An elimination of the possibility of increasing public access in the future includes, but is not limited to, the following:
 - (1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities
 - (2) Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility
 - (3) Construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities
2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:
- a) The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

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

Policy 20

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

Explanation of Policy

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

For those activities, there are several methods of providing access which will receive priority attention from the Waterfront Revitalization of Coastal Areas and Inland Waterways Program. These include: the development of a waterfront trails system; the provision of access across transportation facilities to the waterfront; the improvement of access to waterfronts in urban areas; and the promotion of mixed and multi-use development.

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

The regulation of projects and structures, proposed to be constructed in or over lands underwater, is necessary to responsibly manage such lands, to protect vital assets held in the name of the people of the State, to guarantee common law and sovereign rights, and to ensure that waterfront owners' reasonable exercise of riparian rights and access to navigable waters shall be consistent with the public interest in reasonable use and responsible management of waterways and such public lands for the purposes of navigation, commerce, fishing, bathing, recreation, environmental and aesthetic protection, and access to the navigable waters and lands underwater of the State.

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

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

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

- a) (See definitions under first policy of "access" and "public lands or facilities").
 - b) A reduction in the existing or anticipated level of public access - includes, but is not limited, to the following:
 - (1) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
 - (2) Pedestrian access is diminished or blocked completely by public or private development.
 - c) An elimination of the possibility of increasing public access in the future - includes, but is not limited to, the following:
 - (1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public inland waterway lands and /or waters
 - (2) Sale, lease, or other conveyance of public lands that could provide public access to public inland waterway lands and/or waters
 - (3) Construction of private facilities which physically prevent the provision of convenient public access to public inland waterway lands and/or waters from public lands and facilities
2. The existing level of public access within public inland waterway lands or waters shall not be reduced or eliminated.

- a) A reduction or elimination in the existing level of public access - includes, but is not limited to, the following:
 - (1) Access is reduced or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities
 - (2) Access is reduced or blocked completely by any public developments
3. Public access from the nearest public roadway to the shoreline and along the inland waterway shall be provided by new land use or development, except where (a) it is inconsistent with public safety, military security, or the protection of identified fragile inland waterway resources; (b) adequate access exists within one-half mile; or (c) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way.
4. The State will not undertake or directly fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
5. In their plans and programs for increasing public access, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.
6. Proposals for increased public access to inland waterway lands and waters shall be analyzed according to the following factors:
 - a) The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
 - b) The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the inland waterway lands or waters. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.
7. In making any grant, lease, permit, or other conveyance of land now or formerly underwater, there shall be reserved such interests or attached such conditions to preserve the public interest in the use of state-owned lands underwater and waterways for navigation, commerce, fishing, bathing, recreation, environmental protection, and access to the navigable waters of the state. In particular, the granting of publicly owned underwater or formerly underwater lands to private entities will be limited to exceptional circumstances only.

Recreation Policies

Policy 21

Water dependent and water enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related uses along the shorefront.

Explanation of Policy

Water-related recreation includes such obviously water dependent activities as boating, swimming, and fishing as well as certain activities which are enhanced by a shorefront location and increase the general public's access to the shorefront such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of shorefront scenery.

Provided the development of water-related recreation is consistent with the preservation and enhancement of such important waterfront revitalization area resources as fish and wildlife habitats, aesthetically significant areas, historic and cultural resources, agriculture and significant mineral and fossil deposits, and provided demand exists, water-related recreation development is to be increased and such uses shall have a higher priority than any non-water-dependent uses, including non-water-related recreation uses. In addition, water dependent recreation uses shall have a higher priority over water-enhanced recreation use. Determining a priority among water-dependent uses will require a case by case analysis.

Among priority areas for increasing water-related recreation opportunities are those areas where access to the recreation opportunities of the shorefront can be provided by new or existing public transportation services and those areas where the use of the shore is severely restricted by highways, railroads, industry, or other forms of existing intensive land use or development. The Department of State, working with the Office of Parks, Recreation, and Historic Preservation and with local governments, will identify communities whose use of the shore has been so restricted and those sites shoreward of such developments which are suitable for recreation and can be made accessible. Priority shall be given to recreational development of such lands.

The siting or design of new public development in a manner which would result in a barrier to the recreational use of a major portion of a community's shore should be avoided as much as practicable.

Among the types of water dependent recreation, provision of adequate boating services to meet future demand is to be encouraged by this Program. The siting of boating facilities must be consistent with preservation and enhancement of other inland waterway resources and with their capacity to accommodate demand. The provision of new public boating facilities is essential in meeting this demand, but such public actions should avoid competition with private boating development. Boating facilities will, as appropriate, include parking, park-like surroundings, toilet facilities, and pump-out facilities. Harbors of Refuge are particularly needed along Lake Erie and Lake Ontario. There is a need for a better positional pattern of boating facilities to correct problems of overused, insufficient, or improperly sited facilities.

Water-related off-road recreational vehicle use is an acceptable activity; provided no adverse environmental impacts occur. Where adverse environmental impact will occur, mitigating measures will be implemented, where practicable to minimize such adverse impacts. If acceptable mitigation is not practicable, prohibition of the use by off-road recreational vehicles will be posted and enforced. Ground water contamination presents a threat to Fire Island National Seashore water resources.

Policy 22

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

Explanation of Policy

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

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

- parks
- highways
- power plants
- utility transmission rights of way
- sewage treatment facilities
- mental health facilities*
- hospitals*
- prisons*
- schools, universities*
- military facilities*
- nature preserves*
- large residential subdivisions (50 units)
- shopping centers
- office buildings

** The types of recreation uses likely to be compatible with these facilities are limited to the more passive forms, such as trails or fishing access. In some cases, land areas not directly or immediately needed by the facility could be used for recreation.*

Prior to taking action relative to any development, State agencies should consult with the State Office of Parks, Recreation, and Historic Preservation, and if there is an approved local waterfront program, with the municipality in which the development is to locate, to determine appropriate recreation uses. The agency should provide OPRHP and the municipality with the opportunity to participate in project planning.

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

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

Whenever a proposed development would be consistent with LWRP policies and the development could, through the provision of recreation and other multiple uses, significantly increase public use of the shore, then such development should be encouraged to locate adjacent to the shore (this situation would generally only apply within the more developed portions of urban areas).

Historic and Scenic Resources Policies

Policy 23

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

Explanation of Policy

Among the most valuable of the State's man-made resources are those structures or areas which are of historic, archaeological, or cultural significance. The protection of these structures must involve a recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites but with areas of significance, and with the area around specific sites. The policy is not to be construed as a passive mandate but must include active efforts, when appropriate, to restore or revitalize through adaptive reuse. While the program is concerned with the preservation of all such resources within the waterfront revitalization area it will actively promote the preservation of historic and cultural resources which have a waterfront relationship.

The structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities, or the Nation comprise the following resources:

- (a) A resource, which is in a federal or State park established, among other reasons, to protect and preserve the resource.
- (b) A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.
- (c) A resource on or nominated to be on the State Nature and Historic Preserve Trust.
- (d) An archaeological resource which is on the State Department of Education's inventory of archaeological sites.
- (e) A local landmark, park, or locally designated historic district which is located within the boundary of an approved local waterfront revitalization program.

- (f) A resource that is a significant component of an Urban Cultural Park.

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

- (a) Alteration of or addition to one or more of the architectural, structural, ornamental or functional features of a building, structure, or site that is a recognized historic, cultural, or archaeological resource, or component thereof. Such features are defined as encompassing the style and general arrangement of the exterior of a structure and any original or historically significant interior features including type, color and texture of building materials, entry ways and doors, fenestration, lighting fixtures, roofing, sculpture and carving, steps, rails, fencing, windows, vents and other openings, grillwork, signs, canopies, and other appurtenant fixtures and, in addition, all buildings, structures, outbuildings, walks, fences, steps, topographical features, earthworks, paving and signs located on the designated resource property. (To the extent they are relevant, the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be adhered to.)
- (b) Demolition or removal in full or part of a building, structure, or earthworks that is a recognized historic, cultural, or archaeological resource or component thereof, to include all those features described in (a) above plus any other appurtenant fixtures associated with a building, structure or earthwork.
- (c) All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archaeological resource and all actions within an historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgment about compatibility should focus on the visual and location relationship between the proposed action and the special character of the historic, cultural, or archaeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the proposed actions. With historic districts, this would include infrastructure improvements or changes, such as street and sidewalk paving, street furniture and lighting.

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

Policy 24

Prevent impairment of scenic resources of statewide significance.

Explanation of Policy:

Under the current conditions this policy does not apply to the town/city/village of [XXXXX].

The Waterfront Revitalization of Coastal Areas and Inland Waterways Program will identify on the coastal area map scenic resources of statewide significance. If applicable, a list of preliminarily identified resources appears in the Appendix. The following general criteria will be combined to determine significance:

Quality	<p>The basic elements of design (i.e., two-dimensional line, three-dimensional form, texture and color) combine to create all high quality landscapes. The water, landforms, and human-made components of scenic coastal landscapes exhibit variety of line, form, texture and color. This variety is not, however, so great as to be chaotic. Scenic coastal landscapes also exhibit unity of components. This unity is not, however, so complete as to be monotonous. Example: the Thousand Islands where the mix of water, land, vegetative and human-made components creates interesting variety, while the organization of these same components creates satisfying unity.</p> <p>Often, high quality landscapes contain striking contrasts between lines, forms, textures and colors. Example: A waterfall where horizontal and vertical lines and smooth and turbulent textures meet in dramatic juxtaposition.</p> <p>Finally, high quality landscapes are generally free of discordant features, such as structures or other elements which are inappropriate in terms of siting, form, scale, and/or materials.</p>
Uniqueness	<p>The uniqueness of high quality landscapes is determined by the frequency of occurrence of similar resources in a region of the State or beyond.</p>
Public Accessibility	<p>A scenic resource of significance must be visually and, where appropriate, physically accessible to the public.</p>
Public Recognition	<p>Widespread recognition of a scenic resource is not a characteristic intrinsic to the resource. It does, however, demonstrate people's appreciation of the resource for its visual, as well as evocative, qualities. Public recognition serves to reinforce analytic conclusions about the significance of a resource.</p>

When considering a proposed action, agencies shall first determine whether the action could affect a scenic resource of statewide significance. This determination would involve: 1) a review of the coastal area map to ascertain if it shows an identified scenic resource which could be affected by the proposed action, and 2) a review of the types of activities proposed to determine if they would be likely to impair the scenic beauty of an identified resource. Impairment will include: (i) the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction, or removal of

structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

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

Guidelines include:

- siting structures and other development such as highways, power lines, and signs, back from shorelines or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore;
- clustering or orienting structures to retain views, save open space and provide visual organization to a development;
- incorporating sound, existing structures (especially historic buildings) into the overall development scheme;
- removing deteriorated and/or degrading elements;
- maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest;
- maintaining or adding vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of inland waterways;
- using appropriate materials, in addition to vegetation, to screen unattractive elements;
- using appropriate scales, forms and materials to ensure that buildings and other structures are compatible with and add interest to the landscape.

Policy 25

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

Explanation of Policy

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

The siting and design guidelines listed under the previous policy should be considered for proposed actions within the waterfront revitalization area. More emphasis may need to be placed on removal of existing elements, especially those which degrade, and on addition of new elements or other changes which enhance. Removal of vegetation at key points to improve visual access to inland waterways is one such change which might be expected to enhance scenic quality.

Agricultural Lands Policy

Policy 26

Conserve and protect agricultural lands in the waterfront revitalization area.

Explanation of Policy

The first step in conserving agricultural lands is the identification of such lands. The Department of State is mapping all important agricultural lands within the State. The following criteria have been used to prepare the maps, and the mapped information will be incorporated in the New York State Coastal Resources Inventory and on the Coastal Area Map.

Land meeting any of the following criteria is being mapped.

1. Land which meets the definition of the U.S. Department of Agriculture as being prime farmland, unique farmland, or farmland of statewide importance.
 - a. Prime farmland is defined by USDA Soil Conservation Service in CRF #7 Agriculture Part 657.5(a), January 1979. A list of the soil associations that meet this definition has been prepared for each county.
 - b. Unique farmland is defined by USDASCS in CRF #7 Agriculture Part 657.5(b). In the coastal area of New York State all fruit and vegetable farming meets the terms of the definition.
 - c. Farmland of Statewide importance is defined by USDASCS in CRF #7 Agriculture Part 656.5(c). Lists of soil associations which constitute farmland of statewide importance have been prepared for each county.
2. Active farmland within Agricultural Districts. The maps of each Agricultural District show land committed by farmers. This is the land that will be mapped as active farmland. The district boundary will also be shown.
3. Areas identified as having high economic viability for farming. Any farm not identified above in 1 and/or 2, and which is located in an area identified as having "high viability" on the map entitled "Economic Viability of Farm Areas" prepared by the Office of Planning Coordination in May, 1969. This would be the basis for initial identification of areas having high economic viability for farming. Areas will be added and/or deleted based on comments from the agricultural community.

4. Areas adjacent to land identified above in 1, when are being farmed and are part of a farm with identified important agricultural lands.
5. Prime farmland, unique farmland, and farmland of statewide significance will not be identified as important agricultural land whenever it occurs as parcels of land less than 25 acres in size and these small parcels are not within a mile of areas of active farming.

Given the Program's application to a narrow strip of land, implementing a policy of promoting agricultural use of land must, to be practical, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use as the result of some public action. The many other factors such as markets, taxes, and regulations, which influence the viability of agriculture in a given area, can only be addressed on a Statewide or national basis.

The Program policy requires a concern for the loss of any important agricultural land. However, the primary concern must be with the loss of agricultural land when that loss would have a significant effect on an agricultural area's ability to continue to exist, to prosper, and even to expand. A series of determinations are necessary to establish whether a public action is consistent with the conservation and protection of agricultural lands, or whether it is likely to be harmful to the health of an agricultural area. In brief, these determinations are as follows: First, it must be determined whether a proposed public action would result in the loss of important agricultural lands as mapped. If it would not result, either directly or indirectly, in the loss of identified important agricultural lands, then the action is consistent with the policy on agriculture. If it is determined that the action would result in a loss of identified important agricultural lands, but that loss would not have an adverse effect of the viability of agriculture in the surrounding area, then the action may also be consistent with this policy. However, in that case, the action must be undertaken in a manner that would minimize the loss of important farmland. If the action is determined to result in a significant loss of important agricultural land, that is if the loss is to a degree sufficient to adversely affect surrounding agriculture's viability -- its ability to continue to exist, to prosper, and even to expand -- then the action is not consistent with this agriculture policy.

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

- A. A public action would be likely to significantly impair the viability of an agricultural area in which identified important agricultural lands are located if:
 1. The action would occur on identified important agricultural land and would:
 - (a) Consume more than 10% of the land of an active farmⁱ containing such identified important agricultural lands
 - (b) Consume a total of 100 acres or more of identified important agricultural land, or
 - (c) Divide an active farm with identified important agricultural land into two or more parts, thus impeding efficient farm operation

2. The action would result in environmental changes which may reduce the productivity or adversely affect the quality of the product of any identified important agricultural lands.
 3. The action would create real estate market conditions favorable to the conversion of large areas of identified important agricultural land to non-agricultural uses. Such conditions may be created by:
 - (a) Public water or sewer facilities to serve non-farm structures.
 - (b) Transportation, improvements, except for maintenance of, and safety improvements to, existing facilities that serve non-farm or non-farm related development
 - (c) Major non-agribusiness commercial development adjacent to identified agricultural lands
 - (d) Major public institutions
 - (e) Residential uses other than farm dwellings
 - (f) Any change in land use regulations applying to agricultural land which would encourage or allow uses incompatible with the agricultural use of the land
- B. The following types of facilities and activities should not be construed as having adverse effects on the preservation of agricultural land:
1. Farm dwellings, barns, silos, and other accessory uses and structures incidental to agricultural production or necessary for farm family supplemental income.
 2. Agribusiness development, which includes the entire structure of local support services and commercial enterprises necessary to maintain an agricultural operation, e.g., milk hauler, grain dealer, farm machinery dealer, veterinarian, food processing plants.
- C. In determining whether an action that would result in the loss of farmland is of overriding regional or statewide benefit, the following factors should be considered:
1. For an action to be considered overriding, it must be shown to provide significantly greater benefits to the region or State than are provided by the affected agricultural area (not merely the land directly affected by the action). In determining the benefits of the affected agriculture to the region or State, consideration must be given to its social and cultural value, its economic viability, its environmental benefits, its existing and potential contribution to food or fiber production in the State and any State food policy, as well as its direct economic benefits.
 - a. An agricultural area is an area predominantly in farming and in which the farms produce similar products and/or rely on the same agribusiness support services and are to be a significant degree economically interdependent. At a minimum, this area should consist of at least 500 acres of identified important agriculture land. For the purpose of analyzing impacts of any action on agriculture, the boundary of such area need not be restricted to land within the waterfront

revitalization area. If the affected agricultural lands lie within an agricultural district then, at a minimum, the agricultural area should include the entire agricultural district.

- b. In determining the benefits of an agricultural area, its relationship to agricultural lands outside the area should also be considered.
- c. The estimate of the economic viability of the affected agricultural area should be based on an assessment of:
 - i. soil resources, topography, conditions of climate and water resources
 - ii. availability of agribusiness and other support services, and the level and condition of investments in farm real estate, livestock and equipment
 - iii. the level of farming skills as evidenced by income obtained, yield estimates for crops, and costs being experienced with the present types and conditions of buildings, equipment, and cropland
 - iv. use of new technology and the rates at which new technology is adopted
 - v. competition from substitute products and other farming regions and trends in total demand for given products
 - vi. patterns of farm ownership for their effect on farm efficiency and the likelihood that farms will remain in use
- d. The estimate of the social and cultural value of farming in the area should be based on an analysis of:
 - i. the history of farming in the area
 - ii. the length of time farms have remained in one family
 - iii. the degree to which farmers in the area share a cultural or ethnic heritage
 - iv. the extent to which products are sold and consumed locally
 - v. the degree to which a specific crop(s) has become identified with a community
- e. An estimate of the environmental benefits of the affected agriculture should be based on analysis of:
 - i. the extent to which the affected agriculture as currently practiced provides a habitat or food for wildlife
 - ii. the extent to which a farm landscape adds to the visual quality of an area

- iii. any regional or local open space plans, and degree to which the open space contributes to air quality
 - iv. the degree to which the affected agriculture does, or could, contribute to the establishment of a clear edge between rural and urban development
- D. Whenever a proposed action is determined to have an insignificant adverse effect on identified important agricultural land or whenever it is permitted to substantially hinder the achievement of the policy according to DOS regulations, Part 600, or as a result of the findings of an EIS, then the required minimization should be undertaken in the following manner:
1. The proposed action shall, to the extent practicable, be sited on any land not identified as important agricultural, or, if it must be sited on identified important agricultural land, sited to avoid classes of agricultural land according to the following priority:
 - a. prime farmland in orchards or vineyards
 - b. unique farmland in orchard or vineyards
 - c. other prime farm land in active farming
 - d. other unique farmland
 - e. farmland of Statewide importance in active farming.
 - f. active farmland identified as having high economic viability
 - g. prime farmland not being farmed
 - h. farmland of Statewide importance not being farmed
 2. To the extent practicable, agricultural use of identified important agricultural land not directly necessary for the operation of the proposed non-agricultural action should be provided for through such means as lease arrangements with farmers, direct undertaking of agriculture, or sale of surplus land to farmers. Agricultural use of such land shall have priority over any other proposed multiple use of the land.

Energy and Ice Management Policies

Policy 27

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

Explanation of Policy

New York's overall annual energy demand has begun to flatten over time, in part due to the success of State and utility energy efficiency programs. However, peak load (the highest amount of energy

consumption in a given year) has continued to increase at a more rapid pace. Renewable power sources—hydro, solar, wind, and other carbon-free solutions—also continue to grow as a share of the total energy produced in the State. Significant investments in the billions of dollars are needed to replace New York’s aging electric transmission and distribution infrastructure just to meet currently projected energy demand. To respond to these significant shifts in the State’s energy infrastructure, State energy policies are being designed to maintain energy system reliability during peak load in ways that improve the grid’s overall system efficiency, from both energy transmission and capital investment perspectives.

The New York State energy planning process provides a comprehensive framework for improving the State’s energy system, addressing issues such as environmental impacts, resiliency, and affordability. Key areas of focus for New York’s energy planning and implementation policies include integration of renewable energy generation; local energy generation that can foster both economic prosperity and environmental stewardship; seeking innovative energy solutions across the State’s public facilities and operations; increasing energy efficiency; and decreasing greenhouse gas emissions. New York’s energy policy is also central to how the State responds to the challenges presented by a changing climate. New York State’s energy planning recognizes that extreme weather events demand more resilient energy infrastructure, and that climate change presents both challenges and opportunities to lead and innovate.

A determination of public need for energy is the first step in the process for siting new facilities. The directives for determining this need are contained primarily in Article 6 of the New York State Energy Law. That Article requires the preparation of a State Energy Plan. With respect to transmission lines and the siting of major electric generating facilities, Articles 7 and 10 of the State’s Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for providing additional electric capacity. The policies derived from the siting regulations under these Articles are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Law. That law is used for the purposes of ensuring consistency with the Coastal Management Program.

The Department of State will present testimony for the record during relevant certification proceedings under Articles 7 and 10 of the Public Service Law when appropriate; and use the State SEQR and DOS regulations to ensure that decisions regarding other proposed energy facilities (not subject to Articles 7 and 10 of the Public Service Law) that would affect the shorefront area are consistent with LWRP policies.

Policy 28

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

Explanation of Policy

Prior to undertaking actions required for ice management, an assessment must be made of the potential effects of such actions upon the production of hydro-electric power, fish and wildlife and their habitats as will be identified in Coastal Area Maps, flood levels and damage, rates of shoreline erosion damage, and upon natural protective features.

Following such an examination, adequate methods of avoidance or mitigation of such potential effects must be utilized if the proposed action is to be implemented.

Policy 29

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

Explanation of Policy

The town/city/village of [XXXXX] is not located along the Atlantic Ocean, Long Island Sound or Great Lakes. However, actions proposed in the WRA will seek to accommodate commercial and recreational fishing and maritime commerce, and the ecological functions of local habitats important to New York.

The State encourages the responsible development of renewable energy resources. Wind, wave, tidal, and water current resources located offshore are an increasing focus of development interest, which may continue to grow as projects become more technologically feasible.

Water and Air Resources Policies

Policy 30

Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into inland waterways will conform to State and National water quality standards.

Explanation of Policy

Municipal, industrial and commercial discharges include not only "end-of-the pipe" discharges into surface and groundwater but also plant site runoff, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving inland waterways and those which pass through the municipal treatment systems before reaching the State's waterways.

Policy 31

State policies and management objectives of approved local Waterfront Revitalization Programs will be considered while reviewing inland waterway classifications and while

modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.

Explanation of Policy

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

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

Policy 32

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

Explanation of Policy

Alternative systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost effective in smaller, less densely populated communities and for which conventional facilities are too expensive.

Policy 33

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

Explanation of Policy

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of stormwater runoff and combined sewer overflows. At present, structural approaches to controlling stormwater runoff (e.g., construction of retention basins)

and combined sewer overflows (e.g., replacement of combined system with separate sanitary and stormwater collection systems) are not economically feasible. Proposed amendments to the Clean Water Act, however, will authorize funding to address combined sewer overflows in areas where they create severe water quality impacts. Until funding for such projects becomes available, non-structural approaches (e.g., improved street cleaning, reduced use of road salt) will be encouraged.

Policy 34

Discharge of waste materials into inland waterways from vessels subject to State jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

Explanation of Policy

All untreated sanitary waste from vessels is prohibited from being discharged into the State's inland waterways. Where inland waterway resources or activities require greater protection than afforded by this requirement the State may designate vessel waste no discharge zones. Within these no discharge zones the discharge of all vessel waste whether treated or not is prohibited. A determination from EPA that an adequate number of vessel waste pump-out stations exists is necessary before the State can designate a no discharge zone. The State prepared a Clean Vessel Act Plan which identifies the State's waters for which no discharge zones are needed and the number of vessel waste pump outs required to obtain the determination from EPA. The discharge of other wastes from vessels is limited by State law.

Policy 35

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

Explanation of Policy

Dredging, filling, and dredge material disposal are activities that are needed for waterfront revitalization and development, such as maintaining navigation channels at sufficient depths, pollutant removal, and other management needs. Such projects, however, may adversely affect water quality, fish and wildlife habitats, wetlands, and other important inland waterway resources. Often these adverse effects can be minimized through careful design and timing of the dredging or filling activities, proper siting of dredged material disposal sites, and the beneficial use of dredged material. Such projects shall only be permitted if they satisfactorily demonstrate that these anticipated adverse effects have been reduced to levels which satisfy State permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15, 24, 25, and 34), and are consistent with policies pertaining to the protection and use of inland waterway resources (LWRP policies 7, 15, 19, 20, 24, 26, and 44).

Policy 36

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

Explanation of Policy

See Policy 39 for definition of hazardous materials.

Policy 37

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

Explanation of Policy

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

Policy 38

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

Explanation of Policy

Surface and groundwater are the principal sources of drinking water in the State, and therefore must be protected. Since Long Island's groundwater supply has been designated a "primary source aquifer," all actions must be reviewed relative to their impacts on Long Island's groundwater aquifers.

Policy 39

The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within the waterfront revitalization area will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural land, and scenic resources.

Explanation of Policy

The definitions of terms "solid wastes" and "solid waste management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include

sludge from air or water pollution control facilities, demolition and construction debris and industrial and commercial wastes.

Hazardous wastes are unwanted byproducts of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, hazardous waste is defined in Environmental Conservation Law (Section 27-0901[3]), as “waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: 1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or 2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed, transported or otherwise managed.” A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts this list. (currently contained in 6 NYCRR Part 371). Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include: filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

Policy 40

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

Explanation of Policy

The State Board on Electric Generation Siting and the Environment must consider a number of factors when reviewing a proposed site for facility construction. One of these factors is that the facility shall “not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the State, the public health, and public enjoyment of the receiving waters.” The effect of thermal discharges on water quality and aquatic organisms is considered by the siting board when evaluating any applicant's request to construct a new steam electric generating facility.

Policy 41

Land use or development in the waterfront revitalization area will not cause national or State air quality standards to be violated.

Explanation of Policy

New York's Waterfront Revitalization of Coastal Areas and Inland Waterways Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation pursuant to the Clean Air Act and State laws on air quality. The requirements of the Clean Air Act are the minimum air quality control requirements applicable within the waterfront revitalization area.

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

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

Policy 42

Waterfront revitalization program policies will be considered if the State reclassifies land areas pursuant to the prevention of significant deterioration regulations of the Federal Clean Air Act.

Explanation of Policy

The policies of the State and local coastal and inland waterway management programs concerning proposed land and water uses and the protection and preservation of special management areas will be taken into account prior to any action to change prevention of significant deterioration land classifications along inland waterways or adjacent areas. In addition, the Department of State will provide the Department of Environmental Conservation with recommendations for proposed prevention of significant deterioration land classification designations based upon the Waterfront Revitalization of Coastal Areas and Inland Waterways Program and LWRP policies.

Policy 43

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

Explanation of Policy

The Waterfront Revitalization of Coastal Areas and Inland Waterways Program incorporates the State's policies on acid rain. As such, the Waterfront Revitalization of Coastal Areas and Inland Waterways Program will assist in the State's efforts to control acid rain. These efforts to control acid rain will enhance the continued viability of inland waterway fisheries, wildlife, agricultural, scenic and water resources.

Wetlands Policy

Policy 44

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

Explanation of Policy

Freshwater wetlands include marshes, swamps, bogs, and flats supporting aquatic and semiaquatic vegetation and other wetlands so defined in the NYS Freshwater Wetlands Act and the NYS Protection of Waters Act (Water Resources Law, Environmental Conservation Law Article 15).

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

- habitat for wildlife and fish, and contribution to associated aquatic food chains
 - erosion, flood and storm control
 - natural pollution treatment
 - groundwater protection
 - recreational opportunities
 - educational and scientific opportunities;
 - aesthetic open space in many otherwise densely developed areas
-