

Response to Comments on the Draft Town of Amherst LWRP and Revisions Needed for the Local Adoption and Secretary of State Approval of the LWRP

Revisions Addressing 60-Day Review Comments

A. Local and Regional Agencies, Organizations, and Individuals

Buffalo Niagara Waterkeeper

Comment 1: BNW notes that Ransom Creek, a major waterway in the Town of Amherst, is not included within the LWRP boundary. We recommend that Amherst considers incorporating it as part of the designated boundary. There are specific actions for Ransom Creek identified in the 2020 Town of Amherst Comprehensive Plan that would be beneficial to address in the LWRP for consistency and to ensure the document encompasses all critical water assets within the Town.

Response 1: Ransom Creek is not a designated inland waterway listed in Article 42 of the Executive Law. Accordingly, the waterfront revitalization area (WRA) covered by the LWRP includes only a small portion of Ransom Creek, near its confluence with Tonawanda Creek. A future LWRP amendment may include this creek if the town submits to the State Legislators a formal request for its designation.

Comment 2: There are several areas identified as Conservation Land/Open Space shown in Figures 2.6 and 2.7 that are adjacent to the Tonawanda Creek Subarea Boundary but aren't included as part of the subarea. BNW recommends adding these areas to be incorporated within the LWRP boundary. Even though projects may not be planned for those open space areas, having them included in the boundary ensures that LWRP policies can be applied if/when future development is proposed.

Response 2: The town conducted an extensive public outreach process to identify the boundary of the WRA covered by the LWRP. The town's residents and officials may propose to include these sites in a future LWRP amendment. A modification of the proposed boundary after the 60-day review would require another DOS internal review and another 60-day review.

Comment 3: There are two prominent golf courses in the Town, Audubon Golf Course and Park Country Club, that may have habitat restoration opportunities available. BNW has implemented a successful restoration project at River Oaks Golf Course and would welcome the opportunity to continue working in these types of settings. Golf courses often contribute excess nutrients and pollutants to local waterways. If there is opportunity to add an additional project(s) focused on golf course restoration, BNW

would like to further explore those opportunities with the Town. Additional information regarding BNW's River Oaks Golf Course project along Spicer Creek can be found here: <https://bnwaterkeeper.org/spicer-creek/>.

Response 3: The projects proposed in Section IV of the LWRP must be developed on public lands and coordinated or developed by the Town. The Park Club Golf Course is a privately owned site and business. The site of the former Audubon Golf Course is now planned for revitalization. To address the BNW concern about the site the following sentence was added to the description of proposed project 12. Amherst Central Park Improvements: *In addition, habitat restoration in appropriate areas of the site will be considered during the development of the overall project.*

Comment 4: BNW respectfully requests the correct spelling of Buffalo Niagara Waterkeeper in the Plan's Bibliography.

Response 4: The spelling was corrected in Appendix F of the LWRP.

Comment 5: Page 39 of this section (*Section 2: Development Trends and Opportunities*) states the following: "Buffalo Niagara Waterkeeper previously had plans to create a sustainable shoreline project at the foreshore. The plans are still in the works and have not been funded to date." This should be updated to state that BNW is currently in the process of designing a living shoreline project on the southern tip of the island. Funding is secured with implementation to occur in fall 2023 through 2024. Additional opportunities exist for addressing additional sections of the shoreline on the island that are eroding or degraded.

Response 5: On page 39 of Section II of the LWRP, the information about the BNW plans was updated to read: *Buffalo Niagara Waterkeeper is currently in the process of designing a living shoreline project on the southern tip of the island. Funding is secured with implementation to occur in fall 2023 through 2024. Additional opportunities exist for addressing additional eroding sections of the island's shoreline.*

Comment 6: BNW notes that there is no mention of Harmful Algal Blooms (HABs) having occurred in Ellicott Creek (*in Section 2: Water Quality Assessments*). We recommend including this issue in the Public Safety section and/or Water Quality Assessments section. It is an important item to note both from a public health and water quality perspective, particularly if a kayak launch is being proposed in an area with documented HABs. Additional information regarding known HABs occurrences can be found here: <https://bnwaterkeeper.org/harmful-algal-bloom/> .

Response 6: The following language was added to page 119 of the LWRP: *Harmful Algal Blooms were reported in 2021 to have occurred on certain portions of Ellicott Creek. Most algae are harmless and are an important part of the food web. Certain types of algae can grow quickly and form blooms. Even large blooms are not necessarily harmful. However, some species of algae can produce toxins that can be harmful to people and animals. Blooms of algal species that can produce toxins are referred to as harmful*

algal blooms (HABs). People, pets and livestock should avoid contact with any floating mats, scums, or discolored water. Colors can include shades of green, blue-green, yellow, brown or red. The town will monitor its streams and ponds to inform its residents of any potential health risks. Also, a footnote including the link to the list of reported HAB occurrences, created by NYS DEC, has been added to the new text. In addition, project 15. Environmental & Water Quality Planning proposed in Section IV of the LWRP captures the town's future efforts to monitor water quality and HMB.

Comment 7: There is discussion regarding the Town's private sewer systems and their location in poorly drained soils (*in Section 2: Wastewater Treatment Facilities*). BNW recommends adding a LWRP project that identifies formal education and assistance to guide homeowners in proper septic maintenance as a priority action. Taking this action would be beneficial to mitigate excessive nutrients and organic matter from septic system failures, which may impact water and environmental resources. Recently, the Lake Erie Watershed Protection Alliance (LEWPA) conducted several well-attended septic maintenance workshops for residents in southern Erie County. If interested, the Town could host a similar workshop for Town of Amherst residents. Additional information for Septic Smart for Lake Erie can be found here: <https://www4.erie.gov/septicmart/>.

Response 7: An additional element was added to project 15. Environmental & Water Quality Planning. The following is the description of the new element, G. Septic System Placement and Maintenance Education: *To protect the quality of its surface waters, the town will identify means to provide guidance and training to homeowners about proper placement and maintenance of private septic systems in areas of the town not connected to the public sewer system.*

Comment 8: BNW would like to call out a specific stormwater management concern, "The Town has issues with "inconvenience" flooding in the southern portion of the Ellicott Creek Subarea in the Lehn Springs area. The natural flow of the hydrologic system was disrupted by the infrastructure and road configuration at the Wehrle Drive and Garrison Drive area." BNW respectfully recommends the consideration of innovative green infrastructure practices and development considerations that can be implemented to prevent additional future disruption of the natural flow of the hydrologic system, which will result in less work/maintenance costs for the Town. BNW is open to working with the Town to identify the appropriate green infrastructure and nature-based practices.

Response 8: The sentence about the study proposed to be conducted by the town, included in the description of the proposed project 14. Lehn Springs Neighborhood Flood Mitigation was revised to read: *Action items include the Town conducting a study to assess the flooding in the Ellicott Creek Subarea of the Amherst WRA, south of the Village, and identify solutions, including innovative green infrastructure practices and development considerations that can be implemented to prevent future recurrent flooding events.*

Also, the word “inconvenience” has been removed from the last sentence of the project description.

Comment 9: There is excellent language regarding prioritizing natural riparian vegetation and native species in Section IV, page 54 when discussing Amherst State Park. BNW respectfully recommends including similar language for the Niagara Falls Boulevard and North Ellicott Creek Road Improvements project.

The consideration of including water-based recreation is mentioned as part of the Niagara Falls Boulevard and North Ellicott Creek Road Improvements project. An existing kayak launch exists just downstream on the other side of Niagara Falls Boulevard in Ellicott Creek Park. The Town should assess the need for an additional launch in this proximity, especially as it will likely require ongoing maintenance by the Town. Another factor that should be considered in thinking about water-based recreation is the presence of Harmful Algae Blooms that have been observed in that section of the Creek.

Response 9: The following sentence was added to the description of project 8. Niagara Falls Boulevard & North Ellicott Creek Road Improvements proposed in Section IV of the LWRP: *The proposed improvements will also prioritize the use of native species of plants.* The description of this project does not include the development of a new kayak launch area. The town will consider in its future plans the concern regarding the development of a kayak launch at this site. The concerns regarding public use of areas where HAB may occur is addressed in the language added to page 119 of the LWRP.

Comment 10: In Section 4: Proposed Land and Water Uses and Proposed Projects, Old Niagara Falls Boulevard Improvements, Streetscape Improvements, BNW respectfully recommends that any development proposed within 100 feet of a waterway in this traditional infill area consider the inclusion of green infrastructure elements sufficient to mitigate runoff and minimize any increase in impervious surface that would increase runoff into the creek.

Response 10: The following language was added to the introduction to 4.3 Proposed Projects of the LWRP: *To mitigate runoff and minimize the impact of any increase in impervious surface that would increase the quantity of runoff discharging directly into the streams within the WRA, the town will prioritize the use of adequate green infrastructure elements and native plants in each of the proposed projects located within 100 feet of Tonawanda Creek and Ellicott Creek.*

Comment 12: Policy 12 reads as, “. . . flooding and erosion by protecting natural protective features including, beaches, dunes, barrier islands and bluffs.” The Town of Amherst does not have the four habitats listed. BNW respectfully recommends updating Policy 12 to read, “. . . flooding and erosion by protecting natural protective features including, floodplains, wetlands, forested wetlands and other important ecological habitats.”.

Response 12: The language of Policy 12 in the Amherst LWRP is the same as the language of the State policy and cannot be modified. A future amendment of the State policies may consider the BNW's recommendation.

B. State Agencies

NYS Department of Environmental Conservation, Region 9

Comment 1: Please note that Ellicott Creek and Tonawanda Creek may contain populations of New York State listed threatened / endangered mussel species and critically imperiled (S1) / imperiled (S2) mussel species. If any activities involved work within or adjacent to Ellicott Creek or Tonawanda Creek, consultation with NYSDEC will be necessary. NYSDEC recommends adding this information to Section 2.11 Geographic Features and Natural Resources.

Response 1: The occurrence of endangered or threatened species is reflected in Table II-12 - Summary of Threatened and Endangered Species Occurrences, while the need for consulting NYS DEC when projects are proposed within the WRA is expressed in the sentence above the table.

Comment 2: NYSDEC encourages the Town of Amherst to coordinate proposals within the proposed waterfront revitalization area with involved and interested agencies pursuant to the State Environmental Quality Review Act.

Response 2: The introduction to 4.3 Proposed Projects indicates that "Each of the proposed design and construction projects will be subject to an environmental quality review process, pursuant to the SEQRA regulations (§ 617 NYCRR), and to the LWRP consistency review process, pursuant to the local LWRP Consistency Review Law."

NYS Division of Military and Naval Affairs

Comment: DMNA has reviewed the proposed Local Waterfront Redevelopment Plan and determined it is not adjacent or in the vicinity of any of our facilities in the Buffalo Area. As such we do not anticipate any potential impacts to NYSDMNA facilities or missions related to the adoption of the Amherst LWRP.

Response: No action is required.

Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation

Comment 1: The OPRHP has reviewed the Draft Town of Amherst Local Waterfront Revitalization Program. Number 4 on the list of significant resources under Policy 23 (Section III, page 23) refers to "An archaeological resource on the State Department of Education's inventory of archaeological sites". Please note that there are other repositories of archaeological sites in New York State, including the

State Historic Preservation Office, and we recommend that all previously recorded archaeological sites be considered.

Response 1: The town will acknowledge this information. However, the explanation of this LWRP policy reflects the language included in the explanation of the State policy. Your recommendations will be considered in a future amendment to the State explanation of policy.

Comment 2: Upon review of section “2.8 Cultural and Historic Resources” on pages 74-78 of the Draft Town of Amherst Local Waterfront Revitalization Program, please note that this list of State and National Register listed and eligible properties located within the Town of Amherst does not appear to be accurate. According to our Cultural Resource Information System (CRIS) database, the following properties have been listed on the State and National Registers in the Town of Amherst as of February 2023:

| NYSHPO Project Number | Type | Project Name | Location |
|-----------------------|---|--|-----------------|
| 01PR06092 | National Register (01NR01730) Listed: 10/24/2002 | St. Mary of the Holy Angels Motherhouse | Town of Amherst |
| 02PR06273 | National Register (02NR04911) Listed: 07/03/2003 | Former Reformed Mennonite Church | Town of Amherst |
| 05PR06320 | National Register (05NR05515) Listed: 12/07/2005 | Entranceway at Main Street at Roycroft Boulevard | |
| | | | |

Response 2: Just those listed historic properties located within the WRA boundary are reflected in the LWRP.

Comment 3: Regarding the table II-8 – “Local Blue Rated Properties,” page 76-77, please note that the Jacob Kramer Farmhouse/Pickard Settlement (181 & 215 Brenon Road) has two separate USNs; USN 02902.001134 181 Brenon is identified as State and National Register eligible, while USN 02902.000088 Kramer House is identified as NOT State and National Register Eligible. An additional review of data in CRIS has yielded numerous additional individual and historic districts in the Town of Amherst which have been identified as State and National Register, at least 245 separate entries.

Response 3: The town will acknowledge this information.

Comment 4: Upon review of table II-9 “Historic Structures Located at the Buffalo Niagara Heritage Village in Amherst,” page 78, please note that buildings in this outdoor

museum would not be evaluated for potential State and National Register eligibility as individual resources, since they have been moved and relocated. The buildings have lost their original historic settings, locations, context, and any associated outbuildings, agricultural fields, etc. They are in an entirely new setting in the Buffalo Niagara Heritage Village. We would thus review eligibility of the entire museum, which appears to have originated in 1972. The Buffalo Niagara Heritage Village has not been evaluated by the NYSHPO for State and National Register eligibility as an outdoor museum.

Response 4: The following language was added to the existing information about the Buffalo Niagara heritage Village: *The buildings in this outdoor museum cannot be evaluated for potential State and National Register eligibility as individual resources, since they have been moved and relocated. The buildings have lost their original historic settings, locations, context, and any associated outbuildings, agricultural fields, etc. They are in an entirely new setting in the Buffalo Niagara Heritage Village. However, the town would consider requesting NYSHPO to conduct a review of the eligibility of the entire museum for State and National Register eligibility as an outdoor museum.*

Comment 5: Please note, that in order to ensure that potential effects or impacts on eligible or listed properties are considered and avoided or mitigated during the project planning process, individual projects that are funded, licensed or permitted by State or Federal agencies must be reviewed under Section 106 of the National Historic Preservation Act and/or Section 14.09 of the New York State Historic Preservation Act. In addition, the OPRHP/SHPO advises local communities on local preservation environmental reviews upon request, under the provisions of the State Environmental Quality Review Act (SEQRA). As plans are developed for specific projects associated with the LWRP, OPRHP/SHPO recommends that they be submitted to our office, as separate projects for review under the applicable Historic Preservation Law.

Response 5: The introduction to 4.3 Proposed Projects of the LWRP indicates that “Each of the proposed design and construction projects will be subject to an environmental quality review process, pursuant to the SEQRA regulations (§ 617 NYCRR), and to the LWRP consistency review process, pursuant to the local LWRP Consistency Review Law.... Many of the proposed projects will require coordination with State and Federal agencies under their respective jurisdictions, such as the NYS DEC, NYS Canal Corporation, NYS OPRHP, and USACE, among others.”

NYS Department of Transportation

Comment: The New York State Department of Transportation (NYSDOT) has reviewed the documentation provided for the Town of Amherst Local Waterfront Revitalization Plan and has the following comments:

- Based upon the information provided, the proposed project does not appear to have a significant impact to traffic on the State Highway System at this time
- Please keep NYSDOT in the loop for any future developments in the LWRP area that may affect traffic or access to the State Highway Systems in Amherst

Response: The following sentence was revised to include “NYS DOT”: Many of the proposed projects will require coordination with State and Federal agencies under their respective jurisdictions, such as the NYS DEC, NYS Canal Corporation, NYS OPRHP, NYS DOT, and USACE, among others.

Revisions proposed by the town

The town proposed minor revisions to the local LWRP Consistency Review Law, which address a couple of typos and add clarifying language.

Updated information regarding DEC jurisdiction over Freshwater wetlands

The following text was added to Section II, on page 110:

However, Article 24 of the Environmental Conservation Law was amended in 2022 with provisions going into effect in 2025 and 2028 that may bring some additional freshwater wetlands in the municipality under the jurisdiction of NYS DEC. In 2025, the jurisdictional nature of the existing state freshwater wetlands maps will be eliminated by removing “as shown on the freshwater wetlands maps” in the definition of Freshwater wetlands in § 24-0107.1. As a result, it will be more important to contact NYSDEC to determine whether a wetland is 12.4 acres or larger or of unusual importance and therefore subject to NYS DEC regulation. In 2028, the threshold for state regulated wetlands will be reduced from 12.4 acres to 7.4 acres (also in § 24-0107.1), potentially bringing more wetlands under NYS DEC’s jurisdiction. Sponsors of proposed projects in Section 4 should be aware of the law in effect at the time they undertake development and determine its applicability before commencing work.

Format revisions necessary to prepare the final document

Revised some of the acronyms and corrected the names of some of the grant programs mentioned in 4.3 Proposed Projects.