

LOCAL WATERFRONT REVITALIZATION PROGRAM DRAFT

TOWN OF SMITHTOWN
AUGUST 2019



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Introduction

The waters and waterfront area of the Town of Smithtown have contributed to the character and economy of the Town since its founding. The shoreline, the barrier beaches, the wetlands, the Nissequogue River, Stony Brook Harbor, Long Island Sound, and the creeks and ponds of the area have provided the Town's citizens with extensive and diverse resources and opportunities for nearly four centuries. The purpose of the Smithtown Local Waterfront Revitalization Program (LWRP) is to describe and guide how the Town is managing, and will manage in the future, the use and protection of the waters, waterfront area, and their associated resources in the context of current projections of climate change and sea level rise. The scope of the LWRP recognizes the complexity and diversity of the resources and uses that define the waterfront area:

- the public parks, boating, swimming, and general public access to the water and the infrastructure they require,
- the beaches, dunes, and bluffs and the processes that continually reshape them,
- the landforms and landscapes and how they contribute to visual enjoyment of residents and visitors,
- the historic resources and how they contribute to an understanding of the past,
- the fish and wildlife and the ecosystems on which they depend,
- the salt, brackish, and fresh waters, both on the surface and below ground, and the protection of their character and quality,
- the pattern of development – commercial, residential, institutional, and open space - and how it will change in response to natural forces and human activity.

In addressing these resources and uses, the LWRP recognizes that the resources and uses vary from place to place and, as such, place specific differences are considered. The interrelationships among these resources and uses are complex and significant and are considered in addressing any one resource or use. The LWRP is based on a broad understanding of what is currently known – scientific, cultural, and economic knowledge – and establishes a set of clear policies based on that knowledge to guide management of the resources and uses.

This LWRP is the Town's second edition of its LWRP. Smithtown first adopted an LWRP in 1989. The first Town on Long Island to do so. Much has changed, and been accomplished, in the last thirty years and an update and refinement of the 1989 LWRP is in order.

The 1989 LWRP identified the natural character and lower population density of the waterfront area as a principal asset of the area. In the thirty years since the LWRP was adopted with few exceptions this overall character of the area has been maintained.¹ A major impetus for the adoption of the 1989 LWRP was concern about how the then recently closed Kings Park Psychiatric Center would be redeveloped. The 1989 LWRP called for the former KPPC to be redeveloped for park land with limited institutional and cultural uses and that its landscape character and historic resources be preserved. This has been partially achieved, in that part of the site is now a State Park with the rest under the control of the NYSOPRHP. However, many historic buildings have been lost and the new facilities envisioned by the LWRP have not yet been realized. Inappropriate dense commercial and residential development has been avoided. Indeed shortly after the adoption of the LWRP the State abandoned construction of a new access road to the site because it was inconsistent with the LWRP's standard that a continuous vegetative buffer remain between the site and Lawrence Road. This updated LWRP maintains the original vision for the redevelopment of the former KPPC with the added requirement that a Master Plan for the site be completed before any redevelopment is undertaken.

While the overall vision for Town's waterfront created in the 1989 LWRP is maintained in this LWRP, many refinements became necessary. For thirty years the Town Council with the assistance of the Department of Planning and Community Development has been reviewing development decisions utilizing the policies of the LWRP and identifying proposals inconsistencies, this is responsible for the successes described above, preserving natural vegetation between the River and Residences, directing preservation efforts to within the boundaries including preservation of 23 acres north of the Bull statue. The LWRP exists within the context of other laws and programs and since 1989 this context has evolved significantly. For instance state and federal government have completed the Long Island Sound Comprehensive Conservation Plan and the Long Island Sound Coastal Management Program. New knowledge and requirements from these programs are reflected in this LWRP. The importance of nitrogen pollution and new techniques to address it have been developed. Energy conservation is now given a higher priority by all. And the consequences of climate change for severe coastal storms and sea level rise present heightened challenges for all levels of government including Smithtown. While the Town is fortunate in having limited development, relative to other area municipalities, exposure to these risks present a significant threat to the natural and recreational resources of the Town. How to address these threats is covered in this LWRP. Finally, the LWRP addresses new opportunities to enhance the benefits the citizens derive from access to the waterfront, more open space, more trails and trail linkages, more water-dependent and water-enhanced uses.

¹ See NOAA C-CAP Land Cover Atlas for changes in land cover between 1996 and 2010. These maps indicate very little new development in the waterfront and much of that occurred within park land.

SECTION I

BOUNDARY

Boundary Purpose

The Town of Smithtown Local Waterfront Revitalization Program is both 1) a tool for the Town of Smithtown to better manage the water and waterfront resources of the Town and 2) part of a federal, state, and local coastal management partnership created by the Federal Coastal Zone Management Act, the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act, and the Town of Smithtown Local Waterfront Revitalization Program. This partnership is designed to improve and coordinate the decision making of these three levels of government to better manage the protection and use of coastal resources. To achieve this, the Smithtown LWRP sets policies for the use and protection of the waters, waterfront and coastal resources of the Town of Smithtown to be followed by the Federal, State and Town of Smithtown governments. The Program and its policies apply only to federal, state, or Town of Smithtown agency decisions. The LWRP and its policies do not apply to the decisions of Suffolk County, the villages that lie within the Town, or local agencies outside the control of the Town Board. Agreements for cooperation with the Villages of Nissequogue and Head of the Harbor have been established for the management of shared water resources. The Villages of Nissequogue and Head of the Harbor have adopted their own joint LWRP.

The geographic focus of Smithtown's LWRP is primarily the area encompassing the Town's coastal waters, waterfront, and coastal resources and uses. These resources include, but are not limited to: fishable, swimmable and potable waters; beaches; dunes; bluffs; wetlands; fish and wildlife habitats; scenic landscapes; and historic and cultural resources. In Smithtown, the relevant uses and activities include, but are not limited to: parks; commercial fishing; marinas and boatyards, boating, swimming, and other water related activities; enjoyment and appreciation of coastal scenic and cultural resources; tourism; and residential use. These resources, uses, and activities are identified more fully and analyzed in Sections II – V.

A secondary focus of the LWRP is the area where decisions of the federal, state and town governments can affect Smithtown's coastal resources and uses. This varies with the location and extent of the resource or use and may at times occur beyond the resource or use itself and even beyond the boundaries of the Town of Smithtown. All these decisions are within the scope of the Program. However, most decisions will occur at or near the resource or use, and will be concentrated along or near the shoreline. It is this area, where there is a clear interrelationship between land and water uses, and between these uses and coastal resources, that is mapped and included within the LWRP Boundary.

Criteria For Boundary Delineation

In 1982, pursuant to the Federal Coastal Zone Management Program, New York State identified the boundary of the coastal zone of New York State that is subject to the New York Coastal Management Program. Within the Town of Smithtown, the original state coastal boundary was modified to reflect the Town's LWRP boundary and the New York Coastal Management Program was modified to reflect town coastal management policies. The criteria used to establish this boundary are detailed in the State of New York Coastal Management Program and Final Environmental Impact Statement (August 1982 & 2017 update)² and include:

- “Conform with the nearest cultural feature or political boundary,” — cultural features such as, roads, railroads, utility rights of way, or political boundaries are used for ease of identification of the onshore boundary;”
- “Include all land and waters uses directly impacting coastal waters.... Such impact is defined as that which changes the physical, chemical, biological, littoral, or aesthetic characteristics or the socio-economic values of coastal waters to the extent that the character, use or availability of its resources and/or the environmental quality standards of the coastal waters are so adversely affected that they can only be maintained or restored at high cost to society;” and
- Inclusion of areas subject to coastal flooding, agricultural lands, parks, viewsheds, energy facilities, and water-dependent uses.

The boundary for the Town of Smithtown LWRP includes: 1) all areas likely to be affected by future flooding, erosion and coastal storms; 2) areas within the coastal sub-basin watersheds where the density of development, and the development's proximity to coastal waters indicate that measures to improve water quality may be required; and 3) parks and other large tracts of land whose future uses could affect the use and enjoyment of the town's coastal resources. Cultural features, such as roads, railroads, or political or existing regulatory lines are used to assure that the location of the boundary is readily apparent.

Incorporated villages are excluded from the area encompassed by the boundary except as described later where, within the villages, the town has management responsibilities due to property rights or regulatory authority³.

² Office of Coastal Zone Management National Oceanic and Atmospheric Administration and NY Department of State. 1982. New York State Coastal Management Program and Final Environmental Impact Statement. Online at: http://www.dos.ny.gov/opd/programs/pdfs/NY_CMP.pdf. See pages II-3-1 to II-3-7.

³ Within the waters of the Nissequogue River and Stony Brook Harbor there are authorities that are exercised by both the Town and the Villages. Except for an area within 500 feet from shore in the Village of Head of the Harbor all the waters of the two waterbodies are within the Town only and subject to its regulations. In addition New York State has given the Town the right to manage and regulate the resources of the State owned underwater lands. However the Villages have authority under the NYS Navigation Law to regulate vessel operations within 1500 feet of the low water mark of their shoreline whether or not that area lies within their boundary. To address their shared responsibilities the Town and Villages have enacted laws to coordinate decision making regarding

This original LWRP boundary was adopted by the Town Board and approved by the State and federal governments in 1989. This LWRP update makes minor modifications in order to continue to reflect the boundary criteria. The changes are shown on Figure 2. Generally, these adjustments were of a minor nature and intended to rationalize the line. In some cases the previous line cut across parcels, splitting individual parcels into separate pieces that were in/out of the waterfront district. For example, the existing line included only part of the Smithtown Landing Country Club in the waterfront district. In these cases, the proposed line has been adjusted to follow lot lines, ensuring that entire parcels rather than pieces are included in the waterfront area. In most of the remaining areas, the waterfront boundary line has been adjusted to match the NY State Department of Environmental Conservation's (NYSDEC) Nissequogue River Scenic and Recreational River Corridor. These map revisions provide a more consistent and coherent permitting environment in the waterfront area. In some cases, this resulted in a minor extension of the waterfront area, and in others, a minor reduction. The only other adjustment made was to include an approximately 50-acre vacant parcel and small commercial parcel adjacent to the former Kings Park Psychiatric Center site. These two parcels sit in close proximity to Upper Old Dock Road, the primary access to the town dock at Kings Park Bluff.

Boundary

SEAWARD BOUNDARY

The seaward boundary of the Smithtown LWRP is the town boundary in Long Island Sound at the New York and Connecticut boundary and the boundaries of the Town of Huntington and Brookhaven in Long Island Sound to the west and east respectively.

LANDWARD BOUNDARY

The proposed landward boundary includes: all land north of NYS Route 25A in Fort Salonga; all three state parks in the town; the grounds of the former Kings Park Psychiatric center; all property owned by the Society of St. Johnland; the Smithtown Landing Country Club; all properties within the NYS Nissequogue River Recreational River Corridor; Short Beach; Long Beach; the Nissequogue River; and Stony Brook Harbor. The east end of Long Beach, which is within the Incorporated Village of Nissequogue, is excluded from the Town's waterfront boundary. Exact boundaries are indicated on Figure 1.

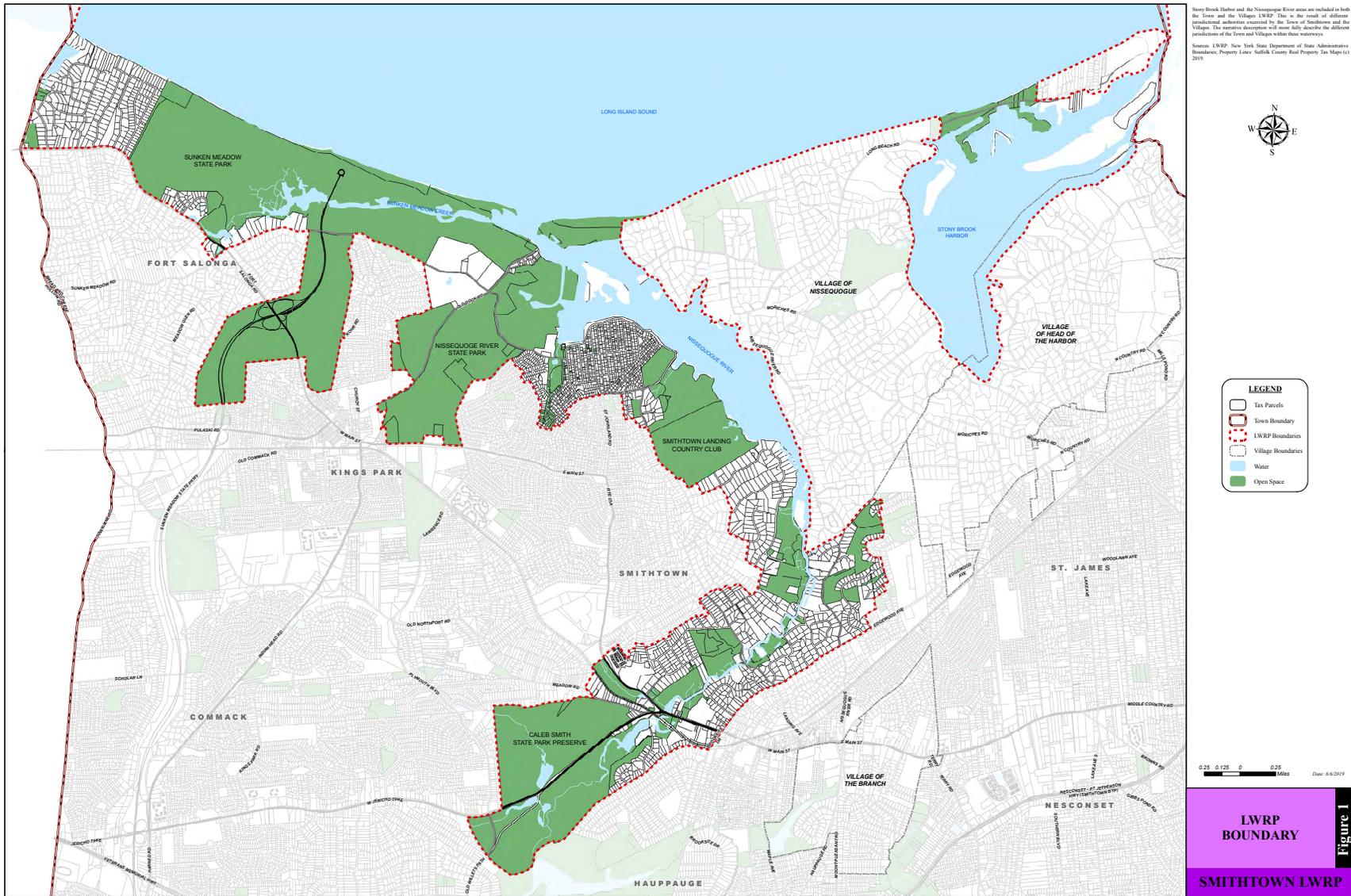
the water for they have shared responsibility. These and harbor management planning for water of the Town and Villages is discussed and addressed in the LWRP.

Areas Outside Of The Town's Waterfront Boundary But That May Be Subject To The LWRP

There are areas outside the Town's LWRP boundary that are nonetheless important to the management of the town's coastal resources because activities in these areas impact the use and protection of the town's waters and waterfront. The Coastal Management Program provides that activities "... in or outside the coastal zone affecting any land or water use or natural resource of the coastal zone..."⁴ be consistent with the State's coastal policies or those of an approved local government coastal management program. Areas outside the boundary, where activities may affect the resources or uses within it, include:

- The watersheds of the town's coastal waters. Achieving water quality objectives for the town's marine waters cannot be done without improved management of activities throughout the watersheds of Long Island Sound.
- Activities in, and the resources of, Long Island Sound. Recreational fishing activity that occurs throughout the town's marine waters, depend upon the health of a variety of species that, in turn, depend upon the health of the Sound's ecosystem extending from the nearshore waters to waters beyond the Town. Energy development and dredged material disposal in the Sound also may affect the waterfront resources and uses of the Town.
- Development in, on or near beaches, dunes or bluffs have direct impacts upon the natural protective functions of these natural resources.

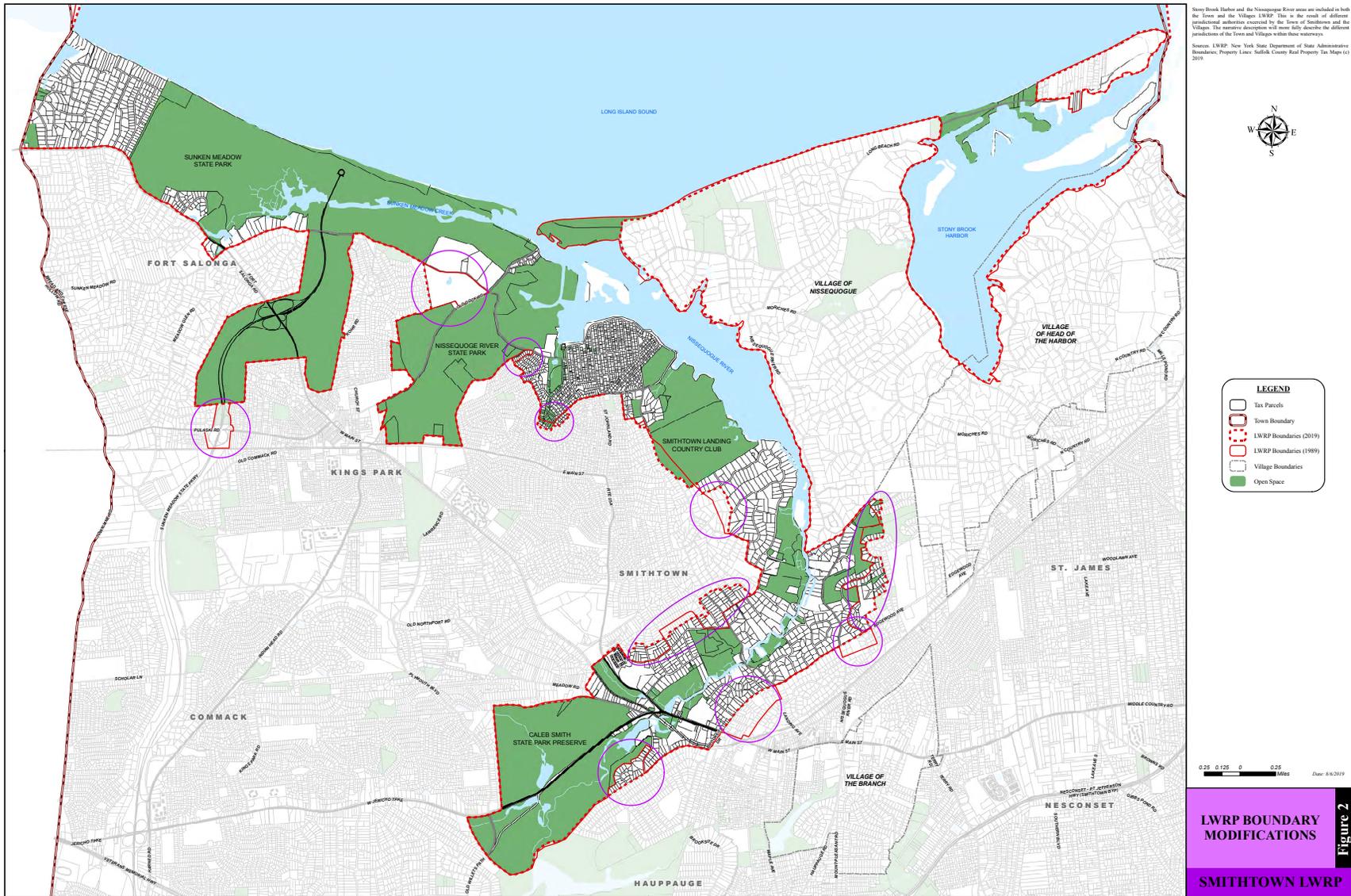
⁴ CZMA, 16 U.S.C. section 1456, section 307 (c)(1)(A).



Stony Brook Harbor and the Nissequogue River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP, New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (1) 2019.

Figure 1. LWRP Boundary



Stony Brook Harbor and the Nissequogue River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c) 2019.

Figure 2. LWRP Boundary Modifications

SECTION II

THE DEVELOPED COAST

General Development and Land Use

INVENTORY AND ANALYSIS

Development History

The waterfront of Smithtown has been an important part of the town's development history. Native Americans are thought to have had a settlement along the Nissequogue River and it was the Nissequogue River and the coastal resources of the area that drew Richard Smythe, the founder of Smithtown, and the early colonists to the area.

Until the mid-nineteenth century, when ships were the dominant mode of transportation, Smithtown's waterfront was more important to commerce than it is today. Vessels loaded and unloaded goods at landings near Old Dock Road, the Psychiatric Center Channel, Landing Road, Landing Avenue and Main Street. The Main Street area was especially important because it was the furthest upstream that commercial boats could go. The landing was adjacent to one of the few regionally important highways. West of the river, the highway was a toll road (Jericho Turnpike); to the east it was known as Middle Country Road. In the early 1800's, earthen mill dams and watermills were built on the Nissequogue River creating Phillips Mill Pond and New Mill Pond. Small hamlets developed around these mills. The mills at Phillips Mill Pond were within a few hundred feet of the landing at Jericho Turnpike. The close proximity of the industrial mills to the transportation interface caused this area to develop into the commercial hub of the Town. Although waterborne transportation was important to the early economy, it was probably the lack of a good harbor that caused Smithtown to be less regionally important than Huntington, Northport and Port Jefferson. These communities were located adjacent to deep, well-protected harbors.

As transportation and industrial technology changed, the waterfront lost its commercial and geographical significance. With the advent of the railroad, and then automobiles, the role of boats became less significant in transportation. The development of electrical power meant that industry, which previously depended on water power, could locate near less obsolete modes of transportation. In the 1870's, the Long Island Railroad was extended through Smithtown and a station was built about one mile east of the Nissequogue River. A new commercial center developed around the railroad station and has evolved into the present central business district of the Town. The old hub declined and it is no longer evident that the area was a significant business center. Today this area is on the fringe of the Central Business District.

Today, while the waterfront is an important part of the character and visual quality of the Town, the local economy is not based on the Town's waterfront. The Town has over 2,500 acres of industrially zoned land in the central and southern parts of the Town. These industrial areas are located near important transportation facilities, such as the Long Island Expressway and the Northern State Parkway.

The Town's business districts are also located generally outside the waterfront area. The western end of the Smithtown Central Business District (CBD) is located in the waterfront area; however, it is not intensively developed and the Town's policy is to guide dense development away from

the waterfront area due to environmental constraints. Neighborhood shopping centers, commercial strips, a regional mall and the St. James and Kings Park business districts are located outside the waterfront area. These areas are also more centrally located with regard to access and population.

Physical Character

The Smithtown waterfront is characterized by a diversity of high quality visual features. The shoreline is generally smooth except that it is punctuated by Sunken Meadow Creek, the Nissequogue River and Stony Brook Harbor. Steep escarpments generally 50-125 feet in height are situated behind coarse sand beaches. The escarpments ("bluffs") are not present near Fresh Pond or sand spits such as Sunken Meadow, Short Beach and Long Beach. The spits and dunes in these areas protect large estuarine and fresh water wetlands. The coastal area projects furthest inland along the Nissequogue River where the coastal flood hazard area extends as far south as Caleb Smith State Park. The upland areas of the waterfront are characterized by heavily wooded terrain.

Existing Land and Water Uses

Land use in the waterfront area is generally consistent with the town's zoning. Most of the land is used for parks, open space and one-acre residences. The existing land and water uses are shown on Figure 3. Higher density residential uses (1/4 acre lots) are prevalent in San Remo and the Upper Dock Road area. Five isolated commercial uses, including a restaurant, seafood store, two delicatessens, and a tavern are located at the Kings Park Bluff and in San Remo. The business sites in San Remo are non-conforming uses. The principal commercial area in the waterfront is the Smithtown Central Business District (CBD). The western third of the Smithtown CBD is in the waterfront area; however, the uses are not related to the water. The types of uses include filling stations, retail stores, supermarket, taverns and miscellaneous businesses.

The former Kings Park Psychiatric Center is a large land use in the waterfront area. The Center comprised approximately 565 acres and consisted of, now mostly abandoned, patient residences, administrative offices, kitchens, employee residences, a laundry, shops, a power plant, a landfill, recreational facilities, storage buildings, farm fields and woods. In 2000, New York State established Nissequogue River State Park on a 153-acre portion of the former Psychiatric Center. In 2007, another 368 acres of the psychiatric center was transferred from the Office of Mental Health to the Office of Parks, Recreation, and Historic Preservation. June 2019, The New York State passed legislation expanding Nissequogue River State Park by 365 acres and specified that NY State Parks complete a master plan for the newly expanded state park.

While the major land uses within the waterfront area are recreational and residential, and the main value of the waterfront area are the various recreational opportunities the waterfront provides or can provide. There are several uses, particularly at the intersection of Main Street and the Nissequogue River that inhibit the recreational potential that the River affords. In addition the former Kings Park Psychiatric Center presents opportunities for major recreational development, broadly defined.

The high demand for housing on Long Island has exerted pressure for higher density development in and outside the waterfront. The lack of

developable land outside the waterfront is increasing the pressure for developing in the waterfront area.

Over the years the community has instituted policies and changes to the zoning to protect the aesthetics and ecology of the waterfront. The Town has had an implicit policy since 1932, when the zoning ordinance was first adopted, to protect the natural character of the waterfront. The waterfront has always been zoned in the most restrictive category. In the 1950's and 60's the Town adopted other techniques to implement its policy of protecting the waterfront, including a land acquisition program to acquire vacant parcels, thus controlling their development. However, since the mid 1970's, little land has been acquired.

Water-Dependent and Water-Enhanced Uses

There are numerous *water-dependent* uses in the local waterfront area, including:

- Sunken Meadow State Park, the largest public park in the area with nearly 3 miles of shoreline;
- Nissequogue River Greenbelt, which includes large parcels Suffolk County has acquired along the Nissequogue River as open space for passive recreation (hiking, fishing, photography, etc.);
- Town waterfront parks and beaches, including Callahan's Beach, the Bluff (park at the terminus of Old Dock Road), Landing Avenue Park, Cruikshank Park, and nature preserves resulting from clustered development;
- Town parks in the Villages of Nissequogue and Head-of-the-Harbor, including Short Beach, Long Beach, Schubert Beach, and Cordwood Park;
- Boating facilities in Nissequogue River State Park, the Town Marina and mooring area in Stony Brook Harbor and the Smithtown Bay Yacht Club

There are numerous *water-enhanced* uses in the local waterfront area, including:

- Picnic grounds, food concessions, and a 27-hole golf course at Sunken Meadow State Park;
- Town-owned picnic areas at Callahan's Beach and Landing Avenue Park;
- The Old Dock Inn, a waterfront restaurant at the end of Old Dock Road;
- Other water-enhanced uses include the Sweetbriar Nature Center.

In addition, opportunities exist to increase water-dependent and water-enhanced uses in the Smithtown Central Business District and the former Kings Park Psychiatric Center grounds.

Though not water-dependent or water-enhanced, the Society of Saint Johnland properties, and residences in the waterfront area have benefitted by being near the shore. However, this impacts of sea level rise and storm severity has introduced a new concern for the long-term viability of residential use along the shorelines.

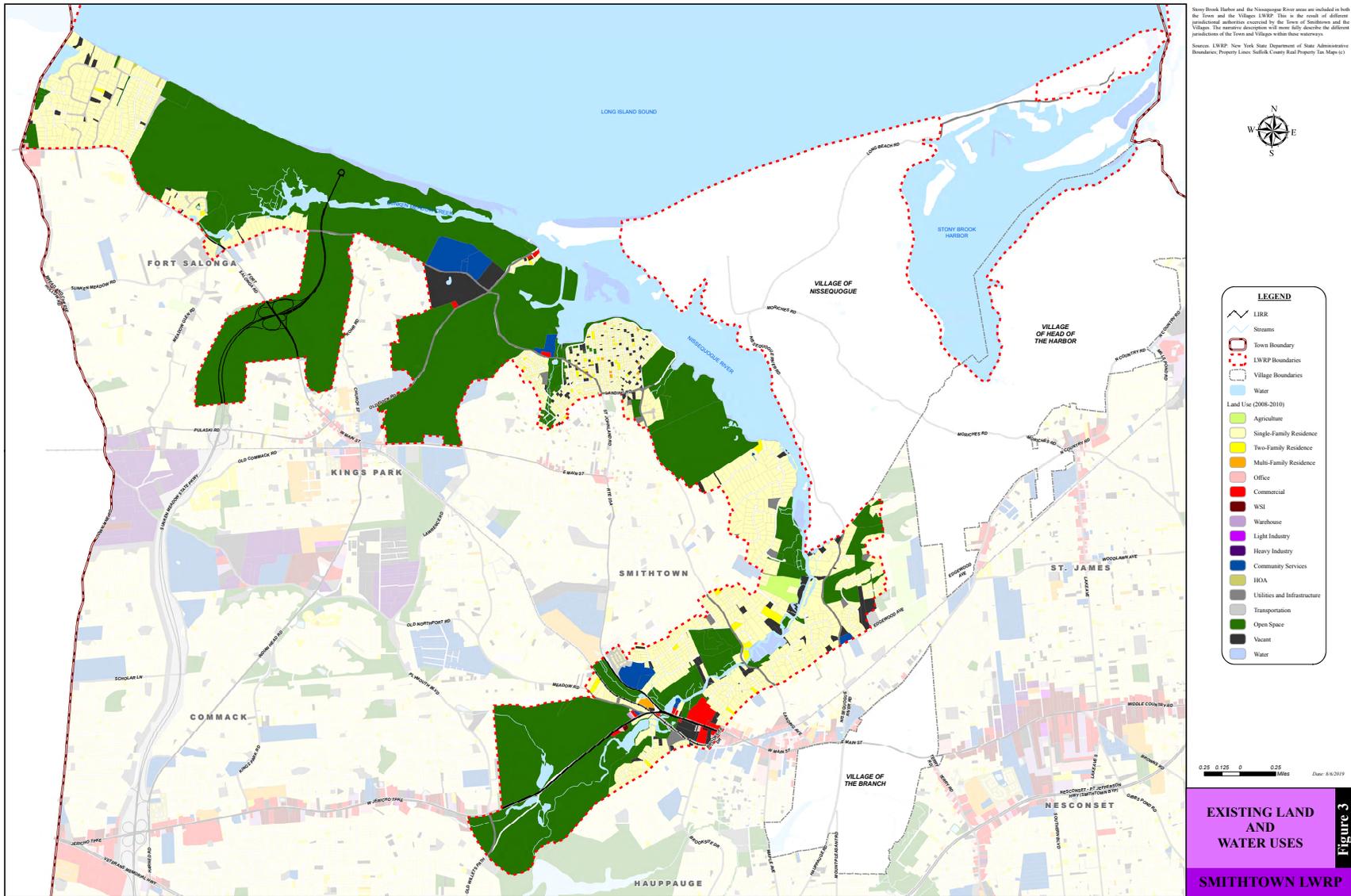


Figure 3. Existing Land & Water Uses

Underutilized, Abandoned or Deteriorated Sites

With the exception of the former Kings Park Psychiatric Center, the uses in the waterfront area are, in general, in good condition and well utilized. The condition of the former Psychiatric Center, Sunken Meadow State Park, Caleb Smith State Park, the Upper Dock Road area, the western end of the CBD, and the San Remo area are discussed below:

At the former Kings Park Psychiatric Center most buildings on the site are no longer used and are in such a deteriorated state that in many cases, reuse is not feasible. Some of these buildings were of historic significance and had reuse potential, but due to lack of care over the past 25 years these buildings have been vandalized and deteriorated to the point that rehabilitation and reuse is not economical. The State, in fact, has a demolition plan for the property. The portion of the former Psychiatric Center that is now Nissequogue River State Park has preserved and reused some of the original buildings and is providing recreational uses; however, the public would benefit from a State-developed master plan to assure the most effective use of the resources of the Park.

Sunken Meadow State Park is another large area land use. The upper level picnic area has not been used for many years, except for occasional education activities, and two utilities - Suffolk County Water Authority and a cell tower. The character of the area is both open and wooded and the conditions of the structures on the property are fair. In 2015, NYSOPRHP adopted a Master Plan for the Park, and took the original LWRP into consideration. The updated LWRP will promote the Park's Master Plan.

Caleb Smith State Park Preserve has one building that is in disrepair and could be restored. This Park, which also has a Master Plan is used for passive recreation, conservation and open space. The general character of the area within the Park is natural and wooded with some fields. Areas surrounding the Park are predominately residential. The Park buildings are sited within twenty feet to one half mile from the Nissequogue River and its tributaries.

The Smithtown Central Business District (CBD) is not blighted or deteriorating. However, the lack of amenities has a negative impact on the district. Additionally, although only a small portion of the CBD is near the water, there are a number of incompatible uses that detract from the natural character of the area. The area of Main Street in the vicinity of the Nissequogue River could be reused for development that takes better advantage of the amenities the river affords.

Development Regulations

The Town Code contains several local laws whose purpose is to manage development. The principle land use regulations in the Town include zoning, subdivision, flood damage prevention, transfer of density flow rights, and environmental and coastal quality review. Other Town regulations, such as those regarding the environment and waterways; County regulations, such as, the Sanitary Code; State regulations, such as, Scenic and Recreational Rivers and Coastal Erosion Hazard Areas; and federal regulations, such as those of the US Army Corps of Engineers can also affect the location and design of development activities. The Town regulations will be described in terms of how they implement the Policy

below and how they might be revised if necessary to improve implementation of the Policy. A separate section of the LWRP will describe State and federal programs required to be consistent with Policies of the LWRP, and actions of State and federal agencies necessary to advance the LWRP.

Comprehensive Plan

The Town's existing Comprehensive Plan was completed and adopted in 1961, prior to the adoption of the LWRP and a range of environmental regulations. In 2019, the Planning Department began a draft of a Comprehensive Plan Update, which has yet to be adopted. The draft Plan Update contains extensive information on the demographics of the town, its natural environment and cultural resources. This information, data, and maps, should be consulted when necessary to interpret and apply the coastal policies of the LWRP. The draft updated Comprehensive Plan and the LWRP are complementary. As stated below, the Comprehensive Plan acknowledges the goals of the LWRP and summarizes the land use pattern of the waterfront area:

The land uses that most effectively achieve these goals are conservation, recreation, and low-density residence. Small areas of water-related business should be located at the Kings Park Bluff and along Main Street in Smithtown. High-density residence should be avoided except in San Remo where the land use was established before the waterfront area was designated. The density should be kept as low as possible in order to avoid adverse effects on the natural resources. When possible, incompatible land uses (e.g. adult entertainment, body shops, etc.) should be relocated out of the waterfront area.

Issues and Opportunities

There are a range of challenging issues, as well as opportunities that will need to be addressed relative to some of the major facilities and land areas within the community, including:

Former Kings Park Psychiatric Center

Issue

It has been more than two decades since most of the Kings Park Psychiatric Center closed. Many of the buildings, which had historic value or reuse potential, deteriorated to the point that their rehabilitation may no longer be feasible. Buildings have been vandalized and toxic substances have been exposed. The site needs substantial state investment to be made ready for appropriate new uses.

Opportunity

Despite the condition of the property and its buildings, the size of the property, its landscape character and some remaining buildings, provide substantial opportunities for redevelopment for a broad range of recreational, institutional, and cultural uses. New York State's Saratoga Springs State Park provides a useful model of how the site could be developed.

Western Portion of the Smithtown Central Business District

Issue

The western entrance to the Smithtown Central Business District, the area where Route 25 crosses the Nissequogue River, is characterized by inappropriate uses that do not take advantage of the amenities the river can provide; nor is there a sense of entrance to the Smithtown CBD. Additionally, traffic and conflicting regulations (State Scenic River regulations and Smithtown zoning) inhibit appropriate redevelopment.

Opportunity

The presence of the River provides opportunities for water dependent and enhanced uses, such as fishing, kayaking, hiking, and picnicking, that not only increase recreational opportunities, but can visually enhance this entrance to the Smithtown CBD. Other uses upland from the river, that are appropriate for a central business district, but that are also compatible with the natural character of the River, can be developed.

St. Johnland

Issue

St. Johnland is an important facility providing needed nursing home services to the community and can increase the range of services it provides by expanding. However its campus setting is surrounded by natural open space important to the character and environmental quality of the Town's waterfront area.

Opportunity

There is an opportunity to allow for expansion of the facility and its services while preserving the open space character of the area through zoning incentives, transfer of development rights, and/or land swaps.

San Remo

Issue

The San Remo neighborhood is a long established neighborhood of dense, primarily single-family homes, located in an area where natural conditions would indicate the need for lower density to avoid water quality and storm water management problems. Given that the nature of the development cannot be expected to change, the challenge is how to address water quality and storm water problems.

Opportunity

There are opportunities to improve water quality by reducing storm water runoff and pollution from septic systems through a range of applications including sewers, green infrastructure, and innovative water treatment techniques.

Public Infrastructure

Issue

The Smithtown Comprehensive Plan describes the extent and nature of the public infrastructure in the Town including: Power, Communications, Water, Drainage, Sewage, and Solid Waste. Within the waterfront area, lack of wireless communication facilities, availability of sewers and adequacy of sewage treatment, drainage systems adequacy, and availability of public water supply are issues to be addressed. (See Comprehensive Plan Volume IV, Community Facilities Study, Section VIII, Utilities and Other Infrastructure)

Opportunity

Sewage and water supply, drainage and power issues are addressed in the policies on water quality and supply, flooding, erosion and sea level rise, and energy and mineral resources. Opportunities need to be found to improve wireless communication in the waterfront area without compromising the visual quality associated with the extensive open space of the area.

Other sections of the LWRP address more fully the characteristic uses of the coastal area including: open space, recreation and public access; natural areas; uses of the harbors: agriculture; historic resources and scenic areas.

POLICIES

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

This policy is intended to maintain, with some exceptions, the general mix of land uses that presently characterize the waterfront area and is shown on Figure 4. This pattern is one of large areas of open space, active water-dependent or water-enhanced recreational uses, limited areas of residential use, a large area to be redeveloped for primarily recreational purposes, and a few commercial uses, some of which should be redeveloped to more appropriate uses given their location near the Nissequogue River and the Central Business District.

1.1 Support the land and water use pattern as described below

a. Fort Salonga

- This sub-area generally consists of low density, single-family residential development. Small vacant parcels should be developed in accordance with existing zoning, which calls for the same low density residential uses. Future development should not be more intensive than the existing development pattern.

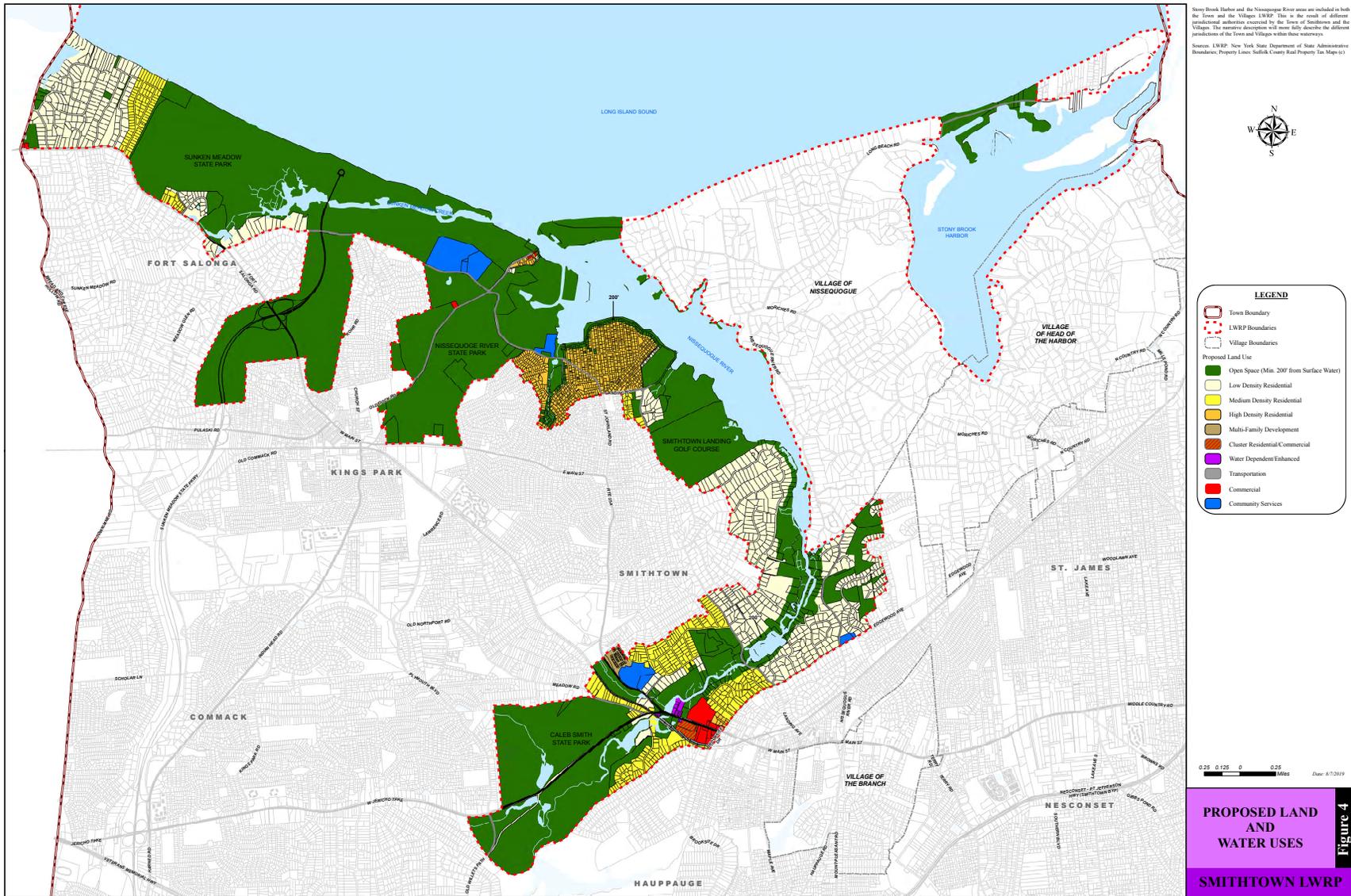
b. Sunken Meadow State Park area

- The Sunken Meadow State Park area includes all of Sunken Meadow State Park and St. Johnland. It is primarily utilized for recreational purposes. Sunken Meadow State Park should continue to be used for recreational purposes. Future development at St. Johnland should be concentrated around the existing buildings. The large tracts of undisturbed land should remain in their natural state.

c. Nissequogue River State Park area

- It is proposed that this property consist of a variety of land uses pursuant to a master plan. The property should consist mostly of open space used for recreational purposes with a core area of recreational, cultural, institutional, and limited residential uses, buildings, and infrastructure. The open space should consist of active recreation, agriculture, and conservation land uses. Most of the active recreation should be located on NYS 25A near the entrance to the property.
- The Town has many acres of mature woodland habitats, but virtually no abandoned field ecosystems. As important as mature woods are, other ecosystems are equally important. In order to promote ecological diversity, land management techniques, such as mowing, pruning, contained burns, etc. should be incorporated.

- The existing wooded areas along Lawrence Road should remain in their natural state to act as a buffer separating the surrounding residential land uses.
- d. San Remo
- The San Remo area is almost fully developed with high density, single and some multi-family residential uses. Small, vacant undersized properties should remain undeveloped in an effort to control erosion, flooding, and pollution problems in the area.
- e. Smithtown Landing
- The Smithtown Landing area consists of all of the land along the east and west sides of the Nissequogue River from San Remo south to the Long Island Railroad on the west side of the river and from the Village of Nissequogue boundary to Cherry Lane on the east side. It is predominantly comprised of conservation, recreation, and low-density residential development.
 - Future development of vacant parcels shall complement the existing land use pattern
 - In the Oakside Drive open development, density shall not exceed one dwelling per two acres
 - The greenbelt should be completed and expanded in order to create a continuous natural corridor along the river and the Greenbelt Trail should be relocated from streets to along the river
- f. Upper Nissequogue River Area
- This area comprises all of the land south of the Smithtown Landing area with the exception of Caleb Smith State Park Preserve. It includes about a dozen properties on Meadow Road and Jericho Turnpike west of the Bull, the western portion of the Smithtown CBD, and the residential neighborhood that is south of the railroad and adjacent to Caleb Smith State Park Preserve. The uses proposed for this area are:
 - Land adjacent to the river should be used for water-dependent and water-enhanced uses
 - Non-compatible uses shall be changed to more compatible uses
 - Land along the riverbank shall be maintained for conservation and recreation
 - South side of Main Street, east of the Bull shall be developed for multi-family, recreational uses, and commercial uses including office, retail, and personal service, any development within this area shall be clustered and preserve half of the land for water-enhanced recreation.
 - Parcels on the north side of Jericho Turnpike between the Bull and Caleb Smith State Park Preserve shall be maintained or reduced in intensity
 - The commercially-zoned parcels on the south side of Jericho Turnpike between the river and Caleb Smith State Park Preserve should be incorporated into the Park. If acquisition is not feasible, the land shall be used for the lowest intensity use practical (e.g., office).



Stony Brook Harbor and the Neversink River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State, Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c)

Figure 4. Proposed Land & Water Use

- g. Caleb Smith State Park Preserve
 - This area is generally utilized for passive recreational purposes. The Park should be expanded to incorporate land that contains tributaries of the river.
- h. Short Beach/Stony Brook Harbor/Long Beach
 - The Stony Brook Harbor/Long Beach area is currently utilized for conservation and recreation purposes and shall be maintained for these uses
- i. Long Island Sound
 - To be determined with harbor management component
- j. Nissequogue River
 - To be determined with harbor management component

1.2 Ensure that development or uses take appropriate advantage of their coastal location

- a. Reserve coastal waters for water-dependent uses and activities. Water-dependent use means a business or other activity which can only be conducted in, on, over, or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.⁵
- b. Accommodate water-enhanced uses along the Town waterfront where they are compatible with surrounding development, do not displace or interfere with water-dependent uses, and reflect the unique qualities of a coastal location through appropriate design and orientation. Water-enhanced use means a use or activity that does not require a location adjacent to coastal waters, but whose location on the waterfront adds to the public use and enjoyment of the water's edge.⁶ Water-enhanced uses are primarily recreational, cultural, retail, or entertainment focused.
- c. Allow other uses that derive benefit from a waterfront location, such as residential uses, in appropriate locations provided such use does not require non-conforming structures that interfere with natural protective features or natural protective areas and do not interfere with public access or public use.

⁵ New York Executive Law, Art 42, Sec. 911(7)(as amended through 2018) and 19 NY-CRR 600.2(ah)

⁶ 19 NY-CRR 600.2(ai)

d. Avoid uses on the waterfront that cannot by their nature derive economic benefit from a waterfront location.

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

a. West End of Smithtown Central Business District at the Nissequogue River

- Redevelop the portion of the west end of the Smithtown CBD that is in close proximity to the River into a hub of water-dependent and water-enhanced low intensity recreational uses, supplemented with a mix of residential and water-enhanced commercial uses. Redevelop non-compatible uses into more compatible uses. Due to water quality impacts, residential density will be contingent upon sewerage.
- Existing commercial development at the west end of the Smithtown CBD is a source of many problems in the waterfront area. Certain intensive and intrusive land uses are not compatible with the nature of the Nissequogue River. NYS Routes 25 and 25A and parking areas accessory to commercial uses are believed to be significant sources of storm water run-off pollution. Excessive noise levels caused by area traffic volumes detract from the aesthetic value of the Nissequogue River.
- A large percentage of the west end of the CBD is undeveloped. Vacant industrial and commercial parcels should be developed for less intensive uses in an effort to reduce traffic congestion, minimize environmental impact, avoid conflicts with water-dependent recreation uses, as well as to promote the concentration of intensive uses in the existing core of the CBD. Less intensive uses will facilitate the redesign of the commercial strip, control access, improve pedestrian movement, and enhance the visual quality of the waterfront. The basic kinds of uses that shall be permitted in this area include passive recreation, limited active recreation (e.g., picnicking, tennis, etc.), multifamily when sewerage is available, or convenience stores, small offices, bars, restaurants, and boat sales, rentals and services. The general pattern that development and redevelopment should follow in the area is that the areas immediately adjacent to the River should maintain a natural character with some water-dependent uses, such as, hand-launched boat rentals, access points for fishing, and trails. Back from the shoreline water-enhanced uses, such as food service and picnicking, should have priority. Cluster development on lands away from River should be used for residential and commercial uses that are more compatible with, and take advantage of the natural character the River provides, support the Smithtown central business district, and avoid significant traffic increases while preserving a minimum of 50% thru clustering or acquisition.
- Two parcels on the south side of the road total about nine acres and are vacant. These parcels abut the Nissequogue River greenbelt and their development for active recreation would significantly enhance access to this section of the waterfront

because they front on a major highway.

b. Former Kings Park Psychiatric Center

- Redevelop the former Kings Park Psychiatric Center for a mix of cultural, recreational, institutional and limited associated residential uses and the periphery of the Center for a mix of recreational, conservation and agricultural uses with the edges kept as open space buffers.
- A Master Plan should be developed for the reuse of Nissequogue River State Park and the lands of the former Kings Park Psychiatric Center. This property should consist of a variety of land uses. The Center should consist of a core area of institutional and open space buffer. The open space buffer would consist of active recreation, agriculture, and conservation land uses. Most of the active recreation would be located on NYS 2SA near the entrance to the Center. The kinds of uses that should be permitted in this area include, nursing homes, health related facilities, colleges, schools, cultural facilities, research and development activities; uses customarily accessory to institutions including residences for staff, students, etc.; active recreation; boat clubs; golf courses; membership clubs; passive recreation; forestry; agriculture and animal husbandry.
- The remnants of the original landscape design and the general character of the landscape should be retained.

1.4 [Manage development and redevelopment in San Remo to avoid health and/or safety hazards by reason of location in flood hazard zones, poor drainage, shallow depth to ground water, ground or surface water contamination, poor soil conditions, and/or inadequate lot size.](#)

- a. The dense single-family residential development in San Remo is compromised because of the natural geologic, topographic, hydrologic, and soil conditions. The combination of the clay soils with dense, un-sewered development would contaminate the groundwater, which would pollute the Nissequogue River. Installing sewers is currently not economically feasible because the street pattern does not reflect the complex topography. However, feasible alternatives to conventional septic systems are available and should be considered.
- b. Stormwater runoff drains directly into the River. Development increases the impermeable surface area resulting in increased flow and non-point source pollution. Development in the flood hazard area exposes the residents to safety hazards and has the potential to increase flooding problems to other residents. Further, dense development would increase the demand on recreational facilities beyond their capacities. It would also result in the removal of significant amounts of vegetation, which would significantly degrade the visual quality of the waterfront area.

- c. Redevelopment presents opportunities to mitigate the negative effects of the density such as reduction of impervious surfaces and upgrading of septic systems and stormwater drainage systems.

1.5 Minimize the impacts of new development and redevelopment

- a. The following guidelines shall be used, as appropriate, in implementing development or redevelopment actions:
 - Priority shall be given to water-dependent uses;
 - The action shall enhance recommended uses;
 - The action should serve as a catalyst to private investment in the area;
 - The action shall improve the deteriorated condition of a site, and at a minimum, must not cause further deterioration (i.e. a building should not be abandoned without protecting it against vandalism and/or structural decline);
 - The action shall promote development that is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use;
 - The action shall have the potential to improve the existing economic base of the community;
 - The action shall protect or improve adjacent and upland views of the water, and, at a minimum, must not affect these views in an insensitive manner; and
 - The action shall improve the potential for development of multiple uses on the site;
 - The redevelopment of abandoned structures shall result in less environmental impact than those created by previous uses.
- b. The following guidelines shall be used in reviewing development proposals to determine whether infrastructure and public services are adequate:
 - The proposed site is served by or is near to public or private sewer and water lines;
 - Public transportation service is available within one mile of the proposed site;
 - Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed development, as well as other potential development;
 - Safe and adequate pedestrian-related infrastructure;
 - Development's water needs can be met by the existing public water supply system;
 - Sewage disposal system can accommodate the wastes generated by the development;
 - Energy needs of the proposed land development can be accommodated by existing utility systems;
 - Stormwater run-off from the proposed site can be accommodated by on-site and/or off-site facilities in an environmentally sound manner;
 - Schools, police, 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;
 - Recognition of a desirable relationship to the general landform, its topographic and geologic character to natural drainage and

surface water run-off and to the groundwater table;

- Minimize potential adverse land use, environmental, and economic impacts that would result from proposed development; and,
- Minimize the potential for adverse impacts of types of development that individually may not result in a significant adverse environmental impact, but when taken together could lead to or induce subsequent significant adverse impacts.

1.6 [No bridge or tunnel connecting Long Island and Connecticut shall be located in the Smithtown coastal area](#)

The terminus of the Sunken Meadow State Parkway is the only location in the Smithtown waterfront area where constructing a bridge or tunnel to Connecticut is feasible regarding vehicular access. However, access is only one factor to be considered in siting such a structure. Many other factors make a bridge or tunnel in this location inappropriate. They would significantly impact the recreational value and disrupt the function of the third most heavily used beach on Long Island. They would cause significant pollution of the air, water, noise, and aesthetics, and would likely cause significant adverse impacts to fish and wildlife habitat areas.

Implementation

Implementation Through Existing Local Laws

Chapter 151 - Environmental and Coastal Quality Review

The ordinance requires all uses and development within the waterfront area to be consistent with applicable State and local policies established in the Smithtown LWRP. The regulations establish procedures for an initial review of proposed actions to determine their compatibility with SEQR and the LWRP requirements and referral to appropriate boards, departments, offices, officers and other bodies of the Town regarding the policies.

Chapter 242 - Telecommunications Facilities and Structures

This ordinance sets forth requirements for siting telecommunications facilities. It establishes avoidance areas, in which Tier 2 and Tier 3 personal wireless service facilities are not permitted. The following is a list of the avoidance areas:

- flood hazard zones
- historical and culturally significant resources
- designated conservation areas
- parklands, including common areas of clustered subdivisions
- parkways
- Nissequogue River Corridor
- scenic or visual corridors as defined by the Town
- wetlands, both tidal and freshwater

Chapter 248- Subdivision Regulations.

This section specifies how vacant land can be divided into building lots.

The regulations include procedures for submitting plans, and policies regarding street layout, dedication of land for public purposes such as parks, water supply and distribution, drainage, regrading, preservation of natural features, etc. Subdivision Regulations are also significant because they are referred to in the Site Plan Review section of the Zoning Ordinance, and therefore regulate other types of development (e.g., commercial, industrial, institutional, multi-family). Subdivision Regulations are important in implementing several policies of the LWRP including appropriate location of development with regard to: public services and facilities; expediting permit procedures; activities undertaken in coastal erosion and flood hazard areas; controlling stormwater run-off; minimizing non-point discharge into coastal waters; and protecting wetlands.

The Subdivision Regulations encourage the retention of natural vegetation and discourage high maintenance landscaping near the shoreline. The regulations also require cluster development in the waterfront area.

Chapter 322- Zoning Ordinance.

Regulates how land is to be used, at what intensity, and under what conditions.

Most of the Smithtown area within the LWRP boundary is in the Town's most restrictive zoning district (i.e., R-43, one-acre density single-family residential). Higher density residential districts are located in the San Remo and Upper Dock Road areas. Small sections of the coastal area are zoned for commercial use and are generally located in the Town's central business district area.

The ordinance creates special purpose districts. One district is a "community facilities" district, which ensures that there is adequate land available for open space, environmental, recreational, and institutional facilities and uses. In order to discourage development for inappropriate uses, the district requires a minimum lot area of 5 acres to build.

Chapter 322-19 – Environmentally Sensitive Lands

This chapter requires that property in special flood hazard areas, wetlands, and other environmentally sensitive areas be excluded from computations of minimum lot area, density, building coverage or floor area. The ordinance requires that all structures be set back at least one hundred (100) feet from any wetland, escarpment, natural surface water feature, or significant wildlife habitat. It also prohibits altering environmentally sensitive land and constructing, enlarging or altering a structure within ten (10) feet of any slope higher than five (5) feet having a slope greater than twenty-five percent (25%), or any A or V Flood Hazard Zone.

Chapter 322-29 – Local Waterfront Revitalization Program

This chapter requires consistency with the LWRP as a prerequisite for the following land use and zoning related actions:

- Zone changes
- Subdivisions
- Site plans
- Building permits for new buildings
- Special exceptions
- Permits for any actions requiring any of the following variances
 - Land use
 - Height
 - Signage
 - Parking
 - Density

- Environmentally sensitive lands

This chapter prohibits the expansion, intensification or change of use of all non-residential areas except to water-dependent use unless the Town Board determines that no water-dependent use is feasible and further finds that such change, expansion or intensification of use is consistent with the policies, standards and conditions described in Section III of the LWRP. It also requires that vegetation be preserved and new vegetation planted so that at least 75% of the building that would otherwise be visible from surface water be screened at the time of completion of construction. Further, the chapter limits the gross floor area of properties in the waterfront area based on the size of the property.

Chapter 323 – Transfer of Density Flow Rights.

This chapter regulates the transfer of allowable wastewater discharge to and from sending and receiving parcels throughout the Town.

It encourages the preservation of environmentally sensitive land by including steep slopes, flood hazard zones, and areas of high groundwater in the calculation of lot area for the purpose of determining the number of rights that can be transferred from a sending parcel. It also prohibits the transfer of flow rights to environmentally sensitive sites. The chapter results in the preservation of open space in that sending parcels are required to be maintained in their natural state in perpetuity. To ensure this, the parcels are either transferred to a government or other land preservation agency or are required to have a covenant filed with the deed.

Implementation Through Changes to Local laws

Chapter 248 - Subdivision Regulations

- Reduce standard pavement width of streets in low density residential neighborhoods
- Eliminate requirement that there be no more than a 5% change in grade extending 25 feet in front of a proposed house
- Modify stormwater design standards to encourage the use of “green” drainage practices opposed to standard catch basins and dry wells.
- Allow permeable pavement in certain low traffic volume locations (e.g., overflow parking)
- Add guidelines for clustering

Chapter 322 - Zoning Ordinance

- Define water-dependent and water-enhanced uses
- Rezone the western part of the Smithtown CBD to advance the proposed redevelopment. This could be accomplished through an overlay zone or creation of a new zoning district. This would be accomplished through adoption of the Comprehensive Plan Update
- Establish a Park and Recreation zone for public and private park and recreational uses that do not allow residential uses except in a limited supportive role.

- Rezone public and private parks and open space as new “Park and Recreation” zone
- Eliminate or revise wording of §322-29A in order to avoid confusion with Chapter 151
- Establish an overlay zone for the grounds of the former Kings Park Psychiatric Center that would allow increased density of institutional uses in exchange for preserving undeveloped land in the waterfront area

Implementation Through Proposed Administrative Changes or Actions

Nissequogue Scenic and Recreational River designation

The Town should petition the DEC to redesignate that the stretch of the River Corridor in the vicinity of west end of Main St as “Community” to allow for new water-dependent and water-enhanced commercial uses

St. Johnland

The Town should facilitate a land swap between the St. Johnland Nursing Center and the former Kings Park Psychiatric Center in order to preserve natural open space and facilitate institutional reuse of the developed psychiatric center grounds.

Implementation Through Projects

Redevelopment Areas

Numerous projects, both public and private, will be required to achieve the outcomes described to complete redevelopment of the Kings Park Psychiatric Center. The Town should facilitate the development of a Master Plan that furthers the policies and objectives of the LWRP.

Property Acquisition Program

The Town has identified certain critical environmental areas that should be protected in order to maintain the environmental, aesthetic, and recreational resources of the waterfront. Reasonably large properties can be protected by mandatory cluster development; however, some parcels are small and completely fragile. Acquisition is the only way to protect these properties. The Town has analyzed these properties to determine the level of government that should be involved with acquisition. It is proposed that the State acquire property near State Parks, the County near County parks and the Town in other areas. See appendix x for current list of properties identified.

Town Acquisition Program

The Town should establish an acquisition program to prevent development on environmentally sensitive land. The Town should either acquire such land fee simple or purchase the density flow rights to transfer to other properties throughout the Town. In both cases, use of the property should be restricted to passive recreation, leaving the property in its natural state. The cost of the program could be partially covered by funds in the Town’s revolving Density Flow Rights Bank; however, it would be beneficial to supplement those funds with other sources.

Historic And Cultural Resources

INVENTORY AND ANALYSIS

Historical Background

Until the mid-nineteenth century, when ships were the dominant mode of transportation, Smithtown's waterfront was more important to commerce than it is today. Vessels loaded and unloaded goods at landings near Old Dock Road, the Psychiatric Center channel, Landing Road, Landing Avenue, and Main Street. The Main Street area was especially important because it was the furthest up stream that commercial boats could go. The landing was adjacent to one of the few regionally important highways. West of the river, the highway was a toll road (Jericho Turnpike); to the east it was known as Middle Country Road.

In the early 1800's, earthen mill dams and watermills were built on the Nissequogue River creating Phillips Mill Pond and New Mill Pond. Small hamlets developed around these mills. The mills at Phillips Mill Pond were within a few hundred feet of the landing at Jericho Turnpike. The close proximity of the industrial mills to the transportation interface caused this area to develop into the commercial hub of the Town.

Although waterborne transportation was important to the early economy, it was probably the lack of a deep harbor that caused Smithtown to be less regionally important than Huntington, Northport and Port Jefferson. These communities were located adjacent to deep, well-protected harbors.

As transportation and industrial technology changed, the waterfront lost its commercial and geographic significance. With the advent of the railroad, and then automobiles, the role of boats became less significant in transportation. The development of electrical power meant that industry, which previously depended on water power, could locate near less obsolete modes of transportation. In the 1870's, the Long Island Railroad was extended through Smithtown and a station was built about one mile east of the Nissequogue River. A new commercial center developed around the railroad station and has evolved into the present central business district of the Town. The old hub declined and it is no longer evident that the area was a significant business center. Today this area is on the fringe of the Central Business District.

Historic Resources

There are many significant historic sites in the Smithtown waterfront area. In 1981, the Town completed a comprehensive historic sites inventory approved by the State Historic Preservation Office. The inventory identified 65 historic sites in the Smithtown waterfront area. The Wyandanch Club Historic District in Caleb Smith State Park Preserve and Blydenburgh Park Historic District are both on the National Register of Historic Places. It is likely that many other sites in the waterfront area are eligible for listing as well. Table 2-1 is a list of the historic structures in

the Town's waterfront area.

There are many threats to local historic sites including increasing pressures for redevelopment, natural deterioration, lack of funds for maintenance of public sites and insensitive development on adjoining parcels. The combination of increasing population density and the lack of developable land in Smithtown is increasing pressure to maximize the development of parcels on the waterfront. Therefore, historic sites are often viewed as sites with potential for development including subdivision, building expansion and building replacement. The lack of adequate funding for maintenance of historic structures is a problem in Sunken Meadow State Park, Caleb Smith State Park Preserve, Nissequogue River State Park, and the former Kings Park Psychiatric Center. Many historic buildings in these facilities are deteriorating as a result of vandalism and have been or are likely to be destroyed in the near future. In fact, the State has been contributing to the loss of historic structures by neglecting buildings and subsequently by authorizing the razing of neglected buildings at the former Psychiatric Center.

The historic sites provide many recreational, aesthetic, and cultural opportunities. Preserved and renovated historic sites could be used to promote tourism as well as enhance the quality of life in the waterfront area.

In the case of the former Psychiatric Center, the buildings if properly protected could have been adaptively reused by the State for a variety of needs. Numerous architecturally handsome buildings are located in the Kings Park Psychiatric Center. However, many have been razed, and some are deteriorated. These buildings are by far the most significant examples of brick Victorian and colonial revival industrial and institutional architecture in the Town. In fact, this type of architecture is uncommon in all of Nassau and Suffolk Counties. The constructed landscape of the Kings Park site is also of historic value and many elements can be preserved.

Map #	Site Name	Historic Inventory ID	Map #	Site Name	Historic Inventory ID	Map #	Site Name	Historic Inventory ID
1	Remains of Fort Salonga	FS 2	35	Spruce Hill	La 19	69	Miller's House/ Treadwell Wheeler House	HR 31
2	Longbotham Lower Farmhouse	FS 3	36	Ships Hole Farm	La 20	70	Haven House	HR 32
3	Zelcer House	FS 4	37	Kenyon Estate, Cottage B	La 23	71	Isaac Blydenburgh House	HR 36
4	Brady House	FS 9	38	Kenyon Estate, Cottage A	La 24	72	Corn Crib at Blydenburgh Farm	HR 36a
5	Muma House (Punch Bowl Nursery)	FS 10	39	Kenyon Estate, Main House	La 25	73	Shed "B" of Blydenburgh Farm	HR 36c
6	Wetmore Estate- Melham	FS 12	40	Black Walnut Tree	La 26	74	Victorian Carriage House	HR 36d
7	Dreier-O'Brien House	FS 16	41	Kenyon Estate, Barn	La 27	75	Ranger Station	HR 37
8	Jonas Platt House	FS 17	42	Old Post Office	HR 3	76	The Mill House (Miller's Cottage)(Lake House)	HR 38
9	St. Johnland Nursing Home	KP 4	43	Road Bridge Over Nissequogue River	HR 4	77	New Mill	HR 39
10	Conklin House I	KP 5	44	LIRR Trestle Over Nissequogue River	HR 6	78	Seaman House	Ed 2
11	Thompson House	KP 7	45	The Smithtown Bull	HR 7	79	Steven Tyler House	Ed 5
12	Old Dock and Bluff	KP 9a	46	Head of the River School House	HR 8	80	Ebo Hill	Ed 6
13	Shea House	KP 10	47	Hill House	HR 9	81	Adam Smith House (Former Higgins Estate)	Ed 8
14	The Round Table Restaurant	KP 10a	48	Ownbey House	HR 10	82	Tracy Higgins House	Ed 9
15	Kings Park State Hospital	KP 11	49	Lawrence House	HR 11	83	Higgins Garage/ Stable	Rv 5a
16	Power House KPSH	KP 11a	50	Kelly House	HR 12	84	Site of Indian Artifacts (Carney Estate Area)	Rv 6
17	Obadiah Smith House	KP 13	51	Lawrence House	HR 12a	85	Rassapeague Club/ Carney House	Rv 7
18	Dowling House	KP 15	52	Williams House	HR 13	86	Seaman House	Rv 7a
19	Marmorzato House	KP 16	53	Gilmor House	HR 14	87	Scott remodeled Stable	Rv 7b
20	Cozzo House	KP 17	54	Cruikshank Carriage House	HR 15	88	Rider-Hall House	Rv 8
21	John Vail House	La 2	55	Cruikshank House I	HR 16	89	Maintenance Building	KP 1e
22	Gerli Estate (Smithtown Landing CC)	La 4	56	Vanacular House	HR 17	90	Biamon House- Superintendent's House	KP 1f
23	Ebenezer Jayne House	La 10	57	Caleb Smith State Park	HR 18	91	Main Refreshment Stand	KP 1g
24	Jayne/ Blydenburgh House	La 11	58	Caleb Smith House (Wyandanch Club)	HR 18a	92	Main Bathhouse	KP 1h
25	Sweet Briar Farm (Vail Blydenburgh House)	La 12	59	Barn at Caleb Smith State Park	HR 19	93	Assistant Supervisor's Quarters	KP 1a
26	Ebenezer Jayne II/ Mills Home	La 13	60	Mill House at Caleb Smith State Park	HR 20			
27	Joseph Tyler/ Wheeler House	La 14	61	Willow Pond Mill	HR 21			
28	Clark House	La 15	62	Whitman House at Caleb Smith SP	HR 22			
29	Landing Ave Bridge	La 15A	63	Vail or Webster House	HR 24			
30	Landing Ave Park and Esker	La 15B	64	Feurstein / Gould House	HR 25			
31	Hare/Holmquist/Thompson House	La 15C	65	Molinoff House	HR 27			
32	Norman Smith House	La 16	66	Phillips House (Purick House)	HR 28a			
33	Sheehan House	La 17	67	Phillip's Mill	HR 29			
34	Thompson House	La 18	68	The Mill House	HR 30			

Table 1. Historic sites in waterfront area

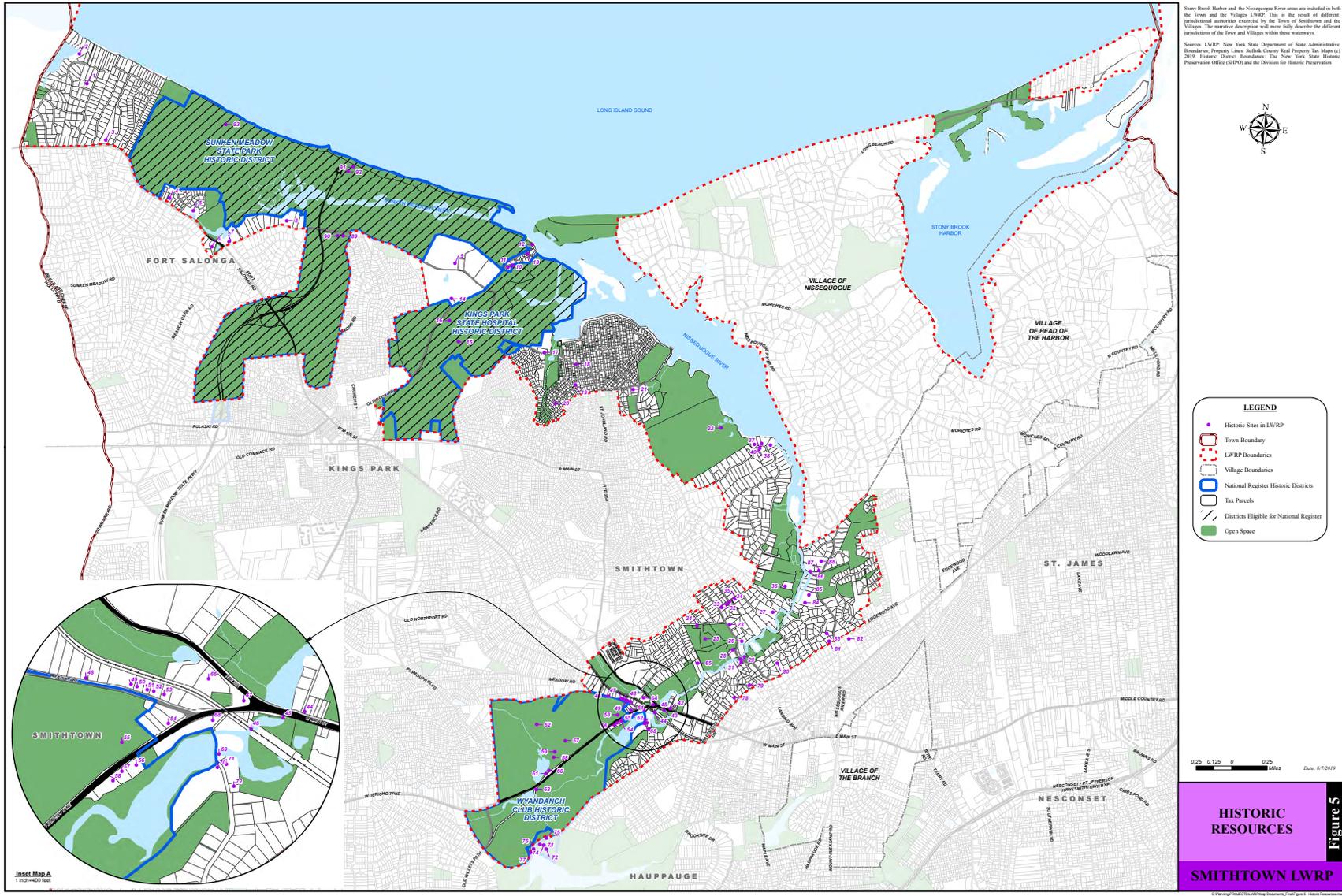


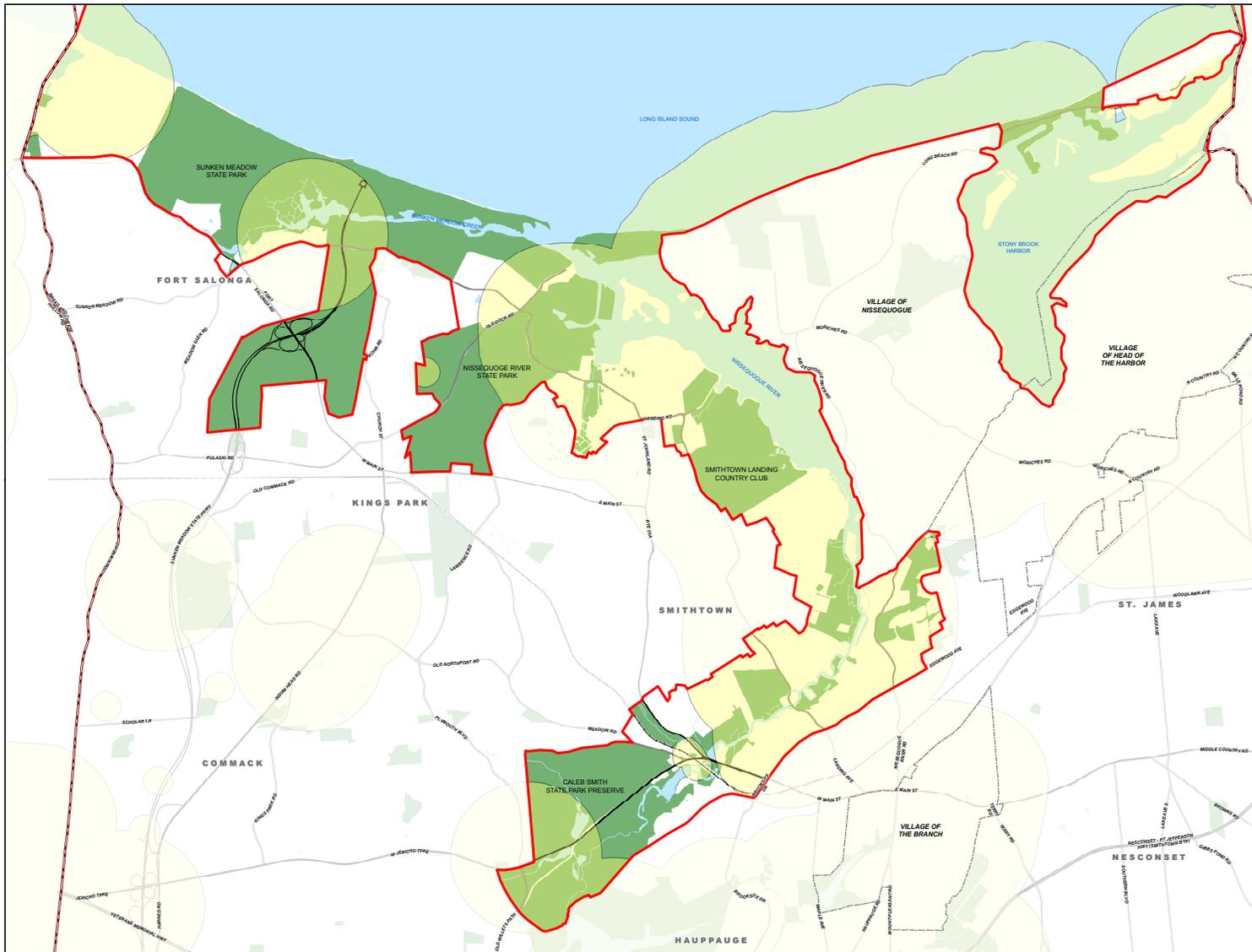
Figure 5. Historical Resources

There are numerous other significant historic features associated with the waterfront. Three fish hatcheries were located at Harrison's Pond, Landing Road and in the vicinity of the Thatch Pond Road. The remains of Fort Salonga, a revolutionary fort, are located near British Colony Road. The original pavilions in Sunken Meadow State Park are probably the best example of art moderne architecture in the Town. In addition, there are many houses in the waterfront area that were built in the eighteenth and nineteenth centuries.

Although the old central business district is an historic area, virtually none of its character remains. In the late 1800's there were about one dozen wood frame commercial and residential buildings in the vicinity of the Long Island Railroad trestle. All of those buildings have been razed or destroyed by fires between the early 1900's and 1981. Most of the business buildings today are located east of the river and are actually an expansion of the current central business district rather than remnants from the old hub of Smithtown. Nevertheless, certain historic characteristics exist and are worthy of preservation. These structures include the Long Island Railroad trestle and the historic houses around Phillips Mill Dam.

Archeological Resources

In addition to historic resources, the Smithtown waterfront contains archeological resources. Along the Nissequogue River, in particular, there are numerous sites where shell fragments and other indications of a prehistoric habitation have been found. An important Revolutionary War site is located at Fort Salonga. The density of the sites, as shown on the NYS Archeological Site Location Map, shows the significance and sensitive archeological nature of the area. To prevent destruction of these archeological sites, it is critical that archeological information is available on a site prior to development, and that as development progresses, care is taken to ensure that resources are not recklessly damaged.



Stony Brook Harbor and the Nissequogue River area are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (s) 2019; US Coastal Area Boundary: New York State Department of State



LEGEND

- Town Boundary
- LWRP Boundaries
- Village Boundaries
- NYS Archeologically Sensitive Areas
- Park Lands

0 25 0.125 0 0.25 Miles Date: 8/7/2019

**NYS
ARCHEOLOGICALLY
SENSITIVE AREAS**

SMITHTOWN LWRP

Figure 5b

POLICIES

Policy 2: Protect, enhance, and restore structures, districts, areas, and sites that are of significance to the history, architecture, archaeology, or culture of the Town, State, or Nation.

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

- a. The structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation comprise the following resources:
 1. A resource that is in a Federal or State park established, among other reasons, to protect and preserve the resource. This includes structures or sites within the Nissequogue River State Park that may be eligible for listing on the State or National Register of Historic Places.
 2. A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.
 3. A resource in or nominated to be in the State Nature and Historical Preserve Trust (Article 45 of the Environmental Conservation Law).
 4. An archeological resource that is on the State Department of Education's inventory of archeological sites.
 5. A local landmark, park, or locally designated historic site or district that is located within the boundary of the local waterfront area (see Table 1) for a list of locally designated sites and Figure 5 for their location).
- b. The Town, State, and Federal governments shall implement techniques, measures, or controls to prevent a significant adverse change to such significant structures, districts, areas or sites. A significant adverse change includes, but is not limited to:
 1. Alteration of, or addition to, one or more of the architectural, structural ornamental or functional features of a building, structure, or site that is a recognized historic, cultural, or archeological resource, or component thereof. Such features are defined as encompassing the style and general arrangement of the exterior of such building, structure or site as well as any original or

historically significant interior features. Typical historical features include: type, color and texture of building materials; entry ways and doors; fenestration; lighting fixtures; roofing, sculpture and carving; steps; rails; fencing; windows; vents and other openings; grillwork; signs; canopies; other appurtenant fixtures, accessory buildings, structures, walks, fences, steps, topographical features, earthworks, paving and signs located on the designated resource property. To the extent they are relevant, the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" should be adhered to.

2. Demolition or removal in full or part of a building, structure, or earthworks that is a recognized historic, cultural, or archeological resource or component thereof.
 3. All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archeological resource and all actions within an historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations used in making judgment about compatibility should focus on the visual and locational relationship between the proposed action and the special character of the historic, cultural, or archeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the proposed actions. With historic districts this would include infrastructure improvements or changes, such as street and sidewalk paving, street furniture and lighting.
- c. This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthwork, or component thereof of a recognized historic, cultural or archeological resource that has been officially certified as being imminently dangerous to life or public health. Nor shall the policy be construed to prevent the ordinary maintenance, repair, or proper restoration according to the U.S. Department of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings of any building, structure, site or earthwork, or component thereof of a recognized historic, cultural or archeological resource which does not involve a significant adverse change to the resource, as defined above.

2.1 [Protect, restore, and rehabilitate locally significant historic sites in the waterfront area, including in Sunken Meadow State Park, Nissequogue River State Park, Caleb Smith State Park, and at the former Kings Park Psychiatric Center](#)

- a. This policy applies to the sites on the Town's historic sites inventory (see Table 1 and Figure 5), which may or not be on the National Register of Historic Places. The historic heritage of the Town of Smithtown is among its most valued and most important educational, cultural, and economic assets. There exists in the Town certain properties, sites, landmarks, and buildings of:
 1. Special historic interest by reason of: association with historic or famous events; antiquity; association with historic or famed

personages; or being illustrative of events or periods in the history and growth of the Town;

2. Unusual aesthetic interest or value by reason of: being representative of a style or period of architecture; extraordinary architectural merit; or association with other buildings, landmarks, pieces of property, or archeological sites that are historically and/or architecturally valuable;
- b. Historic buildings at the former Kings Park Psychiatric Center are deteriorating, with some having been razed. Remaining historic buildings at the Psychiatric Center that are in restorable condition should be restored and utilized for institutional and governmental purposes as described in Policy 1. Some of the historic buildings at Sunken Meadow State Park are deteriorated and should be restored. Restoration and rehabilitation are necessary to preserve these historic resources for educational, aesthetic, recreational, and tourism purposes.

2.2 Protect and preserve archeological resources

Given the possibility of archeologically significant sites within the waterfront area, public agencies are required to contact the N.Y.S. Office of Parks, Recreation and Historic Preservation to determine appropriate protective measures to be incorporated into development decisions, including preparation of a report pursuant to *New York State Preservation Office Phase I Archeological Report Format Requirements (8-05)*.

2.3 Protect and enhance resources that are significant to the coastal culture of the Long Island Sound

- a. Protect historic shipwrecks.
- b. Prevent unauthorized collection of artifacts from shipwrecks and underwater sites.
- c. Protect the character of historic maritime communities.

IMPLEMENTATION

Implementation Through Existing Local Law

Chapter 39 - Historical Advisory Board

The Board advises the Town Board on the preservation of historical, architectural and cultural heritage.

Chapter 185 - Historic Districts

This local law establishes a procedure for the conservation, protection, rehabilitation and perpetuation of places, sites, and structures of historic, architectural, or archeological significance. It establishes an Historical Advisory Board that advises the Town Board on matters relating to the preservation of the historical, architectural and cultural heritage, as well as the establishment and maintenance of Historic Land Use districts that include specifically identified sites, properties, buildings or landmarks of special historical, cultural, or architectural interest which together form distinct geographical areas within the Town. This law requires that anyone wishing to make an environmental change within a district obtain a “certificate of appropriateness.”

Chapter 242 - Telecommunications Facilities and Structures

Section 242-5 categorizes historically and culturally significant resources as “Avoidance areas.” This section prohibits Tier 2 and Tier 3 personal wireless service facilities (PWSFs) in avoidance areas.

Chapter 248 - Subdivision of Land

Section 248-31 requires that a subdivision be clustered to protect historic resources listed in the Town’s Historic Sites Inventory

Chapter 322 - Zoning

The zoning ordinance defines a historic structure as “any structure that is:

- a. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior”

Section 322-30.4 requires that variances in subdivisions preserve historically significant structures.

Section 322-83H(3) requires that variances issued for the repair or rehabilitation of a historic structure in a flood hazard zone be based upon the

determination that:

- a. The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure
- b. The variance in the minimum necessary to preserve the historic character and design of the structure

Implementation Through Changes in Local Laws

1. Amend Chapter 322, Zoning to include sites on the Town's Historic Sites Inventory in the definition of "historic structure" or add a definition for "historic site."

Implementation Through Administrative Changes and other Actions

1. Establish historic districts throughout the waterfront area, pursuant to the procedure set forth in Chapter 185. Historic districts should include:
 - a. Edgewood Avenue
 - b. Fort Salonga
 - c. Head of the River
 - d. Kings Park
 - e. Kings Park Psychiatric Center
 - f. Landing Avenue
 - g. River Road
 - h. Sunken Meadow State Park
-

Scenic Resources

INVENTORY AND ANALYSIS

While the old aphorism “Beauty is in the eye of the beholder” is true for many situations, studies reveal that there is significant consensus among people when it comes to what is scenic, what is an attractive view, and what makes a community visually attractive.

Scenic Quality

The scenic quality of the waterfront landscape is a significant resource of the Town of Smithtown. The natural character of the landscape is a major factor in attracting visitors and residents to the recreational facilities of the waterfront area and enhances the quality of life of residents.

The landscape can be described in terms of its basic physical components: land, water, vegetation, and structures. The land consists of rolling terrain, bluffs, and beaches. Water features include ponds, streams, the Nissequogue River, Stony Brook Harbor, Sunken Meadow Creek, and Smithtown Bay. The land features are mostly in their natural condition, which contributes to the beauty of the waterfront. In a few places, the land has been altered in a way that degrades the scenic quality of the landscape. For example, angular slopes at the Old Dock Road Bluffs, which are the result of the construction of a parking lot, are out of character with the rest of the landforms in the area. Dredging for marinas in the Nissequogue River and Stony Brook Harbor has replaced some of the natural organic curves of the water's edge with a structured shoreline. Also, bulkheads built along the Fort Salonga and Nissequogue bluffs have resulted in beach narrowing, thereby reducing or eliminating public access along the shore.

The vegetation consists of trees, shrubs and ground cover. Most of the vegetation in the Smithtown waterfront is native. The most common habitats include tidal wetlands, freshwater marshes, oak forests, abandoned fields, and transitional vegetation. The fact that Smithtown's waterfront is so heavily wooded enhances the scenic quality because the woody vegetation, unlike lawns, obscures many structures that contrast with the natural landscape.

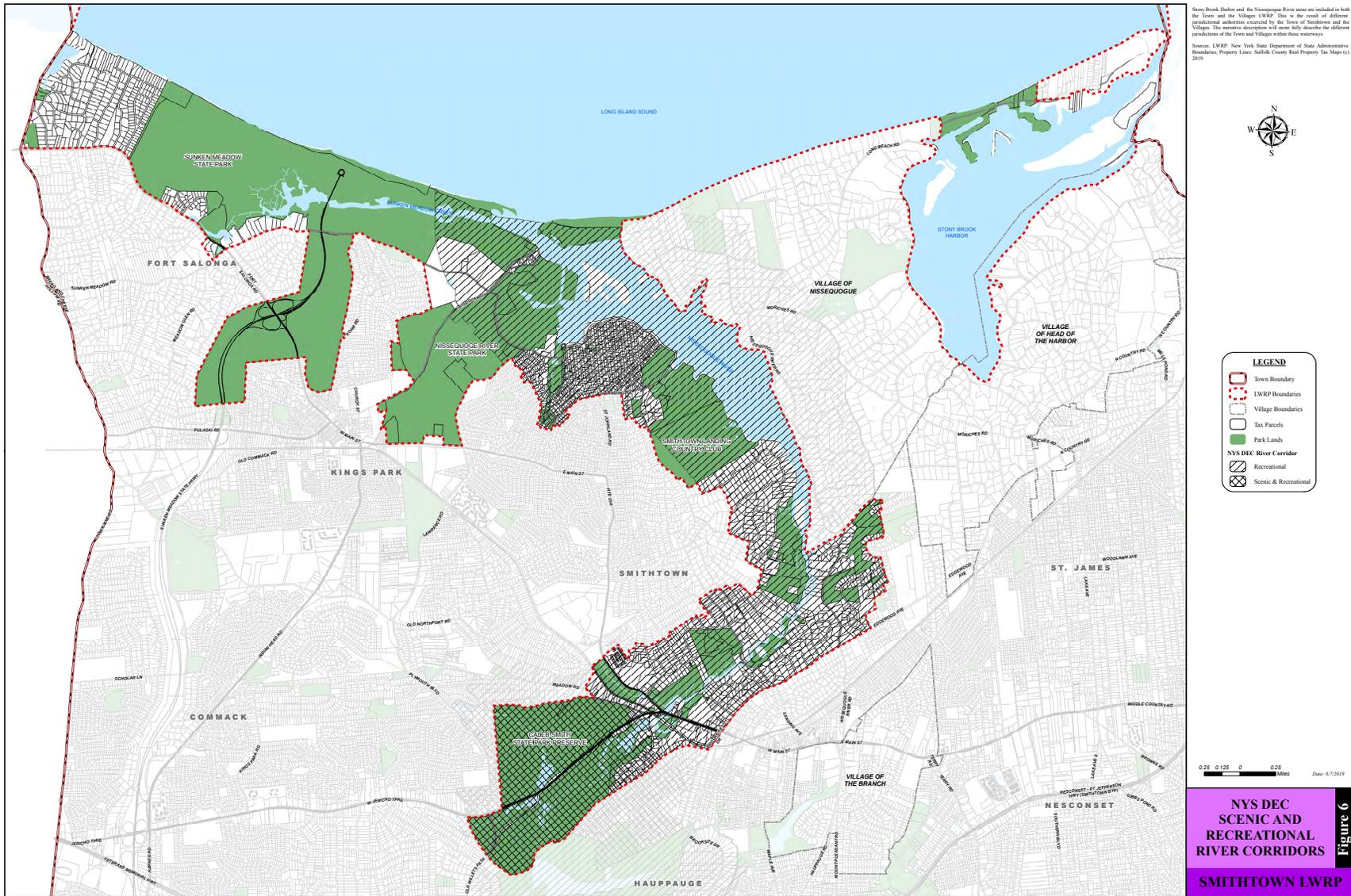
The structural component of the landscape consists of man-made objects such as buildings, roads, and power lines. Smithtown is fortunate in that it has a limited number of structures that are prominently visible from the water. The power plant smoke stack and a twelve-story building located in the former Kings Park Psychiatric Center are visible from Smithtown Bay and parts of the Nissequogue River. However, they are far from the shore and tend to act as landmarks. It is likely that future large, conspicuous structures would degrade the visual quality.

To protect scenic quality, while providing for allowable development, standards are needed for the review of development to ensure it does not compromise scenic quality. The standards need to address the siting of development, the modifications of the landform, the scale and shape of development, and the colors and materials used. One study that provides detailed criteria for the evaluation of development in scenic areas is The Scenic Resources Implementation Handbook of the Columbia River Gorge Commission (www.gorgecommission.org/handbooks.cfm)

The character of the land and water, the extensive natural vegetation, and the few discordant man made features makes most of the Town's waterfront an area of high scenic quality. The State has recognized this in its legislative designation of the Nissequogue River corridor as a *Scenic* and *Recreational River*. While only a portion of the River is designated *scenic* the standards for protection of the portion designated *recreational* also serve to protect scenic quality.

[New York State Wild, Scenic, and Recreational Rivers System Program](#)

To protect the State's major rivers this State program establishes a Rivers System with three classes of rivers--wild, scenic, and recreational--and establishes basic criteria for the designation and management of rivers and river areas included in the Rivers System. In Smithtown, an approximately 7.6 mile section of the Nissequogue River from and including New Mill Pond north to the River's confluence with the Long Island Sound has been designated as a Recreational River. (The designation also includes the tributaries and ponds connected with the River.) In addition, the portion of the river that runs through Caleb Smith State Park Preserve, roughly 1.6-miles of the river, has been designated as a Scenic River.



Stony Brook Harbor and the Nissequogue River area are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP, New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c) 2019.

Figure 6. NYS DEC Scenic and Recreational River Corridors

Vistas

People's appreciation of the scenic quality of the waterfront is enhanced by opportunities to view it, both to and from the water, from high points, and along parkways and scenic roads. There are many significant vistas in the waterfront. The summit on NYS 25A at Sunken Meadow State Park is probably one of the most important vistas of Long Island Sound from Long Island. The view has a good composition with nearby attractive vegetation of varying shades and textures, and with green wooded land reaching to the blues of the sea and sky in the distance. It is also important because of its accessibility--about 16,000 cars per day drive through this vista. There are numerous other public overlooks along the shore that are not as accessible or impressive as the vista from 25A, but are nevertheless important. They include Callahan's Beach, Sunken Meadow State Park, and the Bluffs. These vistas lack significant foreground elements, as they are located at the tops of escarpments at the water's edge. At least two potentially significant vistas are located on the grounds of the former Kings Park Psychiatric Center. One consists of the view down the boulevard, and the other consists of views from the prominence near the water tower.

The elements that give vistas importance include:

- The visibility of water;
- The lack of features that detract from the overall scene;
- The presence of conspicuous foreground, mid-ground, and background features;
- The composition of elements in the view; and
- The visibility of the scene (i.e., the number of viewers over time).

Visual Quality

It is not only the quality of the community's scenic area and significant vistas that enhance the character of the community but also the overall visual quality of its developed areas. The potential visual impact of new development in the Smithtown waterfront can be evaluated by the visual contrasts and dominance of new development with regard to its surroundings. In turn, these two components of visual impact can be ascertained by: the amount of regrading; the amount and characteristics of vegetation to be removed; the size, shape, and location of structures; and the characteristics of proposed vegetation. Many studies indicate that the size and color of structures are the most important factors affecting visual impact. Brightly colored structures tend to detract from the natural landscape more than earth tone structures. Large buildings and buildings located near the water tend to have more impact than small buildings and buildings located far from the water. Other factors that affect visibility include building material and reflectivity. These factors are especially important since people using the water are using it principally for recreation and expect high visual quality.

The positive visual quality of the communities within the waterfront area is enriched by⁷:

⁷ Adapted from 2015 Draft Comprehensive Plan

- Treed streets and wooded neighborhoods
- Large pockets of open space
- Well maintained single-family residences
- Spacious yards
- Low buildings (maximum 2-1/2 stories)
- A well defined transition between neighboring communities
- Access to the shore
- Presence of historic properties

The west end of the Smithtown central business district is a significant visual problem in the waterfront area. The commercial strip, developed in the 1950's and 1960's, strongly contrasts with the overall character of the waterfront. About one dozen buildings of utilitarian character are scattered along the quarter mile stretch of Main Street east of the Nissequogue River. The color of the majority of the buildings contrasts with the color of background vegetation. A few of the buildings are large and tend to dominate the scene. Further, the area lacks sufficient landscaping that would reduce the visual clutter and obscure the negative visual elements. Fortunately, sufficient room exists on most of the sites to provide for trees and other planting.

POLICIES

Policy 3: Protect and, where possible, enhance the scenic and visual quality of the natural and man made environment throughout the waterfront area of the Town

The visual character of Smithtown's waterfront is less urbanized than the rest of the Town and much of the neighboring waterfronts. This natural visual character is becoming increasingly rare in the region as the region develops. Smithtown has a distinctive blend of scenic and visual resources as described above. These resources are critical to the Town's character and economy as an attractive suburban town. The intent of this policy is to ensure that these important scenic and visual resources remain, and are enhanced or improved both to maintain the character of the Town and to pass them on to future generations.

3.1 Protect scenic landscapes, view sheds, and corridors, and viewpoints and views to and from the water as shown in figure 2-1

- a. Minimize the introduction of discordant features.

- b. Mitigate discordant features by removal, modification or screening.
- c. Preserve existing vegetation and plant new appropriate vegetation that enhances scenic quality and vistas.
- d. Group or orient structures to preserve open space and provide visual organization.
- e. Protect dynamic landscape elements that contribute to public enjoyment of scenic quality.
- f. Recognize water-dependent uses as important additions to the visual interest of the coast in appropriate locations (see Policy 10).
- g. Prevent the irreversible modification of natural geological forms and the removal of vegetation from dunes, bluffs and wetland areas.
- h. Enhance access to scenic overlooks in Sunken Meadow State Park and Nissequogue River State Park.

3.2 Protect the scenic quality of the designated Nissequogue River Scenic and Recreational River Corridor

- a. Adhere to the State regulations (see appendix x) for protection of the scenic quality of the Nissequogue River to the extent that an action is allowed pursuant to Town land use regulations.
- b. Adhere to town land use regulations within the designated River corridor to the extent the action is permitted pursuant to NYSDEC regulation for the *Nissequogue Scenic and Recreational River*.

3.3 Enhance the visual quality of the Smithtown Central Business District to make the area more compatible with the Nissequogue River (see Policy 1.3).

3.4 Protect and enhance the natural visual character of the waterfront area's neighborhoods

In order to protect and enhance the visual quality of the waterfront neighborhoods, the following measures should be incorporated into the design of a proposed project:

- a. Recognize and protect the elements that contribute to the natural visual quality of the neighborhood including: treed streets and

wooded areas; pockets of open space; low building height; well defined transitions between neighborhoods; access to the shore; and historic properties.

- b. Site structures and other development such as highways, power lines, and signs back from shorelines, or in other inconspicuous locations to maintain the attractive quality of the shoreline, and to retain views to and from the shore.
- c. Cluster or orient structures to retain views, save open space and provide visual organization to a development.
- d. Incorporate sound, existing structures (especially historic buildings) into the overall development scheme.
- e. Remove degrading elements, such as abandoned buildings, inappropriate signage, excessive artificial lighting, and other degrading elements as perceived by broad community consensus.
- f. Maintain or restore the original landform, except when changes screen unattractive elements and/or add appropriate interest.
- g. Maintain or add vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements.
- h. Allow selective clearing to create views of coastal waters from appropriate locations (areas that do not function as part of a natural protective area or feature) and to remove unsightly, diseased or hazardous vegetation. Where selective clearing is undertaken, street trees, shade trees, and other plant materials shall be installed to screen unattractive structures and elements from views from the water.
- i. Reduce the visual contrast (with respect to color, scale, shape, and line) between a project and the natural environment. Except for historic sites, colors should have "earth tone" hues (e.g., brown, tan, olive), low chromas, and low values (i.e., not bright or high intensity colors). Natural materials (e.g., brick, wood) or man made materials that on close inspection resemble natural materials in appearance and function (e.g. materials made of PVC or cement) should be employed.
- j. Structures having contrasting shapes (e.g., ellipses) should not be permitted.
- k. Enhance the identity of the area and reduce visual chaos by controlling signs.

IMPLEMENTATION

Implementation Through Existing Local Law

Chapter 151 - Environmental Quality and Coastal Consistency Review Law

This local law implements the provisions of the State Environmental Quality Review Act and the Waterfront Revitalization and Coastal Resources Act, thereby incorporating environmental factors and consideration of coastal resources into planning and decision making processes, and requiring the consistency of action with the LWRP.

Chapter 248 - Subdivision Regulations

This law implements the visual quality policies in several ways. It:

- Encourages the retention of natural vegetation near the shoreline
- Requires clustering of development in the waterfront area
- Requires consistency with the LWRP
- Requires the Planning Board to modify the street, highway, and regrading standards in order to reduce ground and surface water pollution, minimize impermeable surface area, minimize regrading, reduce soil erosion, etc.

Chapter 285 - Tree Preservation and Land Clearing

This local law regulates the destruction and removal of trees to secure various benefits, such as stabilization of soil, prevention of soil erosion and flooding, provision of aesthetic quality, noise barriers and natural habitats for wildlife, and maintenance of ecological systems. The ordinance also aids in erosion prevention by providing procedures that regulate the removal, destruction, or alteration of trees.

Chapter 322-29 - Zoning, Local Waterfront Revitalization Program

This section limits the size of structures by establishing maximum floor area ratio (ratio of gross floor area to lot area) in the waterfront area.

Chapter 322-87 - Site Plan Review, Compliance and Standards

This section establishes design standards for all development except one and two family homes.

Implementation Through Changes in Local Laws

Tree fund – The Town Board shall establish a tree fund that will be used to revegetate the waterfront area

Chapter 248 - Subdivision regulations

1. Establish guidelines for clustering to reduce vagueness but maintain the flexibility so that clustering reflects specific site conditions and protects open space.
2. Require that street trees and/or buffer plantings be native vegetation.

Chapter 153 Stormwater Management and Erosion and Sediment Control

1. Within the Waterfront Area, the conversion of permeable ground to impervious surface shall be offset by the planting of native vegetation. The ratio should be no less than one tree per 100 sq. ft. of additional impervious surface. Alternatively, if the property owner does not wish to or is unable to plant trees on his/her property, he/she shall contribute an equivalent monetary amount to the established tree fund

Chapter 322 - Zoning

- Reconcile the definition of activities subject to consistency review in the zoning law and the Environmental Quality and Coastal Consistency Review law (see Section VI Consistency).
- Establish design standards for residential and commercial structures and development in the waterfront area.

Implementation through Projects

Visual access to the waterfront should be enhanced by increasing access to the scenic overlooks in Sunken Meadow State Park and the Psychiatric Center. The high point in the Park is the Town's most scenic overlook and should be more accessible to pedestrians and bicyclists. Access to the overlooks in Sunken Meadow State Park should be maintained to protect the visual quality of the overlooks themselves. Vistas along the shore and the Boulevard should be enhanced by planting street trees to create and frame them. A high point near the water tower should be re-developed from an ash landfill to a scenic overlook and be made accessible to pedestrians and bicyclists.

Continue acquisition of open space and non-conforming lots if they provide access or linkage to public areas.

Install interpretive signage at selected natural areas. Signage would describe the history and use of the site and the nature of the features to enhance public understanding of why the area is significant.

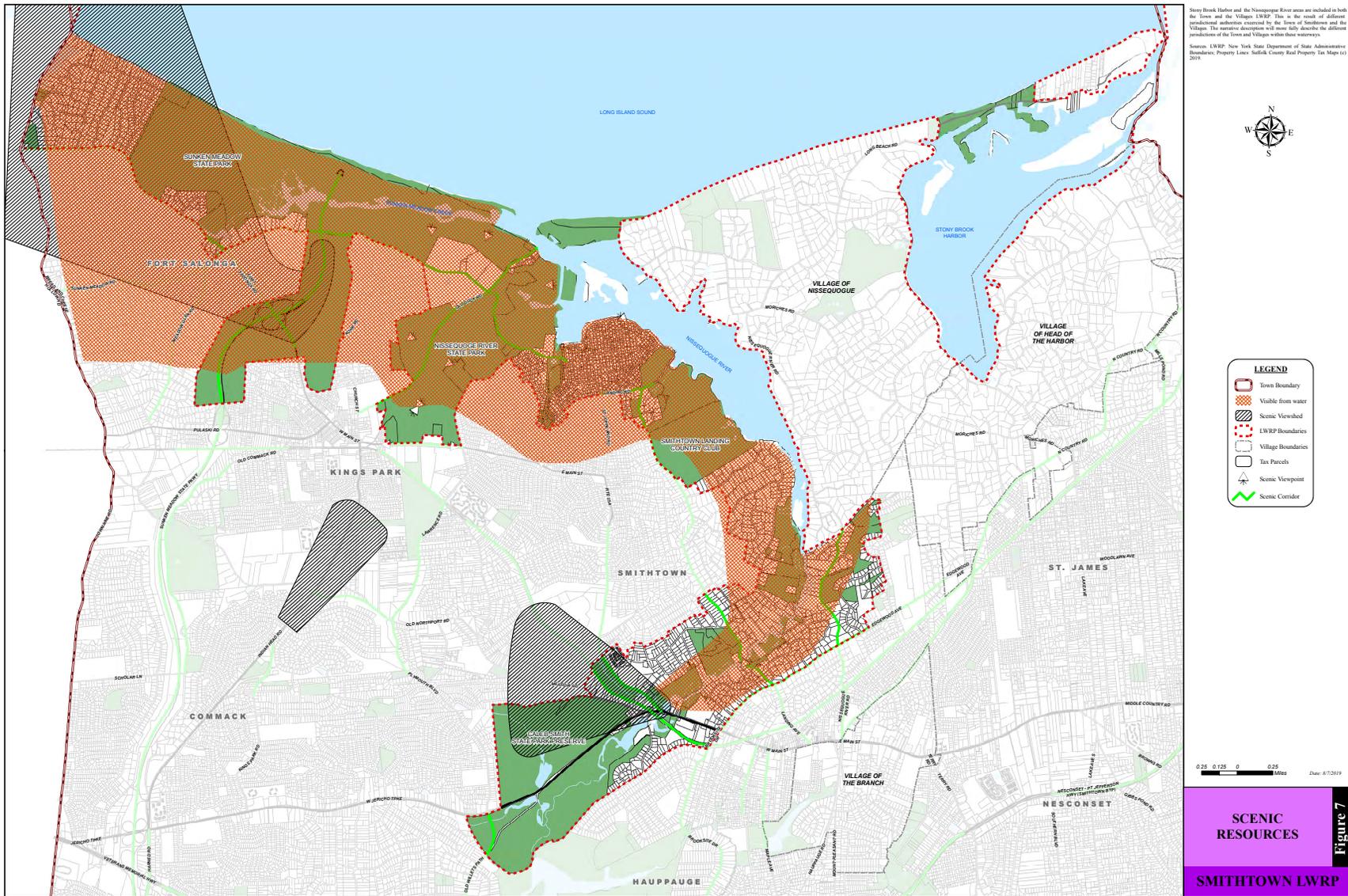


Figure 7. Scenic Resources

SECTION III

THE NATURAL COAST

Flooding, Erosion, Severe Coastal Storms, And Sea Level Rise

INVENTORY AND ANALYSIS

Flooding, erosion, sea level rise, and severe storms have had, and will have, significant effects on the resources, economy, and the lives of residents and visitors of the Town of Smithtown. These natural phenomena become a problem as people occupy or use the areas where they occur and, consequently, several government programs have been set up to mitigate the effects of flooding, erosion, severe storms, and, to a lesser extent, sea level rise. Numerous technical, policy, and legal studies and reports have been prepared from a general, regional, and Town perspective that address management of flooding, erosion, severe storms, and sea level rise. While additional specific information is necessary, particularly with regard to sea level rise, current knowledge based on the existing studies and reports as well as local experience provide an adequate basis for development of refined policies and recommendations for improved public management in this area.

Flooding, Erosion and Severe Storms

The Town's Long Island Sound coastline, the shorelines of the Nissequogue River, Stony Brook Harbor, Sunken Meadow Creek and Fresh Pond exhibit different characteristics based on natural conditions and the manner in which people use these areas. These differences are important for management. Bluffs, dunes, beaches, wetlands, and low lying areas will respond differently to natural forces with differing effects on any structures located in or adjacent to these areas

The Long Island Sound shoreline of the Town is characterized by beaches of varying width throughout its entire length. It is backed by steep bluffs in Fort Salonga, at Sunken Meadow State Park, and the portion of the Village of Nissequogue⁸ between Short Beach and Long Beach. The area east of Long Beach is a barrier beach with dunes. The area at the mouth of the Nissequogue River has barrier spits and dunes to the east and west with bluffs on the west shore near the mouth. The shoreline of the Nissequogue River is primarily characterized by wetlands and low-lying areas, as is the shoreline of Stony Brook Harbor.

The beaches, barrier beaches and spits, and dunes that extend for most the Town's Long Island Sound shoreline as well as the wetlands along its river and bay shorelines are natural, recreational, economic, scenic and cultural resources. They are also the primary defense against the effects of severe coastal storms. They are fragile and dynamic landforms that have been shaped by complex natural processes over centuries with the accumulation of sand from bluff erosion and the littoral drift of sand from waves and storms. The protective value of the beaches is dependent

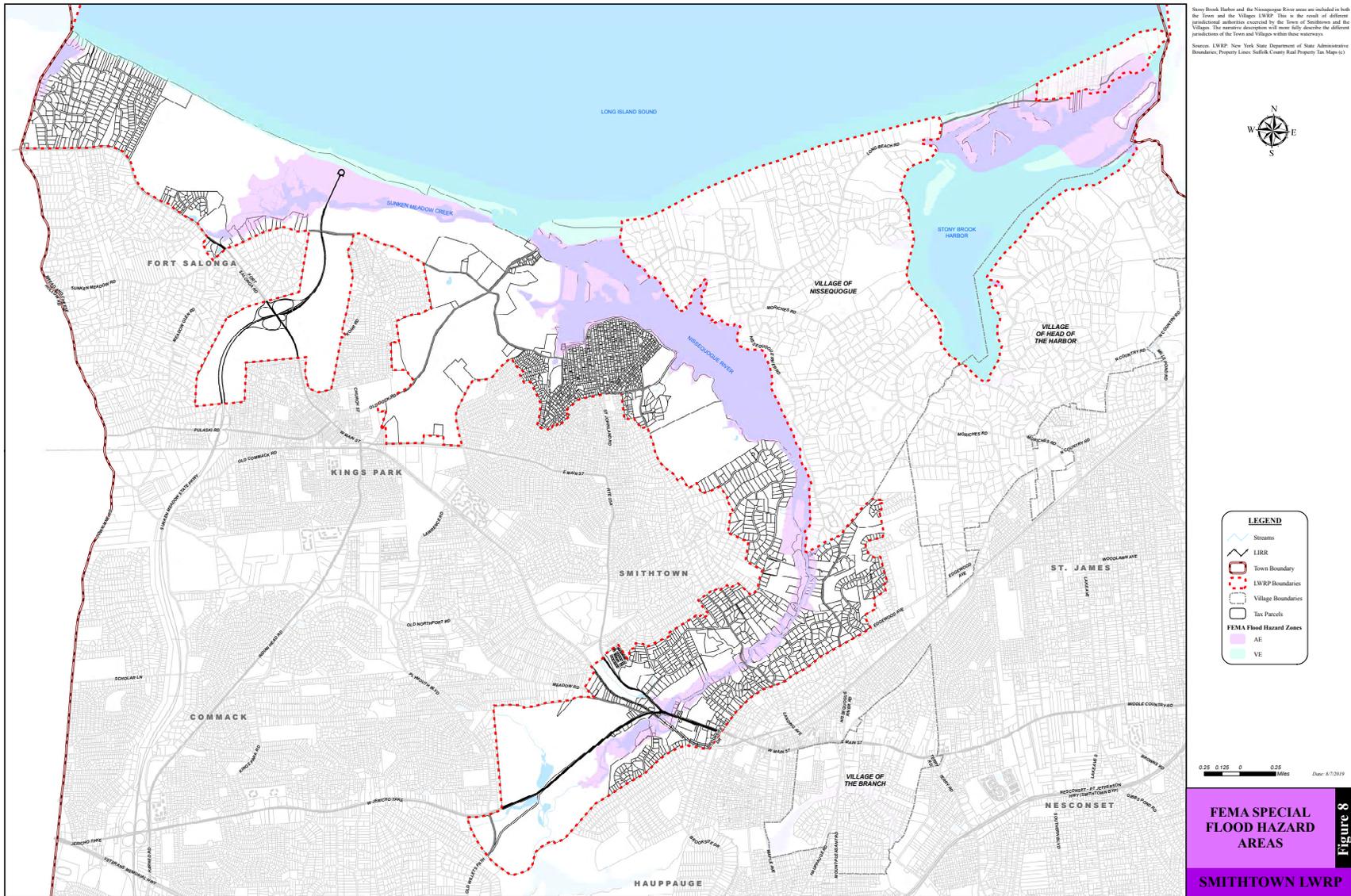
⁸ The Village of Nissequogue extends only to the high water mark of its three shorelines, Long Island Sound, the Nissequogue River and Stony Brook Harbor. The tidal wetlands and the beaches below high water are within the Town of Smithtown and subject to the exercise of its police powers (regulations). Additionally the Town has property interest in these lands for the protection and use of shellfish. The Village has overlapping extra territorial jurisdiction in these areas for the regulation of vessels.

on their width and decreases as the beaches narrow. They are subject to erosion but, if not impeded, will naturally migrate, thus maintaining a shoreline of beaches, dunes, barriers, and marshes. Erosion is a natural and generally unavoidable process and one that is beneficial in maintaining the character of the shoreline.

During severe storms, such as nor'easters, tropical storms, and hurricanes the sea may come completely over the barrier beaches in specific locations, such as at Sunken Meadow Creek, the mouth of the Nissequogue River, and the Long Beach peninsula, retreating, as the storm passes, in a process referred to as overwash. In particularly severe storms the sea can create new openings, called breaches, between Smithtown Bay and the Harbor. A breach remains open until it naturally closes or is closed artificially by filling. The bluffs may experience severe erosion during severe storms. When this happens, the top of the bluff migrates landward till the bluff returns to a natural slope of repose; however, the eroded sediment builds up the beach.

The development pattern of low density residences atop the eroding bluffs and the presence of hard structures intended to control erosion reduce the protective value that bluffs fronted by a wide beach give to the entire shoreline. There is scientific consensus that when structures intended to control erosion of the bluff are placed on an eroding bluff they will cause the fronting beach to narrow as wave action carves the sand away and eventually the beach disappears. Such structures stop the ability of the beach and bluff to move landward. They increase beach loss by wave refraction and scour, i.e., as a wave breaks against the structure it can pull sand away from the beach. Such structures can, by temporarily reducing erosion at the site, also prevent eroded sand from feeding the beach, and can increase erosion/scour at its ends causing loss of beach at adjacent properties. The extensive State and Town recreational uses of the Long Island Sound shoreline which depend on a shoreline of wide beaches, wetlands and dunes for both the people and wildlife that use them can be adversely affected by attempts to stop bluff erosion.

Shoreline hardening has been shown to have adverse effects on natural resources and coastal processes with consequent reductions in public uses and values and to be ineffective in the long term. Approaches to strengthening and clarifying the Town's regulations for the protection of natural coastal features, and reducing the extent of development at risk should be considered. The negative effects of shoreline hardening are not limited to the Long Island Sound shoreline. Regulation of shoreline hardening for the River, Harbor, and ponds is also necessary. Additionally, some soft shoreline structures (e.g., Geotubes) can affect shorelines in similar ways as the more traditional hard measures; however, they also affect the shoreline in other ways because they can fail, and when they do, remnants are disbursed in the environment with potential negative effects on the environment and navigation.



Stony Brook Harbor and the Neversink River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c)

Figure 8. FEMA Special Flood Hazard Areas

The areas of the Town that lie within the Federal Emergency Management Agency special flood hazard areas are shown on Figure 8. Figure 20 (Flood Hazards Composite) shows a larger area that includes, based on past hurricanes, the extent and location of areas that would be subject to a storm surge. This information is from a SLOSH (Sea, Lake, and Overland Surges from Hurricanes) model⁹. This map also includes the effects of various sea level rise projections.

Sea Level Rise

“Sea level rise is closely linked to increasing global temperatures. Thus, even as uncertainties remain about just how much sea level may rise this century, it is virtually certain that sea level rise this century and beyond will pose a growing challenge to coastal communities, infrastructure, and erosion of coastal landforms, and saltwater intrusion within coastal rivers and aquifers. Assessment of vulnerability to rising sea levels requires consideration of physical causes, historical evidence, and projections. A risk-based perspective on sea level rise points to the need for emphasis on how changing sea levels alter the coastal zone and interact with coastal flood risk at local scales”¹⁰.

As noted above, sea level rise is projected to increase substantially over the next century. There are several forces that drive sea level¹¹:

1. Warming global temperatures expand sea water, this is well known and its effects on sea level are predictable with great reliability;
2. Land subsidence as a result of retreat of the last glaciers raises relative sea level rise. It is present in the northeast US coast and the rate is predictable;
3. Melting of the Greenland and Antarctic ice sheets has a substantial effect on the rate of sea level rise, melting of the Antarctic ice sheets will have a greater effect on sea level rise in the northeast US than the melting of the Greenland ice sheet because a concomitant loss of the gravitational effect of the Greenland ice sheet may minimize this source of sea level rise in the northeast US, the predictability of the rate of ice of sheet melting is improving;
4. Changes in ocean circulation as a result of the introduction of water from melting glaciers and the above stated changes will also affect sea level rise, but the predictability of where and to what degree ocean circulation will change is presently the least predicable driver of

⁹ See www.nhc.noaa.gov/HAW2/english/surge/slosh.shtml for more information on the SLOSH model.

¹⁰ *U.S. Global Change Research Program Climate Science Special Report, 2017, Chapter 12.1: Introduction*

¹¹ *U.S. Global Change Research Program Climate Science Special Report, 2017, Chapter 12.2: Physical Factors Contributing To Sea Level Rise*

sea level rise along any given shoreline. Weakening of the Gulf Stream would increase sea level in the northeast¹².

Two recent State reports¹³ have outlined the extent of likely sea level rise, its anticipated effects, and a general direction for mitigating or adapting to the effects of sea level rise. In addition to sea level rise, anticipated climate change is expected to increase the number and severity of coastal storms and alter rainfall patterns. While sea levels have been slowly rising since the last Ice Age, the report estimates that the rate of rise will increase over the next several decades and beyond. The sea level rise projections that the NYS Sea Level Rise Task Force offered as likely for Long Island as updated by NYSERDA, and that DEC has incorporated into its regulations at 6 NYCRR Part 490, Sec. 490.4 (2017) for use by the State in decision making, are listed in the following table:

Time Interval	Low Projection	Low-Medium Projection	Medium Projection	High-Medium Projection	High Projection
2020s	2 inches	4 inches	6 inches	8 inches	10 inches
2050s	8 inches	11 inches	16 inches	21 inches	30 inches
2080s	13 inches	18 inches	29 inches	39 inches	58 inches
2100	15 inches	21 inches	34 inches	47 inches	72 inches

Table 2. Sea Level Projections through 2100

¹² *How Climate Change Could Jam The World's Ocean Circulation*, Nicola Jones, Yale Environment360, September 6, 2016

¹³ See NYS Sea Level Rise Task Force Final Report (2010) at www.dec.ny.gov/docs/administration_pdf/slrtffinalrep.pdf and Responding to Climate Change in New York State (New York State Energy Research and Development Authority, 2011). <http://nyserda.ny.gov/en/Publications/Research-and-Development/Environmental/EMEP-Publications/~media/Files/Publications/Research/Environmental/EMEP/climaid/responding-to-climate-change-synthesis.ashx> is a more detailed report on adaptation to climate change including sea level rise. It was updated in 2014.

The major findings of the Task Force include:

1. Sea level and severe coastal storms will increasingly affect the New York coast;
2. In addition to people and property, natural resources—particularly tidal wetlands—are at risk;
3. Development in hazardous areas continues to be encouraged;
4. Structural solutions, except in urban areas, are too costly and have negative effects;
5. Better maps of areas affected by sea level rise are needed; and
6. Low-cost approaches to reduce vulnerability are available.

The Task Force recommended that:

1. Official projections of sea level be adopted by the State;
2. State agencies factor sea level rise into decisions and prepare maps and regulations to react to projected sea level rise;
3. Areas subject to sea level rise and coastal storms be classified as to risk level;
4. Reliance on non-structural measures and natural protective features to reduce vulnerability be increased;
5. Health risks from sea level rise be assessed;
6. Funding for local government, adaptation measures, and research be made available;
7. Adaptation strategies be coordinated; and
8. Public awareness of sea level rise and climate change be raised.

The New York Community Risk and Resiliency Act, signed into law in 2014, requires that sea level rise be accounted for by State agencies and applicants for certain permits, approvals and funding.

It is important to note that coastal storms and resulting overwashes and breaches can play a positive role in maintaining the barrier spits and their resources in the face of sea level rise.

Mapping areas vulnerable to sea level rise projections is important to identifying appropriate adaptation strategies. The Nature Conservancy has developed a methodology for this mapping, developing a Regional Framework for Assessing Coastal Vulnerability to Sea Level Rise in Southern New England. The Nature Conservancy's report includes Long Island). The National Oceanic and Atmospheric Administration has maps on line at www.coast.noaa.gov/digitalcoast that show areas that would be inundated by various increases in sea level. The maps are based on current land elevations and do not reflect how existing dynamic landforms, such as, bluffs, beaches, dunes, wetlands, will respond to rising sea level and storms over time. Maps x show inundated areas for sea level rise of 2 feet and 4 feet.

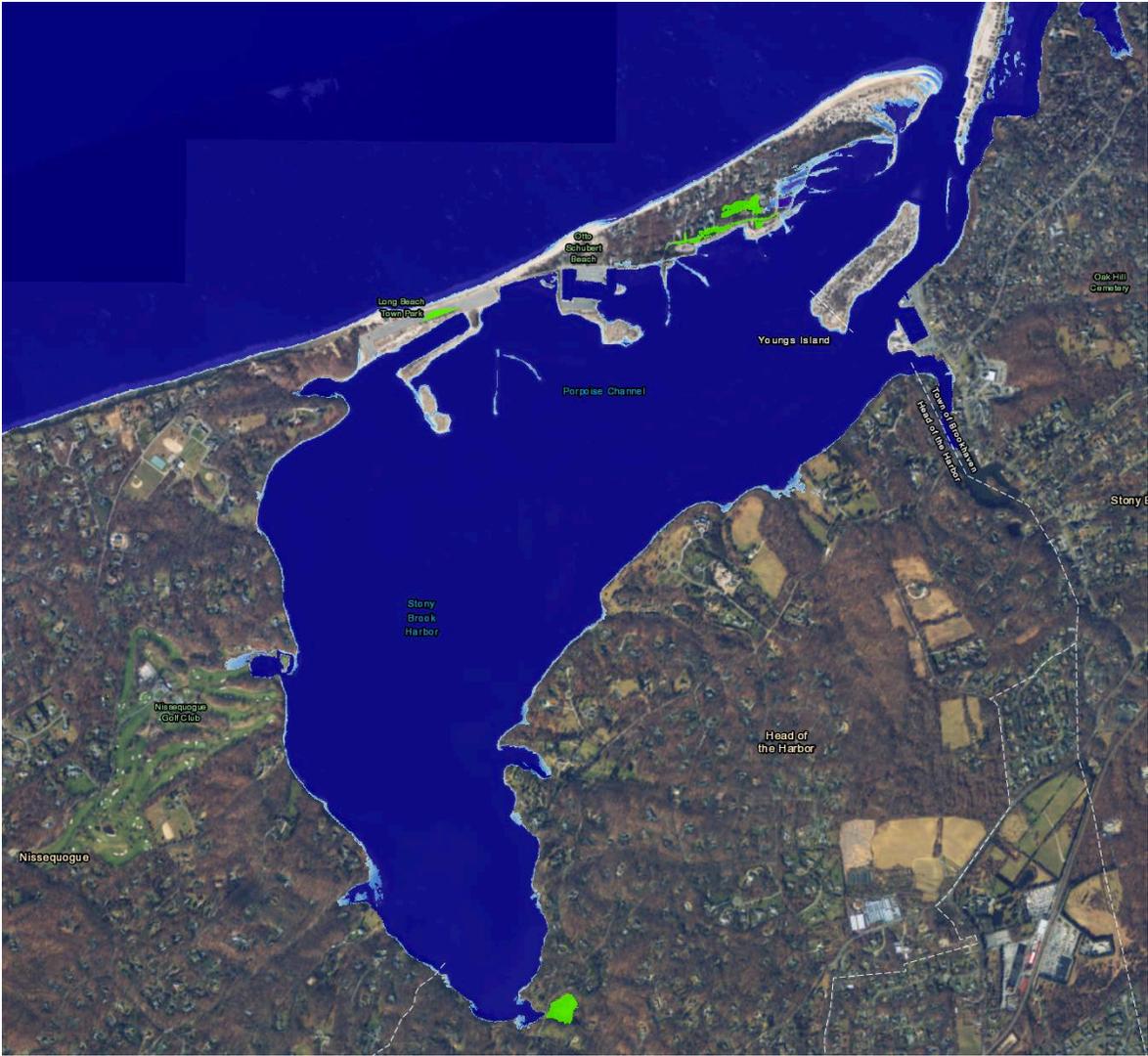


Figure 9. Areas around Stony Brook Harbor that would be inundated if sea level rises 2 feet (Source: NOAA Sea Level Rise Viewer)

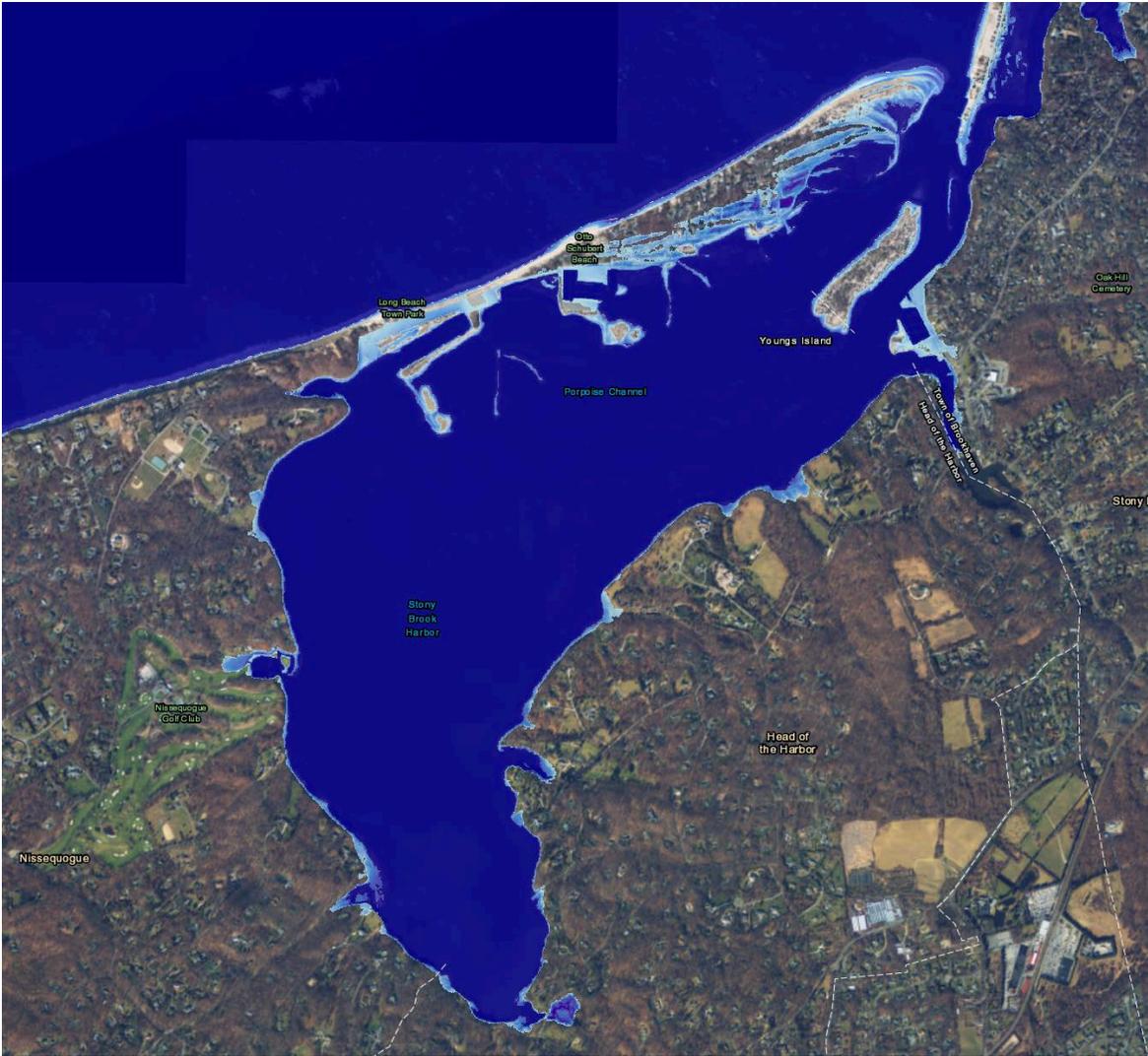


Figure 10. Areas around Stony Brook Harbor that would be inundated if sea level rises 4 feet (Source: NOAA Sea Level Rise Viewer)



Figure 11. Areas around Smithtown Bay, Sunken Meadow Creek and the lower Nissequogue River that would be inundated if sea level rises 2 feet (Source: NOAA Sea Level Rise Viewer)



Figure 12. Areas around Smithtown Bay, Sunken Meadow Creek and the lower Nissequogue River that would be inundated if sea level rises 4 feet (Source: NOAA Sea Level Rise Viewer)

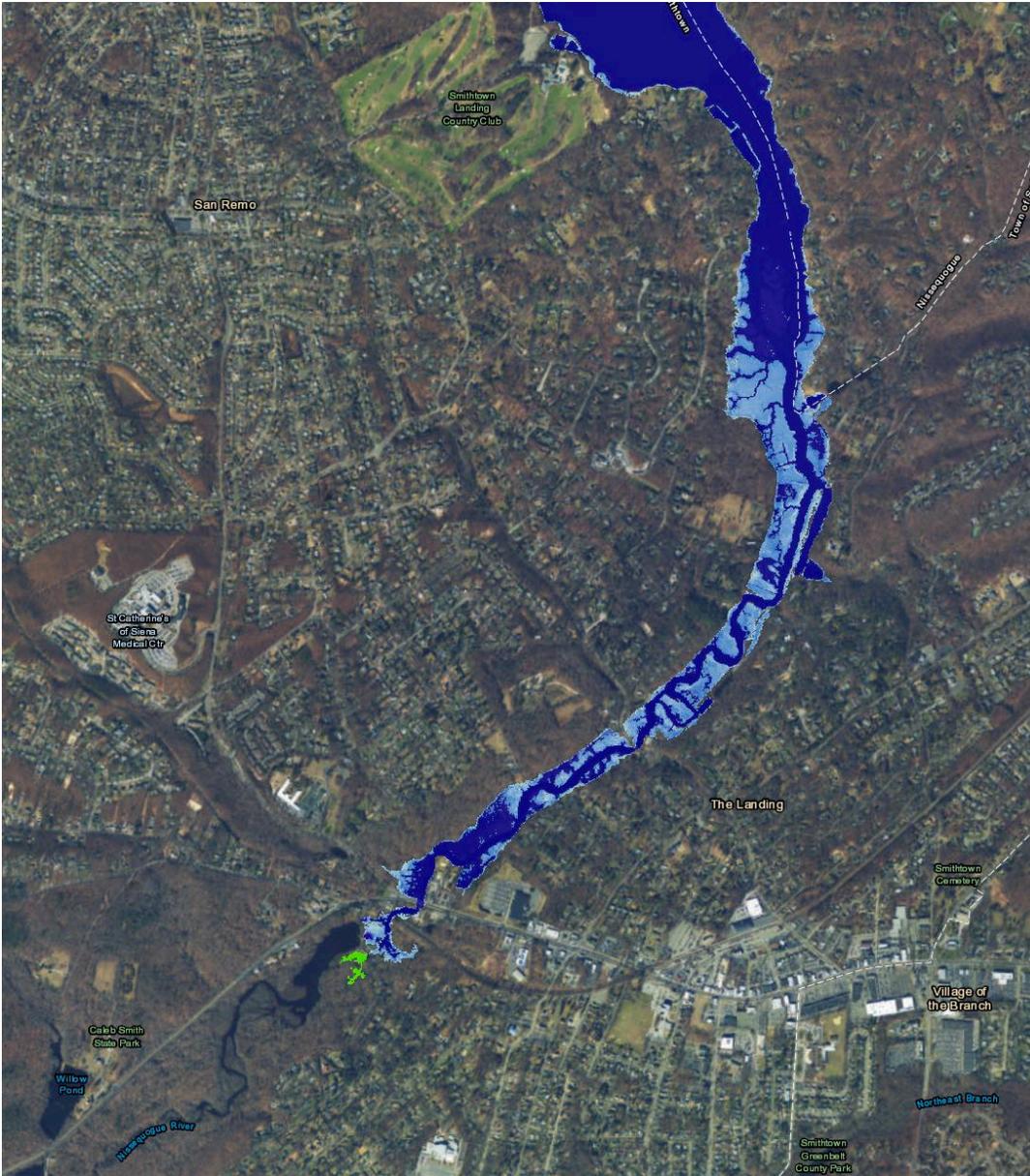


Figure 13. Areas along the upper Nissequogue River that would be inundated if sea level rises 2 feet (Source: NOAA Sea Level Rise Viewer)

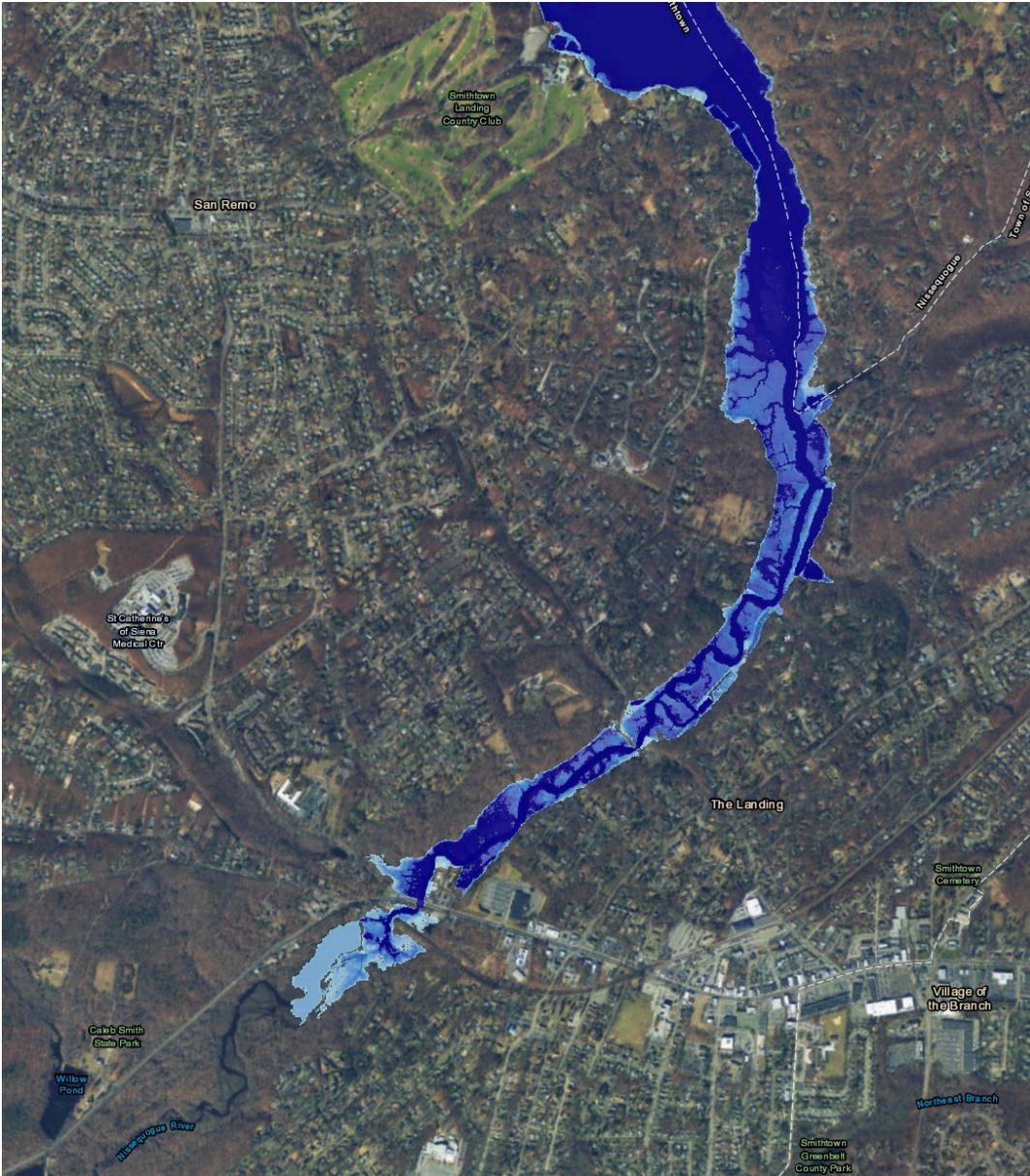


Figure 14. Areas along the upper Nissequogue River that would be inundated if sea level rises 4 feet (Source: NOAA Sea Level Rise Viewer)

Coastal Erosion Hazards Area Act (CEHA)

Recognizing the importance of preserving beaches, dunes, bluffs, and other natural protective features, New York enacted the Coastal Erosion Hazards Area Act (CEHA)¹⁴ in 1981 as part of the State's Coastal Management Program. The NYS Department of Environmental Conservation enforces the act and its regulations found in 6 NYCRR Part 505. CEHA establishes a regulatory line that encompasses the relevant natural protective feature, such as a beach, bluff, or primary dune, and subjects proposed structures seaward of that line to review. Structures within a CEHA in the Town of Smithtown (see Figures 16-19) currently require one or more permits from NYSDEC. In Smithtown the CEHA line extends along most of the Town's Long Island Sound shoreline and along the Village of Nissequogue Long Island Sound shoreline. The Village boundary extends only to the mean high water (MHW) line of Long Island Sound. The beach seaward of MHW is within the Town and subject to the Town's police powers. The beach, waters and lands under water below MHW are also a property interest of the Town as a result of State grants (see the discussion of the Public Trust in the Public Coast Section). In some locations MHW reaches to or above the foot of the bluff. With projected sea level rise the high water line can be expected to extend up the bluff face in some areas. Bluffs are valued for their ability to prevent storm surges from extending inland and damaging properties well inland from the shoreline. In the face of sea level rise they can be expected to retreat inland while contributing sediment to the littoral processes that can enable other coastal landforms to adapt to sea level rise.

The standards for a CEHA permit are strict.¹⁵ Regulated activity in an erosion hazard area includes construction, modification, restoration or placement of a structure, or any action or use of land which alters the condition of the land.¹⁶ The terms development and activity mean the same thing as 'regulated activity' under 6 NYCRR Part 505. Pursuant to this regulation, and with the exception of the following activities, all development is barred on a bluff.¹⁷ Some of the allowed activities on bluffs include: normal maintenance of structures; non-major additions to structures; and the restoration of structures damaged by something other than flooding or erosion. Walkways to the beach "built by or for an individual property owner for limited purpose of . . . access to the beach are also excepted from the permit requirement."¹⁸ The regulations of CEHA also require SEQRA review of all regulated activities.¹⁹

¹⁴ New York Environmental Conservation Law, Article 34

¹⁵ A proposed activity or development in an erosion hazard area shall be deemed an action that is likely to require the preparation of an environmental impact statement, i.e., all CEHA permits are Type I actions. (Section 34-0109 1, (b)).

¹⁶ 6 NYCRR 505.2(hh)

¹⁷ 6 NYCRR 505.8(c)(3)

¹⁸ 6 NYCRR 505.8(c)(7)

¹⁹ 6 NYCRR 505.5(e)

In addition, the general standards for issuance of CEHA permit state that, to be approved, an activity must:

- a. be reasonable and necessary, considering alternatives and the extent to which the activity requires a shoreline location;
- b. not be likely to cause a measurable increase in erosion at the proposed site or at other locations; and,
- c. prevent, if possible, or minimize adverse effects on natural protective features (including their functions and protective values), existing erosion protection structures, or natural resources.²⁰

These are extremely difficult standards to meet for an erosion control structure located in a dynamic coastal environment such as the Long Island Sound shoreline. Comparative views of the Smithtown Long Island Sound shoreline generally shows narrowed beaches where erosion control structures have been placed on the bluffs. The CEHA program also addresses pre-existing structures, which are located seaward of the setback line and the program generally requires compliance with the regulations when structures are substantially modified. However, sea walls and similar erosion protection structures that existed prior to the regulations are not required to comply with the regulations unless they are to be replaced, modified or reconstructed.

²⁰ 6 NYCRR 505.6



Figure 15. Beach Narrowing in Front of Bulkheads

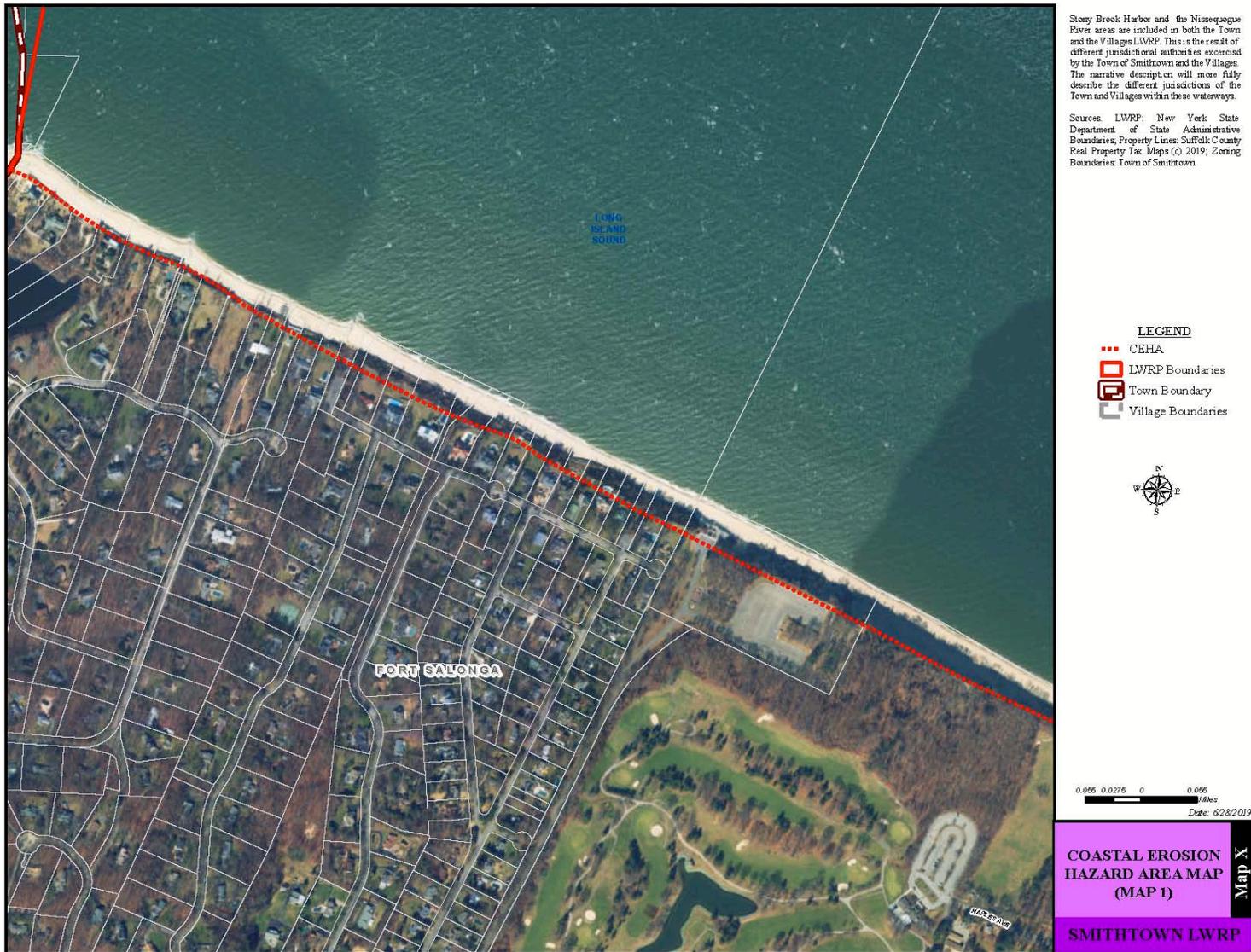


Figure 16. Coastal Erosion Hazard Area Map 1 (12/05/1988)

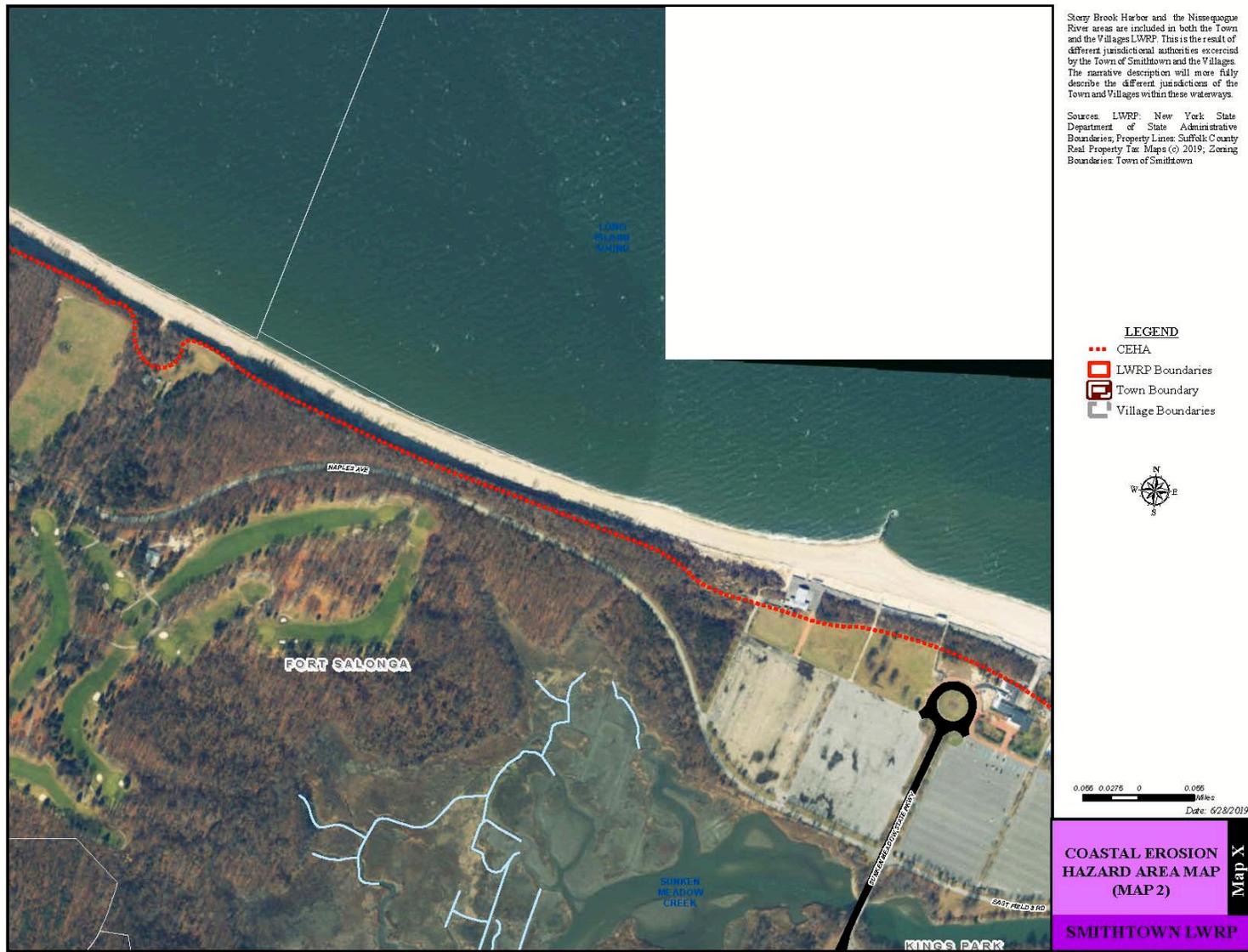


Figure 17. Coastal Erosion Hazard Area Map 2 (12/05/1988)



Figure 18. Coastal Erosion Hazard Area Map 3 (12/05/1988)

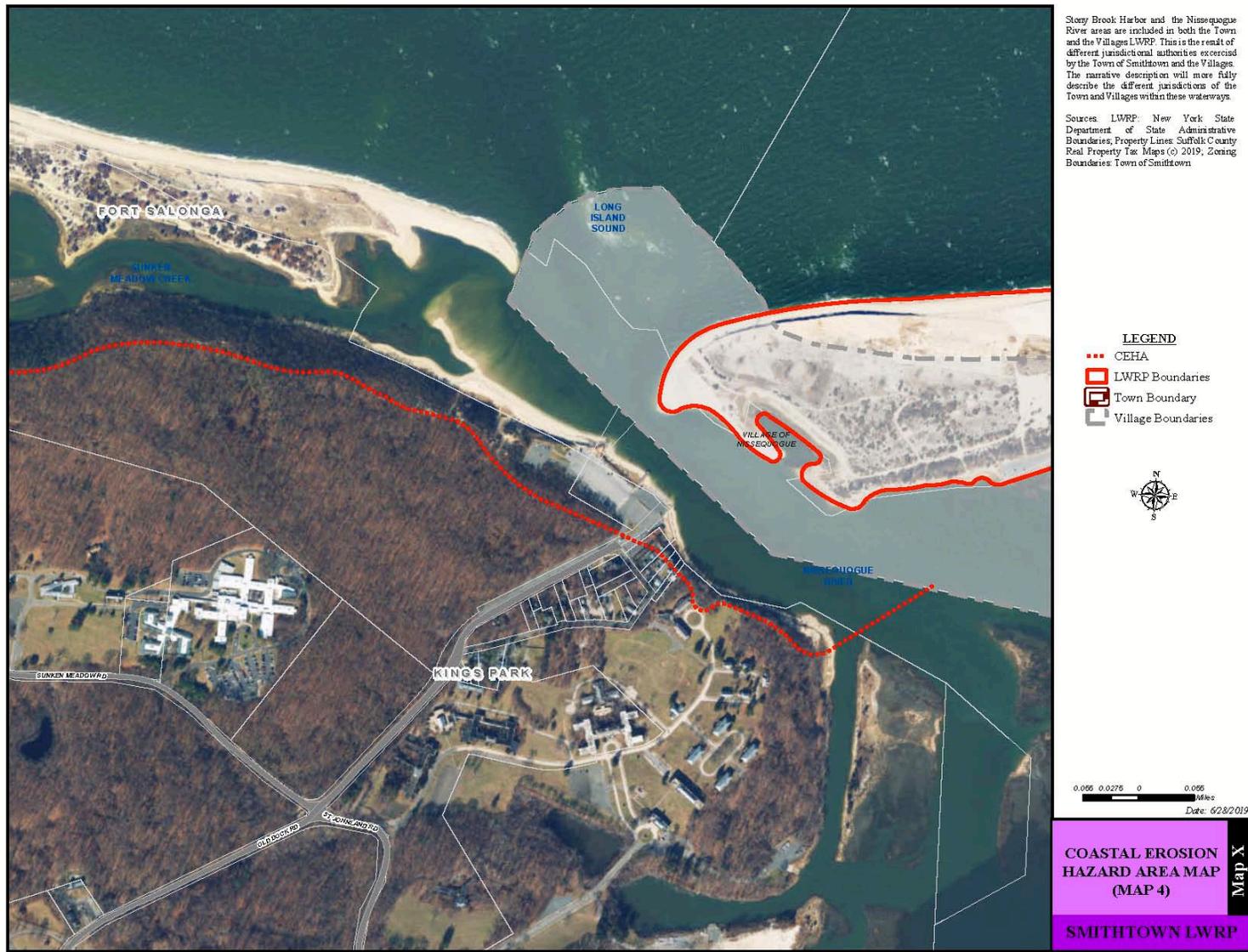


Figure 19. Coastal Erosion Hazard Area Map 4 (12/05/1988)

Coastal Barrier Resources Act

The federal Coastal Barrier Resources Act identifies stretches of generally undeveloped barrier beach and restricts federal support for development in the identified areas. For example, federal flood insurance is not available for property built after an area is mapped as a coastal barrier beach, nor are loans or grants available for infrastructure that would serve or facilitate new development of these areas. Since the barrier beaches in Smithtown are publicly owned and generally devoted to recreation, the designation has little or no practical effect in Smithtown.

Flood Insurance Program

The National Flood Insurance Program administered by the Federal Emergency Management Agency provides flood insurance for residential and business property owners and renters in participating municipalities.²¹ Smithtown is a participating municipality. Participating municipalities adopt local laws to reduce the risk of flooding. Chapter 168 of the Town Code provides standards for development in mapped flood risk areas. FEMA flood zones marked 'A,' 'AE,' 'V,' or 'VE' are identified as being within the Special Flood Hazard Area. Moderate flood areas are marked on the flood maps as 'B' or 'X.' Within the VE zone, structures must be elevated above established flood levels (there are only three homes within the V zone within the town). Within the AE zone structures must be elevated or flood-proofed. Figure 8 shows the V and A zones as well as areas of high groundwater, which also may flood during periods of high rainfall. Groundwater near the shoreline can be expected to rise in step with the rise in sea level. Property owners are generally required to purchase flood insurance if there is a mortgage from a federally regulated bank. The maximum insurance coverage of \$250,000 for a residential structure is low relative to the typical value of structures. FEMA has established a Community Rating System that enables communities to reduce the cost of flood insurance for residents by adopting management measures that exceed the requirements of the National Flood Insurance Program.²²

The areas identified as flood prone on the FIRM maps are based on past flood experience. They do not reflect how future sea level rise will affect flood prone areas nor do they project all areas that could be flooded from a severe coastal storm. During Superstorm Sandy flooding extended beyond the FIRM maps in many areas.

²¹ For information on this program see, http://www.floodsmart.gov/floodsmart/pages/about/nfip_overview.jsp.

²² See www.fema.gov/business/nfip/crs.shtm for more information

Including consideration of such factors, NOAA has prepared maps that include wider areas that are likely to be affected by severe coastal storms (see Figure 20)

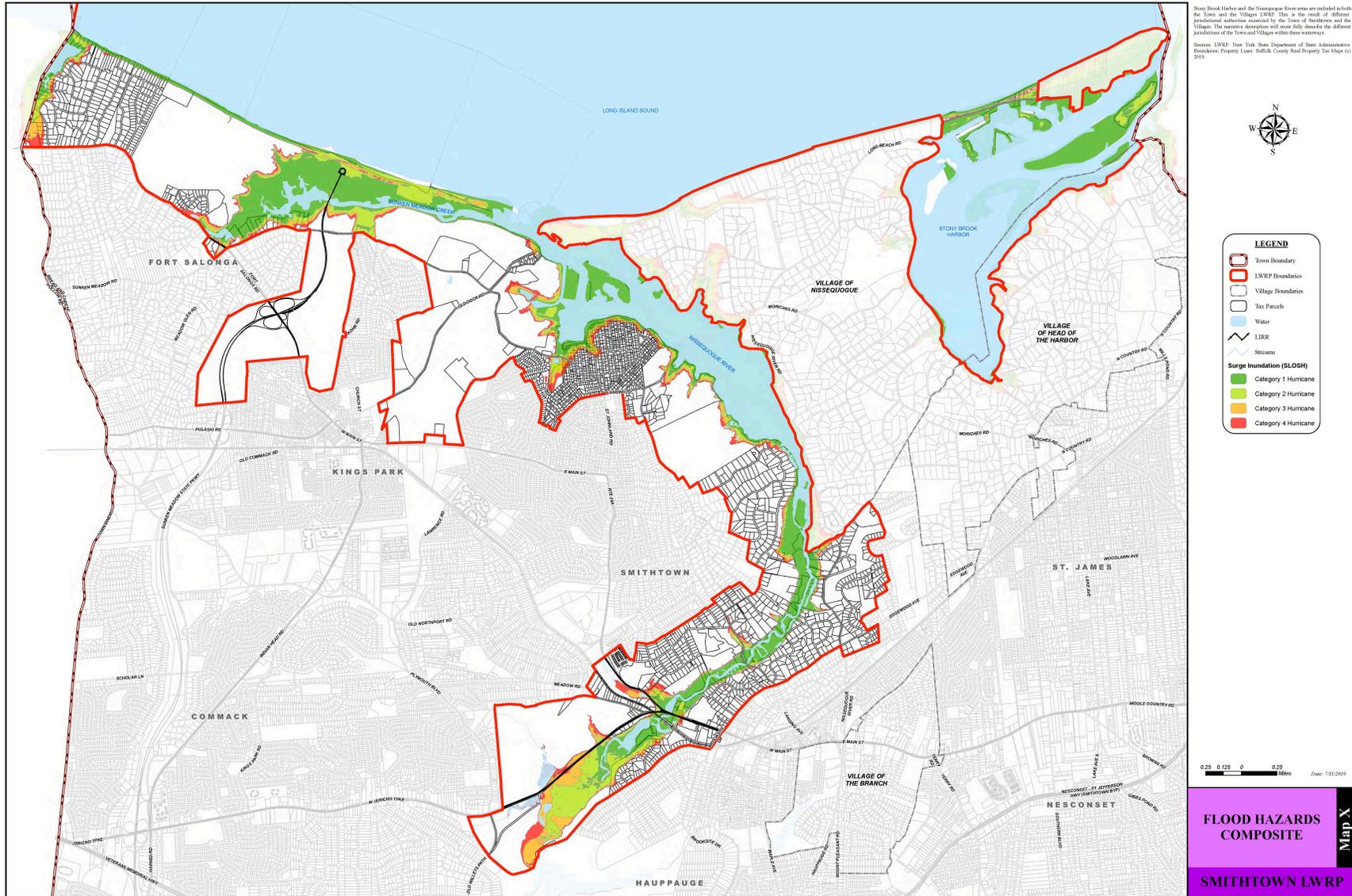
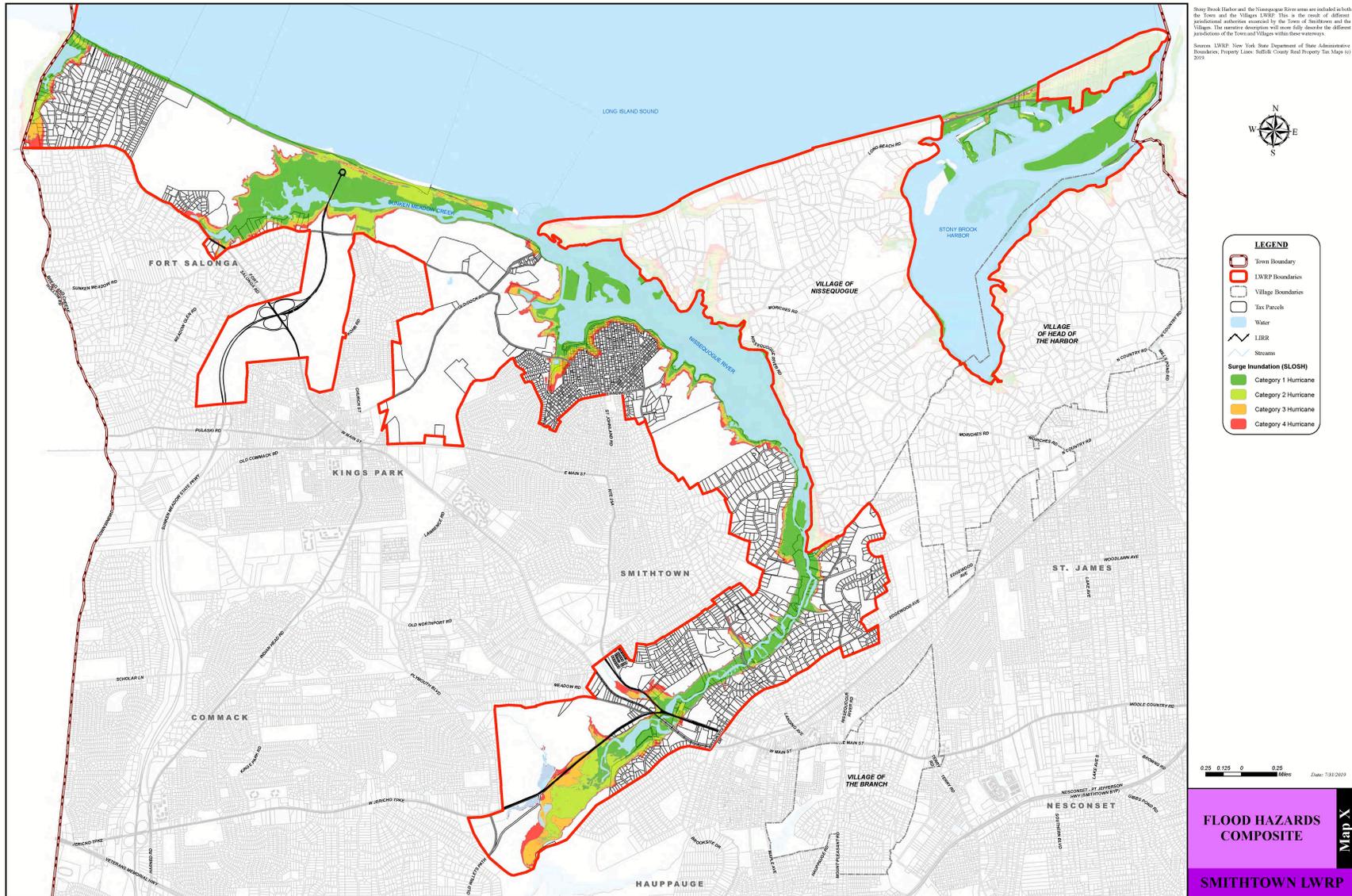


Figure 20). The Coastal Food Hazard Composite map shows areas prone to flooding from one or more of the following hazards:

1. Shallow coastal flooding;
2. High and moderate risk flooding as designated by FEMA;
3. Storm surge for category 1 through 3 hurricanes;
4. Sea level rise scenarios of 1, 2, and 3 feet.

In Smithtown there are few residential areas that fall within these areas. The areas most affected are a portion of the San Remo neighborhood and homes around Fresh Pond. Over time a few homes on bluffs may be affected by ongoing erosion and erosion resulting from severe storms and sea level rise. This latter area is generally not reflected on the map. While all the flood hazards noted above do not affect many homes in the waterfront area, recreation and natural resources can be substantially affected by flooding, sea level rise, and severe storms. Preserving a shoreline of beach and tidal wetlands is not just a good idea, it can be seen as a responsibility of government. The state and the town hold their property interests in the beaches and tidal wetlands in trust for the benefit of the public and cannot, except in exceptional circumstances, divest themselves of that responsibility. This responsibility, The Public Trust Doctrine (PTD), is described more fully in the section on the Public Coast. There is a need for government to more fully use its authority to maintain the character of shoreline, its beaches, dunes, bluff and wetlands, for the benefit of the public. The threats to the public shoreline can come from inappropriate responses to the natural forces - erosion, flooding, severe coastal storms and sea level rise - even as these are the forces that can alter the current character of the shoreline. Responses need to be designed to maintain the character of the shoreline, not necessarily its location.



Stony Brook Harbor and the Nissequogue River were not included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Villages. The narrative description will more fully describe the different jurisdictions of the Town and Villages within these watersheds.

Source: ESRI; New York State Department of State Administrative Boundaries; Property Lines; Suffolk County Real Property Tax Maps (c) 2019.

Figure 20. Coastal Flood Hazard Composite Map

Coastal Resiliency

Faced with the threats to development and natural resources from the forces of erosion, flooding, severe coastal storms, and sea level rise, and while recognizing that over the long term these natural forces also play a positive role in shaping the character of the coastline, careful and thorough planning is needed to balance minimizing the losses from these forces while maintaining the natural protective areas of the coastline.

Recent storms such as Superstorm Sandy have increased the understanding that government must be better prepared for the effects of coastal flooding, erosion, storms, and sea level rise by undertaking a thorough assessment of the infrastructure that is now or will be affected and by planning for its protection or relocation. Such planning must also consider the need to maintain and strengthen the town's recreational resources and the natural character of the shoreline upon which they depend.

The town, as part of a Suffolk County effort, has a Hazard Mitigation Plan approved by FEMA. Copies of the Hazard Mitigation Plan are filed with the Town Clerk and the Town's Department of Public Safety. This plan identifies many actions that the town is undertaking, or will undertake, to reduce damage and losses from hazardous events, particularly during, and in the aftermath, of severe coastal storms. Table 3 shows data, derived from more extensive tables in the Suffolk County Hazard Mitigation Plan, regarding what is at risk in differently defined risk areas for the Town of Smithtown. None of the areas are coterminous, but some overlap. Though the risks to people and buildings is currently low, a category 3 hurricane and sea level rise significantly increase the risks to lives and property damage. Experience has shown that the risk of a Category 3 is real. See Figure 21 for the paths of hurricanes through Long Island since 1842.

Risk Areas in Smithtown, Population, Buildings, Value

<i>Risk Area</i>	<i>Population</i>	<i>Buildings</i>	<i>Replacement Cost Value (millions)</i>
CEHA with a buffer	10	39	61
DOS Coastal moderate to extreme	246	129	152
FEMA V&A Zones	19	32	56
FEMA 500 year	128	37	61
SLOSH Cat 1 hurricane	46	26	21
SLOSH Cat 2 hurricane	164	75	85
SLOSH Cat 3 hurricane	240	128	152
Sea Level Rise (SFHA +3')		44	65
Sea Level Rise (SFHA +2')		62	82

Table 3. Risk Areas in Smithtown: Population, Buildings & Value

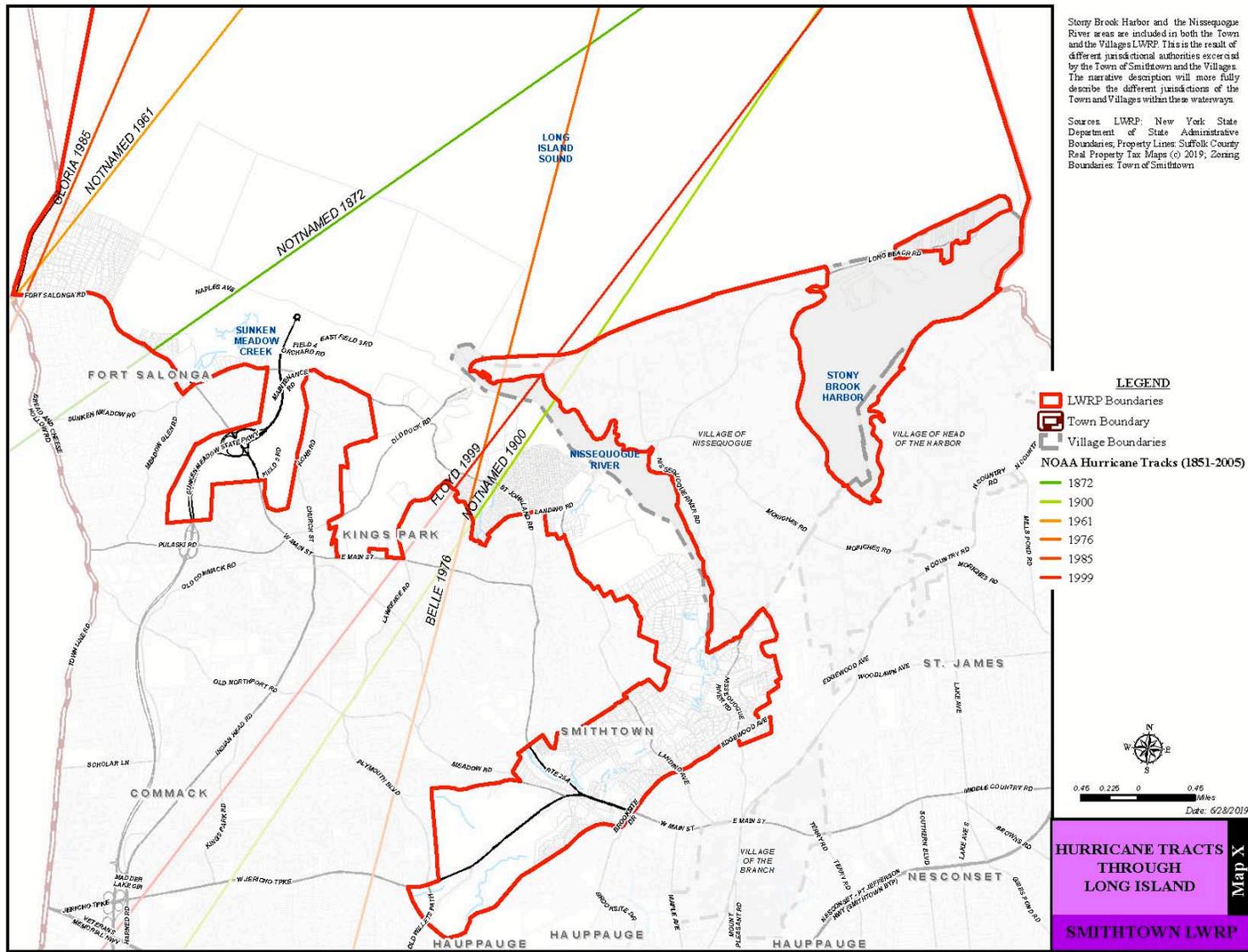


Figure 21. Hurricane Tracks through Long Island since 1842

Planning for adaptation to sea level rise for the town will require (1) an understanding of what areas will be inundated under various sea level rise scenarios, (2) the effects this will have on development currently subject to erosion, flooding and storms, (3) how effects of sea level rise may vary given the nature of the shoreline, and (4) what infrastructure and development requires protection; and 5) what infrastructure requires relocation or abandonment. The planning will also need to consider different approaches given different planning concerns - near term, long term and post-storm.

A USGS study and model on coastal landscape response to sea level rise for the northeast United States²³ indicated that up to 70% of the east coast could adapt in some form to sea level rise rather than be merely inundated based on elevation. The maps in this section reflect sea level rise based on recent elevations only and do not account for how the various coastal landscape features will respond as sea level rises. The USGS model should be applied to the Smithtown shoreline to determine how the landforms of the shoreline - the bluffs, beaches, wetlands, dunes, and particularly the barrier spits of Long Beach, Short Beach and at Sunken Meadow Creek, will respond to various sea level rise scenarios over time. Town or State agencies should identify measures that augment the landforms' natural responses to adapt to sea level rise and which include beach nourishment, sediment migration, augmentation of wetlands, or altering or removing barriers to the migration of landforms (roads, existing shoreline stabilization structures, or other development) be effective in mitigating the effects of sea level rise while maintaining a natural shoreline.

The Department of Environmental Conservation has issued guidance, *Tidal Wetlands Guidance Document, Living Shoreline Techniques in the Marine District of New York State*²⁴ on the use of living shoreline techniques. These techniques can, in some circumstances, stabilize a shoreline with less adverse effects than traditional engineered structures. They are generally not suitable for use along dynamic shorelines, such as the Long Island Sound shoreline. NYSDEC has stated in the guidance on the use of these techniques that the recommendations do not apply within designated Coastal Erosion Hazard Areas. However, beach nourishment may be an appropriate technique along the Long Island Sound shore, which includes the Smithtown Bay. A document prepared by The Nature Conservancy entitled, "Living Shorelines in New England: State of the Practice" also describes living shoreline techniques that may be suitable for Long Island as well.

For beach nourishment to be considered - when, where, who's responsible, at what cost, are questions that need to be addressed. Also whether to fill any breach in the barrier beaches as quickly as possible needs to be addressed. The concept of whether preventative action should be taken to reduce possible breaches and whether this is a responsibility of the Town, must be addressed, as any restoration in the future is apt to be extremely expensive.

²³ https://woodshole.er.usgs.gov/project-pages-coastal_response/publications.html

²⁴ http://www.dec.ny.gov/docs/fish_marine_pdf/dmrlivingshoreguide.pdf

The coastal processes at the mouth of the Nissequogue River are complex and while periodic dredging is necessary for navigational access, the design parameters need to be studied to determine they are the most appropriate in terms of meeting the multiple objectives of maintaining navigational access and natural shoreline processes and that habitat values and recreational uses are preserved.

Planning for adaptation to sea level rise for the town will require an understanding of what areas will be inundated under various sea level rise scenarios; the effects this will have on development currently subject to erosion, flooding and storms; how effects of sea level rise may vary given the nature of the shoreline, and what infrastructure and development requires protection, relocation or abandonment. The planning will also need to consider different approaches given different planning horizons. Major public infrastructure within the waterfront area includes sewage treatment facilities and parking and access to recreation areas.

POLICIES

Policy 4: Minimize loss of life, principle structures, and natural resources from flooding, erosion, severe coastal storms, and sea level rise.

The natural forces of erosion, flooding, severe coastal storms, and sea level rise that have shaped the coast also threaten the uses that people have made of the coast not only because of increases in the frequency, intensity, or rate of these forces, but also because decisions have been made to allow development in areas affected by these natural forces. It is the objective of this policy to protect human uses of the coast by preventing development in hazardous areas, by moving development away from hazardous area, or by protecting development from the effects of coastal hazards, while at the same time assuring that the natural characteristics of the coast are available for a range of public uses and natural habitat. The resolution of any conflicts within this multifaceted objective depend on a close examination of site specific circumstances, the relative scale of the development to that of the hazard, and the timing of uses and the hazard, and the application of the following policy standards. In the Smithtown waterfront the extent of private development exposed to hazards is limited, but the extensive public uses which are dependent on maintaining the natural characteristic of the coast are substantial.

4.1 Minimize losses of human life, principle structures, and infrastructure from flooding and erosion hazards.

- a. Use the following management measures, which are presented in order of priority: (1) avoid development other than water-dependent uses in coastal hazard areas; (2) locate new development out of CEHAs as far away from hazards as practicable; (3) move development and structures as far away from hazards as reasonable, taking into consideration physical and financial constraints; (4) in cases where moving a principal structure is not reasonable or not sufficient to protect the structure from flooding and erosion, use vegetative non-structural measures that will sustainably manage flooding and erosion; (5) enhance existing natural protective features and processes, e.g., beach nourishment and use non- structural measures to manage the effects of erosion; and (6) use hard structural erosion protection measures to control erosion only where the above measures are not sufficient to protect the principal use and the location is not on or in a designated natural protective feature (pursuant to the CEHA) or the use is water-

dependent.

- b. Prohibit structures that will be likely to cause a measurable increase in erosion at the proposed site or at other locations.
- c. Assure that any erosion control activities permitted in a natural protective feature are reasonable and necessary to protect a principle residence or major public infrastructure by considering the nature and imminence of the threat and the options to move, modify, abandon, or protect by other means the principle use threatened.
- d. Limit the time period for which erosion control structures are permitted to that which the erosion control structure would be effective in light of the effects of projected sea level rise, future severe storms, and the protected principle use remains feasible in the face of projected sea level rise and future severe storms,
- e. Require new approval for the reconstruction of any erosion control structure substantially damaged by storms, erosion, or sea level rise.
- f. Existence of erosion control structures does not create a presumption for future approvals to repair or replace with in-kind structures or new structures.
- g. Mitigate the impacts of permitted erosion control structures.
- h. Manage development in floodplains outside of coastal high hazard areas so as to avoid adverse environmental effects, to minimize the need for structural flood protection measures, and to meet federal flood insurance program standards.
- i. Prohibit new residential development in FEMA designated V and A zones. Allow existing development to be maintained and improved to meet building code standards unless damaged or destroyed by more than 50%.

4.2 Preserve and restore natural protective features.

- a. Prevent development in natural protective features except development as specifically exempted in 6 NYCRR Part 505.8, (i.e., normal maintenance of structures and restoration of structures damaged by events *not* related to coastal flooding and erosion).
- b. Maximize the protective capabilities of natural protective features by: avoiding alteration or interference with shorelines in a natural condition; enhancing existing natural protective features; restoring impaired natural protective features; and managing activities to minimize interference with, limit damage to, or reverse damage which has diminished the protective capacities of the natural shoreline.

- c. Minimize interference with natural coastal processes by: providing for natural supply and movement of unconsolidated materials; minimizing intrusion of structures into coastal waters and interference with coastal processes; and mitigating any unavoidable intrusion or interference.

4.3 Protect public lands and public trust lands and use of these lands when undertaking all erosion or flood control activities.

- a. Retain ownership and jurisdiction of public trust lands that have become upland areas due to fill or accretion resulting from erosion control projects.
- b. Avoid losses or likely losses of public trust lands or use of these lands, including public access along the shore, which can be reasonably attributed to or anticipated to result from the construction of erosion protection structures by requiring alternatives to such structures.
- c. Mitigate unavoidable impacts on adjacent property, natural coastal processes and natural resources, and on public trust lands and their use.

4.4 Manage navigation infrastructure to limit adverse impacts on coastal processes.

- a. Manage navigation channels to limit adverse impacts on coastal processes by designing channel construction and maintenance to protect and enhance natural protective features and prevent destabilization of adjacent areas, and make beneficial use of suitable dredged material.
- b. Manage inlets to limit adverse impacts on coastal processes.

4.5 Ensure that expenditure of public funds for flooding and erosion control projects results in a public benefit.

- a. Give priority in expenditure of public funds to actions which: protect public health and safety; mitigate flooding and erosion problems caused by previous human intervention; protect areas of intensive development; and protect substantial public investment in land, infrastructure, and facilities.
- b. Expenditure of public funds is: limited to those circumstances where public benefits exceed public cost; and prohibited for the exclusive purpose of protecting private development, except where actions are undertaken by an erosion control taxing district.

4.6 Consider sea level rise when siting, designing, or approving projects.

- a. Use sea level rise projections that have been officially adopted by the State of New York.

- b. Prohibit residential development in areas projected to be permanently inundated by sea level rise within 30 years.
- c. Support and facilitate the natural adaptation of coastal landforms to sea level rise by eliminating barriers to such adaptation and by augmenting sediment in the system when and where appropriate

4.7 Undertake and maintain coastal resiliency planning

- a. Identify vulnerable infrastructure and public facilities and identify means to mitigate their exposure to coastal hazards.
- b. Maintain at a minimum a FEMA approved All Hazards Mitigation Plan.
- c. Consider site details and long term and entire shoreline effects (including, but not limited to, natural adaptations to sea level, the role of sediment movement in that adaptation, the likely response of the landforms to severe coastal storms, and the Public Trust Doctrine) when considering living shore projects.

IMPLEMENTATION

Implementation through Existing Local Laws

Chapter 138 - Dredging.

A permit is required for any disturbance of a watercourse or wetland. The standards, section 138-14, for issuance of a permit are:

All operations under a permit issued pursuant to this chapter shall be done in such a manner that the removal and/or deposition of material and the redepositing and storage thereof will neither undermine, weaken nor deprive of support other lands in the vicinity nor otherwise adversely affect the watercourses and wetlands of the Town and the lands abutting nor, unless the permit issued pursuant hereto shall expressly provide otherwise, substantially change the course of any channel or the natural movement or flow of any waters or cause or accelerate the drift of soil, shale, mud or bog, upland or underwater, nor adversely affect fish, shellfish, wildlife or other natural resources.

This law, section 138-21, requires permits for any artificial construction (temporary or permanent) of dams, docks, piers, wharves or other structures used as landing places, or bulkheads in or across lands underwater.

Chapter 151 - Environmental and Coastal Quality Review

This law implements the State Environmental Quality Review Act and the Town's Local Waterfront Revitalization Program. It incorporates environmental and social factors and the consideration of coastal resources into existing planning and decision-making processes. The town manages all uses of its wetlands, waterways and shellfish resources to maintain and, wherever possible, improves the long-term ecological health and environmental quality of these resources for the benefit and enjoyment of all its residents. This should include a consideration of sea level rise, severe storms, flooding and erosion.

Chapter 153 - Stormwater Management and Erosion and Sediment Control

This law establishes standards for the management of development-generated stormwater for flooding and water quality purposes and serves to reduce flooding in low lying developed areas primarily from rainfall events. In terms of coastal resiliency the application of this law can be effective in reducing so called nuisance flooding.

Chapter 168 - Flood Damage Prevention

This law assures that the Town is in compliance with FEMA standards for regulation of development in designated flood hazard areas (generally the V and A zones of the FIRM maps). The construction standards require that buildings be elevated two or more feet above the base flood elevations.

Chapter 322 -19, Zoning, Environmentally Sensitive Lands

These lands are defined as any area with one or more of the following characteristics:

1. *Any area of special flood hazard as defined by Chapter 168, Flood Damage Prevention, of the Town Code.*
2. *Slopes in excess of 15%.*
3. *Depth to seasonal high-water table of less than 10 feet.*
4. *Freshwater wetlands, as defined by Chapter 170, Article II of the Town Code.*
5. *A distance of less than 100 feet to the nearest surface water feature identified on the latest United States Geological Survey 6.5-minute topographic map.*
6. *Poorly drained soils, as defined by the United States Soil Conservation Service.*
7. *A habitat for protected, threatened or endangered species.*

These lands are subject to supplementary use and building regulations as follows:

1. *In any location on the Building Zone Map where environmentally sensitive lands are shown as not included in any zoning district, such lands shall be construed to lie within a CF District.*
2. *No environmentally sensitive land shall be used to calculate the permitted density, building coverage, floor area or minimum lot area.*
3. *Except as provided for in Subsection [6], no environmentally sensitive land shall be altered by excavation, storage, compaction, construction activities, vegetation removal or the placement of fill or other activity.*
4. *No structure, including but not limited to buildings, decks, garages, sheds, swimming pools, fences, walks and driveways, shall be constructed, enlarged, altered or replaced within 100 feet from any wetland, escarpment, natural surface water feature or significant wildlife habitat.*
5. *No structure shall be constructed, enlarged, altered or replaced within 10 feet of any slope higher than five feet and having a slope greater than 25% or any A or V Flood Hazard Zone.*
6. *In areas where the only environmentally sensitive land that will be impacted is land where depth to the seasonal high water table is less than 10 feet, the following actions shall be exempt from Subsection C above.*
 - Construction of a deck.
 - Installation of a fence.
 - Construction of a shed less than 100 square feet

Chapter 322 – 29 Local Waterfront Revitalization Program

The supplementary use and building regulation includes the following standards for actions within the Waterfront Area:

1. *The following actions shall be subject to the LWRP: zone changes, subdivisions, site plans, building permits for new buildings, special exceptions, permits for any actions requiring the following variances; land use, height, signage, parking, density or environmentally*

sensitive lands, and shall not be approved, authorized, issued or altered until the Town Board determines in writing, pursuant to Chapter 151 of the Town Code, that the action is consistent with the LWRP policies, standards and conditions.

Implementation through Changes in Local Laws

1. The Town should explore assuming responsibility for administration of the CEHA.
2. Amend zoning ordinance to create an overlay district of areas projected to be inundated by sea level rise and establish a thirty year amortization period for structures in this district. Selection of areas so zoned shall be based on official State projections of sea level rise and locally approved application of those projections to the Smithtown shoreline that are site specific and consider how different landforms respond to sea level rise. Periodic updating shall be required.
3. Rezone the marine waters, including tidal wetlands, of the Town to a new Marine District that allows only uses appropriate to a marine district. While these waters are identified as *Environmentally Sensitive Lands* and consequently are subject to substantial use restrictions there are appropriate uses, under certain circumstances, to marine waters that should be allowed, such as navigation aids, boating facilities, underwater cables, shellfishing equipment.
4. Add to the standards of review for the various land use and environmental permits a consideration of the effects on and of sea level rise.
5. Chapter 322-19 E. states, “No structure shall be constructed, enlarged, altered, or replaced within any A or V Flood Hazard Zone”. This should be amended to
 - a. Allow additions to existing residential structures in V and A zones so long as those additions comply with Town Code and building code;
 - b. Allow existing development to be maintained and improved to meet building code standards unless damaged or destroyed by more than 50%.
6. Adopt standards for building or altering land on or adjacent to a bluff and incorporate those standards via reference in Chapter 322-19. The standards shall incorporate the following, listed in order of priority:
 - a. Avoid development other than water-dependent uses in coastal hazard areas.

- b. Locate new development out of CEHAs as far away from hazards as practicable.
 - c. Move development and structures as far away from hazards as reasonable, taking into consideration physical and financial constraints.
 - d. In cases where moving a principal structure is not reasonable or not sufficient to protect the structure from flooding and erosion, use vegetative non-structural measures that will sustainably manage flooding and erosion.
 - e. Enhance existing natural protective features and processes, e.g., beach nourishment and use non-structural measures that will sustainably manage flooding and erosion.
 - f. Use hard structural erosion protection measures for control of erosion only where the above measures are not sufficient to protect the principal use and the location is not on or in a designated natural protective feature (pursuant to the CEHA) or the use is water-dependent.
 - g. Prohibit structures that will be likely to cause a measurable increase in erosion at the proposed site or at other locations.
7. Amend the definition of environmentally sensitive land to include areas projected by the federal or state government to be permanently inundated by sea level rise within 30 years.

Implementation through Other Actions

1. Undertake site specific studies to determine how the different land forms that make up the shoreline and the coastal processes will respond to sea level rise and coastal storms to determine the most effective measures to minimize the effects of sea level rise and coastal storms on public infrastructure and uses and on natural resources and how best to undertake navigational improvements.
2. Work with the County and State Parks on identifying infrastructure vulnerable to sea level rise and evaluating strategies to protect or relocate such infrastructure and mitigate effects on natural resources (e.g., through augmentation or migration).
3. Undertake site-specific studies to mitigate the effects of sea level rise on infrastructure and inland resources.
 - a. Study the feasibility of reducing the obstruction created by Saint Johnland Road to allow future sea level rise to reach Harrison Pond;

- b. Consider, in consultation with the Town of Huntington, whether modifications to the Fresh Pond Inlet can reduce the effects of future sea level rise on Fresh Pond.
 - c. Consider the feasibility of raising Long Beach Road, recognizing that impediments to overwash may interfere with the ability of the Long Beach barrier beach to accommodate sea level rise by moving landward.
- 4. Work with NYS Departments of State and Environmental Conservation and the Villages of Nissequogue and Head-of-the-Harbor to develop and implement an inter-agency strategy for maintaining the natural shoreline processes and lands held in the public trust in the Coastal Erosion Hazard Area.
- 5. Study the coastal processes at the mouth of the Nissequogue River and entrance to Stony Brook Harbor to establish dredging design parameters that meet the multiple objectives of maintaining navigational access, natural shoreline processes, fish and wildlife habitat and recreational uses.
- 6. Include language similar to the following as conditions to all Town permits for erosion protection structures:
 - a. The time period for which erosion control structures permitted shall be limited to estimated lifespan of the structure considering projected sea level rise and ability to withstand future severe storms;
 - b. A new permit shall be required to reconstruct any erosion control structure substantially damaged by storms, erosion, or sea level rise.
 - c. Existence of erosion control structures does not create a presumption for future approvals to repair or replace with in-kind or new structures.
- 7. Maintain at a minimum a FEMA approved All Hazards Mitigation Plan.

Water Quality

INVENTORY AND ANALYSIS

In 1989 the Smithtown LWRP recognized that water quality was among the most important issues facing the Town. Despite improvements in water quality it remains an important issue.

Water Quality Programs

Since 1989 the numerous programs and regulations that seek to maintain and improve water quality have been updated and expanded. These programs include the federal Clean Water Act and New York State implementing laws and regulations. The major federal, State and County programs affecting the management of water quality in the Town are:

- The Long Island Sound Study (www.longislandsoundstudy.net) and its Comprehensive Conservation and Management Plan (CCMP), updated in 2015;
- The establishment of a Total Maximum Daily Load (TMDL) for Nitrogen in Long Island Sound as a result of the Long Sound Study CCMP;
- Suffolk County's Drinking Water Protection Program, as adopted and amended by public referendum;
- The upgrading of area sewage treatment plants to reduce nitrogen loads to meet the TMDL;
- The Municipal Separate Storm Sewer System (MS4) permit program that requires the Town to reduce the amount of pollutants carried by storm sewers to its waterbodies;
- An updated DEC Priority Waterbodies List which periodically identifies water quality problems and their sources for all waterbodies. (www.dec.ny.gov/docs/water_pdf/wiatllisnrsb.pdf);
- The Long Island Nitrogen Action Plan (LINAP) (www.dec.ny.gov/docs/water_pdf/linapscope.pdf) (2016) the goal of which is to assess nitrogen pollution in Long Island waters, identify sources of nitrogen, establish nitrogen reduction endpoints and a plan to achieve reduction endpoints.

Among the water quality initiatives undertaken by the Town or County since 1989 are:

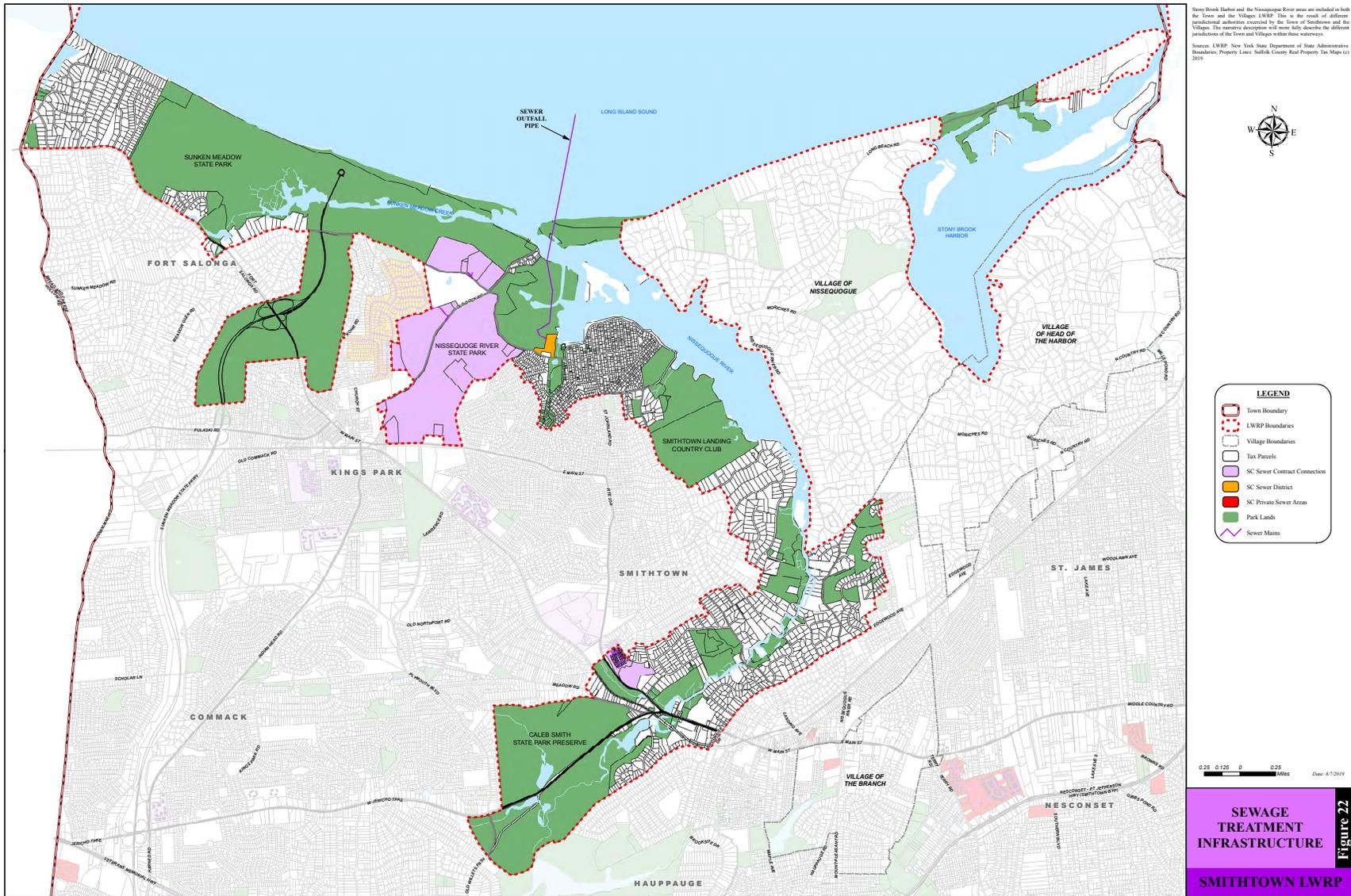
- New town stormwater regulations,
- The Nissequogue River Stewardship Action Plan, sponsored by The Regional Plan Association,
- Suffolk County North Shore Embayments Watershed Management Plan
- Suffolk County upgrade of the Kings Park Sewage Plant,
- Suffolk County Comprehensive Water Resources Plan,
- Suffolk County approval of certain Innovative and Alternative Septic Systems that reduce nitrogen

In order to develop appropriate coastal management policies for the Town Local Waterfront Revitalization Program, it is important to assess water quality from several perspectives:

- The pollutants of concern for each of the several waterbodies of the Town and Villages. For example, excess nutrients are the major concern in both the Sound and its embayments.
- The type of pollutant source, non-point sources, such as, on site septic systems, stormwater²⁵, point sources, storm sewers, sewage treatment plants. For example, septic systems, a non point source, are the major source of the excess nutrients and pathogens in the Nissequogue River and Stony Brook Harbor
- The location of the source – within the small watersheds of Smithtown Bay, the Nissequogue River, and Stony Brook Harbor, within or outside the Town boundaries, within the Long Island Sound watershed but outside the Town, atmospheric deposition, or groundwater. For example, some of the excess nutrients affecting water quality in Smithtown Bay may be coming from elsewhere in Long Island Sound.
- The entity responsible for managing the water quality problem. For example Suffolk County owns the Kings Park Sewage Treatment Plant while the Town is generally responsible for storm sewers.
- The means of control – elimination or reduction of the pollutant, for example, reducing fertilizer use; treatment of the pollutant, for example, a sewage treatment plant or use of on-site septic systems that modify nitrogen; or modifications of, or in, the waterbody to reduce the quantity of pollutant present, for example introduction of shellfish to take up excess nitrogen.

The coastal management policies of a Local Waterfront Revitalization Program because they are a substitute for the New York State Coastal Management Policy must reflect the State’s coastal policies to the extent they are applicable. However, because it is a local program the emphasis and detail must reflect the issues that are the responsibility of the municipality to address or whose resolution the municipality can influence. Important aspects of water quality management are not the direct responsibility of the Town, particularly the sewage treatment plant (Kings Park) that serves part of the area and discharges to Long Island Sound. See Figure 22 for the portion of the waterfront area that is served by the Kings Park STP. Presently the Kings Park STP utilizes approximately half of its treatment capacity. Most of the waterfront residences use onsite septic systems, which are regulated by Suffolk County Health Department.

²⁵ Stormwater can be either a *point* or *non-point* pollution source. Stormwater that passes through a pipe (storm sewer) to reach a waterbody is regulated through an MS4 permit as a point source. Stormwater that flows overland to ultimately reach a water body is a non point source.



Stony Brook Harbor and the Nissequogue River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c) 2019.

Figure 22. Sewage Treatment Infrastructure

The sewage treatment facilities that serve the area are Suffolk County facilities and the standards of treatment are set by the federal and state government. Of particular note is the TMDL for nitrogen for Long Island Sound. Permits for point source discharge are a state responsibility. Approval of septic systems is a Suffolk County responsibility. Much of the monitoring and assessment of water quality is done by state, county, or regional agencies and by citizen groups and non-profit organizations. The water quality responsibilities of the Town include:

- Managing the pattern of land use and development to minimize water quality problems by, for example, maintaining large scale open space and by reducing impervious surfaces to better absorb rain fall
- Developing and undertaking projects to enhance the water quality of the streams, wetlands, ponds, and near shore areas
- Regulating and managing stormwater
- Participating in regional organizations to seek cooperative solutions to shared problems

A principle means by which the Town regulates stormwater to reduce pollution is through requiring the preparation of Stormwater Pollution Prevention Plans. These are required for nearly all development projects that affect Stony Brook Harbor and Smithtown Bay and projects over five acres affecting the Nissequogue River. The differing threshold for the plan requirement is due primarily to the fact that Stony Brook Harbor and Smithtown Bay have designated uses that are impaired, shellfishing and aquatic life respectively, and for which a TMDL has been established. The Nissequogue River is not designated for the taking of shellfish, nor does it have a TMDL.

The Comprehensive Conservation Management Plan developed by the Long Island Sound Study clearly summarizes the major surface water quality impairments in the region. These impairments reflect the intensity of upland and water uses in the Long Island Sound coastal area, and result from both point and nonpoint sources. Impairments also result from pollution sources outside the Sound coastal area. Consequences of water quality impairments include hypoxia, a major problem in the western portions of Long Island Sound and Smithtown Bay; reduced availability of crustaceans and certified, marketable shellfish (Figure 23 shows areas closed to shell fishing in Smithtown waters, general due to excess nutrients and pathogens); increased closure days for beaches; and reduced aesthetic enjoyment of the Sound shoreline.

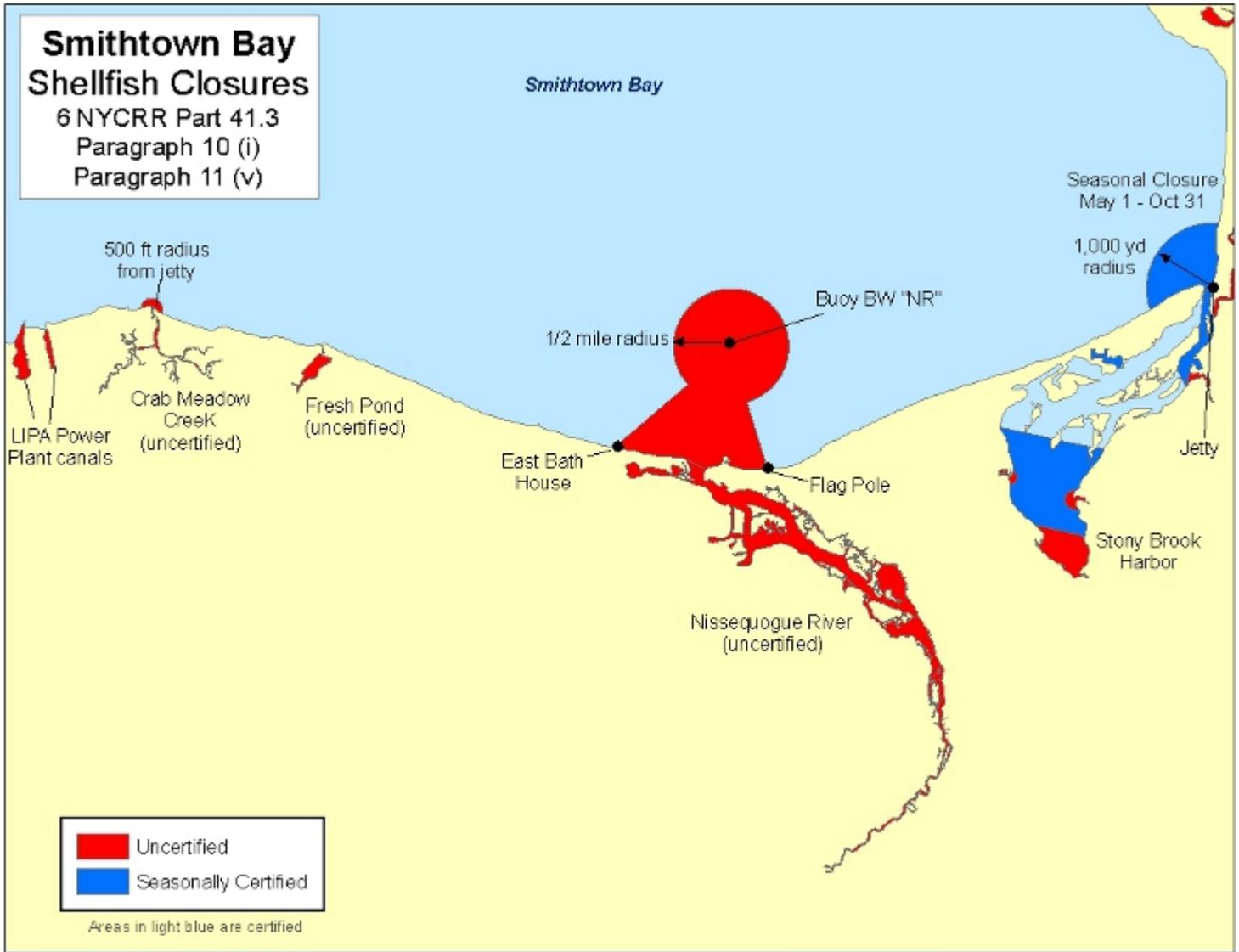


Figure 23. Smithtown Bay Shellfish Closures

Excess nitrogen is affecting the waterbodies in the waterfront area. Sources include septic systems within the waterfront area particularly in San Remo and Fort Salonga. Septic systems Long Island Sound watershed but outside the waterfront area are also a source of excess nitrogen. The upgrade of the Kings Park Sewage Plant has reduced nitrogen discharges to Long Island Sound. The Kings Park Sewage Treatment Plant is among the most effective on Long Island Sound at controlling nitrogen. The nitrogen concentration of the plant's effluent is 3.3mg/L.²⁶ Table 4 shows the nitrogen contribution to the Nissequogue River and Stony Brook Harbor from other sources. Other pollutants of concern include pathogens and sediment. A primary source of these pollutants is stormwater runoff. While some of the control of the above pollutants is the responsibility of other levels of government, the town plays a significant role in limiting these pollutants through its management of storm sewers, storm water regulations, site plan review, general planning to manage the pattern of development, and identification and development of innovative programs to improve water quality, e.g., permeable reactive barriers, shellfish propagation, and wetland restoration.

The following findings statement from the town's stormwater code (Ch. 153 Stormwater Management and Erosion and Sediment Control) well summarizes the issue of managing stormwater:

- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;*
- (2) This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;*
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;*
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation;*
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow;*
- (6) Substantial economic losses can result from these adverse impacts on the waters of the municipality;*
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;*

²⁶ Long Island Sound Study, *Data Summary for Primary Tier Watersheds, June 2, 2017, p B-13.*

- (8) *The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety; and*
- (9) *Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.*

Total nitrogen loading	Source	Kg N/year
Nissequogue River	Atmospheric deposition	11,917
	Fertilizer	16,789
	Sewer	N/A
	Septic and cesspools	179,549
Stony Brook Harbor	Atmospheric deposition	8,376
	Fertilizer	4,348
	Septic and cesspools	22,032

Table 4. Long Island Sound Study, Data Summary for Primary Tier Watersheds, June 2, 2017

Note: The numerous reports and programs which are periodically updated or revised, and which describe the water quality conditions and activities that exist in the Town, including the current LWRP, will be listed in an appendix with links to where they can be found in their most recent form.

Groundwater Water Quality

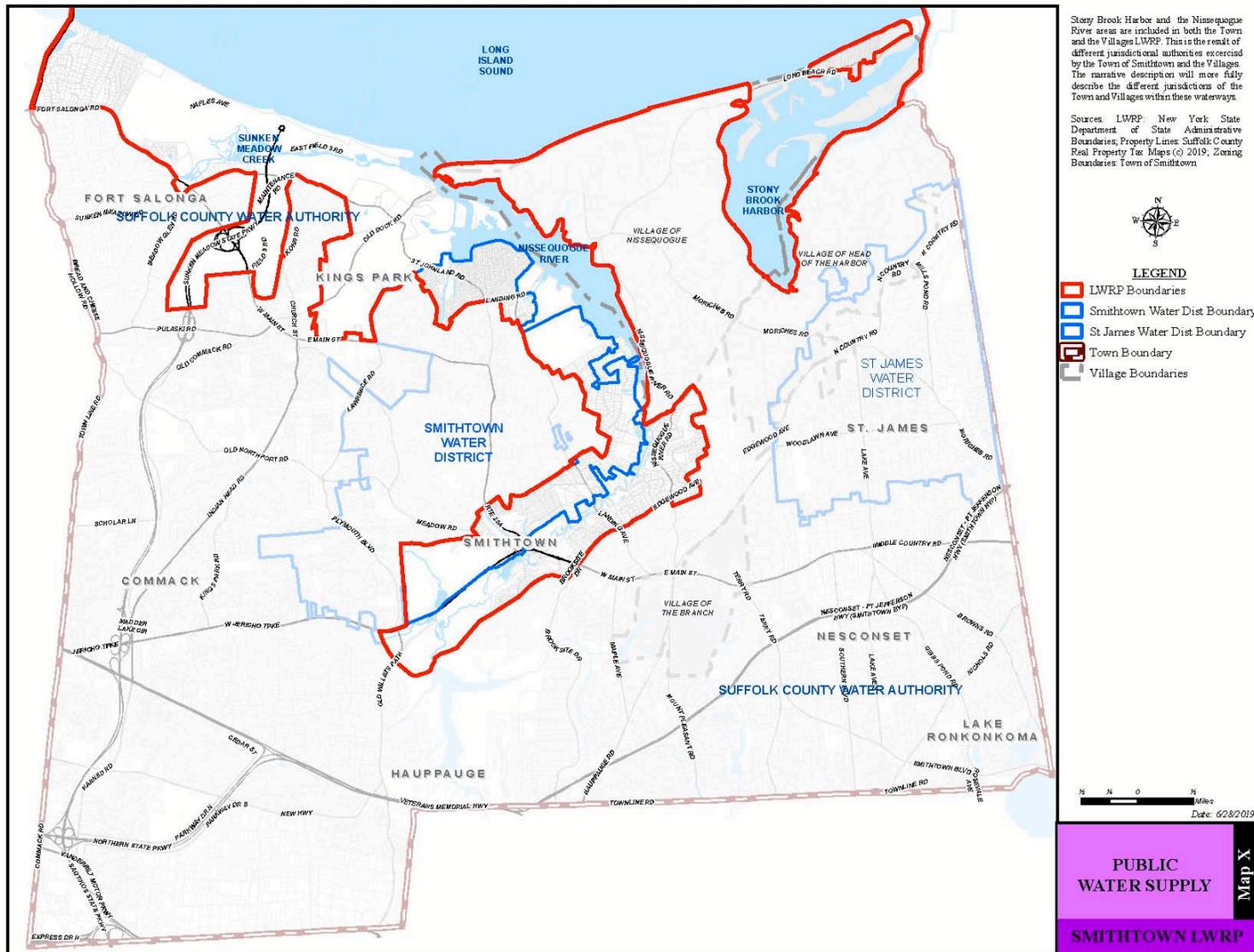
Protection of groundwater is very important since it is the principal source of drinking water for Long Island. At present, most of the coastal area is served by public wells. The former Kings Park Psychiatric Center has its own water supply system, but plans to abandon the system and connect to the public water system. The municipal wells, operated by the Smithtown Water District and Suffolk County Water Authority serve Fort Salonga, the San Remo area and areas south of Landing Meadow Road. The Old Dock Road neighborhood and some of the properties north of Landing Meadow Road are served by private wells.

Both the quantity and quality of the drinking water supply is of concern. Hydrologists have estimated that the amount of water contained in the underlying aquifer system is enough to sustain the future population of Long Island indefinitely. However, as noted, the groundwater is vulnerable to pollution and unless preventive measures are undertaken, groundwater quality will likely deteriorate further. In addition, saltwater intrusion from excessive pumping in areas close to the coast is also a concern as it affects the quality and quantity of drinking water.

In Smithtown, 40 of the 46 public wells draw from the Magothy aquifer. Six of the wells draw from the Upper Glacial aquifer. As is the case for much of Long Island, the Upper Glacial aquifer has largely become too polluted to provide drinking water.

The Upper Glacial aquifer is the shallowest of the three aquifers. It is composed of glacial deposits, consisting mostly of sands and gravels. Prior to the 1960s this aquifer was the primary source of drinking water; however, most of it has become contaminated and its use as a water supply is very limited. As of 2007, six of the wells that the Water Authority operates in Smithtown, and many private residential wells still draw from the Upper Glacial. Pollution in this aquifer tends to contaminate freshwater ponds and streams, and the Nissequogue River.

In order to protect the groundwater quality in, the Suffolk County Sanitary Code requires that the land not be developed at any greater density than the equivalent of one dwelling per 20,000 sq. ft. unless the development is connected to a sewage treatment plant. However, the Town and waterfront area were largely developed prior to enactment of the density restriction; therefore, water quality in the Upper Glacial aquifer has continued to decline.



Stony Brook Harbor and the Nissequogue River areas are included in both the Town and the Villages LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Villages. The narrative description will more fully describe the different jurisdictions of the Town and Villages within these waterways.

Sources: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps © 2019; Zoning Boundaries: Town of Smithtown

Figure 24. Public Water Supply

POLICIES

Policy 5: Protect and improve water quality and supply in the Town of Smithtown waterfront area.

- 5.1 Municipal, industrial, and commercial discharge of pollutants including, but not limited to, toxic and hazardous substances, into coastal waters will conform to State and national water quality standards.

Municipal, industrial and commercial discharges include "end of pipe" discharges into surface and groundwater, plant site runoff, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges, are both those which directly empty into receiving coastal waters and those which pass through municipal treatment systems before reaching the state's [and local] waterways. State and federal regulations generally govern direct pollutant discharge into coastal waters. The standards contained in applicable state and federal regulations will be used to determine consistency of an action with this policy. The following uses, which can have substantial adverse effects on water quality, are prohibited in the waterfront area: filling station, repair garage, acid manufacture, ammonia or chlorine manufacture, blast furnace, chemical poisons manufacture, chemical works, coal or tar products manufacture, explosives manufacture or storage, fertilizer manufacture, fish smoking or curing, gas manufacture, glue manufacture, house trailers, mobile homes, incineration or reduction or garbage, refuse or junk, and junkyards.

- 5.2 State Coastal Policies and the 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 recognized as being a development constraint.

- a. Pursuant to the Federal Clean Water Act of 1977 (P.L. 95-217) the state has classified its coastal and other waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable periodically for possible revision or amendment. Local and regional coastal management policies shall be factored into the review process for coastal waters. However, such consideration shall not affect any water pollution control requirement established by the State pursuant to the Federal Clean Water Act.
- b. NYS DEC current classifications of fresh and saline waters in the Smithtown waterfront area are given in Appendix #. The fresh-water classifications are appropriate for the proposed uses in this Program. The salt-water classifications are consistent with proposed uses except for shellfishing and bathing along the shore now classified SC. Efforts should be made to restore these areas to warrant SA status. TMDLs or an equivalent method should be used to achieve uses and water quality standards if necessary.

Policy Guidelines

1. Manage Long Island Sound, Suffolk County, West (1702-0098) within Smithtown to resolve identified water quality problems and issues, maintain a SA classification, and achieve the established TMDL. The DEC Priority Waterbody List description for this segment identifies the uses that are either impaired or stressed as: public bathing, fish consumption, aquatic life, and recreation. The identified pollutants include nutrients, low Dissolved Oxygen, pathogens. Their sources are urban/stormwater runoff and Waste Water Treatment Plant.
2. Manage Smithtown Bay (1702-0023) within Smithtown to resolve identified water quality problems, maintain a SA classification, and achieve the established TMDL. The DEC Priority Waterbody List description for this waterbody identifies public bathing, recreation, aquatic life, and fish consumption as either stressed or impaired. The identified pollutants include nutrients, low Dissolved Oxygen, pathogens. Their sources are urban/stormwater runoff and Waste Water Treatment Plant.
3. Manage Sunken Meadow Creek (included in 1702-0232) to maintain, at a minimum, its SC classification. The DEC Priority Waterbody List identifies recreation, aquatic life, and fish consumption as the uses supported. The identified pollutant suspected as limiting other uses, including shellfishing, is pathogens from stormwater runoff. Upgrade the classification when achievement is feasible.
4. Manage Fresh Pond (1702-0233) to maintain its C classification. This waterbody is not assessed.
5. Manage the lower Nissequogue River (1702-0025) to maintain at a minimum its SC classification. The DEC Priority Waterbody List identifies recreation, aquatic life, and fish consumption as uses supported and the pollutant identified as limiting other uses as pathogens from stormwater and on site septic systems. Nutrients have been identified as a pollutant in reports of the Long Island Sound Study. Upgrade the classification when achievement of uses is feasible.
6. Manage Philips Mill Pond (1702-036) to maintain its C(T) classification. The waterbody is identified as suitable for general recreation and support of aquatic life and as a cold water trout fishery. Recreational uses are threatened by invasive plant growth. Control invasive plant growth.
7. Manage Stony Brook Harbor (1703-0047) to maintain its SA classification. The evaluated uses of shellfishing, public bathing, recreation, aquatic life, and fish consumption are identified as impaired (shellfishing) or stressed. Manage Stony Brook Harbor to ensure that these uses are fully supported, and the TMDL for Pathogens is implemented.

5.3 [Reduce nutrients to levels necessary to support a healthy ecosystem, one that allows for harvestable sustainable fish and shellfish populations, healthy submerged aquatic vegetation and traditional human uses in the waters of the Town.](#)

The study undertaken for the Long Island Sound Study, Data Summary for Primary Tier Watersheds, June 2, 2017 (table 3-3) identified substantial sources of nitrogen loading entering the Nissequogue River and Stony Brook Harbor. According to the study the primary source of nitrogen to both waterbodies is septic systems and cesspools. Policies 5.4 and 5.5 provide more specific policy direction on managing two of the most significant sources of nutrients, on-site sewage disposal systems and stormwater.

Policy Guidelines

1. Reduce the input of nutrients from all sources, including, human waste, pet waste, stormwater, and fertilizers.
2. Employ all effective methods to reduce nutrients, such as, composting toilets, urine diverting toilets, denitrifying septic systems, permeable reactive barriers, sewage collection and treatment, decentralized/clustered wastewater treatment systems, stormwater control aquaculture, improved tidal flow to embayments where appropriate, open space protection, and limits on fertilizer use.
3. Utilize the most efficient and cost effective combination of methods to reduce nutrients either at their source, in the ground water and/or in the waters of the embayments.
4. Support the establishment of Total Maximum Daily Loads for nitrogen discharges to the major estuaries within the town. In their absence utilize best available science to estimate the level of nutrient reduction required and the relative contribution of nutrients from the various sources in the watershed and manage accordingly.
5. Support the TMDL for pathogens in Stony Brook Harbor

5.4 Mitigate the nutrient contribution from on-site sewage disposal systems.

The Kings Park Sewage Treatment Plant serves a limited portion of the waterfront area. Most residences are served by onsite septic systems or cesspools. As of 2017, this plant uses approximately half of its treatment capacity. The currently unused capacity is likely to be taken up by the extension of sewers to the Kings Park Central Business District. Therefore, it is not feasible to connect a significant portion of the homes in the waterfront area to the treatment plant. However, other measures can be implemented, including innovative/alternative on-site sewage disposal systems, permeable reactive barriers, etc. Priority should be given to reducing nitrogen from densely populated neighborhoods from reaching coastal waters.

5.5 Use Best Management Practices to ensure the control of stormwater runoff and to minimize the discharge of excess nutrients into coastal waters.

The purpose of this policy is to control and regulate land-disturbing activities to assure that best management practices are used which minimize water pollution, retain valuable topsoil and vegetation and prevent flooding, erosion and sedimentation. These best management practices serve to reduce pollution from stormwater whether it is ultimately a point or nonpoint source. See also Policy 4 regarding standards for managing stormwater to reduce flooding risks.

The coastal waters of the Town are subject to eroded soils and nutrients entering into its rivers, streams, creeks and ponds, which feed

into Long Island Sound. These same bodies of water also receive pollutants, such as coliform bacteria, chemical fertilizers, pesticides and other toxic material carried in stormwater runoff. Measures should be taken to mitigate deterioration in water quality from these sources. The federal Coastal Zone Act Reauthorization Amendments, Section 6217(g) of 1990, formally recognizes that nonpoint pollution is a key factor in the degradation of coastal waters, and directs the States to enact specific management measures to control nonpoint pollution. The Town will support these measures and stormwater regulations. The Town has adopted similar provisions regulating stormwater and requiring stormwater management plans for development.

The U.S. Environmental Protection Agency (USEPA), NYSDEC, and NYS Water Resources Institute at Cornell University provide valuable resources to assist in managing stormwater. These include the EPA's National Stormwater Calculator (www.epa.gov/water-research/national-stormwater-calculator), the NYS Stormwater Management Design Manual, and research findings from Cornell.

Policy Guidelines

- a. In determining Best Management Practices the most recent edition of the New York State Stormwater Management Design Manual and the New York Standards and Specifications for Erosion and Sediment Control should be consulted for design standards. Among other standards, the 2015 edition "requires the capture and treatment of stormwater to meet water quality and flood control goals". Climate change is leading to more intense rainfall. Rather than a fixed amount, e.g., 1 inch, the volume of stormwater to be managed must reflect the changing nature of rainfall. The Long Island Sound Study Comprehensive Conservation Management Plan suggested that changes in frequency and severity of storms as a result of climate change could be addressed in each state's stormwater permit regulations²⁷. See also discussion on expected changes in precipitation under Policy 4, "Flooding, Erosion, and Sea Level Rise"
- b. Consideration should be given to modifying the design and siting of structures and associated site infrastructure to 1) minimize the use of structural and mechanical means to manage stormwater water for both water quality and flood control purposes, and 2) reduce the extent of existing and proposed impervious surface.
- c. The following erosion and sediment control standards should be applied when reviewing site development:
 - i. The construction site, or facilities, should fit the land, particularly with regard to its limitations.
 - ii. Natural ground contours should be followed as closely as possible and grading minimized.

²⁷ By supporting a metric (e.g., 90th percentile) that is tied to the measured severity of storms rather than a flat rainfall amount (e.g., one inch), regulations will keep pace with climate change. Under present conditions, a 90th percentile storm is generally a 0.8-1.3 inch storm. However, if the frequency and intensity of severe storms increases, that number will also increase. (LISCCMP 2015).

- iii. Areas of steep slopes, where high cuts and fills may be required, should be avoided.
 - iv. Extreme care should be exercised in areas adjacent to natural watercourses and in locating artificial drainage ways so that their final gradient and resultant discharge velocity will not increase erosion.
 - v. Natural protective vegetation should remain undisturbed if at all possible; otherwise, plantings should compensate for the disturbance
 - vi. The amount of time that disturbed ground surfaces are exposed to the energy of rainfall and runoff water should be limited.
 - vii. Runoff from upper watershed land, which would contribute runoff to areas subject to erosion, should be diverted.
 - viii. The velocity of the runoff water on all areas subject to erosion should be reduced below that necessary to erode the materials.
 - ix. Sufficient ground cover should be applied to restrain erosion on that portion of the disturbed area undergoing no further active disturbance.
 - x. Runoff from a site should be collected and detained in sediment basins or similar structures to trap pollutants that would otherwise be transported from the site. Such basins capture and mitigate the "first flush" of contaminant-laden flows to protect downstream water quality.
 - xi. Provision should be made for permanent protection of downstream banks and channels from the erosive effects of increased velocity and volume of runoff resulting from facilities constructed.
 - xii. The angle for graded slopes and fills should be limited to an angle no greater than that which can be retained by vegetative cover or other erosion control devices or structures.
 - xiii. The length as well as the angle of graded slopes should be minimized to reduce the erosive velocity of runoff water.
 - xiv. Rather than merely minimize damage, the opportunity should be taken to improve site conditions wherever practicable.
 - xv. Fills should not encroach on natural watercourses, construction channels, or flooding areas.
 - xvi. Permeable surfaces should be encouraged for driveways and parking lots, particularly in areas near wetlands and in floodways.
 - xvii. All development shall be undertaken to maintain the rate of surface water runoff to that which existed prior to the development unless increases would facilitate the beneficial flow of water downstream.
 - xviii. Any new stormwater discharge into or adjacent to freshwater and marine surface waters, freshwater and tidal wetlands, should be further minimized to the extent necessary so as not to significantly impact wetlands or surface water by contamination with sediments. Additionally, such runoff should not alter the hydrology of wetlands.
- d. Stormwater should be managed by maintaining existing vegetation and adding vegetation that is appropriate to the site. Vegetation, including, but not limited to, trees, ground cover, and aquatic vegetation, is important for retention of soil and preventing sedimentation. New development and activities which interfere with such vegetation should be conditioned upon the following:

- i. The need for watering, fertilizing and pesticide application shall be reduced by the use of native plants in landscaping and revegetation of sites.
 - ii. Wherever feasible, natural vegetation, particularly trees, should be retained, protected, and supplemented. Stripping of vegetation, regrading, or other development should be done in a manner that avoids erosion.
 - iii. The permanent (final) vegetation and erosion control measures should be installed as soon as practicable.
- e. An important component of stormwater management is the creation and protection of buffers along the watercourses of the Town, which help to maintain and improve water quality by filtering runoff. Because the area has been highly developed, natural buffers have been altered in many areas. Natural buffers should be retained where they exist, and where appropriate, restored or enhanced.
- f. Prevent pollutants from entering waterbodies by reducing generation of pollutants. Everyday activities have the potential to contribute to nonpoint source pollutant loadings. Some of the major sources include household, garden and lawn care activities, turf grass management, diesel and gasoline vehicles, onsite sanitary disposal systems, illegal discharges into stormwater drainage pipes, and pets and other domestic animals. By reducing the generation of these pollutants, adverse water quality impacts from these sources can be decreased:
 - 1. Household hazardous chemicals, including automobile fluids, pesticides, paints, solvents, etc. should be disposed of at designated sites on the days scheduled
 - 2. Lawn and yard trimmings should be disposed of according to municipal directives for picking up such materials. However, yard composting should be encouraged. The use of chemical fertilizers and pesticides should be kept to a minimum.
 - 3. Herbicides and pesticides on golf courses, parks and recreation areas should be minimized. Restriction of such uses also protects the wildlife and ecosystems of these areas.
 - 4. Pollutants, such as floatables, waste oil, litter and pet excrement should not be discharged into storm drains.
 - 5. Parking lots, gas stations, and other such entities, should be required to install appropriate silt traps that have the capability of removing oil and grease at the time application is made for new permits.
 - 6. On-site septic systems should be regularly maintained.

5.6 Limit the adverse effects of watershed development on water quality and quantity.

This policy applies to activities that affect the overall pattern of development and would apply to activities that would influence the location of individual development projects not the individual developments themselves except with regard to substantial cumulative and secondary effects, if any.

Policy Guidelines

- a. Ensure that watershed development does not impair natural characteristics of drainage systems, floodplains, areas that are particularly susceptible to erosion and sediment loss, and wetland extent and function.
- b. Limit the impacts of individual development projects (e.g., impervious surface coverage, sediment loss, changes to stream velocity and temperature) to prevent cumulative water quality impacts upon the watershed, which would result in the significant impairment of surface or groundwater resources.

5.7 Discharge of waste materials from vessels into coastal waters is prohibited.

The Long Island Sound, including its bays, harbors, and navigable tributaries, were designated a vessel waste no discharge zone in 2011 by the EPA at the request of New York State. Within the designated zone the discharge of treated or untreated waste is prohibited.

5.8 Protect and conserve the quality and quantity of potable water.

Limit cumulative impacts of development on the quality and quantity of potable groundwater. Strategies include maintaining low density development, minimizing the clearance of vegetation, limiting, and ultimately reducing, impervious surfaces, and replacing on-site cesspools and septic systems with innovative and alternative onsite wastewater treatment systems or sewage treatment facilities.

IMPLEMENTATION

Implementation through Existing Local Law

Chapter 138 - Dredging

A permit is required for the placement or removal of any material from any watercourse or wetland in the Town. A standard for the issuance of the permit requires that the activity not adversely affect the watercourse. Diminution of water quality would be an adverse effect.

Chapter 153 - Stormwater Management and Erosion and Sediment Control

A Stormwater Management Pollution Prevention Plan is required to be prepared and approved for: any land development discharging to an impaired waterbody (presently includes Smithtown Bay, and Stony Brook Harbor, but not the Nissequogue River); any land development disturbing five acres or more of land; and any land development disturbing between one acre and five acres during construction only and excepting single family residences and agricultural properties.

Chapter 221 - Property Maintenance

This law requires property owners to keep all infrastructure on their site in good condition. This includes any stormwater management infrastructure.

Chapter 248 - Subdivision of Land

This chapter sets forth standards for designing stormwater management infrastructure within a subdivision.

Chapter 285 - Trees

The Tree Preservation and Land Clearing Law of the Town of Smithtown Trees and vegetation play a role in managing stormwater. This law requires a permit for the removal of trees and vegetation on undeveloped and developable commercial land and subdividable residential land. A Tree Preservation and Land Clearing Plan is required prior to removal of vegetation on these properties.

Chapter 315 - Water Pollution

This law provides a general prohibition to any discharge of substances which may render the waters of the Town unfit for bathing, boating, fishing and shellfishing. Fines are imposed for violations.

Chapter 318 - Waterways

The dumping of oil refuse and sewage or garbage is prohibited.

Chapter 322 - Zoning

- Section 322-25 Drainage, requires that post development stormwater discharge to surface water shall have the same quantity, quality, and other characteristics as stormwater discharge from the site in its natural condition.
- Article XIII, Site Plan Review. The standards include the adequacy of water supply, stormwater drainage and sewage disposal facilities.

Implementation through Changes to Local Law

- a. Amend Chapter 153 - Stormwater Management and Erosion and Sediment Control to eliminate the lower threshold for Stormwater Pollution Prevention Plans in the Nissequogue River watershed. The current threshold is tied to whether the affected waterbody is listed as “impaired” on the NYSDEC Priority Waterbody List. Because the Nissequogue River is classified SC²⁸ and is not “impaired,” the Nissequogue River has a lower threshold than Stony Brook Harbor and Smithtown Bay which are classified SA and are impaired for that higher classification. However, the nitrogen loading from the Nissequogue River watershed is substantially higher than into the Harbor. The excess nitrogen is also a concern for groundwater quality.
- b. Amend Chapter 153 to require that stormwater generated by significant expansions to single-family dwellings or otherwise impervious surface area be retained onsite.
- c. Consider adjusting the standard for the size rainfall to be captured on site so that 90% of events are contained even as rainfall changes with climate change.

Implementation through Projects

- a. Continue to make improvements to Town stormwater infrastructure as identified in the MS4 permit.
- b. Pursue sewers for the Kings Park and Smithtown Central Business Districts to reduce nitrogen loading to the Nissequogue River and Smithtown Bay.
- c. Explore the feasibility of various incentives to promote replacement of traditional onsite sanitary systems with Suffolk County approved

²⁸ SC classification, if achieved, allows, among other uses, for secondary contact recreation; SA classification, if achieved, allows, among other uses, for shellfishing.

“Innovative and Alternative” systems to reduce nitrogen loads in the Nissequogue River watershed.

- d. Undertake a feasibility study of the effectiveness of the use of a “Permeable Reactive Barrier” and/or other off-site nitrogen reducing measure in the San Remo neighborhood.
- e. Evaluate the benefits of increasing shellfish propagation for water quality purposes.

Implementation through Proposed Administrative Changes or Actions

- a. Provide links to New York State Stormwater Management Design Manual and the New York Standards and Specifications for Erosion and Sediment Control on the Town’s website.
- b. Support, through distribution of materials and other efforts, Suffolk County’s grant program for the installation of Innovative and Alternative Septic Systems that will reduce nitrogen loadings.

Living Resources

INVENTORY AND ANALYSIS

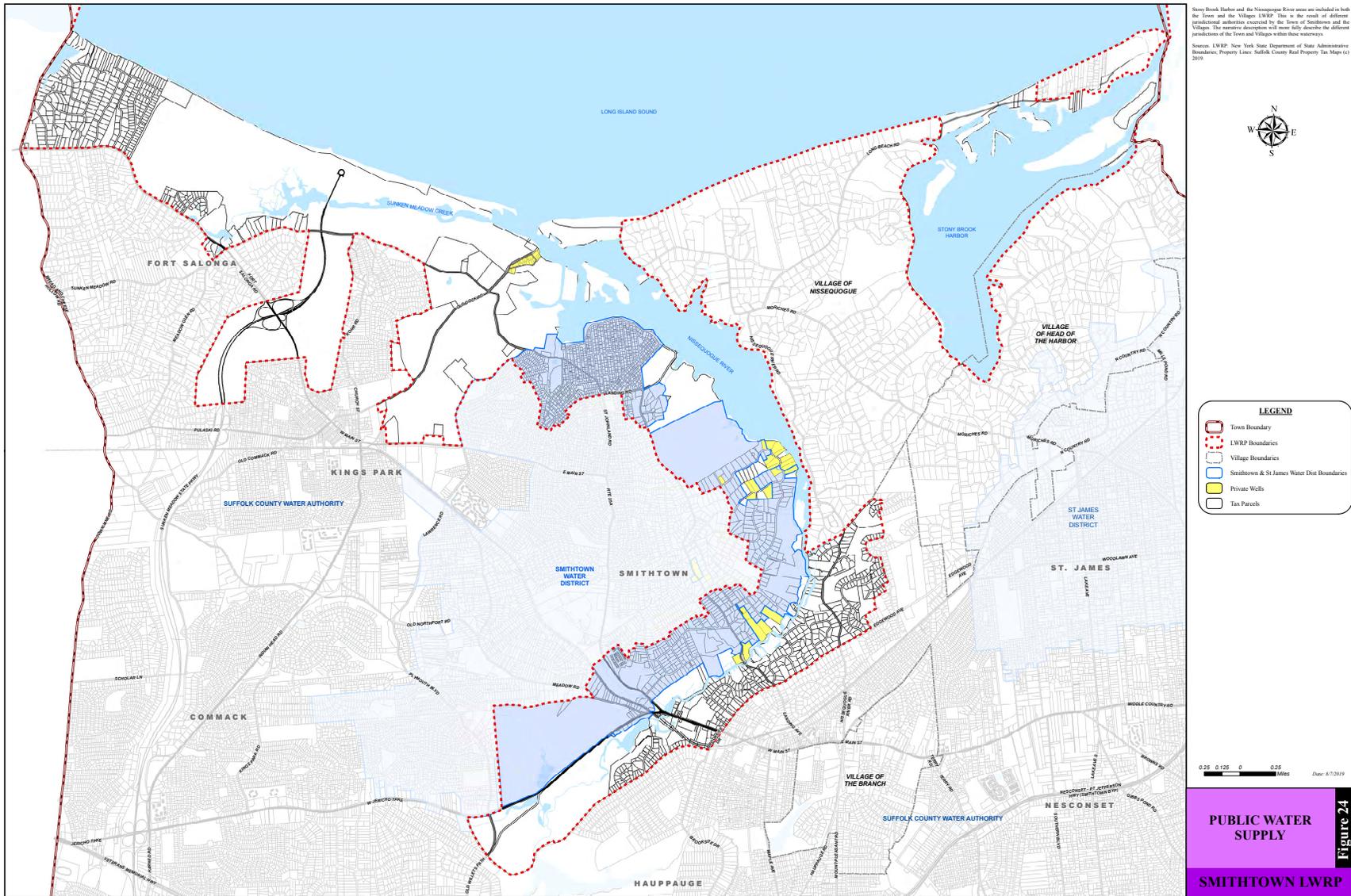
The Long Island Sound and its shoreline provide a rich environment for a wide range of plants and animals. It is an ecosystem that supports these plants and animals. This ecosystem consists of physical (non-living) components, biological (living) components, and their interactions. The physical components include environmental factors such as water, soils, geology, energy, and contaminants. The biological components include the plants, animals, and other living creatures that inhabit the coastal area.

Certain areas and species that are important for their contribution to the quality and biological diversity of the Sound ecosystem have been specifically identified by the State for protection. These areas and species include regulated tidal and freshwater wetlands; designated Significant Coastal Fish and Wildlife Habitats; and rare, threatened, and endangered species. In addition to specifically identified discrete areas and species, the quality of the Sound ecosystem also depends on more common, broadly distributed natural resources, such as the extent of forest cover, the population of overwintering songbirds, or benthic communities. These more common natural resources collectively affect the quality and biological diversity of the Long Island Sound ecosystem.

Smithtown has been more successful than many communities in protecting the natural resources of its coastal area from loss and impacts caused by suburban development. Nevertheless, it is clear that the quantity and quality of these resources are not as good as they once were. The town has lost virtually all its prime farmland, much wildlife habitat, and much of its open space. The quality of the groundwater and surface waters has declined. Noise, air quality, and the consequences of energy consumption remain concerns. These trends will continue into the future, albeit at a slower pace. Analysis of the town's natural resource base reveals that there are opportunities to minimize environmental degradation and to make improvements in the overall quality of the environment for the benefit of living resources. To assure the best possible quality of living resources for the future, it is necessary to plan ahead, take preventative measures as soon as possible, and most importantly, make an effort to restore the physical and biological components of the ecosystem to their original or significantly improved conditions. All of these efforts must be coordinated with other elements of the LWRP.

Wetlands

Wetlands are among the most important ecological resources in any community. They are protected by federal, state, and local legislation. Figure 25 shows the location of wetlands in Smithtown.



Stony Brook Harbor and the Neversink River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRF, New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c) 2019.

Figure 25. Location of Wetlands

The benefits of wetlands include their ability to:

- Absorb stormwater, which reduces the frequency and severity of flooding and storm events,
- Serve as breeding, nesting, and feeding grounds for many types of wildlife,
- Provide habitat for fish and shellfish and contribute to associated aquatic food chains,
- Protect and recharge the groundwater supply,
- Provide locations for active and passive recreation,
- Treat stormwater before it infiltrates the ground or flows into surface water because the wetlands serve as biological and chemical oxidation basins,
- Act as natural erosion control features,
- Provide accessible locations to study the natural environment, and
- Provide nutrients in freshwater food cycles and create nursery grounds and sanctuaries for juvenile fish,
- Provide aesthetic open space in many otherwise densely developed areas.

The town has approximately 278 acres of tidal wetlands, not including open water wetlands of the Nissequogue River, Stony Brook Harbor, or the near shore open waters of Long Island Sound.²⁹ Most of the tidal wetlands in the waterfront area are adjacent to the Nissequogue River and in Stony Brook Harbor; other large wetlands are along Sunken Meadow Creek and Fresh Pond. Prior to the enactment of wetland regulations in the 1970s, tidal wetlands of all types were lost near the mouth of the Nissequogue River and along the shores of Stony Brook Harbor. These wetlands were either dredged to create boat channels and marinas or filled in to create parking lots and other structures. However, while the loss of tidal wetlands due to direct human activity, such as, dredging and filling has declined substantially, wetland loss has continued. There are also extensive freshwater wetlands within the town, including the waterfront area, which provide similar benefits. However, the focus of the LWRP is on tidal wetlands, both vegetated and non-vegetated.

The *Long Island Tidal Wetlands Trend Analysis (2015)* has documented substantial loss and changes to tidal wetlands between 1974 and 2005. In Smithtown the acreage of tidal wetland declined from 410 acres to 278 acres. These figures do not include open waters classified as wetlands (generally less than 6' in depth), nor mudflats. These also are important natural resources and include the entire shoreline. Table 3-4 shows the loss of wetlands by major wetland complexes in the town.

“Changes, including degradation, fragmentation and severe acreage losses have been observed in several Long Island, NY tidal wetland complexes during discrete and limited trends analyses. The results of this effort support other studies that have demonstrated substantial loss of tidal wetlands area over the past forty years. Typical indicators of native marsh loss (i.e., not including Phragmites australis

²⁹ Long Island Tidal Wetlands Trends Analysis, New England Interstate Water Pollution Control Commission, 2015.

marsh) that were observed in the study area include retreat of the seaward edge of the marsh, loss of marsh lands, widening tidal creeks and ditches, panne/mudflat, pond formation, and encroachment of invasive *Phragmites australis*. In addition to native marsh loss, conversion of high marsh to low marsh is indicative of sea level rise.”

For the Stony Brook Harbor wetland complexes, the *Trends Analysis* presents maps that show the change in wetlands from 1974 to 2005 (figure 25).

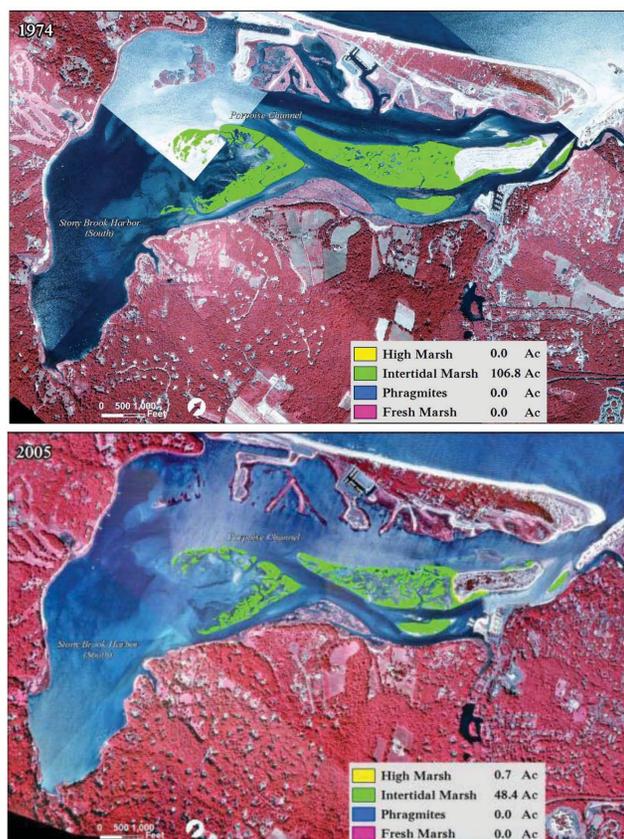


Figure 26. Long Island Tidal Wetlands Trends Analysis

ID #	Wetland Complex	Town	1974 IM+HM+FM (Acres)	2005 IM + HM+FM (Acres)	Change in IM+HM+FM (Acres)	Change in IM+HM+FM (%)
219	Nissequogue Sunken Meadow Moat	Smithtown	2.8	0.0	-2.8	-100.0
220	Nissequogue Upper Sunken Meadow Creek	Smithtown	8.7	1.7	-7.0	-80.8
105	Porpoise Channel Islands	Smithtown	106.7	49.2	-57.5	-53.9
107	Stony Brook Creek	Smithtown	5.6	2.8	-2.9	-49.5
108	Stony Brook Harbor South	Smithtown	52.1	37.7	-14.4	-27.7
214	Nissequogue Smithtown Landing Golf Course	Smithtown	4.1	3.0	-1.1	-27.3
207	Nissequogue Mouth of Sunken Meadow Creek	Smithtown	60.7	44.5	-16.2	-26.6
209	Short Beach	Smithtown	22.6	18.3	-4.3	-19.1
212	Nissequogue Landing County Park	Smithtown	15.4	12.5	-2.9	-18.8
215	Nissequogue East	Smithtown	86.5	71.2	-15.3	-17.7
216	Nissequogue Downstream Coastal FM	Smithtown	9.3	7.6	-1.6	-17.6
210	Nissequogue IM Island	Smithtown	20.3	16.8	-3.5	-17.3
211	Nissequogue Riveria Drive Shoreline	Smithtown	15.3	12.8	-2.5	-16.1
<i>Subtotal</i>			<i>410.2</i>	<i>278.2</i>	<i>-132.0</i>	<i>-32.2</i>

Table 5. Long Island Tidal Wetlands Trend Analysis

The loss of wetlands in Smithtown of 32 % is high relative to the loss in other towns on Long Island. Only the Town of North Hempstead had a greater percentage loss of tidal wetlands.

While there are a number of laws and programs that help protect the remaining wetlands, these laws have been most effective in reducing the rate of destruction. However, like the quality of surface water, the integrity of wetlands has slowly been diminishing. Currently, the largest threats to wetlands include:

- Regrading near wetlands, which destabilizes the wetland,

- Illegal filling of wetlands,
- Increasing pollution from stormwater runoff, storm sewers, and boats.
- Phragmites growth
- Conversion of high marsh to intertidal marsh and panne/pond formation from marsh waterlogging – caused by sea level rise and failure to grow at the rate necessary to compensate for sea level rise
- Future loss of intertidal marsh to open water as a result of a likely accelerating of sea level rise.

The preservation and expansion of wetlands play a critical role in achieving many environmental gains. Not only preservation of the remaining wetlands, but expansion of these resources is necessary to aid in meeting numerous environmental objectives. Efforts should focus on reducing the amount of contaminated runoff that reaches the waterways and strictly enforcing the wetland protection regulations. Efforts need to be taken to combat past and future losses by recreating wetlands and by providing for the migration of wetlands.

The wetlands associated with the Nissequogue River, Sunken Meadow Creek and Stony Brook Harbor are the most significant wildlife habitats. The Nissequogue River, Stony Brook Harbor and the Nissequogue Inlet beaches are designated as State Significant Coastal Fish and Wildlife Habitats. These areas are important for many species of migratory waterfowl. The woods and abandoned fields throughout the waterfront are important habitats for many birds and mammals. Some species, such as red fox, are extremely rare in the Town and would not exist if the amount of habitat areas were to be reduced.

Vegetation

There are several components of a community's vegetation. Forests and landscaped areas are the most visible and common; but there are also other elements such as street trees, wetland vegetation, and shoreline vegetation. All serve a desired function within the natural community, define the character of the human community, and all are resources that require management. Prior to the earliest settlements in the 1600s, Smithtown was entirely forested except for beaches, tidal marshes, and a few freshwater wetlands. By the 1840s, virtually all the forests had been cleared, either for agriculture or for cordwood shipped to New York City. Within a few years, as the large farms of the Midwest were developed, the least productive agricultural land, typically steep hillsides, was abandoned, and the vegetation began to revert to a natural state. Before the suburban influx in the 1950s, about half the Town was forested. Suburban development since that time had significantly reduced the natural forested areas and by 1970, ornamental vegetation (i.e., landscaped areas) had become the dominant cover type. About 18% of the town is paved or otherwise unvegetated.

Smithtown is fortunate in that it is quite wooded in comparison to many other suburban communities in the U.S. Visual preference studies conducted by federal agencies reveal that the public tends to place a high value on forests, especially tall, dense ones. The nearly ubiquitous presence of tall trees in the town creates a green backdrop in most of our visual experience. This is important in creating the image of an open

and attractive community. In addition, forested areas provide wildlife habitat and are desired for passive recreation such as hiking, birding, photography, camping, biking, and running.

The ornamental areas include lawns, gardens, street tree areas, athletic fields, etc. While this type of landscape is valued by the community and serves an important role in making the community attractive, the maintenance of this vegetation has impacts on the groundwater and fresh water bodies. Property owners tend to use excessive irrigation and large amounts of pesticides and fertilizer, which eventually find their way into surface water and groundwater. Additionally, the disposal of landscaping waste is a significant fiscal cost.

While the predominant vegetation is forest and ornamental, there are other types of vegetation that are important, including wetlands, agricultural fields, vacant lands, and street trees.

From a resource management perspective, a major part of Smithtown's urban forest is its street tree population. These trees not only provide an attractive feature to the community, they comprise a vast resource, the size of which is loosely estimated at 80,000 trees, and the Town has the capacity for 20,000 more street trees. Because street trees have a life expectancy of 50-100 years, a large percentage may need to be replaced in the near future. This is exacerbated by the fact that a large proportion of them are Norway Maples, which seem to have a short life span. In addition, most of our other street trees belong to a small number of species, which makes the street tree population close to a monoculture. A pest or disease can spread through a monoculture quickly. Such has occurred with Dutch elm disease, the Asian longhorned beetle, and the American chestnut blight.

In terms of overall numbers, wetland and shoreline vegetation comprise only a small portion of the community's vegetation. At the same time, however, these areas are critically important to the community because they provide a direct benefit to our well-being. Wetland vegetation covers only about 4% of the town, but is the most ecologically important community. There are several programs that are designed to protect this resource. In terms of shoreline vegetation, dune and beach vegetation serves a critical role in stabilizing the waterfront areas and has proven to be far more effective than man-made types of stabilization.

Native plants, because they are adapted to the local climate and soils, are important to the health of the Town's vegetative cover. They predominate in the natural areas of the Town, but can also play a part in areas of ornamental plantings, as they require less water, fertilization and pesticide use. They are the preferred choice for plantings when buffer areas are required to be created along water courses as part of development approvals.

Maintaining and increasing vegetative cover and the converse limiting and reducing impervious cover is important in stormwater management and absorbing CO₂.

Fish and Wildlife

Long Island once had a great abundance of wildlife. Many of these species have since disappeared from the land and waterways as a result of intense hunting and fishing, and most importantly, a loss of habitat and a reduction in quality of the remaining habitat. Such is the case with scallops, porpoise, blowfish, and snowy owl. Shellfish such as clams and oysters, and fish such as trout and winter flounder, have remained a large source of food for the region. However the size and abundance of these organisms have decreased significantly. There are also species that may be lost in the near future including lobster, piping plover, least tern, diamondback terrapin, osprey, and tiger salamander.

More than 80% of the Town has been developed, leaving less than 20% in its natural state. The potential for habitat loss in the future continues as the last remaining private open space is developed. Although many developed sites have been heavily landscaped, such artificial habitats (with the exception of recharge basins) do not support many native wildlife species. Unfortunately, problem wildlife such as mosquitoes and rodents are adaptable to suburban habitats, but their predators such as hawks and certain fish are not.

To understand the wildlife resource, both the abundance and the diversity of species need to be known. These two measures combine to describe habitat health. The New York Natural Heritage Program of the New York State Department of Environmental Conservation identifies, describes, and ranks all of the *ecological communities* in the state. Smithtown contains roughly fifty of these *communities*. These areas are listed in [the appendix](#).

Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations. Certain habitats are particularly critical to the maintenance of a given population and therefore merit special protection based on the following characteristics:

- Are essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding grounds, nursery areas);
- Support populations of rare and endangered species;
- Are found at a very low frequency within a coastal region;
- Support fish and wildlife populations having significant commercial and/or recreational value; and,
- Would be difficult or impossible to replace.

The State's Coastal Management Program designates certain areas as "Significant Coastal Fish and Wildlife Habitat." Three of these areas are in Smithtown: the Nissequogue River, the Nissequogue Inlet Beaches (Short Beach Town Park), and Stony Brook Harbor (Figures 28-31). The full narrative description of these designated habitats and the activities that can be expected to affect these habitats are in Appendix x. The Nissequogue River is a designated significant habitat as it is one of only four riverine systems on Long Island. The river is a significant fishery for brown trout, brook trout, and rainbow trout. The river contains extensive areas of undeveloped wetlands and tidal flats. The habitat of Short Beach is rare, as it is one of the few undeveloped segments of barrier beach adjacent to a major inlet. Stony Brook Harbor is one of the largest coastal wetland ecosystems on the north shore.

To be inserted

Figure 27. Wildlife Habitats

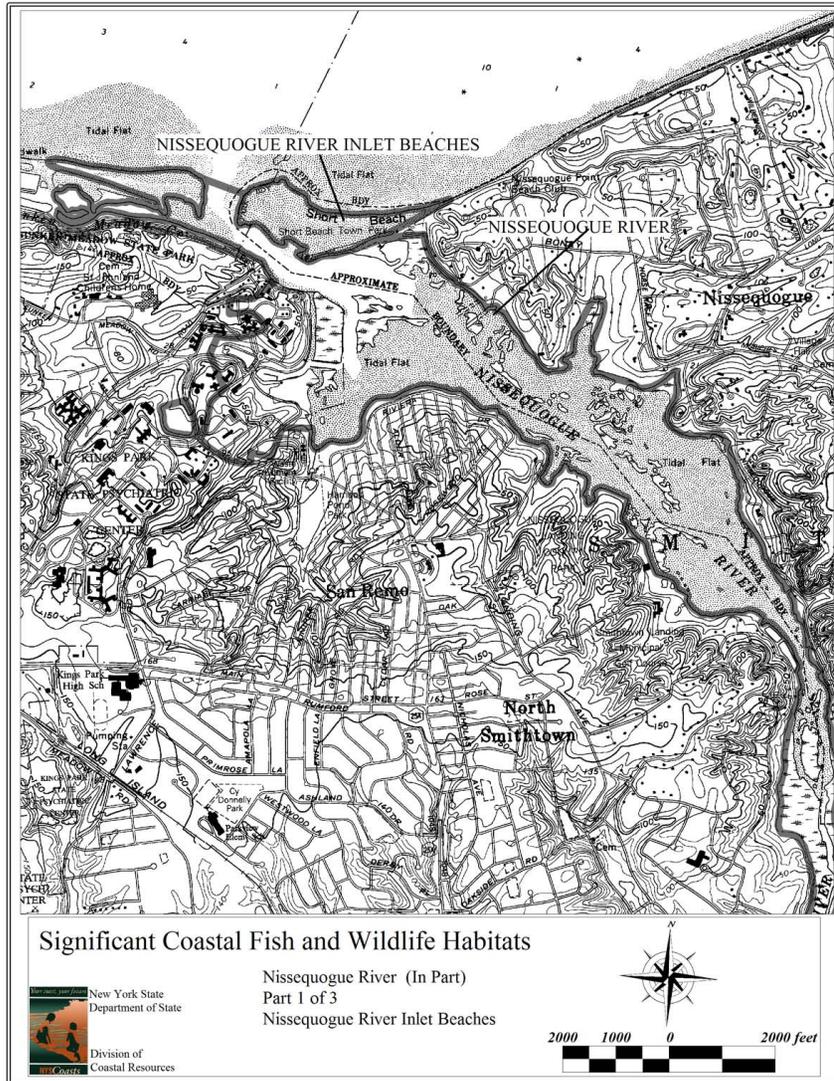


Figure 28. Significant Coastal Fish & Wildlife Habitats (Nissequogue River part 1)

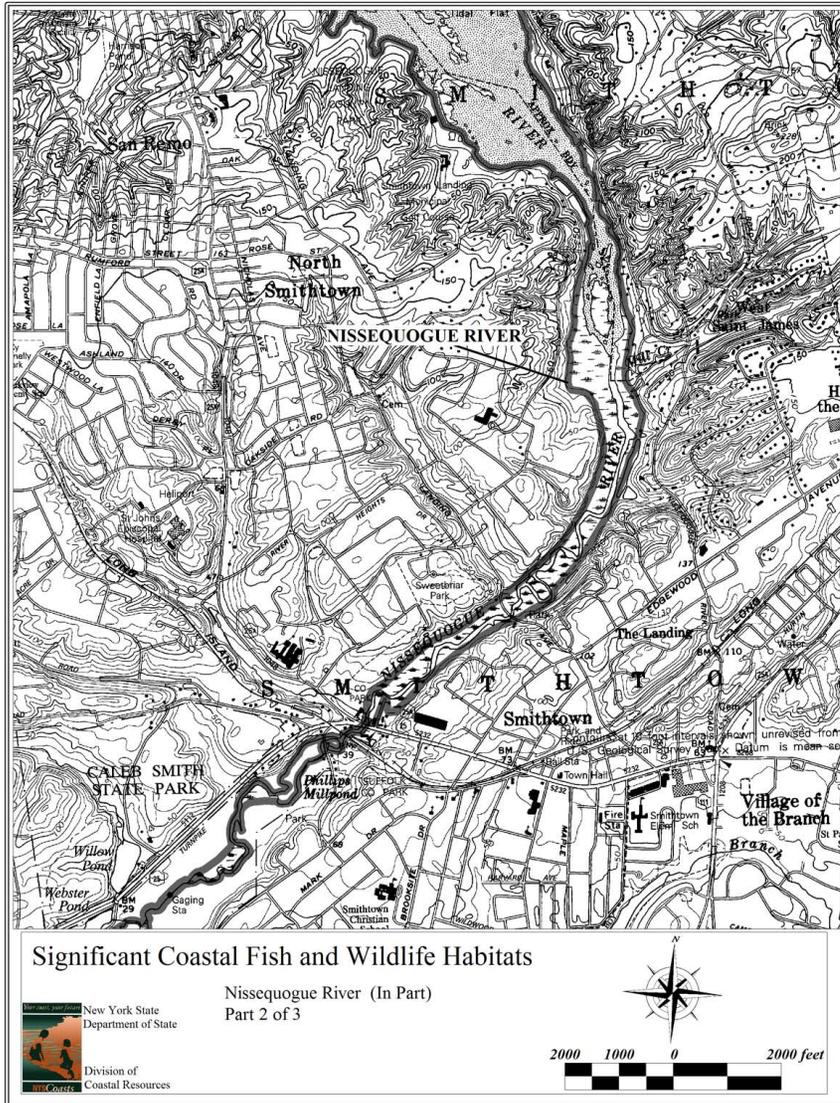


Figure 29. Significant Coastal Fish & Wildlife Habitats (Nissequogue River part 2)

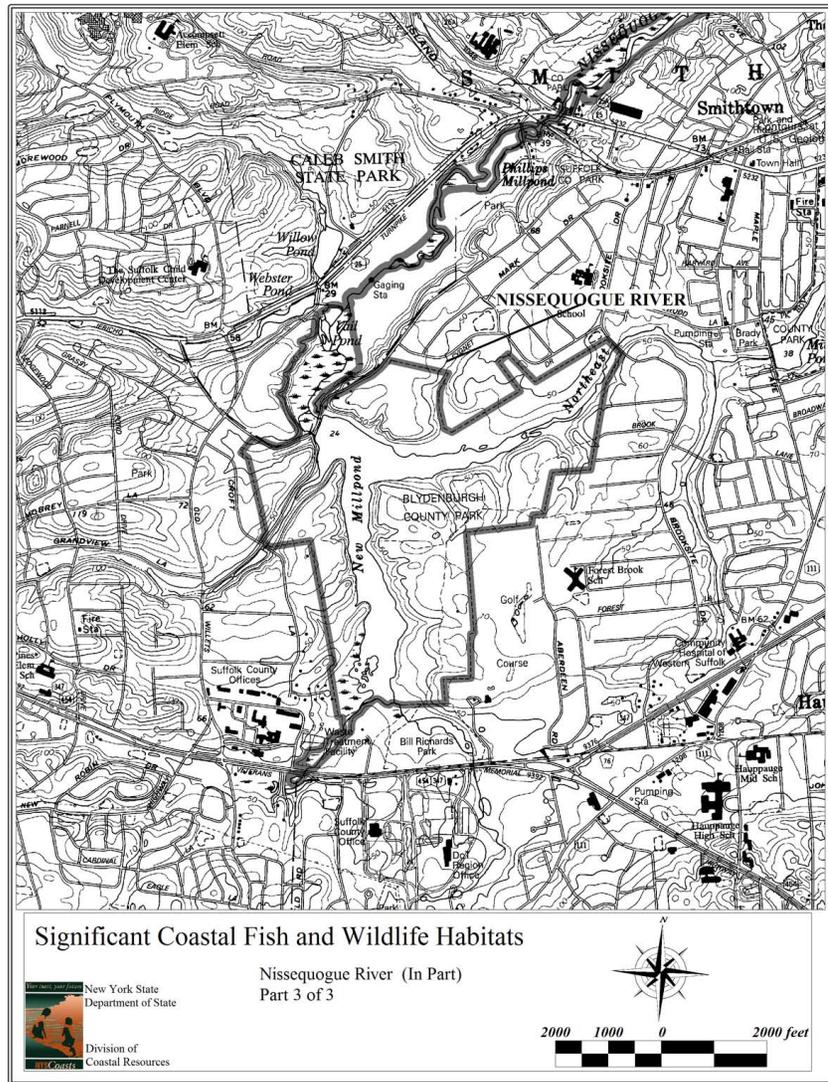


Figure 30. Significant Coastal Fish & Wildlife Habitats (Nissequogue River part 3)

Nissequogue River

The following excerpt from the 2005 Significant Coastal Fish and Wildlife Habitat Narrative for the Nissequogue River describes the value of the River's living resources. The full narrative is in Appendix x and describes the activities that can affect the River's living resources.

The Nissequogue River is one of four major tidal rivers on Long Island and is the island's largest tributary to Long Island Sound. The coastal segment of the Nissequogue River remains in a relatively undisturbed condition, and has been officially designated by New York State as a "Scenic and Recreational River" (under Article 15, Title 27 of the Environmental Conservation Law) to encourage preservation and restoration of its natural, scenic, and recreational qualities. The Nissequogue River also represents one of the largest coastal wetland areas on the north shore of Long Island. This habitat is important to a great diversity of fish and wildlife species throughout the year.

This biologically productive area also serves as an important feeding area for other species nesting in the vicinity, such as least tern (T), common tern (T), and for a variety of wading birds and waterfowl during spring and fall migrations. During the spring and summer months, the Nissequogue River provides suitable nesting habitat for herons, egrets, Canada goose, mallard, American black duck, spotted sandpiper, marsh wren, clapper rail, belted kingfisher, and many passerine species. A pair of osprey (SC) nest east of Vail Pond and south of the Old Dock Road boat ramp. The Nissequogue River is a locally significant waterfowl wintering area, supporting concentrations of American black duck, scaup (greater and/or lesser), bufflehead, red-breasted merganser, mallard, and Canada goose.

In addition to having significant bird concentrations, the Nissequogue River is a productive area for finfish, shellfish, and other wildlife. The river supports a sea-run fishery for brown trout in the fall (September-November, primarily), on the north shore of Long Island. Other fish species which use the Nissequogue River as a nursery or feeding area (from April 1 - November 30) include Atlantic silversides, Atlantic menhaden, bluefish, striped bass, scup, winter flounder, and blackfish. Significant populations of native brook trout and rainbow trout inhabit the upper freshwater segments of the river. New Millpond in Blydenburgh County Park provides good quality recreational fishing for users of the park and includes habitat for large and smallmouth bass, bluegill, pumpkinseed sunfish, brown trout, yellow perch, and brown bullhead.

The river's fisheries resources support recreational fishing of regional significance. Access to the area for fishing is available from Sunken Meadow State Park west of the inlet, from Short Beach Town Park east of the inlet, from Old Dock Town Park, from Nissequogue River State Park, and from Nissequogue Landing County Park on the west shore. The river also contains abundant shellfish resources, including hard clams, soft clams, and American oysters, but these waters are not certified for harvesting shellfish. Diamondback terrapin nest along the sandy shores of the river near the mouth and use the salt marshes for cover and feeding.

Stony Brook Harbor

The following excerpt from the 2005 *Stony Brook Harbor and West Meadow Creek Significant Coastal Fish and Wildlife Habitat Narrative* (see Appendix x for full narrative) describes the value of the area's fish and wildlife resources.

Stony Brook Harbor and West Meadow comprise one of the largest and most diverse coastal wetland ecosystems on the north shore of Long Island, of regional significance, and are important to many fish and wildlife species throughout the year.

Piping plover (E, T-Fed), least tern (T), and common tern (T) nest in several locations within Stony Brook Harbor, including the eastern end of the Long Beach barrier spit, Porpoise Channel Island (Youngs Island), and areas filled with dredged material south of the Long Beach Marina and boat launch. Least tern (T) and piping plover (E, T-Fed) nested in small numbers on West Meadow Beach in the 1990's but recent use of the beach for nesting has not been documented. An annual average of 62 breeding pairs (139 pairs in peak year) of least terns (T), 554 pairs (766 pairs in peak year) of common terns (T) and 1 pair (2 in peak year) of piping plovers (E, T-Fed) were observed in the area during the 1993 to 2002 survey period. One pair of roseate tern (E) was documented nesting on Youngs Island in 2002. In most years, the populations of least terns (T) and common terns (T) nesting at Stony Brook Harbor are among the largest on Long Island, of regional significance. Recent declines in piping plover (E, T-Fed) and tern nesting at the eastern end of the Long Beach barrier spit may be attributable to an increasing number of gulls, which compete with tern and plover populations for finite resources. Population decreases may also be attributable to vegetative succession, which has increased the vegetation on Youngs Island and other previously filled areas of Stony Brook Harbor, resulting in less desirable habitat. A 2002 DEC survey reported 689 pairs of locally nesting herring gulls (at Youngs Island). Stony Brook Harbor and West Meadow are also inhabited by a variety of nesting colonial waterbird species, including snowy egret, great egret, black-crowned night heron, and yellow-crowned night heron. The primary rookery is located on the eastern end of Long Beach, although recent surveys have documented nesting in the woods adjacent to the yacht club. In the late 1970's and early 1980's, this area contained some of the largest nesting concentrations of snowy egret and black-crowned night heron on Long Island, with estimates in peak years of 128 and 160 pairs, respectively. Recent information indicates that these colonial nesters occur in fewer numbers. Other species nesting in the habitat area include osprey (SC), horned lark (SC), black-backed gull, fish crow, red-winged blackbird, and double-crested cormorants. Over 40 pairs of double-crested cormorants nested at Stony Brook Mill Pond in 2003. Because of the great diversity of bird species nesting on or utilizing Youngs island, the island has been is designated as a Bird Conservation Area.

Stony Brook Harbor and West Meadow is one of the most important waterfowl wintering areas (November - March) in northern Suffolk County. Mid-winter aerial surveys of waterfowl abundance for the 11-year period from 1986-1996 indicate average annual concentrations of over 333 birds (784 in peak year), including approximately 111 American black duck (418 in peak year), along with lesser numbers of scaup (lesser and/or greater), mallard, Canada goose, long-tailed duck, bufflehead, common goldeneye, and red-breasted merganser. Waterfowl use during winter is influenced in part by the extent of ice cover each year. Concentrations of waterfowl are also documented in Stony Brook Harbor and West Meadow during spring and fall migrations (March - April and October - November, respectively).

In addition to having significant bird concentrations, Stony Brook Harbor and West Meadow are productive areas for marine finfish, shellfish, and other wildlife. Stony Brook Harbor supports a small commercial shellfishing industry (hard and soft clams) of local importance. The bay and creeks serve as nursery and foraging areas (from April 1 - November 30, generally) for winter flounder, bluefish, blackfish, Atlantic silversides, and striped killifish. Shellfish inhabiting these waters include hard clams, soft clams, American oysters, ribbed mussels, and blue mussels with nearly 87% of the waters certified for shellfishing (West Meadow Creek is uncertified for

shellfishing, as is the southernmost portion of the harbor). Stony Brook Harbor and West Meadow are readily accessible for a variety of fish and wildlife related recreational uses and are popular among local residents for fishing, birdwatching, and nature study.

Stony Brook Harbor is readily accessible for a variety of fish and wildlife related recreational uses, and is popular among local residents for fishing, birdwatching, and nature study. With the exception of the southernmost portion of the harbor, almost all of the harbor is certified for shellfishing. *See Section V, The Working Coast, for the Uses of Living Resources.*

Sunken Meadow State Park

Nesting shorebird species and terrapin inhabiting the barrier beaches of Long Island are highly vulnerable to disturbance by humans from mid-April through July. Significant pedestrian traffic or recreational vehicle use of the uppermost beach and spoil deposit areas could eliminate the tern, plover and terrapin nesting colonies at Short Beach Town Park and Sunken Meadow State Park, and should be minimized during this period. Fencing and/or continued annual posting of the area should be provided to help protect the nesting bird and terrapin species.

Changes at Sunken Meadow Creek created by Superstorm Sandy have improved tidal flow and consequently improved habitat quality. The Sunken Meadow State Park has plans for wetland restoration in or adjacent to Sunken Meadow Creek.

Smithtown Bay

Smithtown Bay is habitat for a broad range of fish, shellfish and other marine creatures. Fish resources include striped bass and blue fish and a broad range of pelagic species. Its shellfish resources include oysters, clams, blue mussels, and whelk. Other marine species present include sponges, anemone, and hydroids. Contributing to a concentration of fish is an artificial reef created by the Town and located about a mile offshore of Long Beach.

Nissequogue River, and the Fresh Pond Greenbelt have been designated as CEAs. Certain other large open spaces have been considered but not yet designated as CEAs.

A draft of the Comprehensive Plan identified that:

“Pollution has also affected many habitats and contributed to declines in the quality of habitats. While the Town has undertaken a substantial effort over the last 40 years to preserve and protect these areas, we are still seeing a degradation of wildlife habitats.

For example, although most of the surface waters in the Town have remained intact, the quantity and quality of aquatic life has declined. Throughout much of the Town’s history, the wildlife of the Nissequogue River and Long Island Sound, including lobster, clams, oysters,

and trout, held commercial importance. However, the commercial fishing and shellfishing industries have declined substantially. If the water quality continues to decline, even the more limited recreational fishing will be eliminated as well.

While we cannot return to having the original habitats, a strategy for the Comprehensive Plan Update is an effort to go beyond preservation of these habitats and to begin restoring our remaining wildlife habitats. It is important to understand, however, that since the problems developed over a long period of time, the solutions must be long range and require a sustained commitment.

The only identifiable altered landscape that has had a beneficial effect on some wildlife are recharge basins. The basins provide pond-like habitats throughout Smithtown, and dense shrubby cover for many species.

Natural habitats that are contiguous are more valuable in protecting wildlife than an equal acreage of habitats that are not contiguous. In other words, preserving habitats is not just preserving acreage. The land that is preserved must be able to sustain the wildlife and this is better accomplished when habitats are connected. Smithtown has more contiguous open space than most places because of the preservation of the Nissequogue River system, the “Greenbelt Trail”, and several large greenbelt areas located throughout the Town. Nevertheless, as of 2007, a few critical gaps remain vulnerable to loss via development and some of these same areas are under constant threat because of encroachment or other forms of habitat destruction.”

Endangered and Threatened Species

Several species noted above as present in the waterfront area have been identified as endangered or threatened.

Endangered species are any species that meet one of the following criteria:

- Native species in imminent danger of extirpation or extinction in New York; or
- Species listed as endangered by the United States Department of the Interior in the Code of Federal Regulations (50 CFR Part 17 [see section 182.1(b)(1) of this Part]).

Threatened species are any species that meet one of the following criteria:

- Native species likely to become endangered within the foreseeable future in New York;
- Species listed as threatened by the United States Department of the Interior in the Code of Federal Regulations (50 CFR part 17 [see section 182.1(a)(1) of this Part]).

Species of special concern are any native species for which a welfare concern or risk of endangerment has been documented by the Department of Environmental Conservation.

Issues

Although the living resources are significant and remain valued in Smithtown, there are threats to these resources:

Pollution

Increasing pollution is adversely affecting both shellfish and finfish. Pollutants include: oil spills (oil coats the gills of fish resulting in death by suffocation); pesticides; fertilizers (overabundance of nitrogen in fertilizers can be lethal to fish and affect water quality); coliform and nitrogen from septic tank and vessel wastes.

Overfishing

Overfishing is the major cause in the decline of oyster production. The institution of quotas and leasing grounds to private parties can aid in protection of the oyster population.

Habitat Loss and Estuarine Deterioration

The dredging, filling, and draining of wetlands and waterways has resulted in significant loss of habitats and degeneration of estuaries. Between 1950 and 1975 there was an estimated 20% loss of estuarine habitat caused by dredging or filling as well as natural events. The problem continues today with a continued 32% loss of wetlands and decline of wetland function. Since 1975 the loss of wetlands is due more to pollution, alteration of adjacent lands and sea level rise.

Sedimentation

Increasing sedimentation caused by dredging can significantly alter physical compositions of habitats. Sedimentation essentially creates new habitats and can cause problems for shellfish. Dredging causes increased turbidity of water, which permits minimal light penetration necessary for photosynthesis. Without proper light for photosynthesis, the food source for shellfish (plankton) cannot grow, and shellfish die. Sediment can also cover shellfish beds, which then affects other species in the food chain that depend on shellfish for food.

Changes in Salinity

Too much or too little salinity is hazardous to reproductive and survival patterns of estuarine inhabitants. Increased salinity can be caused by industrial or commercial development, which uses large quantities of freshwater. Conversely, if urban freshwater run-off is high, salinity will decrease.

Sea Level Rise

Projected sea level rise will reduce wetland variety unless the wetlands can adjust by migrating landward or rising in elevation.

The wetlands associated with the Nissequogue River, Sunken Meadow Creek and Stony Brook Harbor are the most significant wildlife habitats. These areas are important for many species of migratory waterfowl. The woods and abandoned fields throughout the waterfront are important

habitats for many birds and mammals. Some species such as red fox and white tailed deer are extremely rare in the Town and would not exist if the amount of habitat areas were to be reduced.

Nesting birds inhabiting Stony Brook Harbor are highly vulnerable to disturbance by humans from mid-April through July. Recreational activities (e.g., boat landing, picnicking) in or near bird nesting areas should be minimized during this period, through the use of fencing and/or annual posting. Construction and maintenance of shoreline structures, such as docks, piers, bulkheads, or revetments, in areas not previously disturbed by development (i.e., natural salt marsh, tidal flats, or beach), may have a significant impact on the fish and wildlife resources of Stony Brook Harbor and West Meadow Creek.

Pollution can be prevented and habitats protected through augmenting existing regulations and developing stricter penalties. Improving methods of resource management should be achieved.

Restoration of impaired habitats can also be undertaken. The Long Island Sound Comprehensive Conservation Management Plan has a working group that identifies potential restoration projects in the Long Island Sound region. Wetland restoration through improved tidal flow, stormwater control projects near shellfish beds, restoration of fish passage are the types of projects that could be undertaken.

Natural and human activities have sometimes changed the type of wetland found in a given location, high marsh to low marsh, low marsh to mudflat, ponds to freshwater wetland.

POLICIES

Policy 6: Protect and restore the quality and function of the ecosystems of the waterfront area.

This policy shall be accomplished by protecting fish and wildlife and other living resources in the Smithtown waterfront area from the introduction of hazardous wastes and other pollutants which bioaccumulate in the food chain or which cause significant sub-lethal or lethal effect on these resources and by protecting the land and water areas required for these resources in a way that allows these living resources to thrive. This policy also recognizes and provides for enhancement of natural resources within regionally important natural areas for which management plans have been, or will be prepared.

6.1 Protect and restore ecological quality throughout the waterfront area.

- a. Avoid significant adverse changes to the quality of the living resources as indicated by physical loss, degradation, or functional loss of ecological components stemming from new and existing land and water uses.

- b. Reduce impacts of boat moorings on the benthic habitat.
- c. Retain and add indigenous plants as appropriate and control the introduction of non-native invasive species.
- d. Restore damaged ecological communities whenever feasible.
- e. Maintain values associated with natural ecological communities.
- f. Avoid fragmentation of natural ecological communities, and maintain corridors, as well as structural and functional relationships between ecological communities to provide for self-sustaining systems.
- g. Prevent the disposal of dredged materials in Long Island Sound.
- h. Prohibit non-water related structures and land alteration within 100 feet of a waterbody or protected habitat.

6.2 [Protect and restore Significant Fish and Wildlife Habitats through the following means and as further described in the Habitat Narratives in Appendix x.](#)

- a. The Nissequogue River habitat shall be protected, preserved and restored so as to maintain its viability as a habitat for the species identified as valued.
- b. The Nissequogue Inlet beaches habitat shall be protected, preserved, and managed so as to maintain its viability as habitat for protected nesting shorebirds and terrapin.
- c. The Stony Brook Harbor habitat shall be protected, preserved, managed and restored so as to maintain its viability as habitat for fish, shellfish, protected nesting shorebirds, and wintering waterfowl.
- d. Other locally designated significant habitats (Fresh Pond, Sunken Meadow Creek, and Upper Nissequogue River Area) shall be protected, preserved, and restored so as to maintain their viability as habitats.
- e. Enhance or restore designated habitats in order to foster their continued existence as natural systems.

6.3 Protect and restore tidal and freshwater wetlands.

- a. Preserve, protect and restore wetlands and the benefits derived therefrom, in order to prevent the despoliation and destruction of wetlands (marshes, swamps, bogs, and flats supporting aquatic and semi-aquatic vegetation.)
- b. Regulate the development of such wetlands in order to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the town.
- c. Provide and maintain naturally vegetated buffers between wetlands and adjacent or nearby uses and activities to protect wetland values such as habitat, water retention and pollution abatement.
- d. Promote the use of best management practices for land uses and development activities that will minimize impacts on wetlands.
- e. Limit construction of docks and piers in the Nissequogue River to existing channels, access points to existing yacht clubs, and the filled dredge spoil area south of the boat basin.
- f. Consider potential impacts from climate change when evaluating actions affecting wetlands. Potential impacts include, among others, sea level rise and landward migration of wetlands.

6.4 Protect vulnerable fish, wildlife and plant species and rare ecological communities.

The following activities could have major impacts on the fish, birds and wildlife communities and should be avoided, minimized, or mitigated as appropriate:

- Alteration of tidal patterns in the Nissequogue River
- Dredging in the river and harbor, except to maintain existing channels. Dredging in the river should be minimized, and scheduled in late fall and winter to minimize potential impacts on aquatic organisms
- Construction and maintenance of shoreline structures (docks, piers, bulkheads, or revetments)
- Introduction or attraction of mammalian predators to Short Beach
- Activity that substantially degrades water quality in Stony Brook Harbor or West Meadow Creek and as a result adversely affects biological productivity

IMPLEMENTATION

Implementation through Existing Local Laws

Chapter 138 - Dredging, Subsection 21

This law requires permits for any artificial construction (temporary or permanent) of dams, docks, piers, wharves or other structures used as landing places, or bulkheads in or across lands underwater.

Chapter 151 - Environmental and Coastal Quality Review

This law implements the State Environmental Quality Review Act, and the Town's Local Waterfront Revitalization Program by incorporating environmental and social factors and the consideration of coastal resources into existing planning and decision-making processes. The Town manages all uses of its wetlands, waterways and shellfish resources to maintain and, wherever possible, improves the long-term ecological health and environmental quality of these resources for the benefit and enjoyment of all its residents.

Chapter 153 - Stormwater Management and Erosion and Sediment Control

This law establishes minimum stormwater management requirements and controls, and is consistent with the model laws provided by New York State.

Chapter 170 - Freshwater Wetlands

This law serves to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands and to regulate the development of such wetlands in order to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the town.

Chapter 233 – Shellfish

This law manages and enforces shellfish procurement from its waters in both private and commercial sectors.

Chapter 248 - Subdivision of Land

This law and land subdivision regulations provide for the orderly growth and coordinated development of the Town, to assure the comfort, convenience, safety, health and welfare of its people and, further, the preservation of such natural assets as ponds, streams, shrubs and trees through design guidelines and clustering requirements.

Chapter 285 – Trees

This law regulates the destruction and removal of trees to secure various benefits to the maximum extent possible for the present and future inhabitants of the Town of Smithtown. These benefits include the fact that trees stabilize the soil, control water pollution by preventing soil erosion and flooding, absorb air pollution, provide oxygen, yield advantageous microclimatic effects, have an intrinsic, aesthetic quality, offer a natural barrier to noise and provide a natural and valuable habitat for wildlife. Removal of such trees deprives all segments of society of these benefits while disrupting the ecological systems of which they are a part. The ordinance exempts non-subdividable property from having to obtain a tree removal permit.

Chapter 315 - Water Pollution

This law promotes the public welfare, health and prosperity of Smithtown inhabitants by recognizing that the waters and shores of Smithtown are among the greatest assets of the Town. It prohibits individuals or corporations from depositing or discharging into any of the waters of the Town, or place on the shores or banks of said waters any substance which may render said waters unfit or undesirable for bathing, boating, fishing or other recreational purposes.

Chapter 318 – Waterways

This law applies to all water and waterways within the jurisdiction of the Town of Smithtown, with regard to vessel use and operation and certain vessel facilities, including all inland lakes and millponds. It also applies to waterways within the jurisdictional limits of any incorporated village within the boundaries of the Town of Smithtown upon the adoption of an ordinance of substantially like purport by any such incorporated village in accordance with the provisions and requirements of the Village Law of the State of New York.

Chapter 322 – Zoning

The zoning law restricts development in environmentally sensitive lands (section 322-19), which, among other areas, includes flood hazard areas, and the area within a hundred feet of a surface water body or a habitat for protected, threatened, or endangered species.

Implementation through Changes in Local Laws

Chapter 248 - Subdivision Regulations

- Reduce standard pavement width of streets in low density residential neighborhoods
- Eliminate requirement that there be no more than a 5% change in grade extending 25 feet in front of a proposed house
- Modify stormwater design standards to encourage the use of “green” drainage practices opposed to standard catch basins and dry wells.
- Allow permeable pavement in certain low traffic volume locations (e.g., overflow parking)
- Add guidelines for clustering

Implementation through Other Actions

- a. Develop a wetland/habitat restoration plan that identifies where restoration is feasible and establish priorities for restoration based on costs and benefits of restoration.
- b. Work with local landscapers and nurseries to assure that native plants are available for use in buffers areas, restoration projects, and for general use.
- c. Advance the following recommendations of Nissequogue River Study prepared by the Regional Plan Association.
 - Compile a report on the environmental needs of shellfish species that are found, or were once found, in Smithtown Bay and the tidal Nissequogue River and conduct an assessment of current conditions to determine whether shellfish restoration should or can proceed.
 - Encourage DEC to include bird habitat restoration for mitigation along the Nissequogue River.
 - Conduct a watershed wide survey of invasive plants. Map degraded habitats and develop a restoration strategy.
 - Survey streambanks and pond edges to develop an inventory of vegetation types and opportunities for preservation and restoration.
 - Produce informational resources on the importance of key habitat types and species within the Nissequogue River watershed.
 - Inventory the extent of bulkheads and other shoreline stabilization approaches in the watershed and characterize their appropriateness and identify how inappropriate structures can be mitigated.

Air Quality

INVENTORY AND ANALYSIS

While the waterfront area does not generate significant amounts of air pollutants and the Town does not directly regulate air pollutants, the waterfront area is affected by air pollutants, including ground level ozone, nitrogen, and greenhouse gases.

Ground level ozone can cause health problems, particularly for the elderly, children, or people with breathing disorders. It can also affect sensitive vegetation and ecosystems³⁰ Long Island is a nonattainment area for ozone.³¹

Excess nitrogen is a major problem for Smithtown's waterbodies and the Long Island Sound Study estimates that 18% of the nitrogen loading to the Sound is from atmospheric deposition, but that has been declining.³²

Greenhouse gases and their effects on climate can have a significant effect on the waterfront environment over the long term. Many, if not most, of the sources of greenhouse gases affecting the Town come from areas well removed from local jurisdiction. Consequently most of the management of the issue will be done at the State and federal level. Motor vehicle emissions and the energy demand from buildings are the activities in the waterfront area that contribute to these air quality problems. The energy demand of buildings will be addressed in the section on Energy. Efforts that reduce vehicle traffic, such as encouragement of alternative modes of transportation, such biking, walking, use of public transportation, are the area where local government can play a role in addressing air quality.

Smithtown has adopted the Climate Smart Communities Pledge. The pledge indicated that the Town is resolved to reduce greenhouse gas emissions and adapt to a changing climate. Additionally, New York State designated the Town of Smithtown as a Clean Energy Community for implementing clean energy programs.

³⁰ NYSDEC.....

³¹ USEPA, *Current Nonattainment Counties for All Criteria Pollutants*, www3.epa.gov/airquality/greenbook/ancl.html, current as of February 28, 2019

³² EPA Perspectives on Nitrogen Reduction in Long Island Sound, New York Marine Sciences Consortium, October 22, 2016.

POLICIES

Policy 7: Protect and improve air quality in the Town coastal area.

This policy provides for protection of the Town coastal area from air pollution that adversely affects coastal air quality. Due to the nature of air quality and air pollutants, it is primarily the responsibility of the State and federal governments to implement this policy.

7.1 Control or abate existing and prevent new air pollution.

- a. Limit pollution resulting from new or existing stationary air contamination sources consistent with applicable standards, plans, and requirements.
- b. Recycle or capture air contaminants using best available air cleaning technologies.
- c. Limit pollution resulting from vehicle or vessel movement or operation.
- d. Limit actions that directly or indirectly change transportation uses or operation resulting in increased pollution.
- e. Restrict emissions or air contaminants to the outdoor atmosphere that are potentially injurious or unreasonably interfere with enjoyment of life or property.
- f. Limit new facility or stationary source emissions of acid deposition precursors consistent with achieving final control target levels for wet sulfur deposition in sensitive receptor areas, and meeting New Source Performance Standards for the emissions of oxides of nitrogen.

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

7.3 Limit sources of atmospheric deposition of pollutants to the Sound, particularly from nitrogen sources.

7.4 Reduce greenhouse gases.

IMPLEMENTATION

Implementation through Existing Local Laws

Chapter 112 – Building Construction

This chapter incorporates a number of energy saving and greenhouse gas reduction measures. It requires that building construction comply with the Energy Conservation and Construction Code of New York State. It also implements a fast track application process for residential solar panels and requirements for installing geothermal systems. The fast track solar application and geothermal regulations were drafted by the Suffolk County Planning Commission in an effort to create uniform standards across the County.

Implementation through Actions

- Community outreach and education on simple ways to save energy, reduce household expenses and improve indoor air quality
- Promote green building technologies to save money and reduce resource consumption and greenhouse gases
- Promote the construction of green buildings and retrofitting buildings to reduce energy consumption

Solid Waste and Hazardous Substances

INVENTORY AND ANALYSIS

In New York, municipalities have generally assumed responsibility for handling solid waste. Most municipalities separate solid waste into the following subsets: municipal solid waste (i.e. household waste), recyclable material, yard waste, construction and demolition debris, and non-hazardous industrial waste. Disposal of hazardous waste is not a responsibility of the Town. Table 6 below summarizes the Smithtown Waste Management Program.

<u>Residential</u>	
Collection	Private carters contracted by Town of Smithtown
Municipal solid waste	Collected 2 days /week; 1 day/week (paper one week, containers the next)
Paper	Newspapers, copy paper, brown paper bags, magazines and cardboard collected 1x every other week
Comingled recyclables	Metal cans, #1-2 plastics, aluminum foil products collected 1x every other week
Glass	Three drop-off locations in Town
Yard Waste	Curbside collection of leaves and brush (no grass)
Other Materials	Bulk (by appointment)
Household hazardous waste	2 collection events per year at Municipal Services Facility
E-waste and batteries	Drop off location at Municipal Services Facility
<u>Commercial</u>	
Collection	Private carters
<u>Construction and Demolition Debris</u>	
Collection	Contractor responsible for disposal

Table 6. Smithtown Waste Management Program

When the first Master Plan was prepared in 1957, the town operated two landfills: one in Nesconset and one in Kings Park. In the 1960s, the town opened two additional landfills: one in St. James and a second one in Kings Park, and constructed the Resource Recovery Facility in Kings Park. The landfills in Nesconset and St. James were closed in the late 1970s. In 1983, the State legislature passed the *Long Island Landfill Law*, which prohibited landfills in deep recharge areas. In 1989, the town entered into an agreement with the Town of Huntington to construct a waste-to-energy plant. Following the completion of the plant, the Town closed its two landfills in 1991.

Over the years the total amount of solid waste generated within the town has increased. In 1977, the town generated approximately 300 tons of solid waste per day. In 2006, the town generated approximately 444 tons of solid waste per day, a 48% increase from 1977. The EPA has reported that the increase in solid waste nationwide over the last 40 years can largely be attributed to an increase in the amount of paper products discarded.

The town relies on at least eight facilities to recycle or dispose of solid waste; only one of these facilities is in the town. In 2009 the town entered into a contract with the Town of Brookhaven for disposal of its incinerator ash.

Ideally, the town would dispose of ash within its boundaries; however, limitations on where a landfill can be located include factors, such as,

- The landfill cannot be located in a deep recharge area or high groundwater area
- The site should be large enough to function into the foreseeable future and to minimize impacts to adjacent property owners

While these restrictions greatly reduce the amount of land that is suitable for a landfill, there are at least three potential sites in the town that could comply with both requirements (none near the waterfront.) However, Smithtown entered into a new agreement with the Town of Huntington in 2012 to continue disposal of its municipal solid waste and non-hazardous industrial waste.

Currently industrial level composting is not a permitted use in Smithtown. However, the town has received a NYSERDA grant to research and analyze a potential zoning code amendment to permit such a facility. It is anticipated that such amendment would require a fully in-door operation.

While the current system is functional, there are changes that will need to be considered in the future, including both the need for facilities and solid waste management strategies. The town could reduce its waste management costs and minimize conflicts with residences and other land uses by reducing the amount of waste generated. Developing strategies that are appropriate for the town will require innovation and the use of education, regulatory policy, and monetary incentive.

Additionally, the town and region would be more sustainable if waste generated in the region is disposed of in the region. The town's Draft Comprehensive Plan includes the following policy recommendations:

1. Develop strategies to reduce, reuse, and recycle solid waste
2. Maintain one transfer station on each side of town
3. Plan on the resource recovery facility in East Northport being the primary facility for disposing of municipal solid waste
4. Locate organic waste processing facilities near the resource recovery facility and away from homes
5. Prohibit hazardous waste management facilities, as the town is too developed to adequately protect the public
6. Locate construction and demolition debris facilities a minimum of 1,000 feet from residence districts

While the current solid waste system is functional, there are changes that will need to be considered in the future, including both the need for facilities and managing solid waste strategies. The town could reduce its waste management costs by developing a strategy to reduce waste. In 2006, 6% of the waste stream was recycled, 93% was incinerated and recovered as energy, and 1% was land filled. Developing strategies that are appropriate for the town will require innovation and the use of education, regulatory policy, and monetary incentive.

POLICIES

Policy 8: Minimize environmental degradation in the Long Island Sound coastal area from solid waste and hazardous substances and wastes.

Most, if not all, Long Island towns have solid waste management plans approved by the Department of Environmental Conservation. In addition, all significant Long Island landfills have been assigned monitors employed by the Department of Environmental Conservation to ensure that adverse impacts, such as, leachates to groundwater, are mitigated. The Department of Health is implementing a gas monitoring system. Smaller and more incremental solid waste problems arise from littering. The intent of this policy is to protect people from sources of contamination and to protect Long Island Sound's coastal resources from degradation through proper control and management of wastes and hazardous materials. In addition, this policy is intended to promote the expeditious remediation and reclamation of hazardous waste sites. Attention is also required to identify and address sources of soil and water contamination resulting from landfill and hazardous waste sites and in-place sediment contamination in the Long Island Sound region.

8.1 Manage solid waste to protect public health and control pollution.

- a. Plan for proper and effective solid waste disposal prior to undertaking major development or activities generating solid wastes.
- b. Manage solid waste by: reducing the amount of solid waste generated, reusing or recycling material, and using land burial or other approved methods to dispose of solid waste that is not otherwise being reused or recycled.

- c. Prevent the discharge of solid wastes into the environment by using proper handling, management, and transportation practices.
- d. Operate solid waste management facilities to prevent or reduce water, air, and noise pollution and other conditions harmful to the public health.

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

- a. Manage hazardous waste in accordance with the following priorities:
 - i. Eliminate or reduce generation of hazardous wastes to the maximum extent practicable;
 - ii. Recover, reuse, or recycle remaining hazardous wastes to the maximum extent practicable;
 - iii. Use detoxification, treatment, or destruction technologies to dispose of hazardous wastes that cannot be reduced, recovered, reused, or recycled;
 - iv. Use land disposal as a last resort.
- b. Phase out land disposal of industrial hazardous wastes, and ensure maximum public safety through proper management of industrial hazardous waste treatment, storage, and disposal, and remediate inactive hazardous waste disposal sites.

8.3 Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment and public health.

- a. Prevent release of toxic pollutants or substances hazardous to the environment that would have a deleterious effect on fish and wildlife resources.
- b. Prevent environmental degradation due to persistent toxic pollutants by: limiting discharge of bio-accumulative substances, avoiding resuspension of toxic pollutants and hazardous substances and wastes, and avoiding reentry of bio-accumulative substances into the food chain from existing sources.
- c. Prevent and control environmental pollution due to radioactive materials.
- d. Protect public health, public and private property, and fish and wildlife from inappropriate use of pesticides.
- e. Take action to correct all unregulated releases of substances hazardous to the environment.

8.4 Prevent and remediate discharge of petroleum products.

- a. Minimize adverse impacts from potential oil spills by appropriate siting of petroleum offshore loading facilities.

- b. Have adequate plans for prevention and control of petroleum discharges in place at any major petroleum-related facility.
 - c. Prevent discharges of petroleum products by following approved handling and storage, and facility design and maintenance principles.
 - d. Clean up and remove any petroleum discharge, giving first priority to minimizing environmental damage.
- 8.5 Transport solid waste and hazardous substances and waste in a manner which protects the safety, well-being, and general welfare of the public; the environmental resources of the state; and the continued use of transportation facilities.
- 8.6 Site solid and hazardous waste facilities to avoid potential degradation of coastal resources.

IMPLEMENTATION

Implementation through Existing Local Law

Chapter 177 – Solid Waste Management.

This law provides on a Town wide basis for the management, supervision and control of the collection, transportation, processing and disposal of all solid waste generated or existing within the Town of Smithtown, including without limitation the power to require the segregation of wastes and to require the delivery of solid waste to such solid waste management facility as may be designated by the Town Board.

SECTION IV

THE PUBLIC COAST

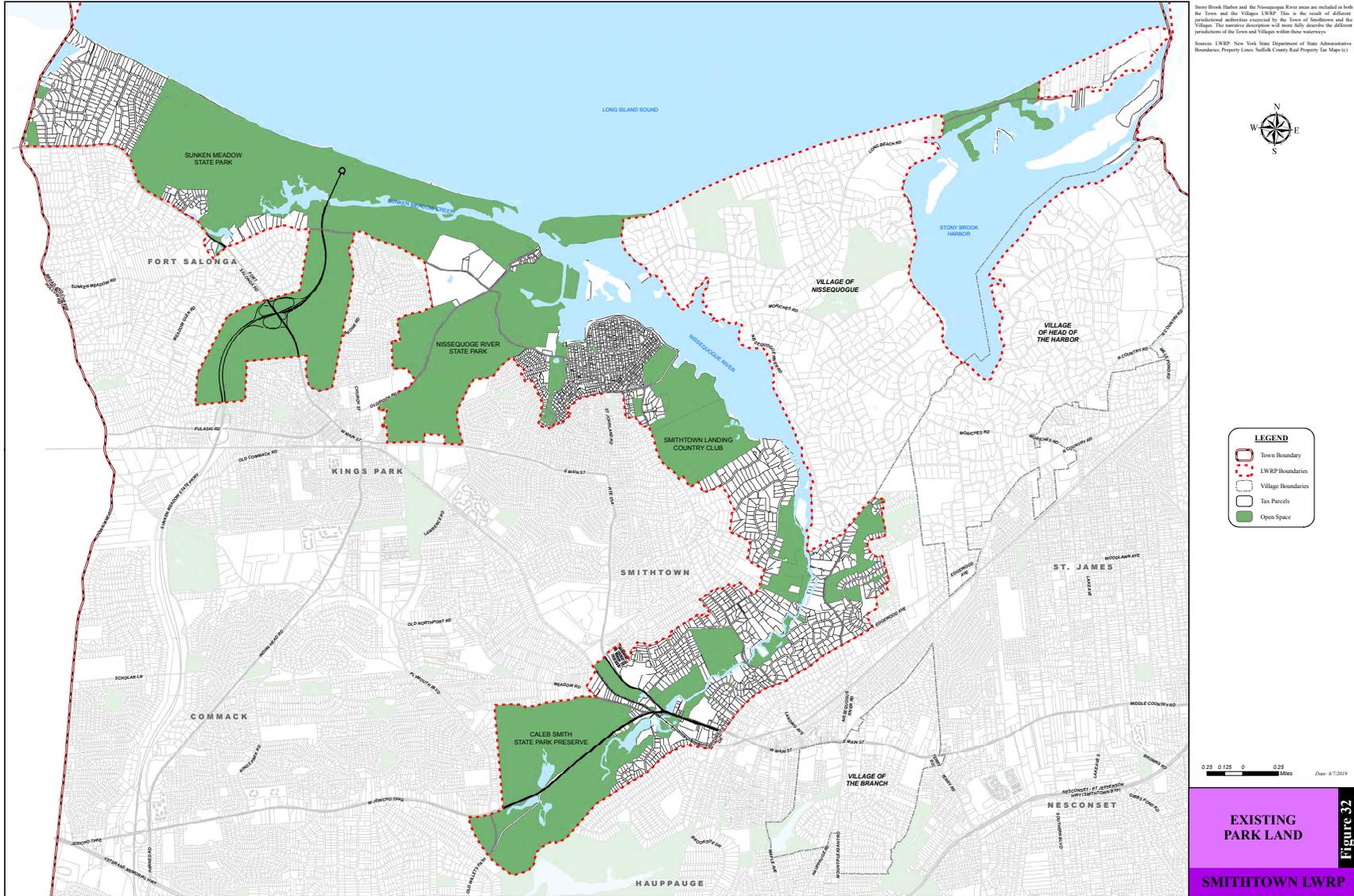
Public Access And Recreation

INVENTORY AND ANALYSIS

The Smithtown waterfront area is characterized by significant open lands and waters with extensive natural and recreational resources unusual for a large suburban town. Smithtown Bay, the Nissequogue River, and Stony Brook Harbor combined with a network of upland parks afford the residents of Smithtown and the region opportunities for extensive public use and enjoyment of the coast. Almost 50% of the waterfront land area is public parkland, including beaches, boating facilities, and natural parks. Public access to the shoreline of the Long Island Sound is also extensive. Of the 3.3 miles of shoreline in the unincorporated area of the Town, 2.7 miles or 75% are publicly owned and accessible. Sunken Meadow State Park has 2.4 miles of frontage. The two Town-owned waterfront parks, the Bluff and Callahan's Beach, have 0.3 miles of frontage on the Sound. The Town also has three beaches (Short Beach, Long Beach, and Schubert Beach), comprising 1.5 miles of frontage in the Village of Nissequogue. Concerning the tidal portion of the Nissequogue River, 64% (five miles) of the riverbank is in public ownership.

These public lands and waters provide for a wide range of public uses, including swimming, boating of all kinds, fishing and shellfishing, hiking, nature viewing and education, passive enjoyment and other active recreation. This wealth of opportunity relies on: the numerous park holdings of the town, state, and county governments; the town and state responsibilities under the Public Trust Doctrine³³; stewardship of natural resources through regulations, education and volunteer activities; and the provision of commercial recreational services. (See Figure 32)

³³ The Public Trust Doctrine is the "principle that certain natural and cultural resources are preserved for public use, and that the government owns and must protect and maintain these resources for the public's use" (Cornell Law School Legal Information Institute, Wex legal dictionary and encyclopedia. https://www.law.cornell.edu/wex/public_trust_doctrine). For example, under this doctrine, the government holds title to all submerged land under navigable waters. Thus, any use or sale of such land must be in the public interest.



Stony Brook Harbor and the Nissequogue River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c)

Figure 32. Existing Parkland

Major Public Parks in Waterfront Area (Ownership)

Alfred E. Smith/Sunken Meadow State Park (New York State)

1,380 acres consisting of 7,000 parking stalls, two miles of beach, 3/4-mile boardwalk, golf, trails, and other active and passive recreation activities. The park attracts the 6th highest attendance in the State. A Master plan was completed for the Park in July 2015.

Caleb Smith State Park Preserve (New York State)

545 acre nature preserve with pristine freshwater fishing.

Nissequogue River State Park (New York State)

159 acres of the former State Hospital, being redeveloped as the Nissequogue River State Park, includes a marina, trails, and soccer fields.

Former Kings Park Psychiatric Center lands (New York State)

370 acres of the former KPPC that were transferred to the Office of Parks, Recreation, and Historic Preservation. Despite the condition of the property and its buildings, the size of the property, its landscape character and some remaining buildings provide substantial opportunities for redevelopment for a broad range of recreational, institutional, and cultural uses.

Blydenburgh County Park (Suffolk County)

625 acres consisting of a 125-acre pond, trails, and camping.

Arthur Kunz County Park (Suffolk County)

60 acres of nature preserve along the River.

Fresh Pond greenbelt (Suffolk County)

20 acres of nature preserve.

Paul T Given County Park (Suffolk County)

10 acres consisting of a nature preserve with a canoe/kayak launch

Sweetbriar Farm (Town)

62 acres including nature preserve and outdoor education amenities

Smithtown Landing Country Club (Town)

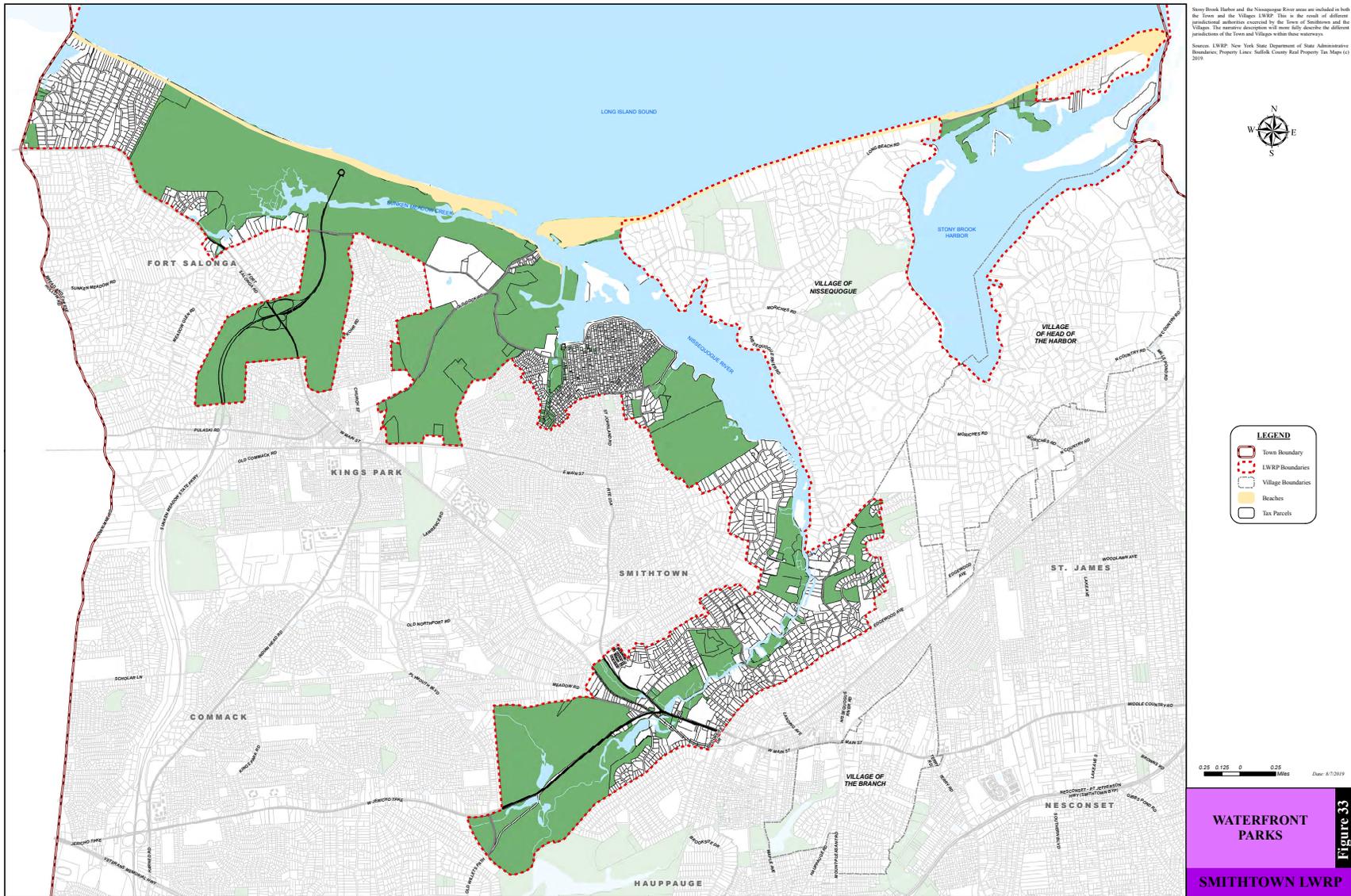
133 acres offering golf, pools, and catering with natural areas along the River

Harrison's Pond Park (Town)

16 acre park that features wetland, upland and a playground

Beaches

The Town has four beaches: Callahan's Beach, Short Beach, Long Beach, and Schubert's Beach. Cordwood Path Beach does not allow swimming due to water quality conditions but is open. (See Figure 33)



Stony Brook Harbor and the Neversink River area are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c) 2019.

Figure 33. Waterfront Parks

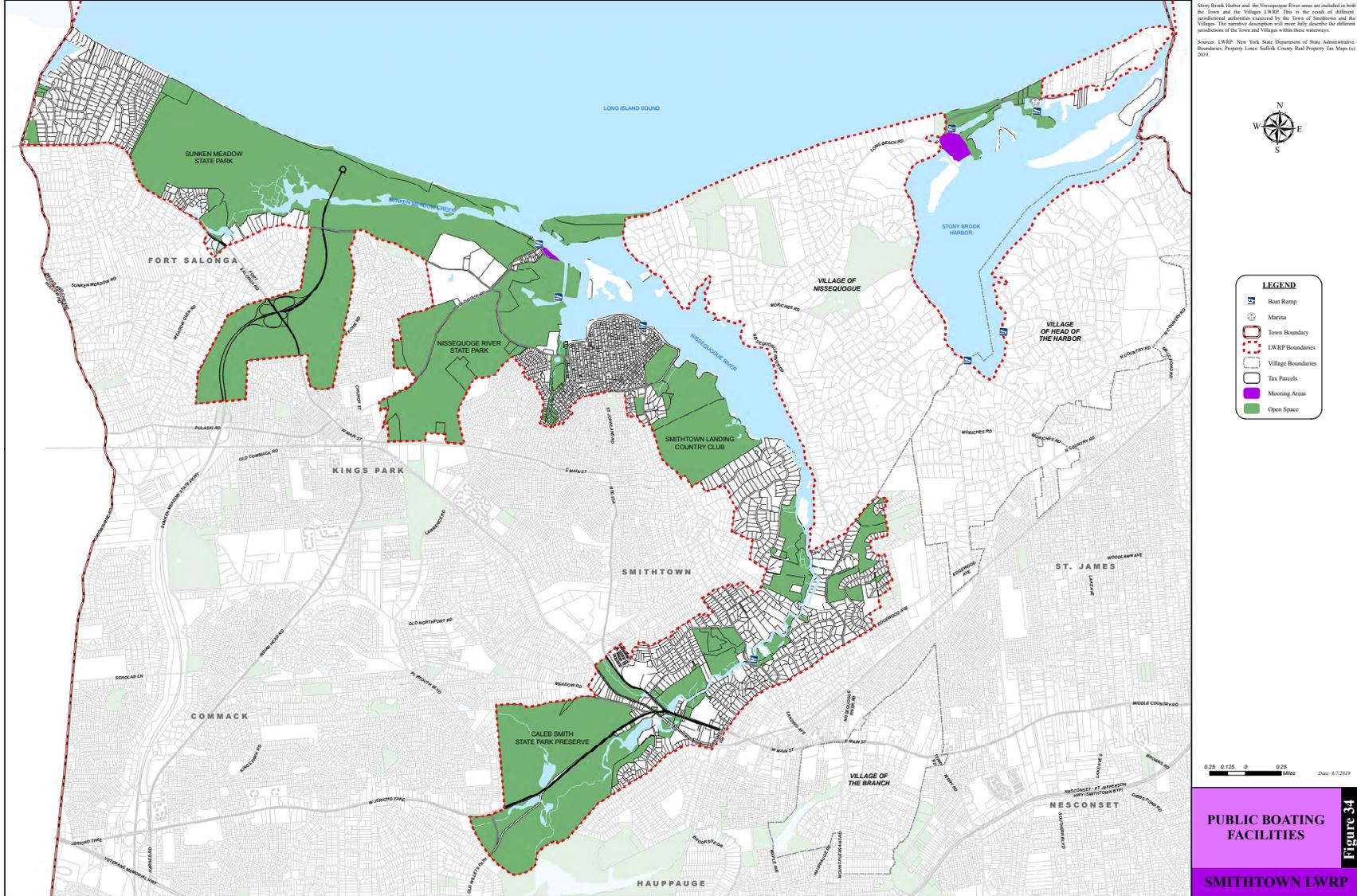
Boating Facilities

The Town operates one marina (180 slips) at Long Beach in Stony Brook Harbor, two mooring areas (105 moorings in Stony Brook Harbor and 75 at Kings Park Bluff), three boat ramps (Kings Park Bluff, Long Beach, and Long Beach Marina), and one canoe launch site at Landing Ave (Peter Nowick Sr. Memorial) Park. . In addition to the Town facilities, the State operates a public marina (138 slips) and boat ramp at Nissequogue River State Park, a canoe launch site at Sunken Meadow State Park, and the County operates a canoe launch site at Paul T. Given County Park. (See figure 4-3 Public Boating Facilities)

Smithtown Bay Yacht Club is a private yacht club (108 slips) located directly adjacent to the Town of Smithtown Long Beach marina, and an additional 10-20 boats moored in Stony Brook Harbor and off Riviera Drive in San Remo. A limited number of docks accessory to residential uses are located in Stony Brook Harbor and along the Nissequogue River (approximately 12 and 24 respectively).

Trails and Paths

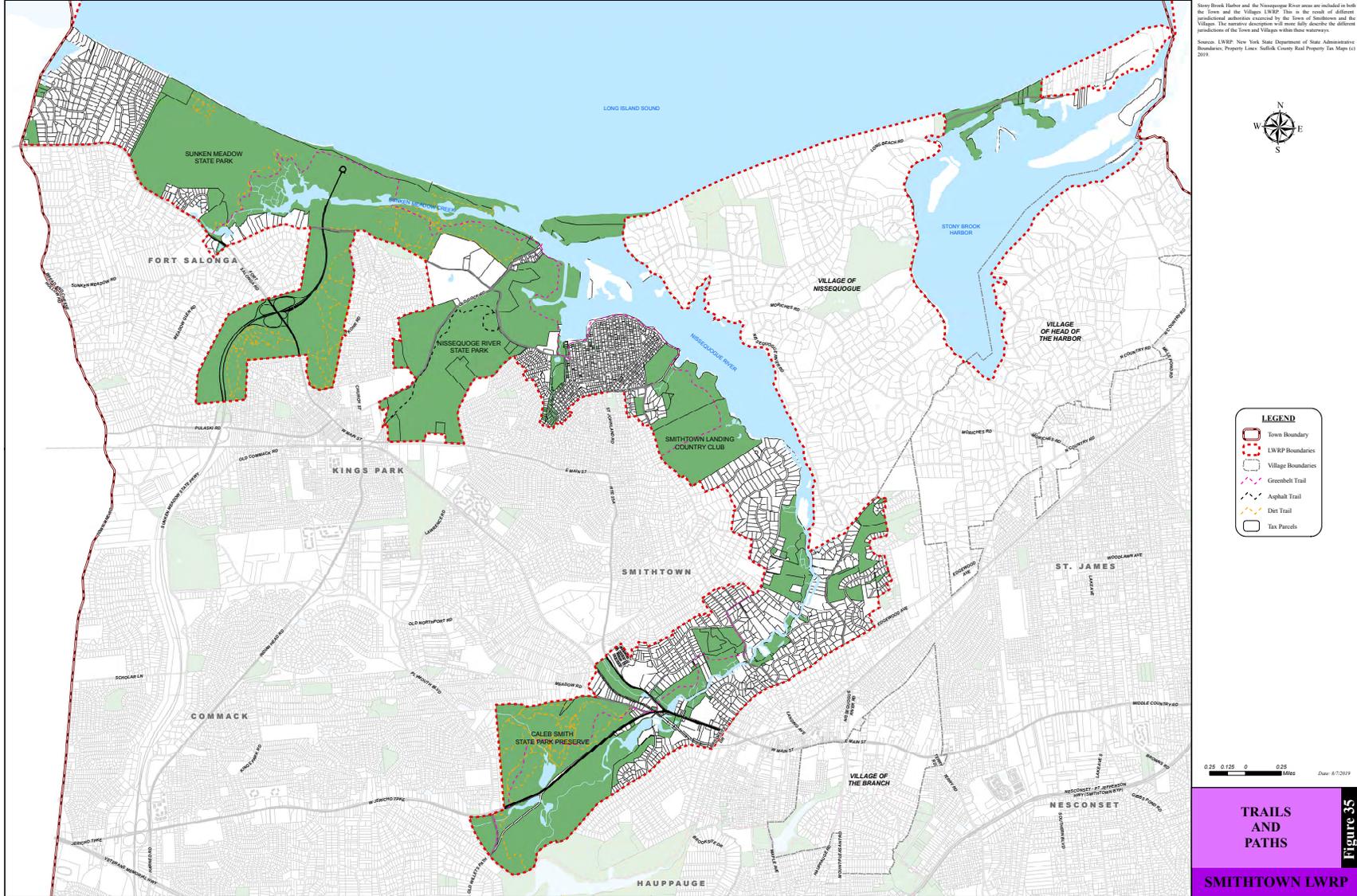
Trails are an important part of the recreation opportunities provided in the waterfront. The major trail within the waterfront is the Long Island Greenbelt Trail. The 32-mile Greenbelt Trail is considered Long Island's most significant linear park. It runs from the south shore to the north shore through five state parks, two county parks, Sweetbriar Nature Center, and the Smithtown Landing Country Club. Within the waterfront area the Greenbelt Trail generally runs along the Nissequogue River from the center of the Town to the shoreline. In some places, because of gaps in open space, it runs along local streets. The major parks identified above contain hiking, biking and other trails. (See figure 4-4 Trails and Paths).



Stony Brook Harbor and the Nissequogue River areas are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRF: New York State Department of State Administrative Boundaries; Property Lines: Suffolk County Real Property Tax Maps (c) 2019.

Figure 34. Public Boating Facilities



Stony Brook Harbor and the Neversink River area are included in both the Town and the Village LWRP. This is the result of different jurisdictional authorities exercised by the Town of Smithtown and the Village. The narrative description will more fully describe the different jurisdictions of the Town and Village within those waterways.

Source: LWRP: New York State Department of State Administrative Boundaries, Property Lines, Suffolk County Real Property Tax Maps (c) 2019.

Figure 35. Trails and Paths

Public Trust Doctrine

The Public Trust Doctrine, part of the Common Law, provides that public trust lands, waters, and living resources in a state are held in trust for the benefit of all of the people, and establishes the right of the public to fully enjoy public trust lands, waters, and living resources for a wide variety of public uses. In New York State, the public trust waters are the waters of the State, and the public trust lands are the lands now or formerly beneath those waters to the high water mark. The living resources inhabiting or dependent on these lands and waters are also protected by the Public Trust Doctrine.

The Public Trust Doctrine is particularly important in establishing the public's right to use and pass over the foreshore of tidal waters. Rivers whose beds and banks are in private ownership may also provide opportunities for public use, including incidental portage on riparian lands, if they are navigable-in-fact. A number of landmark legal cases have confirmed and described the public's rights and the state's responsibilities with regard to public trust lands and waters. In 1992, the New York State Legislature amended the Public Lands Law codifying, in part, the Public Trust Doctrine. The legislature found that regulation of projects and structures, proposed to be constructed in or over public trust lands and waters, was necessary to responsibly manage the public's interests in trust lands. The legislature stated that use of trust lands is to be consistent with the public interest in reasonable use and responsible management of waterways for the purposes of navigation, commerce, fishing, bathing, recreation, environmental and aesthetic protection, and access to the navigable waters and lands underwater.

Riparian and littoral property owners have a right to use or cross public trust lands and waters to gain access to navigable waters. However, the method and manner by which they gain access is determined and limited by the effects on the public's rights, local conditions and custom, and applicable state and local regulations.

Understanding both what the Public Trust Doctrine says about the rights of the public and the rights of riparian or littoral property owners in general and what the specific history of how public trust lands have been managed along a community's shoreline is critical in managing the waterfront.

In the 19th and 20th centuries many grants of public trust lands were made to private interests to promote the commerce of the State and for other purposes. These grants were particularly prevalent in the cities and villages of the state where development was concentrated. In many instances the underwater lands conveyed were subsequently filled. As a result, a community's current shoreline is often not its original natural shoreline. Since these filled lands were imbued with the public trust and the conveyances were usually less than a fee interest or had conditions attached, certain public rights in these lands may continue to exist. This situation can be particularly useful in obtaining public access and other public benefits as the waterfront uses change or new uses are developed. Also, the state may revoke grants when the uses proposed are not in conformity with the Public Trust Doctrine.

Public trust lands in Smithtown

The New York State Office of General Services and, on Long Island, towns are generally the custodian of public trust lands. They have records of conveyances and the original shoreline, which are of use to any community working on plans or projects to use or protect their waterfront. While most Long Island towns received their responsibility and rights for their bays, harbors and rivers as a result of Colonial Patents, subsequently confirmed by the State Legislature, Smithtown received its rights to manage certain of its waters and underwater lands from acts of the State Legislature. These acts, passed between 1881 and 1953, are described below.

Chapter 695 of the Unconsolidated Laws of NY (August 12, 1881) extended the boundaries of the LI north shore towns and counties northward at right angles to the general trend of the coast from the shore to the NY/CT border in mid-Long Island Sound. That extension of the municipal boundary did not convey NY State ownership of underwater lands in Smithtown Bay or the Sound to the Town, but the political jurisdiction of the Town, with its regulatory authority, includes Smithtown Bay and the Long Island Sound to the Connecticut line. (See Boundary Map)

Chapter 952 of the Laws of 1895 conveyed limited State interests in and to certain underwater lands in the Nissequogue River below (north of) Kenyon's Point, Sunken Meadow Creek, and underwater lands in Stony Brook Harbor in the Town, to the Town "for the promotion of oysters and shellfish culture". The right of the state to make grants of land underwater was continued.

Chapter 343 of the Laws of 1910, with limiting language similar to the 1895 Act, conveyed state interests in and to lands between low and high water marks along Smithtown Bay adjacent to the Town of Smithtown "for the protection of clamming". Chapter 343 was repealed by Ch. 442 of the Laws of 1914, and re-enacted by Chapter 267 of the Laws of 1915.

Chapter 776 of the Laws of 1953 conveyed limited state interests in and to lands in the Nissequogue River north of what was State Highway 5232A to the mouth of the river at Short Beach "for the purpose of permitting and enabling the [Town] to improve the navigation on such river and the sanitary condition thereof".

All conveyances of state interests in and to the underwater lands were limited, so that the state retained other interests in and to the underwater lands.

The Town has enacted regulations that implement its authority to manage its waters and underwater lands, as well as other regulatory powers it has as a town. These are discussed in other sections regarding living resources, harbor management, and water quality. They are described here because the Acts of the Legislature convey a property interest to the Town and are subject to the Public Trust Doctrine.

Regulation

Maintaining the quality of existing recreational experiences and opportunities for improvements also depends on regulatory programs. A broad range of governmental environmental regulation can be expected to benefit the recreational resources in the town's waterfront. The quality of these recreational resources is particularly dependent on water quality and fish and wildlife. These natural resources and their role in recreation are discussed in other sections. Town regulations specific to the management of recreation are described in this section under "Implementation".

Most notable among regulations that affect recreation is the New York State Scenic and Recreational Rivers designation for the Nissequogue River. Administered by NYSDEC, the program regulates development activities within a designated corridor along the River to preserve the scenic and recreational values provided by the River.

Private Open Space and Parks

There are also private open spaces and parks within the waterfront area, most of which are greenbelts owned by homeowner associations. Most of the private open spaces separate neighborhoods from busy highways, but a remarkable one is the riverfront park owned by the San Remo Civic Association. Although these private open spaces may restrict general public access they should be preserved so as to protect the ecology and agreements could be sought that expand access.

Demand

The above inventory indicates that extensive recreational resources exist in the waterfront area with a large portion of the shoreline accessible and large areas of land devoted to recreation. Nevertheless substantial recreational needs exist. New York State regularly estimates the demand and need for a variety of outdoor recreational activities. *The New York State Statewide Comprehensive Outdoor Recreation Plan 2014 – 2019* (SCORP) identifies the relative need for eight types of recreational activity throughout the State. The relative need for various recreational activities is given on a scale of from 1 to 10 with 10 representing the greatest need in a given geographic area.

In western Suffolk County, the State identified a need for all eight recreational types, listed below in order of priority with local winter facilities being the most significant need and swimming facilities.

1. Local Winter Facilities
2. Bicycling Facilities Y
3. Boating Facilities
4. Court Game Facilities Y
5. Walking, Jogging, and Hiking Facilities Y
6. Field Sport Facilities Y
7. Park and Playground Facilities Y
8. Swimming Facilities

The overarching goals of the SCORP were to enhance outdoor recreation system, improve connection between recreation and the economy, sustainability, and health, and strengthen the link between people and the outdoors. Important information that influenced the SCORP were the stable and aging population of the State, with over 50% of people over 65 years old participating in walking and swimming activities, and less than 10% participating in field sports and winter activities.

In addition to the SCORP, the Town has conducted two public surveys through its comprehensive planning efforts and has identified a significant demand for walking trails, biking trails and nature preserves. There is also a demand for additional boating facilities, as demonstrated by a roughly 18-year waiting list for a boat slip at the Town marina.

The issues that need to be addressed to maintain, improve, and increase public access and recreational opportunities in the Smithtown waterfront can be grouped around four themes: improve physical and organizational linkages among the several major recreational and access sites; create new recreational and access opportunities; draw in more people to take advantage of existing recreation in the waterfront; and maintain a balance between provision of recreational activities and the preservation of the natural resources on which they depend.

Creating Linkages

In the Town much of the waterfront area has been preserved as parkland, and while there are only a few locations where property would need to be acquired, e.g., to complete the Greenbelt along the River, public access to and throughout this area can be improved.

The Long Island Greenbelt Trail runs along the Nissequogue River in Smithtown. The greenbelt consists of State, County, Town and other parks. The Trail is heavily used, but it has three miles of gaps at five locations where hikers must use the streets. The Town and other responsible public agencies should seek to shorten or eliminate these gaps wherever possible. Also, some sections are severely worn. This indicates the high use of the trail and possibly a need for more trails.

Further, most of this portion of the River is not very accessible to the public. Much of the parkland consists of tidal marshes located behind residences and has few trails to public streets. For example, the Smithtown Landing Country Club is a 160-acre park with 1/2 mile of river frontage; however, about half of its frontage is not accessible.

The construction of a bike path system along the State Parkways, LIPA right-of-way, and along Lawrence Road would also improve recreational linkages.

There are areas where management of existing parkland may be more efficient with the transfer of ownership between the public agencies.

Providing New Recreational Opportunities

The Nissequogue River State Park (152 acres) and the additional lands (368 acres) of the former KPPC transferred in 2002 to the jurisdiction of NYS Office of Parks, Recreation, and Historic Preservation this entire area can provide a multitude of water dependent and water enhanced recreational uses, it is recommended that the preparation of a Master Plan be undertaken by NYS Parks for both the Park and the additional lands. The Plan should consider a mixed-use park similar to Saratoga Springs State Park with museums, historic, cultural and educational institutions, accessory hotel, sports facilities, passive recreation, natural areas, farmland and similar uses. Select buildings should be preserved because of historical significance. The vacant wooded parcel approximately 49 acres with pond owned by St. Johnland on the southerly side of St Johnland Road should be preserved, preferably thru acquisition and added to the State Park. (See also Section II). The area of filled land south of the Nissequogue River State Park adjacent to the existing marina facilities could be excavated to provide additional recreational boating facilities. This area of filled land is expected to be vulnerable to impacts of future sea level rise, appropriate safeguards and mitigations would be required.

The western entrance to the Smithtown Central Business District, the area where Route 25 and 25A cross the Nissequogue River, is characterized by inappropriate non-water dependent uses including adult entertainment and auto repair garages that do not take advantage of the amenities the River can provide. Further, the uses do not create an attractive gateway to the Smithtown CBD. Additionally traffic and conflicting regulations (State Scenic River regulations and Smithtown zoning regulations) are obstacles to appropriate redevelopment. The presence of the River provides opportunities for water-dependent and water-enhanced uses, such as fishing, kayaking/ canoeing, hiking, and picnicking, dining that not only increase recreational opportunities but would also visually enhance this entrance to the Smithtown CBD.

Drawing More People to the Waterfront

The natural open space and recreational facilities of the Smithtown waterfront area provide extensive recreational opportunities to both residents and visitors. There is potential for more people to enjoy these resources. Improved access to the River, the parks, and shoreline is a key element in expanding its recreational and open space usage. Train and bus service already exists in the community however access from the railroad stations to the waterfront could be improved. The challenge is to assist visitors, as well as residents, in accessing the River and the other resources, particularly the greenbelt which passes through Smithtown to the mouth of the Nissequogue. Modifications to the transportation network in the Town could play an important role in improving recreational opportunities. There should be improved pedestrian and bicycle access throughout the waterfront area.

The recreational opportunities of the waterfront area would benefit from the creation of transportation linkages as well as a marketing campaign. Marketing should identify the recreation opportunities and the support services – parking, equipment rentals, lodging, food, and

transportation services. Where these services are lacking their development should be encouraged. Small areas of water-related business could be located at the Kings Park Bluff and along Main Street at the River.

Increasing Recreation Access and Protecting Natural Resources

Maintaining and enhancing public use is a central purpose of the LWRP. However, many parks and recreation facilities are in fragile locations, requiring a focused effort to protect bluffs, dunes, beaches, wetlands, and other significant fish and wildlife habitat while permitting people to enjoy the waterfront area. It also requires recognition that protection of the resource values of these areas will limit the intensity of human use. Various natural processes, such as erosion and flooding, also affect waterfront parks. For example, two of the Town's beaches, Callahan's Beach and the Kings Park Bluff, have changing shorelines and require more attention to adaptation. At the Kings Park Bluff, the complex nature of coastal processes, as well as coastal storms and future sea level rise, inhibits fixing the location of the Park and its facilities. In response to these dynamic conditions and to increase the resiliency of these important facilities, these parks should be reconfigured to be able to adapt to the changes that will occur. For example, parking and fixed structures could, over time, be located further from the shore.

The siting of boating facilities should be consistent with preservation and enhancement of other coastal resources and with the resource's capacity to accommodate the siting. As noted above there are two marinas, a yacht club, mooring areas, and a number of boat launch sites in the waterfront area. These facilities accommodate about 22% of the boats registered in Smithtown. Both the Nissequogue River and Stony Brook Harbor are designated by New York State as Significant Coastal Fish and Wildlife Habitats. However, these facilities could be enhanced and improved to provide more access.

Boating facilities should be sited in areas such as the Nissequogue River mouth, Short Beach, the Long Beach/Stony Brook Harbor area, and the Kings Park Psychiatric Center inlet. Other areas, which are mostly wetland areas, should be utilized for passive water-dependent recreation. Expansion could come from

1. reconfiguring the facilities;
2. excavating upland to create new water areas, such as, at the disturbed upland south of the Nissequogue River State Park marina; and,
3. adding moorings in or near existing mooring areas where there is room;
4. altering the method of mooring where there is not room to make the mooring more compact;
5. exploring the feasibility of an additional boat ramp located on the Long Island Sound shoreline at Long Beach.

The hydrology of the mouth of the river and the natural coastal process in the area should be better understood to optimize the location of the channel. The channel was shifted years ago when the Short Beach spit was modified. There's a hypothesis that maintaining the channel in its current location increases the velocity of water hitting the bluff thereby increasing erosion.

Access to the foreshore for all, as required by the Public Trust Doctrine, needs to be maintained and interference from private development, such as private docks, and shore protection structures, whether the interference is at the site or to littoral processes, needs to be avoided or mitigated. Construction of public marina facilities is consistent with the Public Trust Doctrine.

POLICIES

Policy 9: Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Smithtown waterfront area.

The Long Island Sound shoreline is one of the most densely populated coastal regions along the eastern seaboard, with substantial demand for coastal access and recreation. Due to dense development patterns, physical and visual access to coastal lands and waters is often limited for the general public. The Smithtown waterfront, however, is generally accessible due to the presence of State parks and Town beaches along most of its waterfront. The need is to maintain the access and recreation resources available, accommodate growth in demand, assure a mix of activities that is consistent with demand and the capacity of the natural resource, create linkages among different providers, and adapt to climate change.

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

- a. Provide convenient, well-defined, physical public access to and along the Long Island coast, Nissequogue River and Stony Brook Harbor for water-related recreation.
 - Water-related recreation includes such water-dependent activities as boating, bathing, swimming, and fishing, as well as certain activities which are enhanced by a coastal location and increase the general public's enjoyment of the coast, such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive and active recreation areas that take advantage of coastal scenery. The level and type of public access and recreational use provided should take into account proximity to population centers, public demand, natural resource sensitivity, accessibility, compatibility with on-site and adjacent land uses, and needs of special groups. Levels of access in sensitive areas shall be increased only if it is shown that the increased levels will not adversely affect the resources.
 - Creation of new boating facilities or expansion of facilities shall be limited to areas that due to natural or man-made capacity, are desirable locations for such use and provided such new or expanded use complies with applicable laws and regulations. The siting of boating facilities must be consistent with preservation and enhancement of other coastal resources and with their capacity to accommodate demand. Facilities for recreational boating will be sited in areas such as Short Beach, the Nissequogue River mouth, the Long Beach/Stony Brook Harbor area, and Nissequogue River State Park. Locating boating facilities should only be considered if there will be no significant negative impact to existing marine resources. Boating facilities will, as appropriate, include parking, park-like surroundings, toilet facilities, and pump out facilities. Increasing access for boats at Nissequogue River State Park is limited by the capacity of that section of the River to tolerate an increase in boats; an increased level of boat access

is likely to adversely impact the Nissequogue River's significant habitat area. Appropriate steps to protect the habitat and water quality are needed as part of any expansion of boating facilities. The filled land south of the existing Nissequogue River State Park Marina may be appropriate for excavation and marina expansion. In locations where the ecology is fragile (e.g., Caleb Smith State Park, Stony Brook Harbor) the level of access shall be limited. Hand launched vessels should be encouraged and supported along the River and in the Harbor. Areas that are mostly wetland will be preserved and utilized for passive recreation.

- b. Assure that recreational facilities and public spaces provide access for all persons, including the elderly, children, and persons with disabilities
- c. Protect and maintain existing public access and water-related recreation.
- d. Provide additional physical public access and recreation facilities at publicly owned sites.
- e. Encourage water-related recreation in a manner that preserves and enhances important coastal resources (e.g., Fish and wildlife habitats, aesthetically significant areas, erosion prone areas, and historic and cultural resources)
- f. The development of water-related recreation shall have a higher priority than the development of non-water related uses.
- g. Provide physical access linkages, including the addition and repair of trails, in recreation areas.
- h. Include physical public access and/or water-related recreation facilities as part of development whenever development or activities are
 - likely to limit the public's use and enjoyment of public coastal lands and waters or
 - provide an opportunity to increase public use and enjoyment.

For example, the construction of a dock may increase access for boating but decrease access for pedestrians walking along the shoreline. In such a case, the dock should be designed in a way that protects pedestrians' access as well (e.g., installing stairs or ramps at the sides of the dock to allow pedestrians to traverse over the dock; establishing an easement landward of the dock that would allow pedestrians to walk around the dock).

- i. Development located along the coastline of Smithtown should provide for water-related recreation as a multiple use wherever appropriate. Water-related recreation can be combined with a variety of different primary uses such as public institutions, residential development, commercial development, cultural institutions and nature preserves. Appropriate recreational uses, which

do not require any substantial additional construction, shall be provided by the project sponsor provided wherever practicable and the cost generally within 2% of the total project cost.

- j. Prioritize making water-dependent recreational facilities available to the public.
- k. Provide incentives to private development that provide public access and/or water related recreation facilities.
- l. Restrict public access and water-related recreation on public lands only where such access would be incompatible with public safety and protection of natural resources.
- m. Ensure access for the general public at locations where state or federal funds are used to acquire, develop, or improve parkland.
- n. Avoid reduction of existing access from public lands or facilities to water-related resources and facilities, unless a new alternative access site can be provided that offers similar recreational benefits. In addition, potential access opportunities from public lands or facilities to water-related recreation resources and facilities shall not be eliminated.

Definitions & Explanation of Terms

- 1. Access - the ability and right of the public to reach and use public coastal lands and waters.
- 2. Public water-related recreation resources or facilities - all public lands or facilities that are suitable for passive or active recreation that requires either water or a waterfront location, or is enhanced by a waterfront location.
- 3. Public lands or facilities - land or facilities held by State or local government in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands and the foreshore.
- 4. A reduction in the existing level of public access includes but is not limited to the following:
 - i. The number of parking spaces at a public water-related recreation resource or facility is significantly reduced.
 - ii. The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use and such reduction cannot be reasonably justified in terms of meeting system-wide objectives.

- iii. Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
 - iv. There are substantial increases in the following: already existing special fares (not including regular fares in any instance) of public transportation to a public water-related recreation resource or facility, except where the public body having jurisdiction over such fares determines that such substantial fare increases are necessary; and/or admission fees to such a resource or facility, and an analysis shows that such increases will significantly reduce usage by individuals or families and incomes below the State government established poverty level.
5. An elimination of potential access opportunities includes, but is not limited to the following:
- i. Construction of public facilities that physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.
 - ii. Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility.
 - iii. Construction of private facilities, which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.

9.2 Provide the public with visual access from public lands to coastal lands, waters, and open space at all sites where practicable.

- a. Provide visual access by maintaining physical access to the publicly-owned foreshore, for such uses as walking, sunbathing, appreciation of scenic vistas, bird watching, photography, nature study, beach combing, as well as the traditional uses of fishing, fowling, and navigation.
- b. Minimize adverse impacts on visual access and avoid loss of existing visual access by limiting or mitigating physical blockage of views from new development.
- c. Mitigate loss of visual access by providing for on-site visual access or comparable visual access off-site.
- d. Increase visual access wherever practicable.

9.3 Preserve the public interest in and use of lands and waters held in public trust by the State or Town.

- a. Limit grants, easements, permits, or lesser interests in lands underwater to those instances where they are consistent with the public interest in the use of public trust lands.
- b. Determine ownership, riparian interest, or other legal right prior to approving private use of public trust lands under water.
- c. Limit grants in fee, including conversion grants, of underwater lands to exceptional circumstances. Reserve such interests or attach such conditions to preserve the public interest in use of underwater lands and waterways, which will be adequate to preserve public access, recreation opportunities, and other public trust purposes.
- d. Evaluate opportunities to re-establish public trust interests in existing grants that are not used in accordance with the terms of the grant, or are in violation of the terms of the lease.

9.4 Assure the public rights to use public trust lands and navigable waters.

- a. Ensure that the public access below mean high water and to navigable waters is maintained.
- b. Allow obstructions to public access only when necessary for the operation of water-dependent uses and their facilities, and to the minimum extent practicable.
- c. Permit interference with public access for riparian or littoral accessory structures, e.g., docks accessory to a residential use, that are otherwise permitted, in order to gain the minimum necessary reasonable access to navigable waters. Use the following factors in determining the minimum access necessary: the size and nature of the water body, the uses of the adjacent waters by the public, the traditional means of access used by surrounding similar uses, and whether alternative means to gain access are available.
- d. Mitigate substantial interference or obstruction of public use of public trust lands and navigable waters by, for example, providing for public passage over, under, or around the interference.

IMPLEMENTATION

Implementation through Existing Local Laws

Chapter 101 - Department of Parks, Building and Grounds

Provides for the management of the Town's nature preserves, parks, and beaches and authorizes the dedication of land and the classification of areas.

Chapter 138, - Dredging

Requires a permit for all dredging, filling, and structures in watercourses and wetlands protecting public access to watercourses and the recreational value of natural resources.

Chapter 108 - Boat basin and Moorings

Regulates the location and use of moorings, boat berths and boat ramps.

Chapter 318 – Waterways

A joint municipal ordinance (Nissequogue and Head of the Harbor) that governs the operation of vessels including personal watercraft, water skiing, and aquatic events³⁴

Implementation through Changes in Local Laws

- a. Create a zoning district for parkland and a zoning district(s) for wetlands and waterbodies

Implementation through Other Actions

- a. Facilitate land swaps between the Town and the County to incorporate the Town parks adjacent to Blydenburgh County Park into the County Park in exchange for transferring other county parkland (e.g., Paul T. Given County Park and Arthur Kunz County Park) to the Town. This would improve efficiency and ease of access in these parks.

³⁴ This act was repealed in 1914 but reenacted in 1915

- b. Acquire, or facilitate State acquisition of, parcels adjacent to Caleb Smith State Park near the river in order to protect the river and its tributaries and add passive recreation
- c. Consider restricting the size of boats accommodated at public facilities in order to accommodate a larger number of boats in the same space.
- d. Complete a master plan for the area of the waterfront area where Main Street crosses the Nissequogue River. See figure 4-7 for a concept of potential public spaces for the area. The town should coordinate with NYSDEC to ensure that the master plan would comply with wetland and Scenic and Recreational River regulations. As stated in Section VI, State and Federal Actions Necessary to Implement the Program, the NYSDEC should designate the area as a “community” under the regulations.
- e. The town should request grant support from the Department of State for improving the resiliency of its waterfront parks to coastal storms and sea level rise. Resiliency projects should include both design studies and reconstruction projects as necessary.
- f. The town should conduct a marketing study to determine how to strengthen local businesses by drawing more people to the exceptional recreational resources of the Town’s waterfront.
- g. The town should support expansion of Paul T. Given Park to protect wetlands and habitats.
- h. The town should be generally supportive of the state’s implementation of the Sunken Meadow Park Master Plan and encourage the State to prepare a Master Plan for Nissequogue River State Park and for the entire former Kings Park Psychiatric Center lands.
- i. The town should facilitate State supported acquisition of a parcel of land owned by St. Johnland as recommended in the New York State Open Space Plan and the New York State Outdoor Recreation Plan (see Section VI).
- j. The Town, County and State should construct trails, where feasible and appropriate, to improve access and recreation throughout the waterfront area, particularly along the Nissequogue River.

SECTION V

THE WORKING COAST

Water-Dependent Uses, Harbor Management, And Use Of Living Resources

INVENTORY AND ANALYSIS

Water-dependent and water-enhanced uses

The several commercial and recreational uses in Smithtown that depend on a location on, or adjacent, to the water to function, or that are enhanced by a waterfront location, are integral to the Town's identity and part of its economic vitality. These maritime activities harvest food from the sea, provide livelihoods for people, and recreational opportunities for thousands of residents and visitors. See Section 2, Policy 1.1 a & b and below for definitions of water-dependent use and water-enhanced use.³⁵ Residential uses are not within the program definition of water-enhanced uses.

While there are not extensive commercial water-dependent or enhanced uses in the Smithtown waterfront, there are some and there is limited potential for additional uses. Section 2 provides a list of these uses in Smithtown.

Water-dependent uses

- Sunken Meadow State Park, the largest public park in the area with nearly 3 miles of shorefront
- Nissequogue River Greenbelt, which includes large parcels Suffolk County has acquired along the Nissequogue River as open space for passive recreation (hiking, fishing, photography, etc.)
- Town waterfront parks and beaches, including Callahan's Beach, the Kings Park Bluff (park at the terminus of Old Dock Road), Landing Avenue Park, Cruikshank Park, and nature preserves resulting from clustered development
- Town parks in the Villages of Nissequogue and Head-of-the-Harbor, including Short Beach, Long Beach, Schubert Beach, and Cordwood Park
- Boating facilities in Nissequogue River State Park, the Town Marina and mooring area in Stony Brook Harbor and the Smithtown Bay Yacht Club

Water-enhanced uses

³⁵ " a. Water-dependent use means a business or other activity which can only be conducted in, on, over, or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water. b. Water-enhanced use means a use or activity which does not require a location adjacent to coastal waters, but whose location on the waterfront adds to the public use and enjoyment of the water's edge. Water-enhanced uses are primarily recreational, cultural, retail, or entertainment focused." (19NYCRR Part 600.2 ah and ai).

- Picnic grounds, food concessions, a 27-hole golf course at Sunken Meadow State Park
 - An 18-hole golf course and catering facility at Smithtown Landing Country Club
 - Town-owned picnic areas at Callahan’s Beach and Landing Avenue Park
 - The Old Dock Inn, a waterfront restaurant at the end of Old Dock Road
- Camping, at Short Beach and Callahan’s Beach
- Other water-enhanced uses include the Sweetbriar Nature Center

In addition, opportunities exist to increase water-dependent and water-enhanced uses in the Smithtown Central Business District and the former Kings Park Psychiatric Center grounds.

The substantial public recreational water-dependent and enhanced uses found in the waterfront are more fully described and analyzed in Section IV on Public Access and Recreation. There is also commercial and recreational shellfishing harvesting described below as Uses of Living Resources.

Uses of Living Resources

A major but limited use of living resources in the marine waters in Smithtown is commercial and recreational shellfishing harvesting. The Town supports shellfishing harvesting by growing out and seeding clams and oysters annually. For grow out the Town uses floating rafts and a floating upweller. In 2019, the Town issued 17 commercial shellfish harvesting licenses. A primary issue facing the use of shellfish resources is water quality. The primary concern with regard to water quality is that of an overabundance of nutrients, largely stemming from stormwater runoff and inadequate wastewater treatment (e.g., failing septic systems and inadequate nitrogen removal from existing systems and the Sewage Treatment Plant outfall in Smithtown Bay). Because of water quality concern, the NYS DEC regulates access to marine waters for shellfishing harvesting. Figure 22 indicates the areas that are certified for shellfishing harvesting. The figure shows the areas that are either uncertified or seasonally certified, the remaining areas are certified for shellfishing harvesting.

Recreational fishing occurs throughout the Town’s marine waters. Stripers, Bluefish, Flounder, and Trout (in the Nissequogue River) are popular catches. The beaches along Smithtown Bay are popular for surfcasting. The area around the outfall and the artificial reef are also popular fishing areas.

Recreational Boating

Most of the recreational boating in Smithtown utilizes public facilities for access to the water and is also addressed in Section IV Public Access and Recreation. The Town and NYS Parks are the major providers of boating access through provision of dockage, moorings, and boat ramps.. The location and extent of the boating facilities are shown on the Harbor Management Plan, Map x.

Harbor Management and Navigational Infrastructure

Harbor management is the management of human uses of the shoreline and near shore marine environment. The principal aspects of harbor management involve the regulation of the operation of vessels and the placement of structures in water, protection of critical natural resources, and the allocation of portions of the water or lands under water for specific purposes. Governmental responsibilities affecting harbor management are exercised by a wide range of agencies operating at all levels of government. While many public agencies regulate human use of the marine environment, in New York State, the broadest authority to do so rests with local government.

Jurisdiction

Federal jurisdiction affecting harbor management primarily involves the US Army Corps of Engineers (ACOE) through their responsibilities under the Rivers and Harbors Act and the Clean Waters Act. Under these federal acts the ACOE reviews the placement of structures in water for their effects on navigation and the environment. At the direction of Congress, the COE also undertakes civil works projects to improve navigation, manage the effects of storms and flooding, and restore ecosystems. The US Coast Guard's role is primarily related to vessel and navigational safety. The Department of Interior, particularly the Fish and Wildlife Service, and the Environmental Protection Agency, also affect harbor management through their direct and indirect role in the federal government's regulation of certain activities affecting the marine environment.

At the State level, the Department of Environmental Conservation affects harbor management primarily through its regulatory authority relative to tidal wetlands and the taking of shellfish, as well as protection of waters, docks, and structures in coastal hazard areas. The State Office of Parks, Recreation, and Historic Preservation, in addition to providing for recreational access to the shore directly or through grants, has certain responsibilities under the state Navigation Law. The Department of State Coastal Management Program affects harbor management through its Consistency review ensuring that federal and State actions, including most of the above actions meet State coastal policy standards—and through approval of local government harbor management plans.

Suffolk County has a role in harbor management in the Town of Smithtown through the provision of dredging services.

The inter-governmental program for estuary management, the Long Island Sound National Estuary Program, may also affect harbor management decisions through their research, recommendations and water quality standards (total maximum daily loads).

While the combined effect of all the above programs on harbor management is substantial, only local government has the potential broad authority over most of their shore and near shore waters to effectively manage human uses to fully address competition or potential conflict between the various uses, and between those uses and the natural resources on which they depend.

The Town of Smithtown under NY State Town Law can regulate the operation of vessels within the boundaries of the Town. However, they may not regulate vessel operation within 1,500 feet of a Village shoreline except through an agreement with the Village to provide that service. The Town may, however, enforce State or Village regulations within Village waters. The Town may exercise its broad police powers within its boundaries, which include its marine waters. The Town also has a property interest in underwater lands which also provides the Town authority³⁶

Through the adoption of a harbor management plan pursuant to Article 42 of the Executive Law, the Town may obtain the authority to regulate all structures and uses in water that it otherwise may not have. It may also through its zoning authority establish use zones in the water.

Dredging

There is an ongoing need for maintenance dredging to help ensure navigation safety and the continued viability of water-dependent activities and facilities, including dredging of federal, State, County, Town, and privately maintained channels and boat basins. However, dredging is expensive and funding is becoming increasingly scarce. Further, permitting can be time-consuming and complicated, and upland and in-water disposal options (for material not suitable for beach nourishment) are limited. Enhanced coordination is needed among federal, State, County, Town and private dredging projects. Maintaining a strong economic base of water-dependent businesses is important for supporting the public benefit assessment in support of funding for dredging. In Smithtown, two channels and associated areas are maintained by dredging. One dredged channel is in Stony Brook harbor from the confluence of Porpoise Channel with the Smithtown Yacht Club Spur westerly to the Town Marina and southerly to the Town of Brookhaven Boat Ramp. The entrance channel to Stony Brook Harbor has not been dredged and maintains itself naturally. The natural coastal processes that exist in this area would indicate that any new dredging in this area would destabilize those coastal processes. The other channel is from the mouth of the Nissequogue River to the boating facilities of the Nissequogue River State Park. At the mouth of the Nissequogue River the situation is different. Dredging at the mouth has been done and is needed to maintain access; however, dredging projects should be designed to mimic the natural conditions as much as practical.

³⁶ New York State Law, Chapter 952 of the Laws of 1895, Chapter 343 of the Laws of 1910, and Chapter 776 of the Laws of 1953.

Harbor Management Plan

A Harbor Management Plan (HMP) is a required component of a LWRP. The NYSDOS specifies the components of a HMP and allows it to be a stand-alone document or integrated within a LWRP. The Town of Smithtown Harbor Management Plan is integrated within the LWRP. In addition to the various parts of the LWRP that constitute a HMP, a HMP map (INSERT MAP#) has been prepared that graphically presents many of the provisions of the Smithtown HMP. The HMP Map shows the following uses:

- Channels
- Fairways
- Mooring Areas
- Anchorage Areas
- Buffer Areas to the above
- Docks
- Artificial Reefs
- Outfalls
- Boat Ramps
- Landings
- Shore Hardened Structures associated with boating access
- Areas closed to shellfishing

The Smithtown HMP primary components are (1) the description of proposed waterfront uses, (2) the Town regulation of structures in water, and (3) the provision of boating facilities.

The following text describes how the Town's LWRP meets the Department of State criteria for harbor management.

Boundary

The boundary of the LWRP includes all marine waters within the jurisdiction of the Town. See Section VII of the LWRP that fully describes the jurisdictions of the Town and how the exercise of that jurisdiction has been coordinated with the villages that share some authority for harbor management.

Existing Uses, Features, Conditions

The uses, features and conditions of the Town's marine waters are described in the Inventory and Analysis associated with each policy. The uses are described in general. The uses of the shoreline are fully established and stable. Most of the shoreline is committed to recreational or residential uses. See the land use map, figure 5-3.

Issues

The principle issues regarding harbor management are the same issues of public access and recreation, water quality, living resources, flooding and sea level rise as discussed in the appropriate sections of the LWRP.

Opportunities

There are opportunities to increase public access to the water and to increase boating access as identified in Section IV Public Access and Recreation. There are also water dependent and water enhanced development opportunities at the intersection of the Nissequogue River/Route 25&25A.

Constraints

The natural conditions and coastal processes that are important for habitat, public enjoyment and coastal resilience limit the navigational modifications that are acceptable. Additionally, water quality constrains shell fishing.

Water-dependent Uses

The water-dependent uses are identified in the inventory and analysis associated with Policies 1 and 10.

Economic, Cultural, and Social Issues

The economic, cultural and social issues that relate to the harbor, river, and bay have been discussed throughout the LWRP.

Water Use Plan

The Harbor Management Map identifies allowed surface water uses and shellfish closing and opening areas.

Policies

The policies for harbor management are all the policies of the program to the extent their application affects harbor management. However, Policy 10 is particularly relevant.

Authority

Several local laws give the Town adequate authority to manage its marine waters. Chapter 27 of the Town Code establishes the Department of Environment and Waterways; Chapter 318 Waterways regulates structures in the water; Chapter 303 deals with abandoned vessels; Chapter 151 Environmental and Coastal Quality Review includes integrated review in areas of shared jurisdiction which includes much of the River, the Harbor, and the near shore waters of the Bay. The Town has a Harbor Master and Bay Constables, who are peace officers, with authority to enforce its regulations.

Conflict and Competition for Space

Most uses of the space have been established as either park land or residential development. There is little competition for space. Some conflicts exist between residential uses and boaters over noise created in driving through residential neighborhoods. Both uses are well established and not likely to change.

Regional Needs and Maritime Center

Smithtown's harbor areas are not identified as Maritime Centers under the LISCMP.

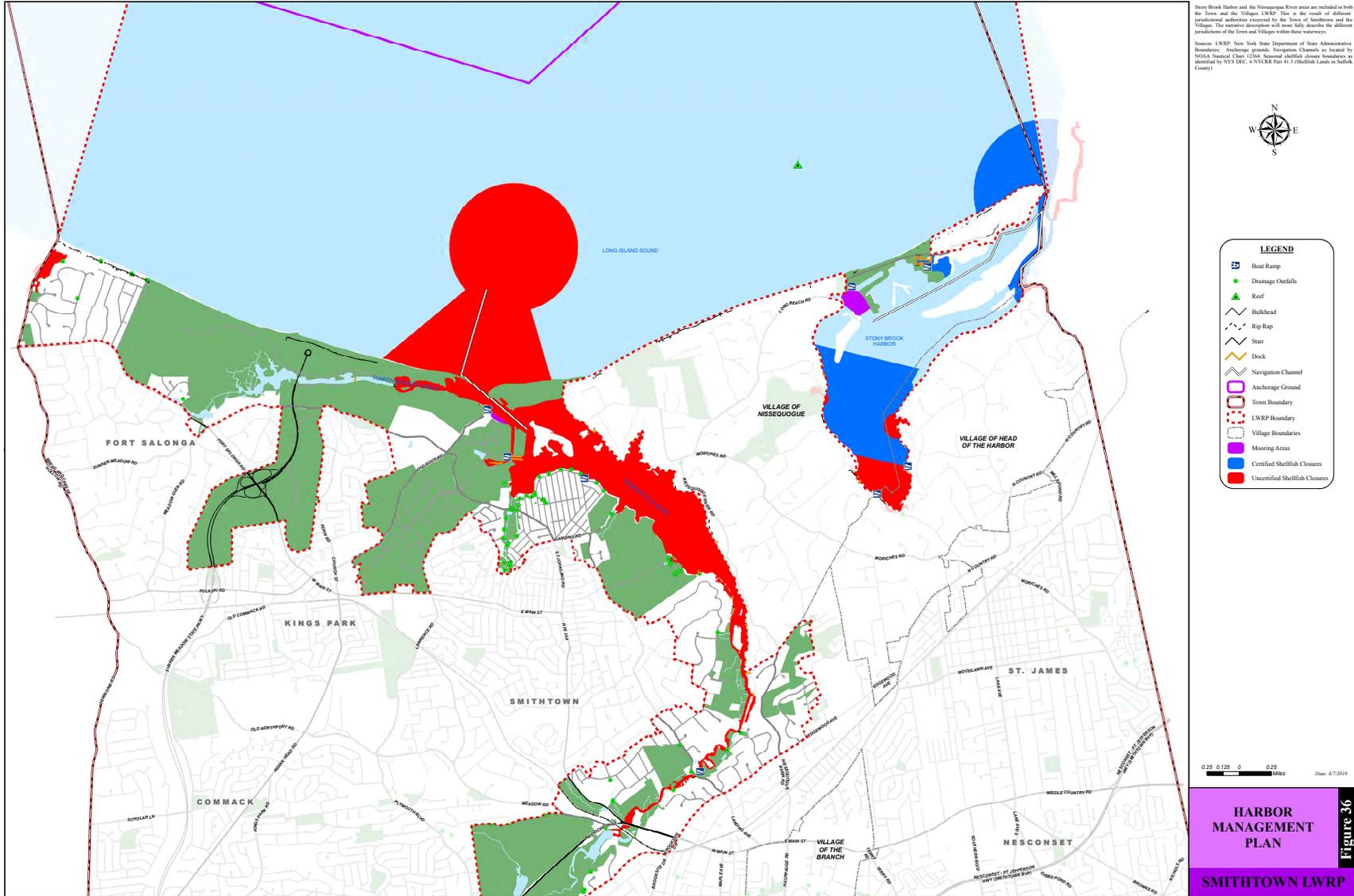


Figure 36. Harbor Management Plan

POLICIES

Policy 10: Protect water-dependent uses and promote siting of new water-dependent uses in limited suitable locations

Boating, fishing, swimming and other water-dependent uses are part of the economy of the Town of Smithtown. These water-dependent uses, and the facilities that support them, can only be conducted on and located in, over, or adjacent to a water body because such activity requires direct access to that water body as an integral part of its operations.

This policy's purpose is to protect and promote water-dependent uses in those locations best suited for such uses, which are unique and limited assets in coastal communities.

10.1 Protect existing water-dependent uses.

- a. Adhere to zoning to protect marinas and other water-dependent activities from conversion to other uses.
- b. Avoid conversion of existing water-dependent uses to non-water-dependent uses, which would displace, adversely impact, or interfere with existing water-dependent uses.
- c. Recognize the right of customary accessory uses associated with water-dependent uses to continue at existing locations.

10.2 Promote maritime centers as the most suitable locations for water-dependent uses.

This sub-policy is not applicable as Smithtown is not a maritime center.

10.3 Allow for development of new or expanded water-dependent uses outside of maritime centers.

- a. New or expanded water-dependent uses may be appropriate outside maritime centers if the site is physically suited for the water-dependent use, and if adverse impacts on natural resources and the surrounding neighborhood are minimal.

10.4 Minimize adverse impacts of new and expanding water-dependent uses.

- a. Site new, and expand existing, water-dependent uses where the following criteria apply:
 - i. Adequate upland exists for support facilities and services
 - ii. Sufficient waterside and landside access is available
 - iii. Appropriate near shore depth is sufficient to minimize dredging
 - iv. There is a suitable water quality classification
 - v. There will be minimal effects on wetlands, shellfish beds, or fish spawning grounds
 - vi. Adequate water circulation exists.

10.5 Promote efficient harbor operation.

Adhere to the plan of uses as presented in the Harbor Management Plan Map.

Policy 11: Support Sustainable Use of Living Marine Resources.

Living marine resources play an important role in the social and economic well being of the Town. Commercial and recreational harvesting of fish and shellfish provides high-protein food sources and contributes to the Town's economy and character. Fishing and shell fishing also provide high quality outdoor recreational experiences for residents and visitors.

Sustaining living marine resources in coastal waters depends on protection, conservation, and restoration of habitat, as well as maintenance and improvement of water quality. The Town has an ownership interest in the land under the waters of the Town and has authority to manage the Town's shellfish resources.

11.1 Ensure the long-term maintenance and health of living marine resources.

- a. Promote sustainability of the Town's finfish and shellfish resources and their habitats as well as the resources and habitats on which the Town's commercial and recreational fisheries depend.
- b. Manage commercial and recreational uses of living marine resources to ensure sustained usable abundance and diversity. Continue to develop and implement marine resource management strategies (*e.g.*, management plans, stocking and seeding activities, restoration of migratory fish passages, seeding to improve spawning, etc.) for both finfish and shellfish resources in the Town. These strategies should be based upon the best available science, should be adaptive, and should strive to maintain the long-term sustainability of the resources.
- c. Foster abundance of marine resources by protecting spawning grounds, habitats, and water quality; and enhancing and restoring fish and shellfish habitat, particularly for diadromous fish, oysters, and hard clams.

11.2 Provide for commercial and recreational use of marine resources.

- a. Maximize the benefits of marine resource use so as to provide a valuable recreational resource experience and viable business opportunities for commercial and recreational fisheries.
- b. Where fishery conservation and management plans require actions that would result in resource allocation impacts, ensure equitable distribution of impacts among user groups, giving priority to existing fisheries.

- c. Protect the public health and the marketability of marine and fishery resources by monitoring, maintaining and improving water quality.
- d. Promote ecotourism as a way to increase the public's exposure to and appreciation of the natural marine resources of the Town.

11.3 **Maintain and strengthen a stable commercial shellfishery.**

- a. Protect commercial fishing from interference or displacement by competing land and water uses.
- b. Protect and strengthen commercial fishing harvest operations.

11.4 **Promote recreational use of marine resources.**

- a. Provide adequate infrastructure to meet recreational needs, including appropriate fishing places, small boat launching areas, and parking.
- b. Improve understanding of recreational opportunities for the use of the marine resources, including recreational fishing regulations, guides on access points, best management practices, etc.
- c. Ensure safe conditions for recreational uses of marine resources.

11.5 **Promote managed harvest of shellfish.**

- a. Restrict shell fishing to Town waters certified for the taking of shellfish by the NYS Department of Environmental Conservation.
- b. Maintain or restore populations of shellfish stocks at levels that can produce the maximum sustainable yield.
- c. Maintain sufficient shellfish spawning stock in harvest areas to sustain the resource while reducing the likelihood of illegal harvesting.
- d. Modify the amount of shellfish that can be taken or the method or equipment that can be used in taking shellfish, as necessary, to protect shellfish propagation efforts and/or an endangered shellfish supply.

11.6 **Promote aquaculture.**

- a. Protect native stocks from potential adverse biological impacts due to aquaculture.

- b. Restore shellfish populations through seeding programs with emphasis on rehabilitating low productivity areas based on scientific investigations.
- c. Provide for the removal of damaged aquaculture gear to reduce impacts to the habitat and to other users of the water.
- d. Support small-scale aquaculture in appropriate locations.

IMPLEMENTATION

Implementation Through Existing Local Laws

Chapter 27 – Department of Environment and Waterways

In addition to specific responsibilities, the Department advises other major Town departments on activities that will affect the environment.

Chapter 138 – Dredging

This law regulates the placement or removal of any material in the bed of any watercourse.

Chapter 151 – Environment and Coastal Quality Review

This law includes the provision for Integrated Municipal Review of actions located within the coastal area.

Chapter 318 – Waterways

This law provides for the regulation of vessels

Chapter 233 – Shellfish

This law establishes regulations regarding the taking of shellfish.

Chapter 303 – Abandoned Vessels

Implementation Through Changes in Local Laws

Consider rezoning the marine waters of the Town to better reflect uses of the waters and natural resource values by establishing districts that reflect the suitability of the area for limited marine development, marine conservation or marine preservation.

Implementation Through Other Actions

The Town should discuss with the Village of Nissequogue the extent and nature of restrictions on trailered boats through the Village roadways.

Energy

INVENTORY AND ANALYSIS

New York State adopted an Energy Plan in 2015³⁷. It is a comprehensive roadmap to build a clean, resilient, and affordable energy system for all New Yorkers. The Plan coordinates every state agency and authority that touches energy to advance an agenda referred to as Reforming the Energy Vision (REV). REV calls for building an integrated energy network able to harness the combined benefits of the central grid with clean, locally generated power. The Plan, as a roadmap for REV, fosters economic prosperity and environmental stewardship—government and industry working together through public-private partnerships to achieve a shared goal of a healthier and stronger New York economy.

The initiatives outlined in the State Energy Plan, along with private sector innovation and investment fueled by REV, will put New York State on a path to achieving the following clean energy goals by 2030:

- i. 40% reduction in greenhouse gas emissions from 1990 levels
- ii. 50% electricity will come from renewable energy resources
- iii. 600 trillion BTU increase in statewide energy efficiency.

In dealing with the Long Island's energy issues, the first order of preference is the conservation of energy. Energy efficiency in transportation and site design, and efficiency in energy generation are the best means for reducing energy demands. Reduced demand for energy reduces the need for construction of new facilities that may have adverse impacts on coastal resources. For similar reasons, greater use should be made of sustainable energy resources, such as solar and hydroelectric power.

There are not any energy related issues in the Smithtown waterfront area that are distinct from those found town wide. The Town in its draft Comprehensive Plan identified the need to develop strategies, which are supportive of the State Plan, that will reduce the per capita use of

³⁷ <https://energyplan.ny.gov/Plans/2015.aspx>

The 2015 New York State Energy Plan sets forth a vision for New York's energy future that connects a vibrant private sector market with communities and individual customers to create a dynamic, clean energy economy. The Plan is divided into two volumes and guided by statutory requirements of Article 6 of the Energy Law. The first volume contains actionable policy recommendations and analyses to guide the state's efforts to advance new energy technologies that foster an innovative clean energy economy. The second volume addresses energy use, its sources and impacts, and provides detailed background that was used to develop the overarching vision and initiatives in the first volume. In addition, the second volume provides forecasts for energy supply and demand, a statewide inventory of greenhouse gas emissions, environmental and public health impacts associated with energy production and use, and vulnerabilities of the energy system.

electricity, use alternative power sources, such as solar and wind power, and implement Green building codes. The Town has put wind and solar power at its Municipal Services Facility in Kings Park and the Town building code includes energy conservation measures.

The draft comprehensive plan also identified the need to improve resiliency by placing more of the electric and communication distribution system underground to protect communities during severe storms and to improve aesthetics. It noted that the majority of streets in the Town have gas lines, most of which are owned and operated by National Grid. Over the next twenty years, it is likely that gas lines will be extended to many of the remaining areas of the Town. In order to reduce costs to the public of extending these lines, it would be beneficial for National Grid to schedule these extensions to coincide with road reconstruction. In addition to the local distribution network, a major gas transmission line, the Iroquois Pipeline, though not in the coastal area, runs through the Town.

Climate change poses a serious threat to Long Island's economy, environment and quality of life. Addressing climate change requires both mitigation and adaptation. Specifically, this refers to mitigation of the greenhouse gases that are fueling climate change and adaptation to the effects of climate change that are not mitigated. The effect with the most significant consequence for the Smithtown waterfront is sea level rise. This issue is addressed in Section III, Policy 4. While adaptation will fall heavily on local government, mitigation must be addressed by higher levels of government, such as New York State is doing with its REV initiative; but, the Town and its residents can advance mitigation as well by taking advantage of the many energy conservation and sustainability programs offered by the New York State Energy Research and Development Agency, other State agencies and the utility companies.

Among the initiatives the Town has taken are:

- An expedited permit procedure allowing for rooftop solar installations, Solar Energy System Fast Track Permit Application
- Changed its ordinance from the Energy Star rating system to utilization of the New York State Energy Code
- Implemented an LED street lighting program throughout the community
- Initiated small scale solar and wind energy projects
- Natural gas powered vehicles

Other energy programs relevant to Smithtown include:

- Home Performance with ENERGY STAR – PSEG Long Island program that is open to all owners of single-family homes. Program includes a free home energy audit and access to PSEG-LI rebates and financial incentives as well as financing from New York State's Green Jobs-Green New York program.
- Home Performance Direct Install – PSEG Long Island program that is open to homeowners with electric heat. Program includes a free comprehensive home energy assessment, duct sealing, and replacement of incandescent light bulbs with LED bulbs.

- The New York State Clean Energy Fund (CEF) – Operated by NYSERDA, the CEF provides funding for clean energy projects, education and research.

However, there are market barriers to extensive participation in energy conservation programs that need to be addressed including:

- Awareness of efficiency measures' potential application, benefits, and possible incentives
- Willingness due to personal/organizational practices, uncertainty or distrust of performance/benefits, fear of unintended consequences, hassle factor, irreversibility, etc.
- Availability of equipment or installation contractors
- Costs (initial cost, operation and maintenance costs, access to financing)

POLICIES

Policy 12: Promote appropriate use and development of energy and mineral resources.

The goal of this policy is to undertake activities in a manner consistent with meeting the following New York State clean energy goals as stated in this Section under Energy Inventory and Analysis:

- 40% reduction in greenhouse gas emissions from 1990 levels;
- 50% electricity will come from renewable energy resources; and
- 600 trillion BTU increase in statewide energy efficiency.

12.1 Conserve energy resources.

- a. Promote and maintain energy efficient modes of transportation, including rail freight and intermodal facilities, waterborne cargo and passenger transportation, mass transit, and alternative forms of transportation.
- b. Plan and construct sites using energy efficient design.
- c. Capture heat waste from industrial processes for heating and electric generation.
- d. Improve energy generating efficiency through design upgrades of existing facilities.
- e. Inform residents and businesses about energy conservation improvements available to residents and businesses.

- f. Reduce energy consumption per capita and replace fossil fuel energy sources with renewable energy sources.
- g. Locate small alternative energy electricity generating facilities in industrial areas, open areas, and non-sensitive locations
- h. Implement measures that protect surrounding properties from the expected upgrades and expansion of existing substations
- i. Facilitate the extension of natural gas lines to underserved areas.

12.2 Promote alternative and resilient energy sources that are self-sustaining, including solar and wind powered energy generation.

- a. In siting such facilities, avoid interference with coastal resources, including migratory birds, and coastal processes.
- b. Locate small alternative energy electricity generating facilities in open areas, non-sensitive locations and redevelopment areas.
- c. Implement measures that protect surrounding properties from the expected upgrades and expansion of existing substations.
- d. Coordinate burying of utility lines with road reconstruction projects.

12.3 Ensure maximum efficiency and minimum adverse environmental impact when siting major energy generating and transmission facilities.

The visual quality, significant wildlife habitats, the extensive system of parks, and the recreational use of the Nissequogue River, Sunken Meadow Creek, Smithtown Bay and Stony Brook Harbor should not be impacted by major energy generating facilities. Other than in Smithtown Bay, underwater pipelines, ships, and barges shall not be used to transport fuel or waste because they are likely to be detrimental to the recreational, aesthetic, and environmental values of the rivers, harbors and near shore areas of the Smithtown waterfront.

12.4 Minimize adverse impacts from fuel storage facilities.

- a. Regional petroleum reserve facilities are inappropriate in the Long Island Sound coastal area.
- b. The production, storage, or retention of petroleum products in earthen reservoirs is prohibited.
- c. Protect natural resources by preparing and complying with an approved oil spill contingency plan.

12.5 Minimize adverse impacts associated with mineral extraction.

- a. Commercial sand and aggregate mining is generally presumed to be an inappropriate use in the Long Island Sound coastal area.
- b. Preserve topsoil and overburden using appropriate site preparation techniques and subsequent site reclamation plans.

IMPLEMENTATION

Implementation Through Existing Local Laws

Chapter 112 – Building Construction

Chapter 112-1.2 – Building Code; Energy conservation

The Town code incorporates the latest version of the New York State Energy Conservation and Construction Code

Chapter 112-1.3 – Building Code; Residential solar energy fast track application process

This law provides an expedited process for installing solar power on homes

Chapter 112-1.4 – Geothermal permitting code

The law facilitates the safe use of this alternative heating source.

Implementation Through Other Actions

- Continue to inform residents and businesses about the financial and technical resources available through the State and LIPA to support energy conservation improvements in residential, commercial and industrial facilities.
- Continue to undertake Town energy conservation projects as feasible.
- Seek State funding and participation in State programs for energy conservation, adaptation and mitigation of climate change, and sustainable development that support Town plans.
- Continue to advocate with the relevant utility company to place more of the system underground to protect communities during severe storms and to improve aesthetics.

SECTION VI

CONSISTENCY

Consistency Procedures

INTRODUCTION: TOWN, VILLAGE, STATE, FEDERAL PARTNERSHIP

The Smithtown LWRP is a management program intended for use by the town, New York State, and the federal government to advance the policies of the New York State Coastal Management Program (NYSCMP) as those policies have been refined to fit the circumstances and objectives of the Town of Smithtown. The CMP is authorized by Article 42 of the New York Executive Law. The framework of the LWRP is intended to identify and manage direct, cumulative and secondary effects of activities and actions proposed in, or affecting, the coastal area in order to determine whether those activities should be pursued, modified, or avoided.

The Coastal Zone Management Act (CZMA) of 1972 defines the federal role. The CZMA establishes general policies for the use and protection of the nation's coastal resources. It provides support to states to prepare state-specific enforceable coastal zone management programs that refine the general policies of the CZMA to meet the circumstances and priorities of each respective state. The CZMA requires that once the federal government has approved a state's coastal management program, future federal activities, permits, funding, and direct actions, must be consistent with each state's program. For the most part, CZMA provides for the state to decide whether a federal activity is consistent with the state's program. This is a unique and powerful tool that the federal government has given to the states to control federal activities affecting coastal uses and resources. The process is generally referred to as the "federal consistency" requirement. (For further information on the federal consistency process in New York, see the NYS Department of State website.)

In 1981, the federal government approved the New York State Coastal Management Program. The State's coastal policies are implemented by numerous specific state laws that address one or more of the uses and resources that characterize the State's coastal area, e.g., the Tidal Wetlands Act, the Coastal Erosion Hazards Area Act, or the Public Lands Law. In addition to these laws, the New York Coastal Management Program is implemented by the Waterfront Revitalization of Coastal Areas and Inland Waterways Act, Article 42 of the Executive Law. This act establishes the New York State Department of State as the state's coastal management agency responsible for reviewing federal activities for consistency with the State's coastal policies. Under the Act, state agency actions are also required to be consistent with the state's coastal policies.

In 2002 the New York State Coastal Management Program was amended to incorporate the Long Island Sound Coastal Management Program (LISCMP). The LISCMP includes a refinement of the state's coastal policies to reflect conditions and circumstances specific to the Long Island Sound Coastal Area. The coastal policies as found in the LISCMP effectively replace the statewide coastal policies of the NYSCMP except where an approved Local waterfront Revitalization Program (LWRP) is in place.

The Waterfront Revitalization of Coastal Areas and Inland Waterways Act also creates the Local Waterfront Revitalization Program, providing for the incorporation of Smithtown's LWRP as part of the federally approved New York Coastal Management Program. Just as the federal CZMA

requires federal activities to be consistent with an approved state coastal management program, Article 42 of the New York's Executive law requires that state agency actions be consistent with an approved Local Waterfront Revitalization Program. When a local government in New York State has an approved local waterfront program, that program is submitted by New York State to the federal government as a revision to the state's federally approved coastal management program and effectively becomes the state's coastal management program within the jurisdiction of that local government. The local program then provides the basis for determining the consistency of federal and state activities within that local government coastal area. After 2002, with the incorporation of the LISCMP as part of the NYSCMP, it is the coastal policies of the LISCMP that are to be refined to fit the circumstances and objectives of a local government that is preparing or revising a LWRP.

The Smithtown LWRP describes a local process for assuring that town government activities and actions are undertaken in a manner consistent with its LWRP and describes the process by which the town will participate in, and shape, the determination of federal and state agency consistency decisions affecting the Town of Smithtown. This process can be a powerful tool, not only for coordinating the multiple public decisions that affect the uses and resources of the Smithtown waters and waterfront, but more importantly to assure that those decisions reflect the values and objectives of the Town as set forth in the Town's LWRP.

In addition, due to the fact that the Villages of Nissequogue and Head of the Harbor are physically situated wholly within the town's boundaries and share waterbodies with the town, it has been recognized that coordinated review of actions by these municipal entities is necessary to achieve the purposes of their respective LWRPs. This coordinated review is formalized through adopted town and village laws. The villages have their own joint LWRP, which has been approved by the NYS Secretary of State.

The following laws and procedures establish the procedures and means by which government activities at each level of government are made consistent with the Smithtown LWRP:

- Federal Coastal Zone Management Act of 1972 (CZMA) as amended
- Procedural Guidelines for Coordinating NYS Department of State (DOS) and LWRP Consistency Review of Federal Agency Actions
- Article 42 of the New York State Executive Law
- NYS Dept. of State Coastal Management Program Guidelines for Notification and Review of State Agency Actions where Local Waterfront Revitalization Programs are in effect
- Chapter 151 of the Town Code – Article II, Environmental Quality and Coastal Consistency Review
- Chapter 151 of the Town Code – Article III, Integrated Municipal Review of Actions Located Within Coastal Area
- Chapter 318 of the Town Code - Waterways, also known as the "Ordinance for Jointly Governing the Waterways within the Jurisdiction of the Town of Smithtown and the incorporated Villages Nissequogue and Head of the Harbor"

The standards for consistency are always the same – the proposed action must be consistent with the applicable policies of the LWRP. However the procedures for determining consistency with the policies will vary depending on the type of activity and the agency undertaking or approving the activity. For projects that involve actions or activities of local, state, and federal levels of government, all of these laws and procedures may

apply. For projects that involve actions or activities of only one level of government, only some of these laws and procedures apply. For instance, approval of a dock, might engage all of these procedures since a permit could be required by the federal, state, town and village governments. Another activity, such as a State Park improvement may only engage the requirement that the state agency action be consistent with the LWRP.

FEDERAL AGENCY ACTIONS

The Smithtown LWRP is incorporated as part of the New York State Coastal Management Program. As such, federal agency activities are required to be consistent with the policies of the Smithtown LWRP. Under the terms of the federal CZMA, the New York State Department of State is responsible for managing the consistency process in New York State. The DOS has established procedures to assure that the Town has the opportunity to participate in the process for determining whether a federal agency's activity is consistent with the Town's LWRP policies.

Procedural guidelines for coordinating NYS Department of State (DOS) and LWRP consistency review of federal agency actions

I. DIRECT FEDERAL ACTIONS

- a. After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, DOS will forward copies of the determination and other descriptive information on the proposed direct action to the program coordinator (of an approved LWRP)³⁸ and other interested parties.
- b. This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department's principal reviewer for the proposed action.
- c. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has "no opinion" on the consistency of the proposed direct federal agency action with the LWRP policies.
- d. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed direct action.

³⁸ The Town Planning Director is the designated program coordinator in Smithtown

- e. A copy of DOS "agreement" or "disagreement" letter to the federal agency will be forwarded to the local program coordinator.

II. PERMIT AND LICENSE ACTIONS

- a. DOS will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the local program coordinator and will identify the Department's principal reviewer for the proposed action.
- b. Within thirty (30) days of receiving such information, the local program coordinator will contact the principal reviewer for DOS to discuss: (a) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed action with the Town's LWRP policies.
- c. When DOS and the local program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the local program coordinator upon receipt.
- d. Within thirty (30) days of receiving the requested information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the local program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with the Town's LWRP policies
- e. After the notification, the local program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed action with the Town's LWRP policies.
- f. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the local program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" to the applicant.
- g. A copy of DOS's "concurrence" or "objection" letter to the applicant will be forwarded to the local program coordinator.

III. FINANCIAL ASSISTANCE ACTIONS

- a. Upon receiving notification of a proposed federal financial assistance action, DOS will request information on the federal financial assistance action from the applicant for consistency review purposes. As appropriate, DOS will also request the applicant to provide a

copy of the application documentation to the local program coordinator. A copy of this letter will be forwarded to the local program coordinator and will serve as notification that the proposed action may be subject to review.

- b. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the local program coordinator. DOS may, at this time, request the applicant to submit additional information for review purposes.
- c. The review period will conclude thirty (30) days after the date on DOS's letter of acknowledgement or the receipt of requested additional information, whichever is later. The review period may be extended for major federal financial assistance actions.
- d. The local program coordinator must submit the municipality's comments and recommendations on the proposed federal financial assistance action to DOS within twenty days (or other time agreed to by DOS and the local program coordinator) from the start of the review period. If comments and recommendations are not received within this period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed federal financial assistance action with the LWRP policies.
- e. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the local program coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS consistency decision.
- f. A copy of DOS consistency decision letter to the applicant will be forwarded to the local program coordinator.

NEW YORK STATE AGENCY ACTIONS

New York State agency actions are required by the *Waterfront Revitalization of Coastal Areas and Inland Waterways Act* to be consistent to the maximum extent practicable with the policies and purposes of an approved LWRP. While the federal consistency process necessitates that the local government work through the DOS, the state consistency process calls for direct communication between the local government and State agency. The DOS's role is to resolve any conflicts that the local government and the State agency cannot resolve. In this case, "[T]he local government shall identify potential conflicts and so notify the Secretary of State. Upon notification of the conflict, the secretary will confer with the affected state agency and the local government to modify the proposed action to be consistent with the local plan"³⁹

The following is excerpted from the *NYS Department of State Coastal Management Program Guidelines for Notification and Review of State Agency Actions where Local Waterfront Revitalization Programs are in effect*:

³⁹ New York Executive Law Article 42, section 915. 9.

I. *Purpose of Guidelines*

- a. *The Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law) and the Department of State's regulations (19 NYCRR Part 600) require certain state agency actions identified by the Secretary of State to be consistent to the maximum extent practicable with the policies and purposes of approved Local Waterfront Revitalization Programs (LWRPs). These guidelines are intended to assist state agencies in meeting that statutory consistency obligation.*
- b. *The Act also requires that state agencies provide timely notice to the situs local government whenever an identified action will occur within an area covered by an approved LWRP. Executive Law Sec. 915(9). These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist local governments in carrying out their review responsibilities in a timely manner.*
- c. *The Secretary of State is required by the Act to confer with state agencies and local governments when notified by a local government that a proposed state agency action may conflict with the policies and purposes of its approved LWRP. Executive Law Sec. 915(7) & (9). These guidelines establish a procedure for resolving such conflicts.*

II. *Definitions*

a. *Action means:*

- 1. *"Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);*
- 2. *Occurring within the boundaries of an approved LWRP; and*
- 3. *Being taken pursuant to a state agency program or activity that has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.*

b. *Consistent to the maximum extent practicable means that an action will not substantially hinder the achievement of any of the policies and purposes of an approved LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:*

- 1. *For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;*
- 2. *That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and*

3. *That will result in an overriding regional or statewide public benefit.*

c. *Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water and man made resources, proposed land uses and specific projects that are essential to program implementation.*

III. *Notification Procedure*

a. *When a state agency is considering an action as described in Definitions (II) above, the state agency shall notify the affected local government.*

b. *Notification of a proposed action by a state agency:*

1. *Shall fully describe the nature and location of the action;*

2. *Shall be accomplished by use of either the State Clearinghouse, other existing state agency notification procedures, or through an alternative procedure agreed upon by the state agency and local government;*

3. *Should be provided to the local official identified in the LWRP of the situs local government as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action. (The timely filing of a copy of a completed Coastal Assessment Form with the local LWRP official should be considered adequate notification of a proposed action).*

4. *If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the chief executive officer can serve as the state agency's notification to the situs local government.*

IV. *Local Government Review Procedure*

a. *Upon receipt of notification from a state agency, the situs local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local official identified in the LWRP, the state agency should promptly provide the situs local government with whatever additional information is available which will assist the situs local government to evaluate the proposed action.*

- b. *If the situs local government cannot identify any conflicts between the proposed action and the applicable policies and purposes of its approved LWRP, it should inform the state agency in writing of its finding. Upon receipt of the local government's finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.*
- c. *If the situs local government does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the municipality's approved LWRP.*
- d. *If the situs local government notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the Resolution of Conflicts procedure established in V. below shall apply. The local government shall forward a copy of the identified conflicts to the Secretary of State at the time when the state agency is notified. In notifying the state agency, the local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.*

V. Resolution of Conflicts

- a. *Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.*
- b. *If the discussion between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.*
- c. *If the consultation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the situs local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party*
- d. *Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.*

- e. *If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.*
- f. *The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.*

TOWN OF SMITHTOWN ACTIONS

Chapter 151 of the Town Code establishes the process and standards to assure that town actions are undertaken in a manner consistent with the LWRP. Because the Town of Smithtown includes overlapping and different forms of jurisdiction, the geographic area to which this law applies requires a precise description. All the area seaward of the inland boundary of the coastal area to the Connecticut boundary in Long Island Sound excluding the land area above mean high water in the Villages of Nissequogue and Head of the Harbor is subject to review under the Town's LWRP. Within the excluded upland of the villages the direct actions of Town agencies are also subject to consistency.

The basis for the Town's jurisdiction in this area and hence the applicability of the town's consistency requirements is twofold. First, the boundary of the Village of Nissequogue extends only to the mean high water line of the Nissequogue River, Long Island Sound, and Stony Brook Harbor. The boundary of the Village of Head of the Harbor extends only 500 feet into Stony Brook Harbor. Therefore, all areas outside the villages' boundaries are subject to the town laws and regulations. It should be noted that as the mean high water (MHW) line changes the Town's jurisdiction changes, e.g., as sea level rises, the town's jurisdiction would move landward⁴⁰. If the beach along the Bay widens due to natural accretion, the location of the MHW line can be expected to move seaward. However, the increase in storm occurrences and severity over the last decades indicates that any seaward movements of the MHW line along Smithtown Bay have been substantially setback by the erosion due to increased storms and the proliferation of sea walls, bulkheads, rock walls and groin installations along Smithtown Bay. Therefore, it is important for purposes of reviewing actions proposed within areas covered by the Town's LWRP, that there be recognition that the town's jurisdiction and interests are not fixed along its shorelines.

In addition to its political jurisdiction, the town has a property interest granted by the state (See Public Coast Section) in the waters and underwater lands of the coastal waterbodies; thus, the town has jurisdiction along Smithtown Bay, the Nissequogue River and within Stony Brook Harbor. The villages have extra-territorial jurisdiction in the Nissequogue River, Long Island Sound, and Stony Brook Harbor primarily to regulate vessel activity. See the Integrated Municipal Review and Joint Waterways laws, described below, for how the three municipalities address their overlapping jurisdictions in the coastal waterbodies of the Town (see Map x).

⁴⁰ In portions of the Nissequogue bluffs along Long Island Sound the high tide line has begun to move up the face of the bluffs.

Article II of Chapter 151 of the Town Code describes the requirements and process for determining the consistency of Town permitting and direct actions within the coastal area. The following is a summary of its provisions.

Procedures to Review Local Actions for Consistency with the LWRP

Each proposed action⁴¹ directly undertaken, funded, permitted or otherwise approved by a town agency for a given public or private project, use or activity within the Local Waterfront Revitalization Area (LWRA) of the town of will be reviewed for compliance with the LWRP pursuant to provisions of the appropriate chapters of the Town Code. The Town Board makes the determination regarding the consistency of an action with the LWRP. The following procedures will be integrated into the town's procedures for compliance with SEQRA.

- a. Any town agency that receives an application for an action involving funding or approval by that agency, or proposes an action to be directly undertaken by that agency shall determine whether the action is a Type I or an Unlisted Action as defined in Chapter 151 of the Town Code. Actions accessory to a one or two family residence, which are listed as Type II actions, and are within a 100 feet of a waterbody shall be subject to consistency review.
- b. If the action is classified as a Type I or an Unlisted Action, or otherwise subject to consistency review, the town agency shall determine if the proposed action is located in or directly affects the Town of Smithtown Local Waterfront Revitalization Area as defined in Boundary Section of the LWRP.
- c. If the action is outside the LWRA, the town agency shall proceed with a determination of environmental significance as provided for in Chapter 151 of the Town Code.
- d. If the action is classified as a Type I or Unlisted Action, or otherwise subject to consistency review, and is located within or directly affects the Town of Smithtown LWRA, the town agency will:
 1. In the case of a direct action, complete a Coastal Assessment Form (CAF) and send a copy of the direct action description, Environmental Assessment Form (EAF), and CAF to the Planning Director; or
 2. In the case of an application, notify the applicant that the application is subject to the LWRP and that he/she is required to submit a CAF, copy of the application, including paperwork, plans and photos, and any required fee to the Planning Department.

⁴¹ The definition of "action" for purposes of consistency is generally the same as that for Type I and unlisted actions pursuant to SEQRA. See Chapter 151 for the full definition.

- e. The Planning Director shall determine if the application or direct action description and any supporting materials submitted constitutes a full statement for the purpose of determining consistency with the LWRP. The Planning Director may request any other material he/she feels is necessary for a complete review.
- f. If the Planning Director determines that there are other interested agencies, he/she shall forward a copy of the application or direct action description and all supporting material including the EAF and CAF to each interested agency.
- g. The Planning Director shall review the action for consistency with the policies, standards, and conditions of the LWRP and shall submit a recommendation regarding the action's consistency to the Town Board. The Planning Director shall also have the authority to issue a consistency determination for actions that meet certain criteria, similar to the Department of State's General Concurrence criteria.
- h. The Town Board shall review the actions referred to it and make a determination of consistency or inconsistency to the town agency within thirty (30) days after receipt of the Planning Director's recommendation. The determination shall be that the proposal is consistent, consistent if conditions are met, or inconsistent with the LWRP.
- i. If the Town Board determines that an action would not be consistent with the LWRP⁴² the action shall not be undertaken unless the Town Board finds that:
 - 1. No reasonable alternative exists which would permit the action to be undertaken in a manner that will not substantially hinder the achievement of such LWRP policy standards and conditions;
 - 2. The action would be undertaken in a manner that would minimize all adverse effects on such policy standards and conditions to the maximum extent practicable;
 - 3. The action will advance one or more of the other LWRP policy standards and conditions; and
 - 4. The action will result in an overriding Town, regional, statewide public benefit.
- j. The town shall maintain a record of its consistency review and determinations.

⁴² The Town Board's decision is based on a determination of whether or not the action is consistent with the coastal policies. If the Board of Zoning Appeals has granted a variance to a specific standard that has been identified as implementing one or more coastal policies, the Town Board should not find the action inconsistent for not meeting the stated standard. However, the Town Board may find the action inconsistent if it determines that the action is not consistent with the general intent one or more coastal policies.

The decision to grant zoning variance is governed solely by §267-b of Town Law, which sets forth specific standards for issuing variances. Such decision is not subject to the consistency review process. However, the nature of the standards in §267-b allows for the consideration of the coastal policies in the interpretation and application of those standards in determining whether or not to grant a variance.

INTEGRATED MUNICIPAL REVIEW

Because of the overlapping jurisdictions described above and the nature of the shared resources, the Town of Smithtown, Village of Nissequogue and Village of Head-of-the-Harbor each adopted identical local laws for integrated municipal review of actions within their shared coastal areas. Smithtown's integrated review procedures are contained in Chapter 151 of the Town Code. The Village of Nissequogue's integrated review procedures are contained in Chapter 20 of its village code and The Village of the Head-of-the-Harbor maintains its review procedures in Chapter 81 of its village code.

These local laws were adopted pursuant to Article 9, Section 1 of the NYS Constitution, Article 5-G of NYS General Municipal Law, and Section 10 of NYS Municipal Home Rule Law. They expressly supersede any inconsistent general or local law regarding consistency review, zoning, and waterways. Each of the municipal codes clarifies that consistency reviews, by either the Town of Smithtown or the Joint Village Coastal Management Commission, of proposed actions to be undertaken by the other municipality "shall be considered to be Type II actions under 6 NYCRR 617 for consistency purposes only." This has the effect of eliminating the necessity of a SEQRA review of the review process itself.

This Integrated Review Procedure is effective only when the Town of Smithtown, Village of Head-of-the-Harbor, and Village of Nissequogue have in effect approved LWRPs and only when the exact same provisions have been duly enacted by the three municipalities. This procedure is to be used to implement an intermunicipal cooperative agreement for the consistency review of actions by the Town of Smithtown and the Villages of Head-of-the-Harbor and Nissequogue, and is in addition to the LWRP consistency laws of the Town of Smithtown and the Villages of Head-of-the-Harbor and Nissequogue. The procedure applies to the LWRP areas of Stony Brook Harbor, the Nissequogue River from the southernmost municipal and jurisdictional boundaries of the Village of Nissequogue and the Town of Smithtown northward to Smithtown Bay, and Smithtown Bay fifteen hundred feet (1500') offshore from the Nissequogue River's confluence with Smithtown Bay, easterly 1500' from shore to the confluence of Stony Brook Harbor with Smithtown Bay.

a. An Action is defined as:

1. A project or physical activity, such as construction or other activities, which changes the use or appearance of any natural resource or structure classified as a Type I or an Unlisted Action pursuant to 6NYCRR Part 617 which is:
 - i. Directly undertaken by an agency
 - ii. Involves funding by an agency; or
 - iii. Requires one or more permits or approvals from an agency or agencies
2. Planning activities of an agency that commit the agency to a course of future decisions;
3. Agency rule, regulations, procedure and policy making; and
4. Combinations of the above.

Notification Procedures

When a Town of Smithtown agency is considering an action in the areas described above in Stony Brook Harbor, the Nissequogue River, or Smithtown Bay. The Town Planning Director or Chief Building Official, as the case may be, shall notify the Villages of Head-of-the-Harbor and Nissequogue Joint Village Coastal Management Commission; when a Village of Nissequogue agency is considering an action in Stony Brook Harbor, the Nissequogue River, or Smithtown Bay, or a Village of Head-of-the-Harbor agency is considering an action in Stony Brook Harbor, the Joint Village Coastal Management Commission shall notify the Town of Smithtown Planning Director of such action.

1. The notification of a proposed action
 - i. Shall fully describe the nature and location of the action;
 - ii. Shall stipulate the dates and times of hearings, meetings, and review and comment periods;
 - iii. Shall be accomplished by the exchange of Coastal Waterfront Assessment forms, Environmental Assessment Forms, and copies of applications and supporting documentation;
 - iv. Should be provided as early in the planning stages of the action as possible, but in any event at least thirty (30) days prior to the agency's decision on the action.

Review Procedures

1. Village Action
 - i. Upon receipt of the notification by the Town Planning Director from the Villages Joint Coastal Management Commission, the Town Planning Director shall forward a copy of the notification to other interested and involved Town agencies and to the Town Board for review and comment.
 - ii. The Town Board shall review the notification describing the proposed Village action against the policies and standards of the Town's approved LWRP, and shall receive and review comments from any other interested and involved Town agencies on the consistency of such action within fifteen (15) days of such referral from the Town Planning Director.
 - iii. If the Town Board cannot identify any conflicts between the proposed Village action and the applicable policies and standards of the Town's approved LWRP, it shall notify the Town Planning Director of such finding, who will notify the Joint Village Coastal Management Commission of the Town's finding.
 - iv. If the Town Planning Director does not notify Village Officials in writing of the Town's finding within twenty five (25) days of receipt of the notification, the Village may presume that the proposed action does not conflict with the Town's approved LWRP.
 - v. If the Town Planning Director notifies Village officials in writing that the proposed action does conflict with the policies and standards of the Town's approved LWRP, the Village shall not proceed with the action until identified conflicts have been resolved in accordance with the procedures set forth herein.
2. Town Action

- i. Upon receipt of notification by the Villages' Joint Coastal Management Commission from the Town Planning Director, the Commission Chairperson or the Chairperson's designee shall forward a copy of the notification to other interested and involved agencies.
- ii. The Joint Village Coastal Management Commission shall review the notification of the proposed Town action against the policies and standards of the Villages' approved LWRP.
- iii. If the Joint Village Coastal Management Commission cannot identify any conflicts between the proposed Town action and the applicable policies and standards of the Villages' approved LWRP, the Chairperson shall notify the Town Planning Director of the Villages' finding.
- iv. If the Chairperson does not notify Town Officials in writing of the Villages' finding within twenty five (25) days of receipt of the notification, the Town may presume that the proposed action does not conflict with the Villages' approved LWRP.
- v. If the Chairperson notifies Town officials in writing that the proposed action does conflict with the policies and standards of the Villages' approved LWRP, the Town shall not proceed with the action until identified conflicts have been resolved, in accordance with the procedures set forth herein.

3. Resolution of Conflicts

The following procedures shall apply whenever a proposed action conflicts with the policies and standards of the Villages of Head-of-the-Harbor and Nissequogue LWRP, or the Town of Smithtown LWRP.

- i. The Chairperson of the Joint Village Coastal Management Commission and the Town Supervisor, within fifteen (15) days of receipt of written notification of a finding that a proposed action conflicts with an LWRP policy or standard, shall meet to resolve such conflicts with respect to the consistency of the proposed action with the relevant LWRP.
- ii. If the Chairperson of the Joint Village Coastal Management Commission and the Town Supervisor can settle the conflicts by a mutually agreeable decision, and the respective Commission and Town Board approve of such decision by resolution, the originating agency may proceed with the implementation of the action pursuant to the decision. In passing the resolution approving such decision, the Commission and the Town Board shall have fifteen (15) days from the date of referral of the proposed conflict settlement decision; failure to act within this time frame by either the Commission or the Town Board shall be deemed to an approval of the action with or without the terms of the decision.
- iii. If the conflicts cannot be resolved by a mutually agreeable decision, the matter will be referred to the respective Village Board of Trustees and Town Board for resolution pursuant to the procedures of this subparagraph. The municipality which determines that the proposed action conflicts with its LWRP may prepare and file with the clerk of the municipality proposing the action, a memorandum of protest with regard to the inconsistency of the proposed action. The memorandum of protest must contain a statement indicating the reasons for the inconsistency of the proposed action, and recommend reasonable alternatives or modification to the proposed action. When such memorandum of protest is filed, the municipality proposing the action shall not act contrary to such memorandum of protest except by a vote of a majority plus one of all the Board members thereof. Such

action shall be subject to judicial review pursuant to the law providing for review of acts of such municipal agencies, commenced within thirty (30) days of its adoption.

- iv. The Town Board and the Joint Village Coastal Management Commission may mutually agree to extend any time limitation designated in this Article. Failure to act within the time requirements of this Article or mutually agreed extension shall be deemed to be the equivalent of approval of such action by the non-acting municipality.

Joint Waterways Ordinance

The town and villages also each adopted identical local laws for the management of vessels in their shared waterways. These are described in the Section on the Working Coast.

SUMMARY OF CONSISTENCY RESPONSIBILITIES

Agency/Agencies involved with the decision to undertake, fund, or approve an action	Consistency Review
Smithtown Town agency only, outside integrated review area	<ul style="list-style-type: none"> • No consistency review by any village, State, or federal agency • Town Board determines the consistency of the action with <i>LWRP Policies</i>
Smithtown Town agency only, within the integrated review area	<ul style="list-style-type: none"> • No consistency review by State or federal agency • Village CZMC reviews action for any conflict with Villages' LWRP • Town Board determines the consistency of its action with the Town <i>LWRP Policies</i> by a majority plus one if the Villages identifies an unresolved conflict with Villages' LWRP

<p>Village agency only, within the integrated review area</p>	<ul style="list-style-type: none"> • No consistency determination by any State or federal agency • Town Planning Director reviews for any conflict with the Town LWRP • Village CZMC determines the consistency of the action with Villages' LWRP by a majority plus one if the Town identifies an unresolved conflict with the Town LWRP
<p>NYS agency only (e.g. DEC or OPRHP)</p>	<ul style="list-style-type: none"> • No consistency determination by Town Board or federal agency • The State agency must notify the Town of the action and determine that its action is consistent with the <i>LWRP Policies</i> • If the Town objects to the State agency action the Town may request the NYS Secretary of State to intervene to assure that any action taken will be consistent with the <i>LWRP Policies</i>
<p>NYS agency (e.g., DEC) and Federal agency (e.g. ACOE)</p>	<ul style="list-style-type: none"> • The State agency must notify the Town and determine that its action is consistent with the LWRP • If the Town objects to the agency action the Town may request the NYS Secretary of State to intervene to assure that any action taken will be consistent with the LWRP • The federal agency must determine that its action is consistent with the LWRP • NYS DOS must notify the Town and seek the Town's

	<p>opinion</p> <ul style="list-style-type: none"> • NYS DOS concurrence with the federal agency determination is required
<p>Town agency, NYS agency, and Federal agency</p>	<ul style="list-style-type: none"> • Town Board determines the consistency of Town action • The State agency must notify the Town and determine that its action is consistent with the LWRP • If the Town objects to the agency action the Town may request the NYS Secretary of State to intervene to assure that any action taken will be consistent with the LWRP • The federal agency must determine that its action is consistent with the LWRP, NYS DOS must notify the Town and seek the Town's opinion • NYS DOS concurrence with the federal agency determination is required

Table 6-1. Summary of Consistency Responsibilities

There are other permutations of agency involvement, as well as multiple agency involvement at each level of government, but there are not additional permutations of agency responsibility for determining consistency. The federal consistency process also differs depending whether the activity is a direct, funding, permit, or in the ocean beyond the state waters, but all federal activities must be consistent.

RECOMMENDATIONS FOR REVISIONS TO CONSISTENCY PROCESS

1. Revise list of actions subject to consistency to make some Type II actions subject to consistency, including structures within 100 feet of the shoreline, and some stormwater permits that could be otherwise be classified as Type II. These require a Town permit but if they are accessory to a single family home they are a Type II actions. Although DEC has considered erosion control structures to fall under this rubric including those within a CEHA area, this is contrary to the state's Coastal Erosion Hazard Act, which states that all activities subject may have a significant effect on the environment.
2. Amend §151-15 A (1) to list the Type II actions that should be subject to LWRP consistency review.
3. Reduce the volume of consistency determinations that the Town Board is required to issue by allowing the Planning Director to find consistent, actions that meet certain criteria that render their effect on coastal policy achievement de minimus. See the DOS Criteria for General Concurrence for certain federal consistency decisions as a model for the type of actions the Planning Director may find consistent. The Planning Director could not find an action inconsistent, only the Town Board may make that determination.
4. Revise the "policy standards and conditions" in Chapter 151 to reflect revised policy. Include the 12 Policies and the sub policy statements but not standards under each sub policy in the text of the legislation.
5. Consider reviewing the time periods within which reviews and filings must be conducted pursuant to Town Code Chapter 151, Articles II and III. Some are very short. Make clear that time periods do not commence until the Town Board or the Planning Director has determined that it has all necessary and adequate information to render a consistency determination. The extension of the time period could also be by mutual agreement. If this is done, make clear that a finding of inconsistency can be based on lack of adequate information.
6. Require preparation of the CAF by the acting Town Agency or the Planning Department, not the applicant, to improve objectivity of responses.
7. Modify the internal Town consistency review procedures of Chapter 151 to include fuller involvement of other Town agencies including the Town Attorney's Office and the Department of Environment and Waterways.

Federal And State Actions Likely To Affect LWRP Implementation

INTRODUCTION

State and federal actions will affect the implementation of the Smithtown Local Waterfront Revitalization Program. The active participation of federal and state agencies through their regulatory decisions, direct actions, and funding is likely to be necessary to effectively implement the Program.

The State Waterfront Revitalization of Coastal Areas and Inland Waterways Act requires that a Local Waterfront Revitalization Program (LWRP) identify those elements of the program which can be implemented by the local government unaided and those that can only be implemented with the aid of other levels of government or other agencies. These identifications shall include those permit, license, certification, or approval programs; grant, loan, subsidy, or other funding assistance programs; facilities construction; and planning programs which may affect the achievement of the LWRP.

Under state law and the US Coastal Zone Management Act, state and federal actions and activities within or affecting the Smithtown coastal area must be “consistent” or “consistent to the maximum extent practicable” with the enforceable policies and purposes of an LWRP. This consistency requirement makes an LWRP a unique, intergovernmental mechanism for setting policies and making decisions at each level of government based on those policies. This not only helps to prevent actions detrimental to achieving the policies, but can also preserve future options from being needlessly foreclosed. In addition, the active participation of State and federal agencies may be necessary to implement specific provisions of the LWRP.

The first part of this section identifies the actions, activities, and programs of state and federal agencies, which are to be undertaken in a manner consistent with an LWRP. Pursuant to the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), the Secretary of State notifies each affected State agency of these identified agency actions and programs that are to be undertaken in a manner consistent with an approved LWRP. The following list of state actions is that list of actions subject to the state consistency requirement. The consistency requirement is effective upon the Secretary of State’s approval of this Smithtown LWRP, or any subsequent amendments, and the Secretary’s notification of approval to affected state agencies. (Note: The Secretary’s notification of approval would indicate that the list of state agency actions in Section VI, subsection A 1., is the legislatively required list and replaces any previous notification or identification of actions subject to consistency.)

Similarly, federal agency activities and programs subject to consistency requirements are identified in the manner prescribed by the US Coastal Zone Management Act and its implementing regulations. The list of federal activities and programs included herein is informational only and does not represent or substitute for the required federal identification and notification procedures. The current official list of actions subject to federal consistency requirements may be obtained from the NYS Department of State. Consistency of federal activities with the Smithtown

LWRP is effective upon the concurrence of the US Secretary of Commerce that the Smithtown LWRP, or subsequent amendments, represents a program change to the New York State Coastal Management Program. Subsequent to the Secretary's approval of the LWRP, the Secretary submits the LWRP to the Secretary of Commerce for concurrence.

There is some variation in the standards and procedures for the "consistency" requirement depending on whether the action or activity is a state or federal one; whether it is a permit, direct, or funding activity; and where the action or activity is to take place. These distinctions are described elsewhere in this document and more fully in the relevant state and federal regulations that implement their respective "consistency" requirement.

Whether or not an action or activity is subject to the consistency requirement, the active participation of state and federal agencies is likely to be necessary to implement specific provisions of the Smithtown LWRP. The second part of this section is a more focused and descriptive list of state and federal agency actions that are necessary to further implement the LWRP. It is recognized that a state or federal agency's ability to undertake such actions is subject to a variety of factors and considerations, and that the consistency provisions referred to above may not apply in some instances.

STATE AND FEDERAL ACTIONS AND PROGRAMS THAT SHOULD BE UNDERTAKEN IN A MANNER CONSISTENT WITH THE LWRP

State Agency Actions And Programs

AGING, OFFICE FOR THE

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

AGRICULTURE AND MARKETS, DEPARTMENT OF

- 1.00 Agricultural Districts Program
- 2.00 Rural Development Program
- 3.00 Conservation Reserve Enhancement Program
- 4.00 Permit and Approval Programs:
- 5.00 Custom Slaughters/Processor Permit
- 6.00 Processing Plant License
- 7.00 Refrigerated Warehouse and/or Locker Plant License
- 8.00 Farmland Protection Grants from the Environmental Protection Fund
- 9.00 Agricultural nonpoint Source Abatement and Control Grant Program and the Agricultural Environmental Management Program

ALCOHOLIC BEVERAGE CONTROL, DIVISION OF (STATE LIQUOR AUTHORITY)

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

ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OFFICE OF

- 1.00 Facilities, Construction, Rehabilitation, Expansion, or Demolition or the Funding of such activities.
- 2.00 Permit and Approval Programs:
- 2.01 Certificate of Approval (Substance Abuse Services Program)
- 3.00 Permit and Approval:
- 3.01 Letter Approval for Certificate of Need
- 3.02 Operating Certificate (Alcoholism Facility)

- 3.03 Operating Certificate (Community Residence)
- 3.04 Operating Certificate (Outpatient Facility)
- 3.05 Operating Certificate (Sobering-Up Station)

ARTS, COUNCIL ON THE

- 1.00 Facilities Construction, Rehabilitation, Expansion, or Demolition or the Funding of such activities
- 2.00 Architecture and Environmental Arts Program

CENTRAL PINE BARRENS COMMISSION

- 1.00 Approval of Development

CHILDREN AND FAMILY SERVICES, OFFICE OF

- 1.00 Facilities Construction, Rehabilitation, Expansion, or Demolition or the Funding of such activities
- 2.00 Bureau of Housing and Shelter Services/Homeless Housing and Assistance Program
- 3.00 Permit and approval programs:
 - 3.01 Certificate of Incorporation (Adult Residential Care Facilities)
 - 3.02 Operating Certificate (Children's Services)
 - 3.03 Operating Certificate (Enriched Housing Program)
 - 3.04 Operating Certificate (Home for Adults)
 - 3.05 Operating Certificate (Proprietary Home)
 - 3.06 Operating Certificate (Public Home)
 - 3.07 Operating Certificate (Special Care Home)
 - 3.08 Permit to Operate a Day Care Center

CORRECTIONS AND COMMUNITY SUPERVISION, DEPARTMENT OF

- 1.00 Facilities Construction, Rehabilitation, Expansion, or Demolition or the Funding of such activities

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

- 1.00 Financing of Higher Education and Health Care Facilities
- 2.00 Planning and Design Services Assistance Program

EDUCATION DEPARTMENT

- 1.00 Facilities Construction, Rehabilitation, Expansion, or Demolition or the Funding of such activities

- 2.00 Permit and Approval Programs:
- 2.01 Certification of Incorporation (Regents Charter)
- 2.02 Private Business School Registration
- 2.03 Private School License
- 2.04 Registered Manufacturer of Drugs and/or Devices
- 2.05 Registered Pharmacy Certificate
- 2.06 Registered Wholesale of Drugs and/or Devices
- 2.07 Registered Wholesaler-Re-packer of Drugs and/or Devices
- 2.08 Storekeeper's Certificate
- 3.00 Administration of Article 5, Section 233 of the Education Law regarding the removal of archaeological and paleontological objects under the waters of the State.

EMERGENCY MANAGEMENT, OFFICE OF

- 1.00 Hazard Identification
- 2.00 Loss Prevention, Planning, Training, Operational Response to Emergencies,
- 3.00 Technical Support, and Disaster Recovery Assistance.

EMPIRE STATE DEVELOPMENT

(updated services are listed here: <http://www.esd.ny.gov/AboutUs/Services.html>).

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

ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

- 1.00 Issuance of revenue bonds to finance pollution abatement modifications in power generation facilities and various energy projects.
- 2.00 New Construction Program – provide assistance to incorporate energy-efficiency measures into the design, construction and operation of new and substantially renovated buildings.
- 3.00 Existing Facilities Program – offers incentives for a variety of energy projects

ENVIRONMENTAL CONSERVATION, DEPARTMENT OF

- 1.00 Acquisition, disposition, lease, grant of easement and other activities related to the management of lands under the jurisdiction of the Department.
- 2.00 Classification of Waters Program; classification of land areas under the Clean Air Act.

- 3.00 Facilities construction, rehabilitation, expansion, or demolition or the funding of such activities.
- 4.00 Financial assistance/grant programs:
 - 4.01 Capital projects for limiting air pollution
 - 4.02 Cleanup of toxic waste dumps
 - 4.03 Flood control, beach erosion and other water resource projects
 - 4.04 Operating aid to municipal wastewater treatment facilities
 - 4.05 Resource recovery and solid waste management capital projects
 - 4.06 Wastewater treatment facilities
- 5.00 Planning, construction, rehabilitation, expansion, demolition, or the funding of such activities and/or projects funded through the Environmental Protection Fund (Environmental Protection Act of 1993) or Clean Water/Clean Air Bond Act of 1996.
- 6.00 Implementation of the Environmental Quality Bond Act of 1972, including:
 - (a) Water Quality Improvement Projects
 - (b) Land Preservation and Improvement Projects including Wetland Preservation and Restoration Projects, Unique Area Preservation Projects, Metropolitan Parks Projects, Open Space Preservation Projects and Waterways Projects. 8.00 Marine Finfish and Shellfish Programs.
- 7.00 Marine Finfish and Shellfish Programs.
- 8.00 Wild, Scenic, and Recreational Rivers Program.
- 9.00 *blank*
- 10.00 Permit and approval programs:

Air Resources

- 10.01 Certificate of Approval for Air Pollution Episode Action Plan
- 10.02 Certificate of Compliance for Tax Relief - Air Pollution Control Facility
- 10.03 Certificate to Operate: Stationary Combustion Installation; Incinerator; Process, Exhaust or Ventilation System
- 10.04 Permit for Burial of Radioactive Material
- 10.05 Permit for Discharge of Radioactive Material to Sanitary Sewer
- 10.06 Permit for Restricted Burning
- 10.07 Permit to Construct: a Stationary Combustion Installation; Incinerator; Indirect Source of Air Contamination; Process, Exhaust or Ventilation System

Construction Management

- 10.08 Approval of Plans and Specifications for Wastewater Treatment Facilities

Fish and Wildlife

- 10.09 Certificate to Possess and Sell Hatchery Trout in New York State
- 10.10 Commercial Inland Fisheries Licenses
- 10.11 Fishing Preserve License
- 10.12 Fur Breeder's License
- 10.13 Game Dealer's License
- 10.14 Licenses to Breed Domestic Game Animals
- 10.15 License to Possess and Sell Live Game
- 10.16 Permit to Import, Transport and/or Export under Section 184.1 (11-0511)
- 10.17 Permit to Raise and Sell Trout
- 10.18 Private Bass Hatchery Permit
- 10.19 Shooting Preserve Licenses
- 10.20 Taxidermy License
- 10.21 Permit - Article 15, (Protection of Water) - Dredge or Deposit Material in a Waterway
- 10.22 Permit - Article 15, (Protection of Water) - Stream Bed or Bank Disturbances, Dock Construction
- 10.23 Permit - Article 24, (Freshwater Wetlands)

Hazardous Substances

- 10.24 Permit to Use Chemicals for the Control or Elimination of Aquatic Insects
- 10.25 Permit to Use Chemicals for the Control or Elimination of Aquatic Vegetation
- 10.26 Permit to Use Chemicals for the Control or Extermination of Undesirable Fish

Lands and Forest

- 10.27 Certificate of Environmental Safety (Liquid Natural Gas and Liquid Petroleum Gas)
- 10.28 Floating Object Permit
- 10.29 Marine Regatta Permit
- 10.30 Navigation Aid Permit

Marine Resources

- 10.31 Digger's Permit (Shellfish)
- 10.32 License of Menhaden Fishing Vessel
- 10.33 License for Non-Resident Food Fishing Vessel

- 10.34 Non-Resident Lobster Permit
- 10.35 Marine Hatchery and/or Off-Bottom Culture Shellfish Permits
- 10.36 Permits to Take Blue-Claw Crabs
- 10.37 Permit to Use Pond or Trap Net
- 10.38 Resident Commercial Lobster Permit
- 10.39 Shellfish Bed Permit
- 10.40 Shellfish Shipper's Permits
- 10.41 Special Permit to Take Surf Clams from Waters other than the Atlantic Ocean
- 10.42 Permit - Article 25, (Tidal Wetlands)

Mineral Resources

- 10.43 Mining Permit
- 10.44 Permit to Plug and Abandon (a non-commercial, oil, gas or solution mining well)
- 10.45 Underground Storage Permit (Gas)
- 10.46 Well Drilling Permit (Oil, Gas, and Solution Salt Mining)

Solid Wastes

- 10.47 Permit to Construct and/or Operate a Solid Waste Management Facility
- 10.48 Septic Tank Cleaner and Industrial Waste Collector Permit

Water Resources

- 10.49 Approval of Plans for Wastewater Disposal Systems
- 10.50 Certificate of Approval of Realty Subdivision Plans
- 10.51 Certificate of Compliance (Industrial Wastewater Treatment Facility)

- 10.52 Letters of Certification for Major Onshore Petroleum Facility Oil Spill Prevention and Control Plan
- 10.53 Permit - Article 36, (Construction in Flood Hazard Areas)
- 10.54 Permit for Activities for Development in Coastal Erosion Hazards Areas
- 10.55 State Pollutant Discharge Elimination System (SPDES) Permit
- 10.56 Approval - Drainage Improvement District
- 10.57 Approval - Water (Diversion for) Power
- 10.58 Approval of Well System and Permit to Operate
- 10.59 Permit - Article 15, (Protection of Water) – Dam
- 10.60 Permit - Article 15, Title 15 (Water Supply)

- 10.61 River Improvement District Approvals
- 10.62 River Regulatory District Approvals
- 10.63 Well Drilling Certificate of Registration
- 10.64 401 Water Quality Certification
- 11.00 Preparation and revision of Air Pollution State Implementation Plan.
- 12.00 Preparation and revision of Continuous Executive Program Plan.
- 13.00 Preparation and revision of Statewide Environmental Plan.
- 14.00 Protection of Natural and Man-made Beauty Program.
- 15.00 Urban Fisheries Program.
- 16.00 Urban Forestry Program.
- 17.00 Urban Wildlife Program.

ENVIRONMENTAL FACILITIES CORPORATION

- 1.00 Financing program for pollution control facilities for municipalities, industrial firms and small businesses.
- 2.00 Clean Vessel Assistance Program

FINANCIAL SERVICES, DEPARTMENT OF

- 1.00 Permit and approval programs:
 - 1.01 Authorization Certificate (Bank Branch)
 - 1.02 Authorization Certificate (Bank Change of Location)
 - 1.03 Authorization Certificate (Bank Charter)
 - 1.04 Authorization Certificate (Credit Union Change of Location)
 - 1.05 Authorization Certificate (Credit Union Charter)
 - 1.06 Authorization Certificate (Credit Union Station)
 - 1.07 Authorization Certificate (Foreign Banking Corporation Change of Location)
 - 1.08 Authorization Certificate (Foreign Banking Corporation Public Accommodations Office)
 - 1.09 Authorization Certificate (Investment Company Branch)
 - 1.10 Authorization Certificate (Investment Company Change of Location)
 - 1.11 Authorization Certificate (Investment Company Charter)
 - 1.12 Authorization Certificate (Licensed Lender Change of Location)
 - 1.13 Authorization Certificate (Mutual Trust Company Charter)
 - 1.14 Authorization Certificate (Private Banker Charter)
 - 1.15 Authorization Certificate (Public Accommodation Office - Banks)
 - 1.16 Authorization Certificate (Safe Deposit Company Branch)

- 1.17 Authorization Certificate (Safe Deposit Company Change of Location)
- 1.18 Authorization Certificate (Safe Deposit Company Charter)
- 1.19 Authorization Certificate (Savings Bank Charter)
- 1.20 Authorization Certificate (Savings Bank De Novo Branch Office)
- 1.21 Authorization Certificate (Savings Bank Public Accommodations Office)
- 1.22 Authorization Certificate (Savings and Loan Association Branch)
- 1.23 Authorization Certificate (Savings and Loan Association Change of Location)
- 1.24 Authorization Certificate (Savings and Loan Association Charter)
- 1.25 Authorization Certificate (Subsidiary Trust Company Charter)
- 1.26 Authorization Certificate (Trust Company Branch)
- 1.27 Authorization Certificate (Trust Company-Change of Location)
- 1.28 Authorization Certificate (Trust Company Charter)
- 1.29 Authorization Certificate (Trust Company Public Accommodations Office)
- 1.30 Authorization to Establish a Life Insurance Agency
- 1.31 License as a Licensed Lender
- 1.32 License for a Foreign Banking Corporation Branch

GENERAL SERVICES, OFFICE OF

- 1.00 Administration of the Public Lands Law for acquisition and disposition of lands, grants of land, grants of easement and issuance of licenses for land underwater, including for residential docks over 5,000 square feet and all commercial docks, issuance of licenses for removal of materials from lands under water, and oil and gas leases for exploration and development.
- 2.00 Administration of Article 4-B, Public Buildings Law, in regard to the protection and management of State historic and cultural properties and State uses of buildings of historic, architectural or cultural significance.
- 3.00 Facilities construction, rehabilitation, expansion, or demolition.
- 4.00 Administration of Article 5, Section 233, sub. 5 of the Education Law on removal of archaeological and paleontological objects under the waters of the State.
- 5.00 Administration of Article 3, Section 32 of the Navigation Law regarding location of structures in or on navigable waters.
- 6.00 Section 334 of the State Real Estate Law regarding subdivision of waterfront properties on navigable waters to include the location of riparian lines.

HEALTH, DEPARTMENT OF

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

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

HOMES AND COMMUNITY RENEWAL, DIVISION OF (and its subsidiaries and affiliates)

- 1.00 Facilities construction, rehabilitation, expansion, or demolition.
- 2.00 Financial assistance/grant programs:
 - 2.01 Federal Housing Assistance Payments Programs (Section 8 Programs)
 - 2.02 Housing Development Fund Programs
 - 2.03 Neighborhood Preservation Companies Program
 - 2.04 Public Housing Programs
 - 2.05 Rural Initiatives Grant Program
 - 2.06 Rural Preservation Companies Program
 - 2.07 Rural Rental Assistance Program
 - 2.08 Special Needs Demonstration Projects
 - 2.09 Urban Initiatives Grant Program
 - 2.10 Urban Renewal Programs
- 3.00 Preparation and implementation of plans to address housing and community renewal needs.
- 4.00 Funding programs for the construction, rehabilitation, or expansion of facilities.
- 5.00 Affordable Housing Corporation

MENTAL HEALTH, OFFICE OF

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

MILITARY AND NAVAL AFFAIRS, DIVISION OF

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

NATURAL HERITAGE TRUST

- 1.00 Funding program for natural heritage institutions.

PARKS, RECREATION AND HISTORIC PRESERVATION, OFFICE OF

(including Long Island State Parks, Preservation and Historic Preservation Commission)

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

- 11.00 Planning, construction, rehabilitation, expansion, demolition, or the funding of such activities and/or projects funded through the Environmental Protection Fund (Environmental Protection Act of 1993) or Clean Water/Clean Air Bond Act of 1996.

PEOPLE WITH DEVELOPMENTAL DISABILITIES, OFFICE FOR

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

PORT AUTHORITY OF NEW YORK AND NEW JERSEY (regional agency)

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

NEW YORK STATE POWER AUTHORITY

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

PUBLIC SERVICE COMMISSION

SCIENCE AND TECHNOLOGY FOUNDATION

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

STATE, DEPARTMENT OF

- 2.00 Coastal Management Program.
- 2.10 Planning, construction, rehabilitation, expansion, demolition, or the funding of such activities and/or projects funded through the Environmental Protection Fund (Environmental Protection Act of 1993) or Clean Water/Clean Air Bond Act of 1996.
 - 2.11 Review of federal activities
 - 2.12 Ocean Plan
 - 2.13 Brownfield Planning

- 3.00 Community Services Block Grant Program.
- 4.00 Permit and approval programs:
 - 4.01 Billiard Room License
 - 4.02 Cemetery Operator
 - 4.03 Uniform Fire Prevention and Building Code

STATE UNIVERSITY CONSTRUCTION FUND

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

STATE UNIVERSITY OF NEW YORK

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

TRANSPORTATION, DEPARTMENT OF

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

- omnibus maintenance and storage facilities
- 4.04 Approval of municipal or regional transportation authority applications for funds for design and construction of rapid transit facilities
- 4.05 Certificate of Convenience and Necessity to Operate a Railroad
- 4.06 Highway Work Permits
- 4.07 License to Operate Major Petroleum Facilities
- 4.08 Outdoor Advertising Permit (for off-premises advertising signs adjacent to interstate and primary highway)
- 4.09 Real Property Division Permit for Use of State-Owned Property
- 5.00 Preparation or revision of the Statewide Master Plan for Transportation and sub-area or special plans and studies related to the transportation needs of the State.
- 6.00 Water Operation and Maintenance Program--Activities related to the containment of petroleum spills and development of an emergency oil-spill control network.

METROPOLITAN TRANSPORTATION AUTHORITY (regional agency)

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

YOUTH, DIVISION OF

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

Federal Activities

This list⁴³ has been prepared in accordance with the consistency provisions of the federal Coastal Zone Management Act and implementing regulations in 15 CFR Part 930. It is not exhaustive of all activities subject to the consistency provisions of the federal Coastal Zone Management Act, implementing regulations in 15 CFR Part 930, and the New York Coastal Management Program. It includes activities requiring:

⁴³ This LWRP's list of the federal agency activities is identical to the most recent version of the Table 3 list in the New York State Coastal Management Program as approved by the federal Office for Coastal Management on May 7, 2017. Please contact the New York State Department of State, Office of Planning and Development, at (518) 474-6000, for any updates to New York State Coastal Management Program Table 3 federal agency activities list that may have occurred post-approval of this LWRP.

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

Activities Undertaken Directly by or on Behalf of Federal Agencies

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

Department of Commerce, National Marine Fisheries Service:

- Fisheries Management Plans

Department of Defense, Army Corps of Engineers:

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

Department of Defense, Air Force, Army and Navy:

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

Department of Energy:

- Prohibition orders.

General Services Administration:

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

Department of Interior, Fish and Wildlife Service:

- Management of National Wildlife refuges and proposed acquisitions.

Department of Interior, National Park Service:

- National Park and Seashore management and proposed acquisitions.

Department of Interior, Bureau of Ocean Energy Management

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

Department of Homeland Security, Coast Guard:

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

Department of Transportation, Federal Aviation Administration:

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

Department of Transportation, Federal Highway Administration:

- Highway construction

Federal Licenses and Permits and Other Forms of Approval or Authorization

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

Department of Defense, Army Corps of Engineers:

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

Department of Energy, Federal Energy Regulatory Commission:

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

Department of Energy, Economic Regulatory Commission:

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

Environmental Protection Agency:

- NPDES permits and other permits for Federal installations, discharges in contiguous zones and ocean waters, sludge runoff and aquaculture permits pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

- Permits pursuant to the Resources Recovery and Conservation Act of 1976.
- Permits pursuant to the underground injection Control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).
- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

Department of Interior, Fish and Wildlife Services:

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

Department of Interior, Bureau of Ocean Energy Management:

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

Surface Transportation Board:

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

Nuclear Regulatory Commission:

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

Department of Transportation:

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

Department of Transportation, Federal Aviation Administration:

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

Federal Financial Assistance to State and Local Governments

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

Department of Agriculture

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

⁴⁴Numbers refer to the *Catalog of Federal Domestic Assistance Programs, 1980 and its subsequent updates.*

10.906 River Basin Surveys and Investigations

Department of Commerce

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

Department of Housing and Urban Development

- 14.112 Mortgage Insurance - Construction or Substantial Rehabilitation of Condominium Projects
- 14.115 Mortgage Insurance - Development of Sales Type Coop Projects
- 14.117 Mortgage Insurance - Homes
- 14.124 Mortgage Insurance - Investor Sponsored Cooperative Housing
- 14.125 Mortgage Insurance - Land Development and New Communities
- 14.126 Mortgage Insurance - Manages ant Type Cooperative Projects
- 14.127 Mortgage Insurance - Mobile Home Parks
- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Program
- 14.221 Urban Development Action Grants
- 14.223 Indian Community Development Block Grant Program

Department of the Interior

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

Department of Transportation

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

General Services Administration

- 39.002 Disposal of Federal Surplus Real Property

Community Services Administration

- 49.002 Community Action
- 49.011 Community Economic Development
- 49.013 State Economic Opportunity Offices
- 49.017 Rural Development Loan Fund

49.018 Housing and Community Development (Rural Housing)

Small Business Administration

59.012 Small Business Loans

59.013 State and Local Development Company Loans

59.024 Water Pollution Control Loans

59.025 Air Pollution Control Loans

59.031 Small Business Pollution Control Financing Guarantee

Environmental Protection Agency

66.001 Air Pollution Control Program Grants

66.418 Construction Grants for Wastewater Treatment Works

66.426 Water Pollution Control - State and Area-wide Water Quality Management Planning Agency

66.451 Solid and Hazardous Waste Management Program Support Grants

66.452 Solid Waste Management Demonstration Grants

66.600 Environmental Protection Consolidated Grants Program Support

66.800 Comprehensive Environmental Response, Compensation and Liability (Superfund)

STATE AND FEDERAL ACTIONS AND PROGRAMS NECESSARY TO FURTHER THE LWRP (THE TOWN MAY WISH TO IDENTIFY ADDITIONAL ACTIONS NECESSARY)

State Actions And Programs Necessary To Further The LWRP

COUNCIL ON THE ARTS

- Assistance from the Architecture and Environmental Arts program.

EMPIRE STATE DEVELOPMENT (ESD)

- Provision of funding and other support of tourism development.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- Funding support as available for necessary environmental infrastructure support for expansion of sanitary sewers to serve Kings Park and Smithtown Main St Central Business Districts and development in the waterfront area whose nitrogen contribution cannot be adequately reduced by other means. Environmental Facilities Corporation support also required.
- Communication and consultation regarding regulatory decisions affecting the Town, including actions, in whole or in part, within the Villages that affect waters and intertidal areas subject to the Town’s jurisdiction (all tidewaters within the Villages are subject to Town jurisdiction).
- Facilitate the permitting of wetland restoration projects.
- Classify waters consistent with continuation of recreational boating mooring areas.
- Development of TMDLs for Nitrogen for Long Island Sound embayments.
- Designation of specific areas of the Nissequogue Recreational River as “Communities” under the Wild, Scenic, and Recreational Rivers Act.
- Consider bird habitat restoration as mitigation along the Nissequogue River.
- Support shellfish propagation for water quality purposes.

ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

- Funding and technical assistance with energy efficiency, climate, and sustainability studies.

ENVIRONMENTAL FACILITIES CORPORATION

- Funding assistance for the planning, design, and construction of wastewater facilities.

OFFICE OF GENERAL SERVICES

- Prior to approval of any development occurring in the water or on the waterfront, and early in the process OGS should consult with the Town on any authorization to use and occupy these lands.

DEPARTMENT OF HEALTH

- Support for alternatives to septic systems for removal of nitrogen.

OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

- Planning, development, construction, major renovation or expansion of recreational facilities or the provision of funding for such facilities.
- Provision of funding for State and local activities from the Land and Water Conservation Fund.
- Planning, development, implementation or the provision of funding for recreation services programs.
- Certification of properties within districts listed on the National Register of Historic Places.
- Provision of funding for State and local historic preservation activities.
- Development of a Master Plan for all of the former Kings Park Psychiatric Center lands.

- Acquisition of a parcel of undeveloped land owned by St. Johnland identified in the NYS Open Space Plan.
- Implementation of the Sunken Meadow Park Master Plan

DEPARTMENT OF STATE

- Provision of funding for the implementation of actions identified in the LWRP.
- Consultation with the Town on all consistency decisions affecting the Town.
- Active advocacy with State and federal agencies for the implementation of the LWRP, with particular regard to actions and activities identified on this list.
- Assistance with planning for coastal resiliency.

DEPARTMENT OF TRANSPORTATION

- Assistance for street repairs through the Consolidated Highway Improvements Program.
- Management of stormwater on State highways to meet water quality standards and any TMDL or equivalent standards established by the Town.
- Cooperation with redevelopment initiatives at the intersection of the Nissequogue River and Routes 25 and 25A.

Federal Actions and Programs Necessary to Further the LWRP

ECONOMIC DEVELOPMENT ADMINISTRATION

- Assistance under the Public Works and Economic Development Act for street improvements.

ENVIRONMENTAL PROTECTION AGENCY

- Support for reducing nitrogen levels in the Nissequogue River and Stony Brook Harbor and Dissolved Oxygen in Smithtown Bay through the Long Island Sound Study, and establishment of TMDLs where and when appropriate.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- Community Development Block Grant Program, continued funding.

DEPARTMENT OF THE INTERIOR

National Park Service

- Provision of funding under the Land and Water Conservation Fund Program.

DEPARTMENT OF THE TREASURY

- Continuation of Incentives for Qualified Building Rehabilitation.
- Provision of appropriate tax-exempt status for non-profit agencies active in the coastal area.