APPENDIX B

GUIDELI..S FOR LOCAL WATERFRONT REVITALIZATION PROGRAMS

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Part I - General Guidelines

INTRODUCTION

In 1981, the New York State Legislature enacted the Waterfront Revitalization and Coastal Resources Act which established the first concerted statewide waterfront revitalization effort in the Nation. This law represents years of private and public effort. Development interests, environmental interests, civic groups, and cities, towns and villages -- all played a vital role in shaping this law. The experiences of Boston, Baltimore, San Francisco and even the small city of Beaufort, South Carolina, clearly indicate that waterfront revitalization cannot succeed through the efforts of any single entity, either public or private. Hence, the major theme for the Waterfront Revitalization Program is that of consensus building to foster a strong private and public sector partnership that will achieve the single overriding purpose of this law - the advantageous use and protection of the unique characteristics evident in each of the State's 240 waterfront communities.

Since it is to become a major element in the implementation of the Statewide coastal program in the coastal area within the community's jurisdiction, a Waterfront Revitalization Program must be comprehensive. In addition, to gain the community commitment to undertake the revitalization effort, the program must be focused and small enough to be grasped and accomplished within the foreseeable future, and at the same time big enough to make a difference in the community's attitude toward its waterfront. Further, a Waterfront Revitalization Program must be exciting enough to maintain the community's interest and momentum over a long period of time. Without this long term commitment, a hodge podge of poorly executed projects with no lasting value may result. A Waterfront Revitalization Program must also be flexible enough to allow for and encourage change. The completed Waterfront Revitalization Program must express a vision of what the waterfront can become, and a pragmatic strategy for achieving that vision.

A Waterfront Revitalization Program will contain policies which for the most part either promote the beneficial use of coastal resources (development) or prevent the impairment of certain coastal resources (protection). The emphasis in each program will vary since all localities differ in terms of development, economy, population, natural environment and social make-up. Thus, each local program will be unique and tailored to local conditions to best take advantage of what is present on the waterfront. At the same time, there are certain common requirements for preparing a program that must be observed. All programs must begin with an evaluation of the local waterfront - its assets and its liabilities. Such an evaluation may have already been undertaken in preparing an existing local plan and simply require refinement and updating. At the other extreme, a locality may be seriously looking at its waterfront for the first time. In either case, a locality should follow this and the other general steps listed below in preparing a program:

First, a community must see what's on the waterfront. It must identify all of the opportunities and problems, their interrelationships and complexities and understand what caused the waterfront to evolve into its present status.

Second, a community should establish a mechanism for obtaining public and governmental involvement in the development of a program.

Third, the locality must establish an approach for addressing the identified opportunities and problems, being mindful of the community's capabilities, the necessity to create the excitement and commitment needed for success, and the need to further those State coastal policies that apply.

Fourth, the locality must devise specific solutions in terms of uses, projects, or procedures to solve the identified problems, or to take advantage of the identified opportunities.

Fifth, the locality should develop specific management, funding, and legislative strategies for priority uses, projects, and procedures. At the same time, the locality must use existing or new enforcement capabilities to ensure that at a minimum, nothing will occur to prevent the long term advantageous use of the waterfront.

Sixth, the locality must present procedures for addressing potential waterfront opportunities and problems so that the community has the ability to address new situations as they arise.

In addition to funds being available to assist in the preparation and implementation of a Waterfront Revitalization Program, a major benefit of an approved local program is the requirement that State and federal agency actions must be consistent with the details of a program.

GETTING STARTED

The initiative for undertaking a local Waterfront Revitalization Program lies with the individual local government or governments. The State encourages such a program, but the State's Waterfront Revitalization Program is not dependent on their existence. Where undertaken, however, it becomes a major element in the implementation of the State's coastal program.

Localities interested in undertaking a waterfront revitalization program should first contact:

Division of Local Government
and Community Services
Department of State
162 Washington Avenue
Albany, New York 12231

Such contact should be established at an early date. The Department of State can help an interested community in several ways:

1. Assistance in Funding Local Program Development.

   The Department of State has received federal funds for use in preparing local programs. These funds will be available to match local cash or in-kind services for up to 50% of the cost of preparing a local program. Criteria for allocating the funds are:

   (a) the initiative shown by local government by the amount of local resources, fiscal and non-fiscal, committed to addressing coastal issues;

   the relative significance a locality's coastal resources/activities have for that locality, the region, or the state;

   geographical balance is desired but there will also be priority for contiguous localities, particularly whole counties or logical subregions such as the Long Island Sound shore of Westchester, the East end of Long Island;

   (d) the degree of coincidence between local coastal concerns and State and Federal priorities (access, water dependent uses, erosion, etc.);

   (e) the ability of the locality to successfully carry out the work;

   (f) commitment to implementing the program;

   (g) ability of locality to undertake work without a grant.

As to the amount of a grant, the factors to be considered are:

(a) a, b, d, and g above;

(b) the population of a community in total and within the coastal area and the number (in general terms) of people who make use of the coastal area.

2. Technical Assistance and Advice.

The Department has a staff of coastal and development specialists who are available to consult with municipal officials interested in undertaking waterfront revitalization. They will answer questions, suggest approaches, and provide needed services to launch the local program.

3. Needed Tools

In beginning a Waterfront Revitalization Program, a locality will require special maps and data. The Department possesses a wide range of resources of this nature which it can make available.

CONTENT OF LOCAL PROGRAM

The following outline describes in detail the steps to be taken in developing an approvable local Waterfront Revitalization Program under the 1981 legislation, with suggestions and examples for local guidance. Most of the steps will be recognized as familiar planning activities generally followed in the course of undertaking any land use or economic development program. Because each local government's coastal situation is different, the design of a local program will vary. Adherence to the steps below will assist a community in determining its own waterfront policies and in determining which State coastal policies are relevant and are to be considered and dealt with in its local program. To gain familiarity with the scope of State waterfront concerns, a first step should be to carefully read the 28 State coastal policies. These policies, which are derived from Article 42, are found in DOS regulations, 19 NYCRR Part 600 and in Part II of these guidelines.

Undertaking an Inventory and Analysis

Before a community can design a local Waterfront Revitalization Program, it must first inventory and analyze its existing waterfront conditions. Many communities, of course, may have already done much of this work. Of assistance in this task is the State's Coastal Atlas, a copy of which is available to any interested coastal community. The atlas identifies the major coastal resources and circumstances which must be recognized in a local program. Such items as important agricultural land, significant historic sites, important wildlife habitats, and major scenic vistas are indicated on the atlas maps. The State has also identified certain other coastal conditions, such as erosion and floodprone areas, which may affect local programs.

Using the coastal atlas as a starting point, the local government should refine and supplement this information, based on a more intensive community study, particularly in the following areas:

Existing natural, recreational, cultural, aesthetic, and historic resources not accounted for in the state atlas, but of local significance.

Economic activities, particularly current or potential industrial and commercial uses dependent on a waterfront location.

(c) Current land and water uses.

Analysis of inventory and other data should follow to determine the existence and significance of problems, issues, and opportunities that are related to the waterfront.

This analysis may indicate that much of the local waterfront is already in stable uses, such as residential, and presents no problem. However, analysis may also indicate that some important uses, such as agricultural lands, are threatened, and need local attention and solutions. Other waterfront areas may be identified as deteriorated, and provide the opportunity to promote new and more economically rewarding uses. These problem areas are the ones on which the local Waterfront Revitalization Program should concentrate.

2. Determining Local Policies and Applicable State Policies

Identification of the waterfront problems and opportunities on which the community program must concentrate should be linked to a determination of which of the policies and required activities described in Part II of the guidelines need to be incorporated in the local program. Three situations are possible. First, some policies may not be applicable to the community, for example, the policy on agriculture is not relevant to New York City while the policy on port development is not relevant to Niagara Falls. Second, some policies will reflect concerns which are not primarily responsibilities of local government. In such cases, the policies can be merely repeated in the local program. Third, many of the policies will be applicable to the community and must thus be elaborated upon and incorporated in the program. In Part II, guidelines are provided for determining whether and to what extent a policy or activity is relevant to the circumstances of the locality.

Based on the above analysis and determination, the municipal waterfront program should set forth specific local policies. In establishing the policies of a local program, the community should keep the following factors in mind:

be specific; general goals are not sufficient to provide direction to a program

establish priorities; all problems and opportunities cannot be fully addressed at once

(c) stay within the community's capabilities, both fiscal and social

generate excitement and commitment

realize that the State policies are a minimum; if relevant to the locality, they should in most instances, be elaborated upon in the LWRP.

3. Defining the Waterfront Revitalization Area Boundary

A coastal area boundary has been designated for the entire State and is shown on the coastal area maps sent to each local government in 1981. The entire area within the designated boundary for the local government is to be included within the geographic area of a local Waterfront Revitalization Program. However, if it can be justified that the program's inland boundary should be altered, a recommendation should be made to the Secretary of State to revise the boundary accordingly.

Recommendations for the inland boundary of a local Waterfront Revitalization Program should be based on consideration of the following points:

Plot the geographic locations affected by coastal issues, problems, and opportunities found to be relevant and which are to be the basis for the determination of those policies and activities to be incorporated into the waterfront revitalization program.

Recognizable lines, such as cultural features (highways, streets, railroads, etc.) should, if at all possible, be used for the inland boundary.

4. Identifying Uses, Projects, and Procedures

The heart of a local Waterfront Revitalization Program consists of the identification of specific uses and projects, both public and private, proposed for the waterfront area. These must further each policy of the program and must be as specific as possible, considering the circumstances of the particular use or project.

While the proposed uses and projects should be long-term, this does not preclude attention to immediate problems nor staged implementation of a program so long as any major resources identified are adequately protected and major development opportunities are not allowed to be foreclosed. Also, proposed uses and projects can be identified by sub-areas that reflect neighborhoods or related uses or geography. The proposals should be very specific. Detailed sketch plans, preliminary cost estimates, and time schedules should be included so that implementation of the proposals can be furthered by an approved program.

Alternatively, where identification of specific uses or projects is not realistic, a locality may choose to establish a procedural mechanism(s) (such as a local Coastal Commission that reviews and approves waterfront

activities, or amendments to an existing procedure such as SEQR) to achieve all or some of the program's objectives. Such procedural mechanism(s) would provide that any proposed uses or projects meet certain standards. This approach can be taken for an entire program and may be most appropriate in a locality with an extensive and diverse waterfront. In that situation, the approach should be supplemented by the identification of a few specific projects. In other localities the approach taken may concentrate on several specific uses and projects and supplement that approach with procedural mechanism(s) that meet the policies not covered by identification of specific uses or projects.

5. Identifying the Techniques for Implementing the Program

The Waterfront Revitalization Program places great emphasis on implementation. In developing the specific management, funding, and program strategies, a locality may emphasize those priority uses and projects it has identified. However, at the same time it must also identify existing or new enforcement capabilities that ensure that, at a minimum, nothing will occur to prevent the long term advantageous use of the waterfront, or that would frustrate achievement of any identified local objective or relevant state policy.

Specifically, the State legislation requires a "description of proposed means for long-term management and maintenance of waterfront development and activities including organizational structures and responsibilities and appropriate land use controls." A further section requires that the local program provide "specification of the adequate authority and capability of the local government to implement the program." A "description of necessary and appropriate state actions for successful implementation of the program" is also called for. What is necessary to meet these several requirements is described below.

(a) Local programs should include a complete description of the various means that the locality will employ to implement its program. The description should clearly indicate how the various means will achieve each of the policies or proposals contained in the program. Means of implementation are defined to include organizational structure, review procedures, financing, land use controls and other ordinances, etc. Part II contains a brief discussion under each policy or activity of various techniques available to local government for the given purpose. Localities are free to choose whatever means they feel suit their

circumstances, provided that they can demonstrate that the means chosen are likely to be effective. Each policy/activity discussion in Part II also contains guidelines for determining whether the means chosen are adequate to achieve the policy or cause the activity to occur.

(b) A local program should include a section which provides evidence that the community has the capability to achieve the policies stated in its program. Capability refers to: 1) legal capability, i.e. the local laws and ordinances identified as part of the program are or will be in place prior to program approval (the full text of any local laws or ordinances should be appended to the program); such legal capability should also include provisions that municipal agencies operate their programs consistent with the LWRP; 2) organizational capability, i.e. there is adequate staff to manage the program and a mechanism exists for coordinating the activities of municipal agencies within the waterfront revitalization area, and 3) financial capability, i.e. the projects and other program elements to be developed with local public funding are reasonable given the fiscal resources of the locality, and, to the extent private and other government financing are to be sought, that there is a likelihood that they can be obtained.

(c) While it is necessary for a locality to demonstrate that it can successfully undertake a Waterfront Revitalization Program, it is recognized that many of the funding, regulatory, and direct activities of state agencies will greatly influence the successful implementation of Waterfront Revitalization Programs. The process of achieving the required consistency of State actions with local programs can be facilitated by local governments identifying those specific State agency actions (including proposed actions or classes of actions) and programs which are likely to affect achievement of the local program, either in a positive or negative manner. Localities should describe how their program is affected and how each State program or action might be modified.

To aid localities in identifying programs, DOS will prepare a list of the major State agency programs which may affect waterfront revitalization. A locality should attempt to be as complete as possible in identifying such programs; however, failure to identify a program or action does not diminish the requirement that the program or State agency action be consistent

with an approved local program, provided it is identified by the Secretary of State as such at the time of program approval. How consistency works is discussed in detail below under Benefits of an Approved Progam. Localities may also wish to identify Federal actions which would affect achievement of the local program.

6. Obtaining Local Commitment

Finally, the local waterfront revitalization program must be geared to produce results. Once approved by the State, State agencies and federal agencies may not undertake action in conflict with the approved program.

Because such a program represents partnership efforts, a firm local commitment to the proposed program is expected before State action is taken on the submission. Local commitment requirements are satisfied by:

(a Approval of the program by the mayor, supervisor and manager, if any.

Attachment of a resolution by the local governing body formally approving the waterfront program and its transmittal to the Secretary of State for approval.

Evidence of local support by both public and private agencies and general citizenry, including information on public meetings held for the purpose of informing residents of the proposals. Such evidence can be in the form of letters and/or resolutions by such groups as businessmen's associations, citizen improvement groups, and environmental groups affected. It is important that a local program have broad support from both development and preservation interests. Formation of a citizen's advisory committee can often be an effective means of gaining public support for a local program.

(d) Identification of objections to the proposal, including any letters or resolutions received in opposition.

While a local commitment is obtained only near the end of the process, the effort to obtain such commitment must begin at the inception of the development of the program.

7. Consultation with Other Affected Governments

Each locality wishing to prepare a local program is strongly encouraged to consult with adjacent coastal communities and its county on their plans and policies for the coastal area. To assure a useful exchange of ideas this should be done early in program development. The DOS will assist any community in this effort if requested.

DIRECTIONS FOR SUBMISSION OF A PROGRAM

There are two stages to the completion and submission of a local Waterfront Revitalization Program:

1. Draft Program Document. The required content of the local program was covered in the previous section. Once the first five of these items have been completed, 30 copies of the proposed program should be forwarded to the Department of State for initial review by the state agencies which may be concerned. Copies should also be provided to county and regional planning agencies and to adjacent coastal communities. The implementation section at this time may be proposals rather than finally enacted laws or ordinances, but the method of implementation must be made clear. The Local Commitment section need not be attached to this draft.

   The draft document must include maps at any appropriate scale which clearly identify the proposed program items. A summary map should also be prepared at a scale of 1:24,000. Items to be entered on these maps or map are:

   boundary of the state coastal area

   inventory information prepared as part of local program

   specific land and water uses and locations of projects proposed for the waterfront area.

   Copies of local legislation to be used to implement the program should be included if already enacted. A draft Environmental Impact Statement may also be required.

2. Final Program Document. After receiving Department of State clearance of the draft program, the final document should be submitted, again in 35 copies. The following additional items must be part of the final submission:

   any amendments or alterations required following Department of State review of the draft version

   copies of enacted ordinances or local laws to be employed in carrying out the program (or a proposed local law or ordinance to be enacted upon program approval. Programs may be approved conditional on such enactment.)

   evidence of formal approval of the program by local legislative body, and executive

evidence of local support of the program

identification of objections to the program, including any letters or resolutions received.

BENEFITS OF AN APPROVED LOCAL PROGRAM

Consistency

One of the major benefits and innovations of the waterfront revitalization act is the concept of "consistency". This provision aims to raise the goal of coordination between local government and the State and federal governments to a new level and at the same time provides the means to make it a reality. The premise behind the concept is as follows: if a locality develops a detailed Waterfront Revitalization Program which furthers the State's general coastal policies (and is not in conflict with other established state policy), then the State should adhere to the details of that program. (i.e., the State will not attempt to 'second guess' what is the best way to implement a particular policy at the local level). The process of program approval is to provide the State with an adequate opportunity to determine that a local program does further the State coastal policies and does not conflict with other established State policies.

The 'Consistency' provision will work as follows:

1. During the development of its local Waterfront Revitalization Program, a locality is encouraged to consult with State and federal agencies concerning aspects of mutual interests. The Department of State staff is available to facilitate such consultation.

2. Before approving a local Waterfront Revitalization Program, the Secretary of State will consult with potentially affected State and Federal agencies. These agencies will have 60 days in which to comment on a local program. The Secretary will not approve a local Waterfront Revitalization Program if he/she finds it conflicts with an existing State or federal policy. When a conflict is found, the Secretary will attempt to resolve the differences. Prior to approving the program the Secretary must also find that the program is consistent with the policies and purposes of Article 42 and incorporates certain required activities. Upon receiving the draft program the Secretary will provide State and federal agencies likely to be affected by the program with copies. The following State and Federal agencies are the ones most likely to receive copies:

   U.S. Dept. of Commerce - National Oceanographic and Atmospheric Agency

   U.S. Environmental Protection Agency

   U.S. Dept. of Interior - National Park Service and Bureau of Fish and Wildlife

   U.S. Dept. of Transportation - U.S. Coast Guard

Dept. of Defense - Army Corps of Engineers

Federal Emergency Management Administration

Dept. of Housing and Urban Development

NYS Dept. of Environmental Conservation

NYS Office of Parks, Recreation, and Historic Preservation

NYS Dept. of Transportation

NYS Dept. of Commerce

NYS Energy Office

Dept. of Public Service

NYS Office of General Services

Port Authorities, if located in that community

Other State and federal agencies will be sent copies of the draft program if the program has identified any actions of these agencies as necessary for successful implementation of the local program or if the Secretary finds that their programs may be significantly affected by the program.

3. Within sixty days of approving a local program, the Secretary will identify specific State permit, financial assistance, acquisition, and capital construction programs likely to affect the achievement of the local program. This identification will be based on the identification of State programs by the locality in its program, additional consultation with the locality and State agencies if necessary, and the DOS familiarity with State programs that affect the coastal area.

4. State agency programs so identified will, to the maximum extent practicable, be undertaken in a manner consistent with the approved local Waterfront Revitalization Program. Amendments to SEQR regulations in tandem with new DOS regulations will provide the procedures for the State agency's consistency determination. Using the Environmental Notice Bulletin, A-95, and other procedures, if necessary, State agencies will provide local government with adequate information on a proposed action. The municipality is expected to evaluate proposed actions and identify any conflicts with its approved local program. Once notified by the locality of the potential conflicts,

the Secretary will confer with the State agency and the lc l government to modify the action so that it will be consistent with the approved Waterfront Revitalization Program.

5. The Secretary is also required by the Act to work with State agencies and seek additional means of implementing approved local waterfront programs. Where a local government has identified program elements which depend upon other than local funds and actions, the Secretary will consult with the appropriate State and federal agencies to explore the possibilities or programming of additional assistance that would further the implementation of the local program.

Project Funding

Financial assistance is provided to a local government for implementation of a local Waterfront Revitalization Program. Grants for activities, including eligible pre-construction activities (feasibility studies, preliminary engineering studies) which implement an approved LWRP will be made to a local government or a local government agency provided: (1) the proposed project will lead to the achievement of state and local policies identified for priority attention, (2) if the funding is to be used for pre-construction activities, the grant does not exceed 10% of the cost of the construction projects, and (3) if the grant is to be used for preliminary engineering reports, funds are committed for completion of the construction project. Additionally, whether and to what extent a locality will receive financial assistance will be based on criteria which reflect the following considerations:

The allocation of funds to local governments for the implementation of Waterfront Revitalization Programs will reflect their initiative and interest in undertaking these tasks and other factors to assure fair and equitable distribution. Determination of what constitutes "initiative and interest" and "fair and equitable" will be based on consideration of the following points:

The initiative shown by the locality by its commitment of local resources (fiscal and non-fiscal) to the implementation of its approved program.

The significance of the coastal resource/activity affected by the implementation project for the locality, the region, or the State.

The number of people benefiting from the project, and the population of coastal locality, or coastal areas as appropriate.

The likelihood that the project being facilitated will be successfully implemented.

The degree to which the project furthers State and Federal priorities.

The ability of the locality to undertake the work without a grant.

Technical Assistance

The Department of State is able to offer technical assistance to localities in the preparation of waterfront revitalization programs. A staff of coastal specialists will be on hand to answer questions, suggest approaches, and provide needed services such as making available maps and data helpful in preparing a local program.

Part II - Specific Guidelines

INTRODUCTION

Each community wishing to have an approved LWRP must, according to Article 42 of the Executive Law, further and incorporate certain policies and activities in its local program to an extent commensurate with local circumstances. The following policies and activities are those that must be addressed. For each policy or activity, guidelines are provided for: 1) determining the degree to which the policy applies to each locality; 2) identifying the techniques available and suitable for implementing the policy; and 3) determining whether a community's treatment of the policy is adequate.

DETERIORATED AND UNDERUTILIZED URBAN WATERFRONT AREAS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources... "(Section 912.1) and "to encourage the restoration and revitalization of ... man-made resources" (Section 912.6). The Act also declares that a LWRP should incorporate "the promotion and preservation of scenic, historic, cultural, ... resources as community amenities and tourist destinations" and " the reuse of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions..." Therefore, DOS regulations require that to be approved a LWRP further the following policy: "RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR BUSINESS, CULTURAL, RECREATIONAL AND OTHER COMPATIBLE USES."

Revitalization of their once dynamic waterfront areas is one of the most effective means of encouraging economic growth, without consuming valuable open space outside of these waterfront areas. Waterfront redevelopment is also one of the most effective means of rejuvenating or at least stabilizing residential and commercial districts adjacent to the redevelopment area.

Communities affected by this policy should also refer to the policy guidelines below on: Water Dependent Uses; Concentration of Development; and Expediting Permit Procedures.

I. <u>Determining the degree to which this policy applies to each locality</u>

This policy is directed at communities where the effects of a steady exodus of people, commerce and industry has resulted in underutilized, abandoned and often deteriorated waterfront sites. In determining whether this policy applies to a particular locale, reliance will be placed on information obtained from the waterfront resource inventory which each community is required to produce for its Waterfront Revitalization Program. In some larger coastal communities, there should be no uncertainty as to its application; in small communities, it will be a matter of judgment, on a use-by-use basis.

II. <u>Identifying the techniques available and suitable for implementing this policy</u>

Most communities will find that, among the many policies which they may have to deal with in preparing Waterfront Revitalization Programs, this policy probably will require the most vigorous and imaginative deployment of the powerful tools at their disposal: legal, financial and political.

Implementation also will require the full commitment of the community's leaders and its residents, as well as the closest working relationship with other government agencies and private interests.

While implementation of such major development will depend heavily on private investment, attracting private investment will require the imaginative use of all of a community's legal and financial tools including: zoning techniques such as the creation of special waterfront districts; site plan reviews; permit procedures; building codes; the use of eminent domain powers; tax incentives; special benefit assessments or improvement districts; and capital facilities programming.

III. Determining whether a community's treatment of this policy is adequate

DOS recognizes that implementation of this policy is a long term project. Thus, a community's treatment of it will be reviewed in that context.

A. Because some communities will find significant levels of complexity of ownership, use and structural conditions in their waterfront redevelopment areas, they should first prepare a set of data, including maps, sufficiently detailed to give precise information, on the current status of those areas. Without those data, redevelopment planning efforts would be fruitless.

B. The community should demonstrate that it has established, or will establish within a reasonable time, appropriate laws, ordinances or governmental initiatives in regard to waterfront redevelopment areas, in which direction and incentive is given to ensure that, where pertinent:

1. Priority is given to uses which are dependent on a location adjacent to the water;

2. Proposed actions will enhance existing and anticipated uses;

3. Proposed actions will serve as a catalyst to private investment in these areas;

4. Proposed actions will improve the deteriorated condition of a site, and at a minimum, must not cause further deterioration;

5. Proposed actions will lead to development which is compatible with the existing or planned character of the areas, with consideration given to scale, architectural style, density and intensity of use;

6. Proposed actions will have the potential to improve the existing economic base of the community and, at a minimum, not jeopardize this base;

7. Proposed actions will improve adjacent and upland views of the water, and, at a minimum, not affect these views in an insensitive manner;

8. Proposed actions will improve the potential for multiple uses of the site.

WATER DEPENDENT USES

The Waterfront Revitalization and Coastal Resources Act declares that a local waterfront revitalization program must incorporate "the facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location such as but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture" (Section 915.5.a.). Therefore, DOS regulations require that to be approved a LWRP must "FACILITATE THE SITING OF WATER DEPENDENT USES AND FACILITIES ON OR ADJACENT TO COASTAL WATERS."

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 coastal waters. To ensure that such "water dependent" uses can continue to be accomodated, a community should avoid undertaking, funding, or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses, and should utilize appropriate programs to encourage water dependent activities.

I. <u>Determining the degree to which this policy applies to each locality</u>

Rural coastal communities will be the least affected by this policy although their desire to prepare a local Waterfront Revitalization Program probably reflects a certain degree of pressure on their shorefronts. The greatest need for this policy will be found in locales in or near poplulation centers, where the competition for waterfront land is usually more intense. The water dependency concept, however, is so fundamental to the proper management of waterfront resources, that most communities will respond to this policy in their programs.

II. <u>Identifying the techniques available and suitable for implementing this policy</u>

Because "water dependency" is a comparatively new approach to meeting development needs, the processes and techniques for implementing it are described here in great detail.

Water Dependent Uses and Facilities

The following uses and facilities are considered as water dependent:

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

2. Recreational activities which depend on access to coastal waters (for example: swimming, fishing, boating);

   Uses involved in the sea/land transfer of goods (for example: docks, loading areas, pipelines, short-term storage facilities);

4. Structures needed for navigational purposes (for example: locks, dams, 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 transporation 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 becomes critical (for example: firms processing perishable foods);

10. Scientific/educational activities which, by their nature, require access to coastal waters (for example: certain meteorological and oceanographic activities); and

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.

Water-enhanced Uses

In addition to water dependent uses, 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 that has no critical dependence on obtaining a waterfront location, but the profitability of the use and/or the enjoyment level of the users would be increased significantly if the use were adjacent to, or had visual access to, the waterfront. A restaurant which uses good site design to take advantage of a waterfront view, and a golf course which incorporates the coastline into the course design, are two examples of water-enhanced uses.

"Temporary" Non-Water Dependent Uses

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

Choice of Sites

In the actual choice of sites where water dependent uses will be encouraged and facilitated, the following factors should be considered:

1. Consistency with other coastal policies -- the designation of a site as appropriate for water dependent uses will have to be consistent with other policies. Particularly relevant would be those policies calling for development where environmental conditions are favorable, and where the concentration of development would be reinforced. The siting of water dependent uses would also have to comply with all policies relating to specific coastal resources -- the existence of wetlands, fish and wildlife habitats, important agricultural lands, and beaches and other erosion and flood hazard areas, would therefore have to be taken into consideration.

2. 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.

3. 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 is to be generated.

4. 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.

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

6. 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 State and other 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.

7. Providing for expansion -- a primary objective of the policy is to create a process by which water dependent uses can be accomodated well into the future. 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.

Promoting Water Dependent Use Areas

In promoting water dependent uses, the following kinds of actions should 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 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 could be given to water dependent uses.

3. Where possible, consideration might be given to providing water dependent uses with property tax abatements, loan guarantees, or loans at below market rates.

4. 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, state and federal 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.

III. Determining whether a community's treatment of this policy is adequate

Although the techniques for dealing with this policy are set forth in very specific details above, the newness of the process requires adoption of a flexible approach to evaluation of a community's treatment. Nevertheless, certain key elements described must be addressed: (1) Identify Water/dependent, Water Enhanced, and "Temporary" Non-water Dependent Uses which are appropriate to the community's present stage of development; (2) Prepare a projection of possible future demands by those and anticipated new water dependent uses and facilities; (3) If necessary, select sites where water dependent uses will be encouraged and facilitated; (4) Establish laws or ordinances to promote and to safeguard those sites as locations for water dependent uses and facilities.

CONCENTRATION OF DEVELOPMENT

The Waterfront Revitalization and Coastal Resources Act declares that it is state policy "to encourage the location of land development in areas where infrastructure and public services are adequate" (Section 912.7) and that LWRPs incorporate the "reuse of existing infrastructure and building stock...". Therefore, DOS regulations require that to be approved a LWRP must "ENCOURAGE THE LOCATION OF DEVELOPMENT IN AREAS WHERE PUBLIC SERVICES AND FACILITIES ESSENTIAL TO SUCH DEVELOPMENT ARE ADEQUATE, EXCEPT WHEN SUCH DEVELOPMENT HAS SPECIAL FUNCTIONAL REQUIREMENTS OR OTHER CHARACTERISTICS WHICH NECESSITATE ITS LOCATION IN OTHER COASTAL AREAS".

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, large scale development in the coastal 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, and where development will not have significant adverse effects on the achievement of other coastal policies.

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

I. <u>Determining the degree to which this policy applies to each locality</u>

This policy applies to every community.

II. Identifying the techniques available and suitable for implementing this policy

The first step a community should take in implementing this policy is to analyze its waterfront area. This is necessary because, for any action that would result in large scale land development or an action which would facilitate or serve future large scale land development, the community should make a determination as to whether or not the proposed action is within, contiguous to, or in close proximity to an area of concentrated development where infrastructure and public services are adequate.

Communities should use the following guidelines in analyzing their waterfront areas and in making that determination.

1. Cities, built-up suburban towns and villages, and rural villages in the coastal area are generally areas of concentrated development where infrastructure and public services are adequate.

2. Other locations in the coastal area may also be suitable for such land 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. Less 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 fire fighting) 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

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.

Exceptions are made in recognition that certain forms of land development may and/ or should occur at locations which are not within or near areas of concentrated development. Thus, this coastal development policy does not apply to the following types of land 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. Land development which by its nature is enhanced by a non-urbanized setting, e.g., a resort complex, campgrounds, second home developments.

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

4 Water dependent uses.

5. Land 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 considerations should be located away from populous areas.

7. Rehabilitation or restoration of existing structures and facilities.

8. Land development projects which are essential to the construction and/or operation of the above uses and activities.

Because this policy explicitly requires a positive approach to land use by "encouraging" concentration of development, the techniques used to implement it should be so constructed. That is, communities should use incentives and disincentives to attract appropriate development to the areas identified above. Zoning ordinances, permits, site pre-clearing, capital budgets and other similar techniques can be used to achieve that goal.

III. Determining whether a community's treatment of this policy is adequate

A community which has identified areas meeting the criteria listed in II above and which can demonstrate that it has established or will establish a reasonable incentive/disincentive mechanism so as to encourage development in such areas should be deemed to have met the requirements of the policy.

MAJOR PORTS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to encourage the development and use of existing ports ..... so as to reinforce their roles as valuable components within the State's transportation and industrial network" and that LWRPs provide for the "strengthening of the economic position of the state's major ports" (Section 912.2). Therefore, DOS regulations require that affected localities in their LWRPs "ENCOURAGE THE DEVELOPMENT OF THE STATE'S EXISTING PORTS OF ALBANY, BUFFALO, NEW YORK, OGDENSBURGH 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 WATERBORNE TRANSPORTATION OF CARGO AND PEOPLE."

The general approach which communities should adopt to meet the requirements of this policy is one which recognizes the importance of port operations by, at a minimum accommodating them, and as far as possible stimulating them, so that they may continue to contribute to the economic wellbeing of the locale and of the State.

I. <u>Determining the degree to which this policy applies to each locality</u>

The aim of this policy is to promote the development of the State's major ports - New York, Buffalo, Oswego, Ogdensburg and Albany. Thus, with the exception of the discussion below on proposals for new major ports, only communities whose actions might affect those five ports need observe this guidelines section. Those communities should also refer to the guidelines on Water Dependency, Concentration of Development, and Expediting of Permit Reviews, all of which have significant implications for port development.

II. <u>Identifying the techniques available and suitable for implementing this policy</u>

Before addressing discrete techniques for implementing these guidelines, a major port community should ask if it has established an effective means of coordination with port agencies, owners and operators so that implementation of the policy is carried out in an informed way rather than reactively. For example, port operations have been viewed as such an integral part of its overall waterfront activities that the City of Buffalo has joined recently with the Niagara Frontier Transportation Authority and other public and private interests

to form a Waterfront Planning Board to help determine the future of that city's waterfront. Formal structures such as Buffalo has established may not be necessary in all communities but the principle is worth considering.

Implementation of this policy may be achieved by exercise of the community's police powers including zoning, building codes and other permit procedures, and planning functions, and through its capital budget to assure compatible development in areas adjacent to ports.

III. Determining whether a community's treatment of this policy is adequate

First, a distinction must be made between public and private port operations. All five ports have facilities operated by public agencies established by the State legislature such as the Albany Port District Commission and the Niagara Frontier Transportation Authority. The special character of those agencies is noted below.

DOS recognizes that jurisdictional constraints may prevent communities from implementing certain of the guidelines presented below.

A. In regard to both public and private port areas, a community's treatment of this policy will be considered adequate if it can demonstrate in its decisions:

(1) In evaluating and acting upon proposed projects within or abutting port areas, the overriding consideration is the maintenance and enhancement of essential port activity which will have precedence over other non-port related activities.

2 Dredging to maintain the economic viability of the port will be considered an action of major state or regional benefit if need is shown and it can be demonstrated that environmental impacts would be at an acceptable level.

(3 Landfill projects for port related activities in near-shore areas will be regarded as an acceptable activity within port areas provided adverse environmental impacts are minimized and strong economic justification is demonstrated.

(4) Non-port related activities proposed to be located in or near a port area will be sited so that they will not interfere with normal port operations.

(5) In the programming of capital projects affecting ports, high priority will be given to those that promote the development and use of the port.

B. Two additional guidelines are directed at the community's treatment of public port agencies. First, when not already restricted by existing laws or covenants, and when there is no major public benefit to doing otherwise, surplus public land or facilities should be offered for sale, in the first instance, to the local public port agency. Second, particularly where there is limited access to the waterfront, the community should negotiate with the public port agency to provide opportunities for public access insofar as this does not interfere with the day-to-day operations of the port and its tenants do not incur unreasonable cost.

C. Commercial shipping may be hindered or damaged by floating debris in the ports' waterways. Because the major source of this hazard is deteriorating waterfront buildings, piers, barges and other vessels, the community should enact laws or ordinances which would ensure the upkeep of those structures and vessels and prevent their abandonment.

D. All coastal communities should be aware that any proposals in their LWRP's for the development of new major ports will be assessed in terms of the anticipated impacts on: (a) existing New York State major ports; (b) existing modes of transportation; and (c) the surrounding land uses and overall neighborhood character in the area in which the proposed port is to be located.

SMALLER HARBORS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to encourage the development and use of ..... small harbors including use and maintenance of viable existing infrastructures" (Section 912.2), and that LWRPs incorporate means for "strengthening the economic position of... small harbors"(Section 915.5.d). Therefore, DOS regulations require that to be approved a LWRP "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 A UNIQUE MARITIME IDENTITY."

This policy recognizes that the traditional activities occurring in and around many smaller harbors throughout the State's coastal area have contributed much to the economic strength and attractiveness of harbor communities. However, in many instances, sight has been lost of these values. Thus, community efforts should center on promoting and facilitating such desirable activities as recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits, and other compatible activities which have made those smaller harbor areas appealing as tourist destinations and commercial and residential areas. Particular consideration shall 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.

I <u>Determining the degree to which this policy applies to each locality</u>

Many locales will have no difficulty in identifying themselves as communities with smaller harbors as for example, Greenport and Freeport on Long Island. Some will be more substantial than others. In general, however, this policy applies to communities with a rich mix of active traditional uses such as commercial fishing, recreational boating and fishing, boat building and repair, and a resource base of natural amenities and historic buildings. Competition is keen for waterfront space in those communities and time-honored activities are threatened with displacement by new uses, many of which are incompatible with the harbor's distinctive character.

II. <u>Identifying the techniques available and suitable for implementing this policy</u>

The most important tools available to small harbor communities are, of course, those delegated to them under the police powers. Imaginative use of zoning to create commercial marine districts, to restrict building heights, and to set design standards, for example,

will help achieve the purposes of the guidelines. Some communities may decide to establish harbor improvement districts where agreement can be reached among private and public interests to share the cost of necessary upgrading of amenities.

III. Determining whether a community's treatment of this policy is adequate

In developing its local waterfront revitalization program, a community will have a wide range of methods to develop or enhance its small harbor area. The adequacy of the approaches it chooses will be ascertained by evaluating how it proposes to achieve the following:

(A) Give priority to those traditional or desired uses which are dependent on or enhanced by a location adjacent to the water.

(B) Ensure that proposed activities will enhance or not detract from or adversely affect existing traditional and/or desired anticipated uses.

(C) Ensure that proposed activities will not be out of character with, nor lead to development which would be out of character with, existing development in terms of the area's scale, intensity of use, and architectural style.

(D) Ensure that harbor area structures are not abandoned or allowed to deteriorate.

(E) Ensure that proposed actions will not adversely affect the existing economic base of the community - e.g., waterfront development revolving around a residential complex might be inappropriate in a harbor area where the economy is dependent on tourism and commercial fishing.

(F) Ensure that proposed activities will not detract from views of the water and the harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity.

PERMIT SIMPLIFICATION

The Waterfront Revitalization and Coastal Resources Act declares that a local waterfront revitalization program must incorporate "means for long-term management and maintenance of waterfront development and activities, including organizational structures and responsibilities and appropriate land use controls (Section 915.4.e). As part of this requirement, LWRPs should take steps to expedite existing permit procedures in order to facilitate the siting of development activities at suitable locations.

I. Determining the degree to which this policy applies to each locality

This policy applies to every coastal community seeking approval of a LWRP.

II. Identifying the techniques available and suitable for implementing this policy

To meet this requirement, a local government should determine if existing controls can be simplified in an effort to expedite desired development in areas suitable for such development. Further, the local government must identify those State and Federal permit programs requiring simplification in order to expedite the desired development (Section 915(5) (h)).

For specific types of development activities and in areas suitable for such development, state agencies and local governments participating in the Waterfront Revitalization Program, should, to the maximum extent practicable, 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 should be coordinated within each agency. Also, efforts should be made to ensure that each agency's procedures and programs are synchronized with other agencies' procedures at each level of government. Finally, regulatory programs and procedures should be coordinated and synchronized between levels of government, and if necessary, legislative and/or programmatic changes recommended.

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

Permit simplification techniques range from simple redesign of a form to revamping of a complex review process. For example, the Department of Environmental Conservation and the Corps of Engineers, Buffalo District, now share the same application form for certain permits, thus reducing the public's paperwork load. The pre-clearing of sites suitable for development is another approach which a community may choose. "One-stop shopping" and systems for keeping track of permit applications are other examples.

Preparation of a guide to development permits could be a most productive initial step: it would not only give assistance to developers and the public at large but also provide a preliminary basis for the community to review the permit process as a whole.

Local governments should note that the Waterfront Revitalization and Coastal Resources Act requires a local program to be approved by its legislative body. This approval will require local regulatory agencies to adhere to the program policies, which, if the program is approved by the Secretary of State, will be adhered to by State and Federal agencies. This adherence to one set of specific policies will provide the basis for improving the ease of obtaining permits. This requirement, in conjunction with the requirement for all interests to be consulted during the program's preparation (Section 915(3)), lessens the time necessary for public review of individual actions when proposed, thus providing another means for expediting permits.

In addition, Section 916(1) (b) of the Act requires State agencies' actions to be consistent to the maximum extent practicable with approved local programs. Because local programs are, in part, a detailing of State policies, this will significantly increase the specificity of State policies, decrease the discretionary power of the regulator, increase the developer's understanding of approval conditions and provide a mechanism for expediting permits.

III. <u>Determining whether a community's treatment of this policy is adequate</u>

DOS recognizes that permit simplification will not be achieved overnight. However, a community should at a minimum demonstrate that a review of local permit processes is underway. Recognition may also be given to earlier community improvements made in this policy area.

SIGNIFICANT FISH AND WILDLIFE HABITATS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to conserve and protect fish and wildlife habitats identified by the Department of Environmental Conservation as critical to the maintenance or reestablishment of species or wildlife. Such protection shall include mitigation of the potential impact from adjacent land use or development" (Section 912.3). This policy recognizes that valuable fish and wildlife species cannot be protected and maintained without preserving their habitats. DOS regulations require that to be approved a LWRP must further the following policy: "SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS, AS IDENTIFIED ON THE COASTAL AREA MAP, SHALL BE PROTECTED AND PRESERVED SO AS TO MAINTAIN THEIR VIABILITY AS HABITATS."

A habitat is an area with a unique combination of resources (food, shelter, living space, etc.) and environmental conditions (temperature, climate, salinity, etc.) which animals need for their survival. When man destroys a vital resource or alters an environmental condition beyond an organism's range of tolerance, he destroys the habitat.

Certain habitats, such as breeding grounds, nursery areas, and migratory routes, are special areas where fish and wildlife populations tend to congregate during various stages of their life cycle. Such areas must be identified and afforded special protection, since their loss would create a greater threat to the survival of a population than would the loss of areas where the organisms were less densely distributed.

While habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations, certain habitats are more critical to the maintenance of a given population than others and therefore merit a greater degree of protection. Such habitats exhibit one or more of the following characteristics:

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

2. support populations of rare and endangered species;

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

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

5. would be difficult or impossible to replace

In cooperation with the State's Coastal Management Program, the Department of Environmental Conservation has identified coastal fish and wildlife habitats. Their relative importance is being evaluated according to a system which DOS and DEC have developed. This system incorporates the above five parameters.[1] Results of the evaluation will provide the basis for determining whether a habitat should or should not be designated a "significant habitat."

Once a habitat area is identified as significant, it will be mapped on the official New York Coastal Area Map. A narrative will be prepared detailing information on that particular habitat, e.g., description of the community of organisms and a list of the types of actions that most likely would affect the habitat.

I. Determining the degree to which this policy applies to each locality

To determine whether a community must respond to this policy, it must simply consult the N.Y.S. Coastal Area Map to see if one or more significant habitats are located within or near the proposed boundaries of its local waterfront revitalization program.

If a community recognizes an additional habitat which it considers important enough to warrant designation as a significant coastal habitat, then it should recommend in its LWRP to the Department of State that the habitat area be considered for such designation. The Department will, in turn, instruct the Department of Environmental Conservation to field check the area and apply the rating system to determine its relative significance.

II. Identifying the techniques available and suitable for implementing this policy

The techniques available and suitable for implementing this policy will be a function of the type of significant habitat requiring protection, and the degree of protection already being afforded to that area through existing regulatory programs.

[1] The Development and Evaluation of a System for Rating Fish and Wildlife Habitats in the Coastal Zone of New York State. Final Report, January, 1981. (15pp.)

In most cases, when a local response is needed, it will probably have to be a regulatory one. For example, municipalities may enact zoning provisions aimed at protecting identified habitat areas, such as open space requirements, prohibition of the removal of soil and vegetative cover essential to habitats, and regulations on the use and siting of buildings or activities which may have an adverse effect on nearby habitats or fish and wildlife resources.

Municipalities may adopt programs, where feasible, that permit an owner of land including or adjoining a habitat to transfer the development rights of the parcel to another parcel in the locality.

As part of local subdivision regulations, a developer may be required to employ the cluster design technique if his land includes or is adjacent to a significant fish or wildlife habitat. This approach would permit the developer to locate future residential construction away from an identified habitat, thereby reducing adverse effects.

As an alternative to a regulatory approach, a locality could acquire fee or less than fee interests in land for the protection of critical fish and wildlife habitats.

III. Determining whether a community's treatment of this policy is adequate

A locality's treatment of this policy will be considered adequate if it: (1) has recognized the existence of any significant habitat(s) located within or near its program boundary; (2) described the habitat in a level of detail commensurate with that of the existing information on the particular habitat available at the Department of Environmental Conservation; (3) listed existing State regulatory programs already affording protection to the significant habitat (e.g. Freshwater or Tidal Wetlands Act); (4) identified a need, if any, for additional local regulatory controls to preserve the habitat and proposed a means of implementing such controls; (5) identified likely adverse impacts associated with any of the proposed activities identified in their LWRP, and (6) identified and planned for the mitigation of these adverse impacts to acceptable levels.

The LWRP should ensure that land and water uses or development would not be undertaken or approved if such actions would destroy or significantly impair the viability of an area designated as a significant coastal fish and wildlife habitat. When the action would cause the elimination of a vital resource (e.g., food, shelter, living space) or a change in environmental conditions (e.g., temperature, substrata, salinity) beyond the tolerance range of an organism, then the action would be considered to "significantly impair" the habitat. Indicators of a significantly

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

The LWRP should also ensure that if a proposed action would significantly impair the habitat, and if no practical alternative exists, it could occur only if: there were overriding regional or statewide public benefits resulting from the action; the action furthered achievement of one or more other coastal policies; and all reasonable measures to mitigate the adverse impacts on the habitat were applied.

COMMERCIAL FISHING

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to conserve, protect and where appropriate promote commercial...use of fish...resources..." (Section 912.3). Therefore, DOS regulations require that to be approved a LWRP must further the following policy: "FURTHER DEVELOP COMMERCIAL FINFISH, SHELLFISH AND CRUSTACEAN RESOURCES IN THE COASTAL AREA BY:

1. ENCOURAGING THE CONSTRUCTION OF NEW OR IMPROVEMENT OF EXISTING ON-SHORE COMMERCIAL FISHING FACILITIES;

2. INCREASING MARKETING OF THE STATE'S SEAFOOD PRODUCTS; AND

3. MAINTAINING ADEQUATE STOCKS AND EXPANDING AQUACULTURE FACILITIES. SUCH EFFORTS SHALL BE MADE IN A MANNER WHICH ENSURES THE PROTECTION OF SUCH RENEWABLE FISH RESOURCES AND CONSIDERS OTHER ACTIVITIES DEPENDENT ON THEM."

A tremendous opportunity for expanding the State's commercial fishing industry was created with the passage of the federal Fishery Conservation Management Act of 1976. This law provides U.S. fishermen priority rights to harvest the millions of tons of fish previously being caught by foreign fishing fleets. To realize this development potential, New York must make adjustments in the harvesting, processing and marketing sectors of its fishing industry. The single greatest opportunity for local governments to play a role in commercial fishery resource development exists with the establishment of shore-side support facilities. At present, limited availability of docking, unloading and processing facilities impedes the growth of offshore deepwater fisheries. An insufficient number of boat ramps, inadequate catch transfer sites, and lack of shellfish processing and gear storage facilities limit development of the nearshore fisheries.

A second major opportunity for involvement by local governments in commercial fishery resource development is in the area of aquaculture. Today the market demand for aquaculture products (e.g., clams, oysters, striped bass) far outstrips current production levels of these high value seafood products.

I. Determining the degree to which this policy applies to each locality

Coastal communities, particularly those located along New York's coast where commercial fishing is not being restricted due to toxic contamination of the fishery resource, are being encouraged through this Program to direct their energies in helping to foster growth of the State's commercial fishing industry. Communities which have established fishing ports or could accommodate new commercial fishing development activities as part of harbor development programs are those communities which would be in the best position to implement this policy.

II. Identifying the techniques available and suitable for implementing this policy

Municipal zoning regulations can be used to provide increased utilization of commercial fin and shellfish. Marine commercial zones can be established in areas where such facilities as marinas, commercial docks, and fish processing plants would be appropriate. Such zoning would reduce competition for dock space between sport and commercial fishermen, and hence reduce the access problem for commercial fishing activities. Provision may also be made for the storage of fishing gear in residential areas.

In addition, municipalities have capital construction powers which might be used to provide infrastructural improvements necessary for commercial fishing. Roads, piers, docks, lighting, and sanitary sewers are all facilities that can be improved or constructed to aid the commercial fishing industry. Financing such infrastructure improvement projects could be achieved through the creation of a special improvement district and then taxing beneficiary property owners accordingly.

III. Determining whether a community's treatment of this policy is adequate

A municipality's treatment of this policy would be considered adequate if: (1) the community has realistically assessed the potential for commercial fisheries development in its area of jurisdiction, (2) identified a practical and meaningful role it could play in promoting commercial fishery development, (3) identified a means of funding this development effort, (4) made adjustment as needed in its zoning code to provide for such activities along its waterfront and (5) prevented incompatible development adjacent to existing on-shore support facilities which might ultimately force the future dislocation of that facility.

RECREATIONAL USE OF FISH AND WILDLIFE

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to conserve, protect and where appropriate promote...recreational use of fish and wildlife resources..." (Section 912.3). Therefore, DOS regulations require that to be approved a LWRP must further the following policy: "EXPAND RECREATIONAL USE OF FISH AND WILDLIFE RESOURCES IN COASTAL AREAS BY INCREASING ACCESS TO EXISTING RESOURCES, SUPPLEMENTING EXISTING STOCKS AND DEVELOPING NEW RESOURCES. SUCH EFFORTS SHALL BE MADE IN A MANNER WHICH ENSURES THE PROTECTION OF RENEWABLE FISH AND WILDLIFE RESOURCES AND CONSIDERS OTHER ACTIVITIES DEPENDENT ON THEM".

In New York the primary responsibility for managing the State's fish and wildlife rests with the New York State Department of Environmental Conservation. Any efforts to increase recreational use of fish and wildlife, whether through private or public sector initiatives, will have to be done in accordance with existing state law and in keeping with sound resource management considerations. Such considerations include: biology of the species, carrying capacity of the habitat, public demand, costs, and available technology.

Recreational use of fish and wildlife resources is meant to include more than simply hunting and fishing activities. Promotion of other nonconsumptive uses of these resources such as bird watching, wildlife photography and nature study would also be considered desirable and appropriate objectives of a local waterfront revitalization program.

I. <u>Determining the degree to which this policy applies to each locality</u>

As part of its inventory of coastal resources, a local government should determine whether valuable hunting or fishing resources or natural areas exist in its waterfront area. Next the coastal community should consult and cite existing recreation needs inventories prepared either locally or by state agencies[1] to assess and document the need to provide increased opportunities for recreational enjoyment of its coastal fish and wildlife resources.

[1] Examples of existing state publications include: NYS Office of Parks, Recreation and Historic Preservation <u>State Comprehensive Outdoor Recreation Plan</u>; NYS Department of Environmental Conservation's report, <u>New York Angler Survey, 19761977, Final Report</u> by Walter A. Krester and Lois Klatt (1981); Interests, Needs and <u>Attitudes by New York State's Metropolitan Public in Relation to Wildlife, 1978</u> by Tommy L. Brown and Chad P. Dawson, for NYDEC

Given the existence of the resources and the need for increased recreational use of these resources, a local government should respond to this policy in its local waterfront revitalization program.

II. Identifying the techniques available and suitable for implementing this policy

The most important means by which local governments can assist with increasing recreational use of the State's fish and game resources is by either creating new access to them or by preventing land use development which will pre-empt existing access to these resources. Local governments may exercise their powers to acquire fee simple or less-than-fee-interests (e.g., easements) in land to provide for increased access to public fish and game resources. On the other hand, local governments could, through site plan review or planned unit development, induce a developer to provide for public access to public fishing and hunting areas in the event that such development activities would otherwise block public access to such resources.

III. Determining whether a community's treatment of this policy is adequate

Municipalities may be encouraged to utilize their acquisition powers to provide for increased public access to recreational fish and game resources, within the limits of local fiscal capabilities. Municipalities will, however, be required to make a finding that their proposed LWRP will not pre-empt existing or future access to these resources. If such impacts are unavoidable, provisions must be made for new access opportunities which are at least equivalent to those being eliminated by the implementation of the proposed program.

FLOOD AND EROSION HAZARDS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy: "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing..... shoreline erosion" (Section 912.1) and "to minimize damage to natural resources and property from flooding and erosion, including proper location of new land development, protection of beaches, dunes, barrier islands, bluffs and other critical coastal features and use of non-structural measures, whenever possible" (Section 912.5). The Act also states that a LWRP must incorporate, to an extent commensurate with the particular circumstances of the local government, the "protection of sensitive ecological areas, including dunes.... and the protective capability of coastal land features" (Section 915.g). Therefore, DOS regulations require that to be approved a LWRP must further the following policies:

"ACTIVITIES OR DEVELOPMENT IN THE COASTAL AREA WILL BE UNDERTAKEN SO AS TO MINIMIZE DAMAGE TO NATURAL RESOURCES AND PROPERTY FROM FLOODING AND EROSION BY PROTECTING NATURAL PROTECTIVE FEATURES INCLUDING BEACHES, DUNES, BARRIER ISLANDS AND BLUFFS. PRIMARY DUNES WILL BE PROTECTED FROM ALL ENCROACHMENTS THAT COULD IMPAIR THEIR NATURAL PROTECTIVE CAPACITY."

(2 "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."

(3) "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 NOR FLOODING AT THE SITE OF SUCH ACTIVITIES OR DEVELOPMENT OR AT OTHER LOCATIONS."

"MINING, EXCAVATION OR DREDGING IN COASTAL WATERS SHALL NOT SIGNIFICANTLY INTERFERE WITH THE NATURAL COASTAL PROCESSES WHICH SUPPLY BEACH MATERIALS TO LAND ADJACENT TO SUCH WATERS AND SHALL BE UNDERTAKEN IN A MANNER WHICH WILL NOT CAUSE AN INCREASE IN EROSION OF SUCH LAND."

5 "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."

(6 "WHENEVER POSSIBLE, USE NON-STRUCTURAL MEASURES TO MINIMIZE DAMAGE TO NATURAL RESOURCES AND PROPERTY FROM FLOODING AND EROSION. SUCH MEASURES SHALL INCLUDE: (i) THE SET BACK OF BUILDINGS AND STRUCTUERS; (ii) THE PLANTING OF VEGETATION AND THE INSTALLATION OF SAND FENCING AND DRAINAGE SYSTEMS; (iii) THE RESHAPING OF BLUFFS; AND (iv) THE FLOOD-PROOFING OF BUILDINGS OR THEIR ELEVATION ABOVE THE BASE FLOOD LEVEL."

Fortunately, in great part the framework is already established for a community's treatment of the above policies through the Coastal Erosion Hazard Areas Act (Article 34, Environmental Conservation Law) and the National Flood Insurance Program (in which community's must participate according to Article 36, Environmental Conservation Law). However, because the policy in Section 912.5 of the Waterfront Revitalization and Coastal Resources Act is not already covered by an existing means of implementation, the guidelines for its treatment are described in greater detail in section II below.

Determining the degree to which these policies apply to each locality

Flooding and erosion are two of the most familiar phenomena in the coastal area but their severity, and thus their significance in the preparation of a LWRP, will vary among communities. Therefore, it will be necessary first to establish in each community if flooding and erosion occur, to what extent, and where.

In the case of coastal flooding, data supplied by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program are the means to be relied upon in making that determination. Such data are included in Flood Hazard Boundary Maps and Flood Insurance Rate Maps. If a coastal community has been provided with those data, then the LWRP policies will apply in identified flood-prone areas.

In the case of coastal erosion, the Department of Environmental Conservation (DEC) is required by Section 34-0104 of Article 34, ECL, to identify coastal erosion hazard areas (CEHA's). Where such areas have been identified in a community, the LWRP policies will apply.

In a community where DEC has not yet surveyed the coastal area, DOS will request that DEC make a preliminary determination, in consultation with the local government, as to the likelihood that there are CEHA's in the community's coastal area and indicate their probable location. If DEC finds that there is little likelihood that such areas are present, then the community's LWRP need not take account of these policies. (Some communities may desire, nevertheless, to adopt erosion ordinances in the absence of identifiable CEHAs due to local concerns, and are encouraged to do so.) However, should DEC make a positive preliminary finding regarding CEHA's, then DOS will consult with DEC and the local government to make arrangements for formal identification of the CEHA's as soon as possible under the provisions of Section 34-0104 as noted above. Unavoidable delays in the formal identification of CEHA's caused by factors beyond the control of the local government need not prevent approval by DOS of a LWRP which meets all other requirements of Article 42. However, a timetable must be agreed upon by DEC, DOS and the local government for completion of that identification process. (See also III below).

II. Identifying the techniques available and suitable for implementing these policies

Implementation of the flooding and erosion policies can be achieved by the use of familiar tools developed under local government police powers. In communities with existing zoning ordinances, new provisions can be added as revisions. Where zoning has not been introduced as a planning instrument, building codes may be prepared to meet those requirements. Whether or not zoning is in place, subdivision regulations should be developed. Communities may also find the SEQR process a productive auxiliary device in treating the policies. Last, the policy which requires "the use of non-structural measures, whenever possible" may be incorporated in the procedures of the existing laws or ordinances dealing with flooding and erosion.

III. Determining whether a community's treatment of these policies is adequate

a. A community's treatment of the flooding and erosion policies (except the policy in Section 912.5 of the Waterfront Revitalization and Coastal Resources Act) will be considered adequate if, where applicable as determined in I above, the community can demonstrate that it has enacted or will establish according to an agreed-upon schedule, the following:

(1 Flooding Local laws or ordinances which meet the regulatory requirements of the National Flood Insurance Program consistent with the most current flood data provided by FEMA. This means that where further data has been provided by FEMA which would enable the community to upgrade its regulation of identified flood hazard areas, it must do so by enacting the appropriate ordinances or laws.

2 Erosion Local ordinances or laws to regulate development and activities in coastal erosion hazard areas which have been certified by the Commissioner of DEC according to Section 34-0105 of Article 34, ECL.

b. In both flooding and erosion hazard areas, the community's LWRP must also take into account the policy enunciated in Section 912.5 which requires "the use of non-structural measures, whenever possible" to minimize damage from erosion or flooding. First, recognizing the high cost and potentially adverse impacts of such structural measures as groins, dams and bulkheads, a community should address this policy by identifying "non-structural measures" appropriate to its shoreline, including: (1) Within identified coastal erosion hazard areas - (a) the use of setbacks as provided for in Section 34-0108 (Article 34, ECL); (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 reduce the potential for slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce run-off and internal seepage of waters. (2) Within identified flood hazard areas - (a) the siting of new development or activities outside the flood hazard areas to avoid the risk of damage; and (b) the flood-proofing of buildings or their elevation above the base flood level.

Second, the community must have established procedures to ensure that non-structural measures are used "whenever possible." Such procedures must require that when property owners or governmental agencies propose to prevent or diminish damage from erosion or flooding by the use of structural measures, they must demonstrate clearly to the local government that it is not possible to use alternative non-structural measures which would afford a similar degree of protection. Satisfaction of this guideline can be obtained by requiring that those proposing such

structures submit evidence including analyses of the sites, the circumstances involved and of the protection measures, in sufficient detail so that the local government can make specific findings regarding the reasonableness of the proposals. Obviously, the procedures must also give the local government the power to require the use of non-structural measures where they are found to be effective.

ICE MANAGEMENT PRACTICES

The Waterfront Revitalization and Coastal Resources Act declares: that it is State Policy "... to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing the loss of living marine resources and wildlife, shoreline erosion, ... or permanent adverse changes to ecological systems" (Section 912.1); "to conserve and protect fish and wildlife habitats ... (Section 912.3); and "... to minimize damage to natural resources and property from flooding and erosion ...." (Section 912.5). The Act also requires local governments to incorporate into their LWRP"S the "... protection of sensitive ecological areas including dunes, tidal and freshwater wetlands, fish and wildlife habitats and the protective capability of coastal land features" (Section 915.5g.). Therefore, DOS regulations require that to be approved a LWRP must further the following policy: "ICE MANAGEMENT PRACTICES SHALL NOT DAMAGE SIGNIFICANT FISH AND WILDLIFE AND THEIR HABITATS, INCREASE SHORELINE EROSION OR FLOODING, NOR INTERFERE WITH THE PRODUCTION OF HYDROELECTRIC POWER."

I. Determining the degree to which this policy applies to each locality

Although ice forms in the waters of most coastal communities, the degree to which this policy will apply to a particular locality will depend on the extent to which it has jurisdiction over these waters, the nature of the problems which necessitate ice management, and the effects of ice management practices. For example, emergency measures such as the breaking up of ice jams to prevent flood damage or the freeing of a ship from the ice would be exempt from this requirement.

II. Identifying the techniques available and suitable for implementing this policy

A local government may exercise its police powers through the enactment of appropriate ordinances or laws concerning ice management practices.

III. Determining whether a community's treatment of this policy is adequate

First, a locality should provide data on the extent of its jurisdiction over coastal waters adjacent to its shores. Second, the locality should provide a description of ice management problems and practices in its coastal area. And third, local laws or ordinances designed to achieve the desired response should be prepared and enacted.

PUBLIC ACCESS

Introduction

Public access to both the recreational and aesthetic resources of the coast is a key element in the management of coastal areas. Development, private ownership of land, natural shoreline topography, inadequate public transportation, limited parking facilities, and non-resident restrictions are all factors which singly or in combination can restrict public access to existing recreation resources and to publicly owned lands and waters of the coastline at large. The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) addresses the public access issue by declaring that it is necessary "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing ..... diminution of ..... public access to the waterfront ...." and "to encourage and facilitate public access for recreational purposes." Article 42 gives additional direction to local governments wishing to develop Waterfront Revitalization Programs by requiring such programs to call for "the increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking, and picnicking." Given these general directions, DOS regulations have been developed which require that to be approved a LWRP must further the following policies:

> "PROTECT, MAINTAIN AND INCREASE THE LEVELS AND TYPES OF ACCESS TO PUBLIC WATER-RELATED RECREATION RESOURCES AND FACILITIES SO THAT THESE RESOURCES AND FACILITIES MAY BE FULLY UTILIZED BY ALL THE PUBLIC IN ACCORDANCE WITH REASONABLY ANTICIPATED PUBLIC RECREATION NEEDS AND THE PROTECTION OF HISTORIC AND NATURAL RESOURCES. IN PROVIDING SUCH ACCESS, PRIORITY SHALL BE GIVEN TO PUBLIC BEACHES, BOATING FACILITIES, FISHING AREAS AND WATERFRONT PARKS."
>
> "ACCESS TO THE PUBLICLY-OWNED FORESHORE AND TO LANDS IMMEDIATELY ADJACENT TO THE FORESHORE OR THE WATER'S EDGE THAT ARE PUBLICLY-OWNED SHALL BE PROVIDED, AND IT SHOULD BE PROVIDED IN A MANNER COMPATIABLE WITH ADJOINING USES. SUCH LANDS SHALL BE RETAINED IN PUBLIC OWNERSHIP."

I. Determining the degree to which the policies apply to each locality

Every locality desiring to prepare a Waterfront Revitalization Program has the potential to provide or increase access to its waterfront for water-related activities. The amount and type of access and the kind of water-related activities to be emphasized will depend upon a number of factors. These include: the amount, location, type, condition, and use of existing waterfront recreation facilities and parks;

B. Land Acquisition and Capital Construction

A locality has broad powers to acquire and develop land for public purposes. These powers could be used to acquire fee or less than fee interests in land needed to increase public access to the waterfront as well as develop specific capital facilities to increase access.

III. Determining whether a community's treatment of these policies is adequate

As stated above, communities have a variety of techniques available for maintaining and increasing access to the waterfront. The Department of State, in determining whether the techniques are adequate to meet the policy requirements of Article 42, will evaluate them against the circumstances of each locality. The following factors will be used to judge the effectiveness of the locality's proposals for meeting the policy requirements:

A. The amount, location, type, and condition and use of existing waterfront access areas.

These factors relating to a community's existing access areas will be reviewed in evaluating the effectiveness of its program proposals for dealing with access. The substance of the program proposals will vary from community to community, depending upon the characteristics of these factors. Obviously, if a community already has a large number of various types of access to the waterfront which are well-located, in good condition, and greatly used, its access needs are few and will be so reflected in its waterfront program. On the other hand, a community with access deficiencies, i.e., few access points, poorly-located, in poor condition, not well-used, etc., will be required to show in its program what it proposes to do to ameliorate the situation.

B. The location and character of existing development and the degree of pressure for additional development.

The nature of existing development and its location will have a great influence on the provision of increased access. A highly developed waterfront will effectively prohibit many types of access from being provided, as will the type of development, i.e., a transportation facility running the length of the community along its waterfront. Conversely, a waterfront with little or no development could have many access opportunities if other factors are also favorable. Thus, a community's Waterfront Revitalization Program will have to recognize the nature of its development as it relates to the type of access being proposed. In the same fashion, the degree of pressure

for additional development will particularly relate to the timing for increased access. Where development pressures are great, the timing for providing increased access must be such that opportunities are not foreclosed by development before action can be taken. Where there are few or no development pressures, timing will be a less important factor.

C. The natural characteristics of the waterfront as they relate to potential waterfront access opportunities.

This factor will be judged against a community's proposal for increasing access to ensure that the proposals are realistic in terms of existing natural characteristics. Simply put, these characteristics must match the type of access being proposed. For example, it would make little sense to propose increased access for fishing where water is polluted and fishing is banned, as is the case along some sections of the Hudson River.

D. The proposals in the program for specific uses and projects and the potential for maintaining or increasing access for each such proposal.

Each proposal for specific uses and projects in a community's waterfront program should reflect the feasibility of increasing access to the waterfront. This will be specifically looked for in each program. For example, a proposal for redevelopment of an abandoned waterfront warehouse into a civic center would be expected to contain a proposal for increasing access to the waterfront.

E. The fiscal capability of the locality measured against the cost of proposals for acquiring waterfront access areas and developing specific facilities.

The costs of proposed acquisition of land and development of facilities for increasing access must be realistic in terms of the fiscal resources of the community and the possibility of assistance from other sources.

RECREATION

Coastal areas are New York's most important outdoor recreation resource. Their appeal and significance creates several concerns. Principal among these is determining how the demand for coastal area recreation can be met while ensuring that other land and water use needs will be accommodated and that the natural resource base will be protected. More specific concerns include: conflicts with other uses; overuse of existing coastal recreation areas; deficiency of water-based recreation in urban areas; conservation of historic and cultural resources; the particular needs of recreational boating and fishing; and the desire to promote the private sector's role in recreation.

The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) addresses recreation issues by declaring that it is necessary "to achieve a balance between economic development and preservation...while preventing... diminution of open space areas..."; "to...promote...recreational use of fish and wildlife resources..."; "to encourage and facilitate public access for recreational purposes..."; and "to encourage the restoration and revitalization of natural and man-made resources." Article 42 gives additional direction to local governments wishing to develop Waterfront Revitalization Programs by requiring such programs to call for "the increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking, and picnicking." Therefore DOS regulations require that to be approved a LWRP must further the following policies:

1. "WATER DEPENDENT AND WATER ENHANCED RECREATION SHALL BE ENCOURAGED AND FACILITATED AND SHALL BE GIVEN PRIORITY OVER NON-WATER RELATED USES ALONG THE COAST, PROVIDED IT IS CONSISTENT WITH THE PRESERVATION AND ENHANCEMENT OF OTHER COASTAL RESOURCES AND TAKES INTO ACCOUNT DEMAND FOR SUCH FACILITIES. IN FACILITATING SUCH ACTIVITIES, PRIORITY SHALL BE GIVEN TO AREAS WHERE ACCESS TO THE RECREATION OPPORTUNITIES OF THE COAST CAN BE PROVIDED BY NEW OR EXISTING PUBLIC TRANSPORATION SERVICES AND TO THOSE AREAS WHERE THE USE OF THE SHORE IS SEVERELY RESTRICTED BY EXISTING DEVELOPMENT" AND

2. "DEVELOPMENT, WHEN LOCATED ADJACENT TO THE SHORE, SHALL PROVIDE FOR WATER-RELATED RECREATION, AS A MULTIPLE USE, WHENEVER SUCH RECREATIONAL USE IS APPROPRIATE IN LIGHT OF REASONABLY ANTICIPATED DEMAND FOR SUCH ACTIVITIES AND THE PRIMARY PURPOSES OF THE DEVELOPMENT."

I. Determining the degree to which the policies apply to each locality

Almost every locality desiring to prepare a Waterfront Revitalization Program has the potential to increase the use of its waterfront for water-dependent and water-enhanced recreation activities. Because each locality's waterfront is different, the amount and type of activities possible will differ and will depend upon a number of factors. These include: the amount, location, type, condition, and use of existing waterfront water-related recreation facilities and parks; the location and type of existing and proposed residential, commercial and industrial development; the location of public transportation; the potential recreation opportunities; and the types and locations of specific uses and projects proposed to implement the local program objectives.

The initial inventory and analysis steps required of all localities wishing to prepare a program will reveal much of the information about the above factors and thus the potential for increasing water-related recreational opportunities. Several different types of situations are possible with respect to increasing water-related recreation activities, depending upon the circumstances of the locality. For example, a locality with existing water-related recreation facilities along its waterfront should show that these facilities are sufficient or, if they are not, show how and where additional facilities can be provided. On the other hand, a locality may be developed to such an extent that little or no waterfront recreation facilities exist and there would be difficulties in providing for many types of such facilities. In this case, providing more of these facilities would depend upon coming up with imaginative proposals for fitting in appropriate types of new waterfront facilities with existing development. A third situation might be one in which a community has a large amount of undeveloped waterfront land with no waterfront recreational facilities. If a large-scale development were proposed for the community's waterfront, the waterfront program would have to ensure that such a development provide water-related recreation facilities as a multiple use where appropriate.

II. Identifying the techniques available and suitable for implementing these policies

There are several means available to localities for increasing water-related recreation facilities along the waterfront. Those most suitable for a locality's particular situation should be identified in the waterfront program. One of the means not described below but which can be used in conjunction with either one or both is the use of cooperative arrangements between a locality and private

developers to provide recreational opportunities in connection with new developments. The following means should be considered.

A) Land Acquisition and Capital Construction

A locality has broad powers to acquire and develop land for public purposes. These powers could be used to acquire the lands and develop the facilities needed to increase the amount of water-related recreation on the waterfront. A provision of State law provides that the State Office of Parks, Recreation and Historic Preservation can cooperate with communities in the development of recreation facilities.

B) Regulation

There are several regulatory methods localities can use to provide for increased recreation:

1. Zoning districts can be created, where appropriate, for the protection of natural resources such as wetlands or other features important for the development of certain kinds of recreation, such as sandy beaches for swimming. These districts can also prescribe selected water-related recreational activities or require the provision of open space as a condition of approval of major new developments which would then be used for recreation.

2. Flood plains or flood hazard districts can be created which permit parks, public and private marinas, boat launching sites, wildlife sanctuaries or other types of recreational uses not susceptible to substantial damage from floods.

3. Transfer of Development Rights (TDR) is a potentially valuabe tool which can be used to provide for open space for recreation while permitting the development which otherwise would occur on that land to occur elsewhere in the locality.

4. Subdivision regulations can be used to require, as a condition of approval, the provision of lands for open space purposes where such developments occur in waterfront areas. Such regulations also allow, in lieu of providing land, payment of fees to the municipality to be used for purchase of parks and recreational land elsewhere.

5. Municipalities have the power, under General Municipal Law (Article 18-A), to establish industrial development agencies which can be used,

among other purposes, for the promotion, development, encouragement, and assistance of private sector activities to improve waterfront recreational opportunities.

6. Local zoning or site plan approval ordinances may establish site design criteria and standards for large planned developments which can require the inclusion of recreation and open space use within such developments.

III. Determining whether a community's treatment of these policies is adequate

As stated above, communities have a variety of techniques available for increasing water-related recreation facilities along the waterfront. The Department of State, in determining whether the techniques chosen are adequate to meet the policy requirements of Article 42, will evaluate them against the circumstances of each locality. The following factors will be used in judging the effectiveness of the locality's proposals for meeting the policy requirements:

(A The amount, location, type, condition, and use of existing waterfront water-related recreation facilities.

These factors relating to a community's existing water-related recreation facilities will be reviewed in evaluating the effectiveness of its program proposals for dealing with recreation. The substance of the program will vary from community to community, depending upon the characteristics of these factors. Obviously, if a community already has a large number of various types of water-related recreation facilities which are well-located, in good condition, and used by its citizens, its need for additional facilities may not be great and will be so reflected in its waterfront program. On the other hand, a locality with deficiencies in water-related recreation facilities, i.e., few facilities with little variety in activities available; poor access in terms of public transportation; poorly maintained; not well-used, etc., will be required to show in its program what it proposes to do to ameliorate the situation.

(B) The location and type of existing and proposed residential, commercial, and industrial development and the degree of pressure for additional development.

The nature of existing and proposed development and its location will have a great influence on the provision of increased water-related recreation facilities. A highly developed waterfront will effectively prohibit

many types of recreation facilities from being provided, as will the type of development, i.e., heavy waterfront industry, such as a steel mill, may not be compatible with adjacent waterfront recreation such as picnicking or swimming. On the other hand, a community with a sparsely developed waterfront may have many more opportunities for providing additional recreation facilities, if other factors are favorable. A community's Waterfront Revitalization Program will thus have to recognize the location and type of its existing development in its proposals for waterfront recreation facilities.

The degree of pressure for additional development will particularly relate to the timing for providing waterfront recreation facilities. Where development pressures are great, the timing for providing such facilities must be such that opportunities are not foreclosed by development before action can be taken.

(C) Proposals for large-scale developments to be located on the waterfront.

A community's Waterfront Revitalization Program should contain a procedure for ensuring that proposals for developments of this nature also contain recreation facilities as multiple uses where appropriate to the development and to other circumstances of the community.

(D) The natural characteristics of the waterfront as they relate to potential recreation opportunities.

This factor will be judged against a community's proposals for increasing recreation facilities to ensure that the proposals are realistic in terms of existing natural characteristics. Simply put, these characteristics must match the type of facilities being proposed. For example, a proposal for development of a beach for swimming must be reasonable in terms of the physical characteristics of the beach and the water to permit swimming.

(E) The proposals in the program for specific uses and projects to increase recreation opportunities.

Proposals to increase water-dependent and water-enhanced recreation facilities will be specifically looked for in a community's Waterfront Revitalization Program. Such proposals will be expected to be given priority over non-water related proposals on the waterfront. The Department of State will also evaluate the proposals against the anticipated demand for them. This demand factor should be carefully developed to ensure that facilities will, in fact, be used by citizens of the community.

(F) The fiscal capability of the locality measured against the cost of proposals for acquiring waterfront lands for recreation and developing specific facilities.

The costs of acquiring land and developing facilities for waterfront recreation must be realistic in terms of the fiscal resources of the locality and the possibility of assistance from other public and private sources.

HISTORIC RESOURCES

New York's coast is rich in structures, sites and areas of significance in the history, architecture, archeology and culture of the State. The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) recognizes the contribution of historic resources to the character and economic development potential of a community and requires the "promotion and preservation of ... historic and cultural ... resources as community amenities and tourist destinations", "the reuse of existing...building stock," and "the restoration and revitalization of ... man-made resources". Therefore, DOS regulations require that to be approved a LWRP must further the following policy: "PROTECT, ENHANCE AND RESTORE STRUCTURES, DISTRICTS, AREAS OR SITES THAT ARE OF SIGNIFICANCE IN THE HISTORY, ARCHITECTURE, ARCHEOLOGY, OR CULTURE OF THE STATE, ITS COMMUNITIES OR THE NATION".

Determining the degree to which this policy applies to each locality

The amount of attention that a local program pays to historic resources will depend on the extent of these resources in a community. Some communities may retain along their waterfronts large areas of historic residential and commercial structures with few gaps or incongruous elements. Many other communities may have only one or two structures of historic interest scattered amongst more recent development. A few communities may retain little or no evidence of past history. Each community should, however:

A. Record in the local resource inventory structures, sites and areas of significance in the history, architecture, archeology, and culture of the community, State or Nation.

Structures, sites and areas that the Department of State and others consider to be of significance include:

a resource which is in a federal or State park established, among other reasons, to protect and preserve the resource

2. a resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places

3. an archeological resource which is on the State Department of Education's inventory of archeological sites

4. a resource that is a significant component of an Urban Cultural Park

5. a local landmark, park, or locally designated historic district

Where a structure, site or district is of historic significance but has not been designated in one of the above ways, the community should take steps to see that it is officially recognized at least at the local level.

II. Identifying the techniques available and suitable for implementing this policy

New York State communities can protect historic resources in two general ways. They have substantial powers to regulate for the protection of historic and aesthetic resources, and they have broad powers to acquire real property.

There are two types of preservation regulations: those meant to apply to historic districts and those meant to apply to individual landmarks. The district approach applies where many or most of the buildings in a delineated area are of historic significance while the other, as the name indicates, is concerned with the preservation of individual buildings and possibly adjacent sites.

Generally a local historic preservation law establishes some procedure for nominating a district or landmark and then identifies the actions -- alteration, new construction, demolition -- which are subject to regulation. Also, the law usually contains standards for decisions made in reviewing proposed actions. The Department of the Interior's "Standards for Rehabilitation" and "Guidelines for Rehabilitating Historic Buildings" may serve as a good basis for detailed review standards. When permissible under State building and fire codes, these standards may be achieved in part by modifying local codes.

As mentioned above, communities can protect historic resources by acquiring interests in real property. Not only can they acquire full fee interests but also lesser interests. This is a valuable means of acquiring property to ensure its preservation while avoiding the cost of outright acquisition.

In addition to the local powers of regulation and acquisition, communities can encourage reuse of historic buildings by educating the public about federal tax incentives for historic rehabilitation. They can also operate programs to provide government grant monies to individuals for rehabilitating historic structures. Such grant programs have encouraged substantial private investment in the State's older developed areas.

III. Determining whether a community's treatment of this policy is adequate

To be considered adequate a program should:

A. Provide assurance that significant historic resources will be protected

As described above, strong mechanisms are available to local governments for protecting historic resources. Depending on the extent of historic resources and the level of development pressure, a community's approach will vary. In many cases, adequate mechanisms are already in place; but in other cases, communities will need to strengthen their ability to protect single resources or a district.

B. Demonstrate how the community will encourage re-use of historic resources

Traditionally, certain historic resources have been preserved because of their association with historic personages or events. More recently, historic preservation activities have expanded to include buildings and areas that represent a particular historic era. The new historic preservation movement has sought to rehabilitate residential structures and adapt old commercial buildings to new uses. In addition to giving people a sense of time, place and meaning in terms of where they live and work, recent preservation projects have been beneficial for purely business reasons. For a start they have created jobs and trained new workers and are generally less costly per square foot than new construction projects.

To take advantage of the benefits of historic preservation and to encourage private sector involvement in the re-use of historic resources, a community can:

1. prepare a detailed program of incentives and goals for re-use of specific resources which are especially suited to various types of adaptation, perhaps as part of a larger recreational, residential or commercial project, or

2. at a minimum and as permissible, modify local codes and other regulations in order to facilitate appropriate adaptive re-use of historic structures.

VISUAL QUALITY

State policies on the waterfront recognize not only the inherent value of coastal scenery but also its social and economic worth. The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) declares that "impairment of scenic beauty" should be prevented at the same time that coastal resources are being developed. Article 42 gives additional direction in this regard to local governments wishing to develop local waterfront revitalization programs by strongly encouraging a community: (1) to promote and preserve "scenic, historic, cultural and natural resources as .... amenities and tourist destinations" and (2) to apply "local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites". Therefore, DOS regulations require that to be approved a LWRP must further the following policies:

1 "PREVENT IMPAIRMENT OF SCENIC RESOURCES OF STATEWIDE SIGNIFICANCE, AS IDENTIFIED ON THE COASTAL AREA MAP. IMPAIRMENT SHALL INCLUDE:

(i) THE IRREVERSIBLE MODIFICATION OF GEOLOGICAL FORMS, THE DESTRUCTION OR REMOVAL OF VEGETATION, THE DESTRUCTION OR REMOVAL OF STRUCTURES, WHEREVER THE GEOGOLIC 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."

(2) "PROTECT, RESTORE AND ENHANCE NATURAL AND MAN-MADE RESOURCES WHICH ARE NOT IDENTIFIED AS BEING OF STATEWIDE SIGNIFICANCE, BUT WHICH CONTRIBUTE TO THE SCENIC QUALITY OF THE COASTAL AREA."

The DOS recognizes the great variation in the visual characteristics of communities throughout the coastal area. It also recognizes that resident attitudes towards visual quality vary greatly depending not only on a community's physical character but also on such conditions as major commercial and industrial activities, employment needs, and financial resources. In a resort town, residents may be very concerned about preserving the natural and historic features which attract tourists; while in a small city where industries have folded, residents are likely to be far more concerned about unemployment than about dilapidated structures degrading their waterfront. Nonetheless, the DOS is committed to protecting, restoring and enhancing the visual quality of the State's coastal areas. The Department expects each community, at a minimun, to assess the visual quality of its waterfront and to appropriately strengthen its capability for responding to potential visual impacts of future development.

I. Determining the degree to which these policies apply to each locality

A. Describe in general the natural characteristics of the community's coastal landscape and also the appearance of land uses along its waterfront.

Every coastal community can be described in terms of visual quality. One community may be more attractive overall than another, but almost every community has some visual feature which is worthy of being protected, restored or enhanced. An agricultural village or historic fishing town may be visually pleasant from one end of the coastal area to the other; but even a highly industrialized community may have a visually dynamic waterfront which can be observed from at least a few access points.

B. Record in the local resource inventory scenic resources of statewide significance.

The DOS will identify a limited number of scenic resources of statewide significance on the Coastal Area Map. These resources are unique in the State and of especially high quality. If a community believes that it contains a resource which should be designated on the Coastal Area Map, it may request as part of its local program that the map be amended to include this resource.

C. Identify in the local resource inventory scenic resources of local or regional significance

The local inventory should include the location and geographic limits of scenic areas of local or regional significance. It should also include a description of the important components of each area and how they combine to create its scenic quality. Depending on the community, important components would include natural elements, such as distinctive geological features or views of coastal waters, and also architectural and other man-made elements of aesthetic, cultural and historic value.

Identification of scenic areas in the inventory should be reinforced by indications that the public recognizes the scenic value of these identified areas. Such recognition may be demonstrated by identification of an area in previous inventories, by public ownership, by public park development, or simply by regular use of an area by residents who enjoy its scenic qualities. Public recognition can be further substantiated through a public opinion survey.

D. Identify in the local resource inventory specific degraded areas or general conditions which impair the visual quality of the entire waterfront.

The inventory of a community's waterfront should include areas that are visually degraded. In addition to the location and geographic extent of these areas, the inventory should describe the specific conditions, such as blighted piers and warehouses, which cause the unattractive appearance. The inventory should describe the relationship of these conditions to nearby land and water uses. Also, the inventory should identify degrading conditions, such as litter, billboards or junkyards, which affect the visual quality of the entire waterfront.

II. Identifying the techniques available and suitable for implementing these policies

Communities in New York can employ a wide variety of mechanisms to protect and improve visual quality. They can incorporate height and bulk restrictions or detailed site plan review provisions into zoning ordinances; allow clustering in subdivisions to preserve open space and scenic features; create special districts to protect and promote historic, cultural and scenic elements; prepare separate ordinances to prevent the visual abuses sometimes caused by signs, parking lots, junkyards, etc., or acquire property, scenic easements, or development rights.

III. Determining whether a community's treatment of these policies is adequate

In many instances, coastal communities have already instituted one or more of the local mechanisms available for managing visual quality and thus need few, if any, additions to enable them to more effectively oversee the visual evolution of their communities. However, some localities have not yet incorporated measures for improving or protecting visual quality; such measures may be particularly important in areas where significant scenic resources remain unguarded or where visual degradation seriously discourages economic development.

A. Provide assurance that the community will prevent impairment of any scenic resource identified as being of statewide, regional or local significance

The DOS is particularly concerned that a coastal community containing or adjacent to a scenic resource of statewide significance incorporates measures in its local program to protect the resource; the Department has similar concerns about regional and local scenic resources. The following activities would be likely to impair scenic beauty:

removal of attractive vegetation

modification of existing landforms

demolition of attractive structures

addition of structures or other elements (signs, towers, etc.) which are inappropriate in terms of use, materials, form, or scale, and/or which may completely or substantially block views of coastal waters.

Where scenic resources have been identified, a local program needs to demonstrate that it can respond to proposed development activities so as to prevent, or at least minimize, their negative effects on the identified resources. The local program could require such protective measures as:

setting structures back from shorelines or in other inconspicuous locations 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, 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 coastal waters;

using appropriate materials, in addition to vegetation, to screen unattractive elements;

using appropriate building scales, forms and materials which are compatible with and add interest to the landscape.

Local governments can incorporate such measures into their general site plan or environmental quality review and approval procedures and then apply the measures carefully to actions which might affect identified scenic resources. Depending on the type of resource, local governments could go further to create special districts which would include the resource and perhaps adjacent areas. In these districts, more strict standards would prevail than elsewhere in the community.

B. Determine what actions are most appropriate for specific degraded and/or scenic areas of the community's waterfront

By planning in advance, communities can direct some development activities toward specific degraded areas in need of improvement. They can also steer development away from especially sensitive scenic areas or take advantage of certain areas as settings for compatible types of development.

C. Provide assurance that the community has adequate tools for responding to potential impacts on the general visual quality of its waterfront

The need for tools to govern general visual quality will vary depending on the character of a community's waterfront and on development pressures. In a rural or suburban community experiencing growth pressures, the need for detailed site plan review procedures may be greater than in a highly developed community with little room for growth. In some communities, only one type of development (the proliferation of signs, parking lots, mobile homes...) may be spoiling the appearance of the waterfront. In such cases, a community may need a separate ordinance or a special section in the zoning ordinance to deal with the offending activity.

AGRICULTURE

Agricultural land that lies within the coastal boundary of a community may not be a significant percentage of the total agricultural land in that community. It can, however, be one of the most important and extensive land uses within a community's coastal area and, if so, is often characterized by a higher percentage of prime and unique farmland than is found elsewhere in the State. In addition, much of such agriculture is dependent on its coastal location. Thus, though the goal of preserving valued agricultural lands is Statewide in scope, the legislation includes a policy which, calls for "conserving and protecting agricultural land within the coastal area." Therefore, DOS regulations require that to be approved a LWRP must further the following policy: "TO CONSERVE AND PROTECT AGRICULTURAL LANDS IN THE STATE'S COASTAL AREA, AN ACTION SHALL NOT RESULT IN A LOSS, NOR IMPAIR THE PRODUCTIVITY, OF IMPORTANT AGRICULTURAL LANDS, AS IDENTIFIED ON THE COASTAL AREA MAP, IF THAT LOSS OR IMPAIRMENT WOULD ADVERSELY AFFECT THE VIABILITY OF AGRICULTURE IN AN AGRICULTURAL DISTRICT OR IF THERE IS NO AGRICULTURAL DISTRICT, IN THE AREA SURROUNDING SUCH LANDS."

Given the Program's application to a narrow strip of land, implementing a policy of promoting agricultural use of land must, to be practicable, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use. Many other factors which influence the viability of agriculture in a given area, can only be addressed on Statewide or national basis.

I. <u>Determining the degree to which this policy applies to each locality</u>

Relative to the furthering of this policy, a locality wishing to prepare a LWRP will tend to fall into one of three situations. The more urban communities may have little or no agricultural land and need not address this policy at all. On the other hand, for many rural towns, agriculture is the principal industry of the coastal area; in these communities any waterfront revitalization program will have to recognize the primacy of agriculture, or even, if it chooses, have protection of agriculture as its major objective. The third situation is one in which agriculture is one of several activities along a town's shore; in this situation the community wishing to prepare a LWRP must avoid use of agricultural land or inhibiting agricultural production but need not make protection of agriculture a major focus of its program.

The agricultural land that is to be protected is the agricultural land which is mapped on the Coastal Area Map or in the Coastal Atlas. Localities may identify additional agricultural lands of local importance and include their protection in the program.

II. Identifying the techniques available and suitable for implementing this policy

Several methods for conserving valued farmland have been utilized or proposed. The principal ones are: public purchase and lease back; farm value assessment and other tax changes; transfer of development rights; public purchase of development rights; zoning, either for exclusive agricultural uses, or very low density residential use; and the Agricultural District program and law.

Of the above methods, the public purchase and lease back will generally not appear to be suitable both from the viewpoint of the responsible public agency and the farmer, for while it ensures preservation of agricultural land, the costs are too high for the approach to be widespread, and it removes the land from direct ownership of the farmer. This technique is perhaps useful only with regard to a specific and very important farm when no other means are available. Farm value assessment is essential if farmers in the urban/rural fringe are to continue farming; however, of itself it is not sufficient to prevent conversion of farmland to urban use. New York law allows farmers who commit their land to agriculture for eight years to have their farms assessed for their agricultural value. This is a voluntary program but local governments may encourage its use. Localities should identify any such commitments.

The remaining methods have more direct application for the LWRP efforts to implement the policy of preserving agricultural lands in the coastal area.

Transfer of development rights is a relatively recent land use control technique. Its appeal is that it combines use of police power with partial compensation, thus avoiding the "taking issue". The technique has primarily been used as a way to preserve a valued low intensity or relatively uneconomic use of land (but which has high value for its physical, social or other economic characteristics) in areas where there is pressure from more intensive development. The public benefit derived from this technique is clear with regard to the land use or resource being preserved, for the land use or resource is preserved without requiring an economic sacrifice by the owner. The problems will come in choosing areas to which development rights will be transferred and assuring that there is a market for these rights in those locations. The Town of Southhampton has incorporated a form of transfer of development rights in its zoning ordinance for the express purpose of preserving agricultural lands. Such an

ordinance is one method that towns, in which development pressure on agricultural lands is strong, may choose to adopt.

Public purchase of development rights is a similar technique, in that is based on the separation of development rights from landownership. Because it is not a land use regulation per se and there is not a location to which development rights must be transferred, it is a simpler approach; however, it requires large expenditures of public money. Suffolk County has pioneered in the application of this procedure to the preservation of agricultural land. The authority for Suffolk County's program is found in the General Municipal Law, Section 247, which allows local government to acquire full title or lesser interest in lands to be preserved as open space. Such a method is available to the other areas of the State if the fiscal resources are available. This is a severe limitation on an otherwise very effective procedure.

Traditional zoning ordinances can also be a method by which localities can preserve valued agricultural lands. While zoning districts in which only agriculture and its accessory uses are permitted are not common, they have been upheld by courts, particularly in California. Such an approach might be considered by some localities. A more common zoning technique in rural communities has been to permit agricultural activities in areas zoned for large lot residential use. While this zoning is not as effective as the above procedures, it can be utilized in some areas, depending upon the degree of development pressure and the existing development patterns. If zoning is to be the method by which a coastal community preserves its agricultural land, the frequency and nature of changes and variances must be kept to a minimum for the technique to be effective.

The Agricultural District Program is the principal procedure developed by the State to preserve agricultural lands. While it may be completely effective in preserving agricultural land only where development pressure is not extreme, its provisions, in combination with other methods, it is a useful component of any LWRP. These provisions of the Agricultural District Program include farm value assessment, prohibition of local ordinances which restrict farm activity beyond the requirements of health and safety, restrictions on the use of eminent domain, restrictions on the power of special service districts to assess levies on farmland. While a locality may not initiate agricultural districts, it can be instrumental in encouraging their formation.

Another method a community may use is the SEQR process. A locality could amend its SEQR regulation to more specifically require an assessment of an action's impact on the preservation of agricultural land.

III. Determining whether a community's treatment of this policy is adequate

In developing a local waterfront revitalization program, communities with important agricultural lands may choose from a variety of methods (cf. III below) to conserve and protect agricultural lands. The DOS, in determining whether the method(s) chosen by a community are adequate to meet the requirement of Article 42, will evaluate the method(s) chosen according to the likelihood of its (their) effectiveness in preventing conversion of agricultural lands to other uses given the circumstances of each locality. The factors that will be considered in judging effectiveness are: 1) the type of farmland that exists along the shore (e.g. prime farmland in orchards or vineyards, other prime farmland, other unique farmland, farmland of statewide importance, etc.), 2) the economic, social and environmental importance of farming to the community, 3) the extent of farming in the coastal area and surrounding areas, 4) the degree of urban development pressure, 5) recent rates of loss or increase of land in farms, 6) the fiscal resources of the community, and 7) support of the method(s) by farmers. In general, the more important, in terms of soil quality and coastal dependency of the crop, etc., the agriculture is and the more development pressure there is, the more rigorous the method(s) for conserving the land will have to be in order to be judged likely to be effective.

As part of their program to conserve agricultural land, communities must provide assurance that the agencies of the local government, as well as the public, will not undertake or approve actions which are directly or indirectly detrimental to the conservation of important agricultural lands.

WATER QUALITY
and
COASTAL DEVELOPMENT

The WRCRA calls for "... a balance between economic development and preservation that will permit the beneficial use of coastal resources while...preventing...permanent adverse changes to ecological systems." More specifically the act requires that a local program include "protection of sensitive ecological areas, including but not limited to ... tidal and freshwater wetlands, fish ... habitats, ... Such protection will assure that land use or development will not affect such areas." Maintaining or achieving water quality is a major factor in realizing these and other benefits the coastal area has to offer. Conversely the type of desired land and water use should be reflected in the establishment of water quality objectives. Therefore, DOS regulations require that to be approved a LWRP must further the following policy: "STATE COASTAL AREA POLICIES AND PURPOSES OF APPROVED LOCAL WATERFRONT REVITALIZATION PROGRAMS WILL BE CONSIDERED WHILE REVIEWING COASTAL WATER CLASSIFICATIONS AND WHILE MODIFYING WATER QUALITY STANDARDS; HOWEVER, THOSE WATERS ALREADY OVERBURDENED WITH CONTAMINANTS WILL BE RECOGINZED AS BEING A DEVELOPMENT CONSTRAINT."

I. <u>Determining the degree to which this policy applies to each locality</u>

Local governments should consult the New York Coastal Atlas to determine whether any waters within the proposed waterfront program boundaries are designated as "water quality limiting" or "effluent limiting." If any waters are so identified then they are over-burdened with contaminants and must be considered to create a constraint to new development or redevelopment activities. It will be imperative that the local government consult with the regional DEC office to determine potential water quality impacts of the proposed program and to identify ways to mitigate these adverse impacts accordingly.

If a community's coastal waters are in either a higher or lower stream classification than seems necessary or appropriate in light of the community's desired land or water uses and a reasonable change in the classification could better accommodate those desired uses, then the community should include recommendations for modifying stream classification in its local program.

II. Identifying the techniques available and suitable for implementing this policy

From the locality's point of view, i.e., assuring that land and water uses are compatible with water quality objectives and that proposed land uses reinforce proposed water uses, the means for achieving this policy are traditional land use controls plus, where appropriate, controls on activities in or on the water. The other aspect of this policy, i.e. assuring that classfication of coastal waters reflects proposed land and water uses of an approved program, will be implemented as part of periodic reviews of stream classifications by DEC.

III. Determining whether a community's treatment of this policy is adequate

Localities should provide evidence that they have recognized existing water quality standards for their respective portions of coastal waters, considered the water quality impacts of their proposed program, and have consulted with technical water quality staff at DEC to identify ways to avoid or mitigate these impacts. The community must adopt and implement regulatory controls to assure that development activities proposed in the local waterfront program will not further degrade the quality of their coastal waters.

The locality's program should identify those portions of their coastal waters where the classification is inappropriate in light of proposed land and water uses. They should recommend reclassification to a higher or lower class. For example, an area with potential for shellfish development that is presently classified 'B' should be recommended to be reclassified 'A' if that is reasonably attainable. Conversely, if a portion of a locality's coastal waters classified 'A' is adjacent to an area proposed for a major water dependent industry, it may be appropriate to recommend that it be reclassified if this would facilitate development of the water dependent industry and no valuable resources are dependent on the higher stream classification.

OTHER WATER QUALITY ISSUES

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing...permanent adverse changes to ecological systems." That is to say the State of New York should assure that land and water use activities which occur along its coastal areas should not cause the destruction or impairment of coastal ecological systems. Aquatic systems, such as groundwater aquifers, tributaries, inlets, bays and estuaries, would be included. While the maintenance and enforcement of water quality standards have been traditionally the State's responsibility, there exist several opportunities for local governments to play an active role in augmenting the State's efforts in preserving water quality. In particular, municipalities should focus their efforts on several water quality problem areas for which DOS regulations have been developed. These regulations require that to be approved a LWRP must further the following policies: (1) "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," (2) "BEST MANAGEMENT PRACTICES WILL BE USED TO ENSURE THE CONTROL OF STORMWATER RUNOFF AND COMBINED SEWER OVERFLOWS DRAINING INTO COASTAL WATERS," (3) "DISCHARGE OF WASTE MATERIALS FROM VESSELS INTO COASTAL WATERS WILL BE LIMITED SO AS TO PROTECT SIGNIFICANT FISH AND WILDLIFE HABITATS, RECREATIONAL AREAS AND WATER SUPPLY AREAS," AND (4) "BEST MANAGEMENT PRACTICES WILL BE UTILIZED TO MINIMIZE THE NON-POINT DISCHARGE OF EXCESS NUTRIENTS, ORGANICS AND ERODED SOILS INTO COASTAL WATERS."

I. Determining the degree to which these policies apply to each locality

Generally all communities which elect to develop LWRP's must consider and take effective steps to anticipate and mitigate the water quality impacts of any land and water use activities proposed in their LWRP.

In particular, a municipality's response to this policy will be contingent upon the nature of the primary water quality problems which either already exist or would likely result with the implementation of the proposed LWRP should proper measures not be taken to avoid or mitigate potential water quality impacts.

For example, there are instances where conventional sewer collection and treatment systems are not servicing waterfront properties and where installation of such facilities proves too expensive to be practical. If the proposed activities of a local waterfront revitalization program are likely to result in the release of untreated sanitary wastes into coastal waters, then the community

would be expected to require that suitable alternative treatment facilities be installed and operated. The level of treatment required would depend upon existing State water quality standards and intended use of the waterfront (i.e. drinking water, swimming, boating, industrial water supply, etc).

A critical need to manage surface runoff and control of non-point sources of nutrients, organics and eroded soils may exist in communities which: (1) have had to close their beaches or shellfishing areas due to pollution, (2) have been faced with chronic shoaling of their navigation channels, or (3) had major infestations of nuisance aquatic weed species choking their bays and inlets. The types of pollutants being carried into waters include coliform and pathogenic bacteria (untreated sewage); agricultural, lawn, and garden chemicals; animal wastes; petroleum residuals from streets and parking lots; road salt; garbage and assorted debris; and eroded soil. Therefore, communities experiencing any of the above problems would need to address this policy.

Municipalities which own and operate solid waste management facilities (e.g., sanitary landfills, solid waste reduction or resource recovery facilities) located within the boundaries of their proposed LWRP must address potential groundwater and surface water pollution commonly associated with such facilities.

And, finally, communities dependent primarily on groundwater for their drinking water supply may need to regulate land use development activities which could degrade the water quality of their groundwater resources. Of particular concern are aquifer recharge areas, since it is in these areas where the potential of groundwater contamination is the greatest. For example, seepage from septic systems located on top of recharge areas could cause an increase in nitrate and chloride concentrations to levels exceding drinking water standards and thereby render drinking water supplies unfit for human consumption.

This list of water quality problem areas should be considered as being suggestive of the range and types of water quality problems local governments might consider as they prepare their LWRP's.

II. Identifying the techniques available and suitable for implementing these policies

Alternative sewage treatment 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 for which conventional facilities are too expensive. Financing these facilities can sometimes be achieved with use of state or federal funds. However, in the event these monies are unavailable, the community should have identified other means of securing needed funds, i.e., selling municipal revenue bonds, creating a special district and collecting user fees.

A variety of regulatory techniques could be adopted by communities to manage and control surface runoff. As appropriate, a municipality could adopt ordinances aimed at: controlling drainage and soil erosion from construction sites, pet control ordinances, controlled use of lawn fertilizer, and regulation of vegetation removal along streambanks or shore areas, or other potentially suitable regulatory techniques available to local governments. In addition, municipalities could further policy implementation by altering their delivery of public services, e.g., improve street cleaning programs or reduce use of road salts.

Adoption of a special zoning classification, i.e., "Marine District" or adoption of a special sanitary wastes treatment ordinance are two means by which a municipality could regulate and prevent the discharge of vessel wastes into near-shore coastal waters.

While an outright ban on the construction of new solid waste management facilities within the coastal boundary could be enforceable through zoning restrictions, such an approach is not always feasible or practical. When siting a solid waste management facility near the waterfront proves necessary, or such a facility is already located there, technological devices such as leachate collection systems must be installed as required in the solid waste management permit.

Through zoning, municipalities can limit the type and density of land use development on lands overlying an aquifer recharge area. If homes in a subdivision rely on septic tank systems to treat sanitary wastes, then the density of development may need to be controlled. If sewers are installed, then this density restriction becomes less necessary.

Municipalities are also authorized under Section 228 of Public Health Law to adopt and enforce a sanitary code, and thereby, prevent excessive nutrients from leaching into groundwater supplies. Furthermore, municipalities could consider adopting ordinances directed toward reducing animal wastes, use of domestic fertilizers, or restricting the sales of certain chemical cleaners used in septic systems that are known to have toxic residuals.

III. Determining whether a community's treatment of this policy is adequate

A community's response to water quality issues will be dictated by the kinds of water pollution problems most prevalent in their coastal area. The following criteria will be applied as appropriate to each individual situation.

A community must demonstrate how it will prevent the release of sanitary wastes into coastal waters which might result from any development activities recommended in the LWRP, particularly when conventional sewage collection and treatment facilities are neither economically nor technically feasible. Installation of alternative treatment systems should be used when they are cost effective.

While most structural approaches (e.g., construction of retention basins, replacing combined sewers with separate sewers) to controlling the flow, storage and treatment of surface runoff are generally recognized as effective in reducing the discharge of pollutants into coastal waters, these approaches are, in most instances, not economically feasible, and will not be required of communities until affordable technology is developed. Therefore, a community's response could be considered adequate if, upon submission of its local waterfront revitalization program, either structural or nonstructural means (e.g., requiring best management practices for controlling erosion, and other regulatory controls as suggested above) of controlling surface water runoff are in place.

When a community has utilized its regulatory powers to require installation of vessel wastes treatment facilities as part of its harbor development plan, then its response to this policy will be considered adequate.

Any community will have satisfied this policy if it has a solid waste management plan approved by NYDEC pursuant to the NYS Solid Waste Management Act or it has successfully obtained a construction or operation permit (pursuant to 6 NYCRR, Part 360) for a new facility proposed for construction within the coastal boundary. In instances where "midnight dumping" is a problem, municipalities should document the existence and magnitude of this problem and present a strategy for attempting to reduce or eliminate it altogether.

Specific standards by which one could assess a community's efforts to prevent groundwater contamination do not yet exist. In general, however, localities could exercise their police powers to limit the density of residential development in or near the vicinity of an aquifer recharge area.