MANAGEMENT STRUCTURE TO IMPLEMENT THE LOCAL WATERFRONT REVITALIZATION PROGRAM

In order to provide a LWRP focus within the community, the Town will enact a Local Consistency Review Law that provides a process for the review of actions within the Town for consistency with the LWRP. The procedures for review are also identified in the Local Consistency Review Law.

The purpose of the Local Consistency Review Law is to provide a framework for agencies of the Town to consider the policies, purposes, and common interests contained in the Town s LWRP when reviewing applications for actions or direct town actions and to insure that such actions are consistent with those policies and purposes. The procedures for consistency review are intended to ensure that all policies of the Town s LWRP are considered as early as possible in the formulation of a proposed action. Timing for review by the Planning Board has been established so as to avoid delays in the permitting process.

1. Procedures to Ensure Local Compliance

LWRP compliance procedures are distinct but integrally tied to the State Environmental Quality Review procedures and are limited to Type I actions as defined in the SEQRA regulations.

All town agencies contemplating a direct action within Greece s coastal areas or receiving an application for approval (in the form of a permit, license, etc.) of an action by others shall follow the review procedures set force on the Town s Local Consistency Review Law and SEQRA:

> Whenever a proposed Type I action is located within the Town s Coastal Areas, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the Town s LWRP policy standards and conditions.
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> Each agency of the Town shall be responsible for making its own consistency determination.
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> Where more than one town agency is involved in reviewing a proposed action, the lead agency (as defined in the SEQRA regulations) shall be responsible for making the determination that the proposed action is consistent with the LWRP policy standards and conditions.
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> The consistency determination process shall be coordinated with the environmental review process set forth in SEQRA to the greatest extent possible.
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> Whenever an agency receives an application for approval of funding of a Type I action or as early as possible in the agency s formulation of a direct action to be located in a Coastal Area, the applicant or agency shall prepare a Coastal Assessment Form (CAF) to assist with the consistency review of the proposed action.

The agency shall refer a copy of the completed CAF to the Planning Board within ten (10) days of its submission, and prior to making its determination, shall consider the recommendation of the Planning Board with reference to the consistency of the proposed action with the Town s LWRP.

After referral from an agency, the Planning Board shall consider whether the proposed action is consistent with the LWRP policy standards and conditions.

The Planning Board shall render its written recommendation to the agency within thirty (30) days following referral of the CAF from the agency. The recommendation shall indicate whether, in the opinion of the Planning Board, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions. The Planning Board shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

After receipt of the Planning Board recommendation, the agency shall make its determination of consistency based on that recommendation, the CAF,SEQRA documents, the application and project documentation, and relevant recommendations from other agencies. The agency shall have the authority in its finding of consistency to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with the Town s Waterfront Consistency Review Law.

2. Procedures for Reviewing State and Federal Actions

Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs Are In Effect

a. Purposes of Guidelines

(1) The Waterfront Revitalization of Coastal Resources and Inland Waterways Act (Article 42 of the Executive Law) and the Department of State s regulations (19 NYSRR 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 statutary consistency obligation.

(2) The Act also requires that state agencies provide timely notice to the situs local government whenever an identified action will occur within an area covered by an approved LWRP. These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist local governments in carrying out their review responsibilities in a timely manner.

(3) The Secretary of State is required by the Act to confer with state agencies and local governments when notified by a local government that a proposed state agency action may conflict with the policies and purposes of its approved LWRP. These guidelines establish a procedure for resolving such conflicts.

b. Definitions

Action means:

(1) A Type 1 or Unlisted action as defined by the State Environmental Quality Review Act (SEQRA).

(2) Occurring within the boundaries of an approved LWRP; and

(3) Being taken pursuant to a state agency program or agency which has been identified by the Secretary of State as likely to affect the policies and purposes of LWRP.

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;

(3) That will result in an overriding regional or statewide public benefit; and

(4) That will advance one or more of the other coastal policies.

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.

c. Notification Procedure

(1) When a state agency is considering an action described in (b) above, the state agency shall notify the affected local government.

(2) Notification of a proposed action by a state agency shall fully describe the nature and location of the action; shall be accomplished by use of either the State Clearinghouse, other existing state agency notification procedures, or through any alternative procedure agreed upon by the state agency and local government; and should be provided to the local official identified in the LWRP of the situs local government as early in the planning stages 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.

(3) 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.

d. Local Government Review Procedure

(1) 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.

(2) 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.

(3) 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.

(4) 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 (e) 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.

e. Resolution of Conflict

The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP.

(1) Upon receipt of notification from a local government that proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.

(2) If the discussion between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The State agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

(3) If the consultation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the situs local government and state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.

(4) Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.

(5) If agreement among all parties cannot be reached during this discussion, the Secretary shall, within fifteen days, notify both parties of his/her findings and recommendations.

(6) The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.

Procedural Guidelines for Coordinating New York State Department of State and Local Waterfront Revitalization Program Consistency Review of Federal Agency Actions

a. Direct Actions

(1) After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, DOS will forward copies of the determination and other descriptive information on the proposed direct action to the local coordinator of an approved LWRP and to other interested parties.

(2) This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department s principal reviewer for the proposed action.

(3) The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has no opinion on the consistency of the proposed direct federal agency action with the LWRP policies.

(4) If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency s consistency determination on the proposed direct action.

(5) A copy of DOS agreement or disagreement letter to the federal agency will be forwarded to the local program coordinator.

b. Permit and License Action

(1) DOS will acknowledge receipt of an applicant s consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the program coordinator and will identify the Department s principal reviewer for the proposed action.

(2) Within thirty (30) days of receiving such information, the program coordinator will contact the principal reviewer for DOS to discuss:

(a) the need to request additional information for review purposes; and

(b) any possible problems pertaining to the consistency of a proposed action with the LWRP policies.

(3) When DOS and the program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the program coordinator upon receipt.

(4) Within thirty (30) days of receiving the requested information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the program coordinator will notify DOS of the reason why a proposed action may be inconsistent or consistent with the LWRP policies.

(5) After that notification, the program coordinator will submit the municipality s written comments and recommendations on a proposed permit action to DOS <u>before or at the conclusion</u> 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 <u>presume</u> that the municipality has no opinion on the consistency of the proposed action with the LWRP policies.

(6) If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the program coordinator to discuss any differences of opinion prior to issuing a letter of concurrence or objection to the applicant.

(7) A copy of the DOS concurrence or objection letter to the applicant will be forwarded to the program coordinator.

c. <u>Financial Assistance Actions</u>

(1) Upon receiving notification of a proposed federal financial assistance action, DOS will request information on the action from the applicant for consistency review purposes. As appropriate, DOS will also request the applicant to provide a copy of the application documentation to the program coordinator. A copy of this letter will be forwarded to the coordinator and will serve as notification that the proposed action may be subject to review.

(2) DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgment to the program coordinator. DOS may, at this time, request the applicant to submit additional information for review purposes.

(3) The review period will conclude thirty (30) days after the date on DOS letter of acknowledgment or receipt of requested additional information, whichever is later. The review period may be extended for major financial assistance actions.

(4) The program coordinator must submit the municipality s comments and recommendations on the proposed action to DOS within twenty days (or other time agreed to by DOS and the program coordinator) from the start of the review period. If comments and recommendations are not received within this period, DOS will presume that the municipality has no opinion on the consistency of the proposed financial assistance action with the LWRP policies.

(5) If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the program coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS consistency decision.

(6) A copy of DOS consistency decision letter to the applicant will be forwarded to the program coordinator.

Proposed Re-Write of Fish and Wildlife Habitat Protection Policy #7 on Page #73 of Town of Greece Local Waterfront Revitalization Program:

Policy 7: Significant coastal fish and wildlife habitats, as identified on the Coastal Area Map, shall be protected, preserved, and where practicable, restored so as to maintain their viability as habitats.

Policy 7.A: The Braddock Bay and Salmon Creek Habitat shall be protected, preserved, and where practical, restored so as to maintain its viability as a habitat.

Policy 7.B: Establish a Lake Ontario Cluster District, a modified version of the Town's existing Cluster Open Space District, encompassing the Salmon Creek area, to help protect environmentally sensitive wildlife habitat.

Policy 7.C: Establish an Erie Canal Overlay District within the LWRP planning area along the Canal which includes provisions to recognize and avoid development in significant environmentally sensitive areas.

Policy 7.D: Promote an eco-tourism industry which capitalizes upon, and protects sensitive environmental resources.

Habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations. Certain habitats are critical to the maintenance of a given population and, therefore, merit special protection. Such habitats exhibit one or more of the following characteristics: (1) are essential to the survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas); (2) support populations of rare and endangered species; (3) are found at a very low frequency within a coastal region; (4) support fish and wildlife populations having significant commercial and/or recreational value; and (5) would be difficult or impossible to replace.

A **habitat impairment test** must be met for any activity that is subject to consistency review under federal and State laws, or under applicable local laws contained in an approved local waterfront revitalization program. If the proposed action is subject to consistency review, then the habitat protection policy applies, whether the proposed action is to occur within or outside the designated area.

The specific **habitat impairment test** that must be met is as follows.

> In order to protect and preserve a significant habitat, land and water uses or development shall not be undertaken if such actions would:
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> - destroy the habitat; or,
> - significantly impair the viability of a habitat.

Habitat destruction is defined as the loss of fish or wildlife use through direct physical alteration, disturbance, or pollution of a designated area or through the indirect effects of these actions on a designated area. Habitat destruction may be indicated by changes in vegetation, substrate, or hydrology, or increases in runoff, erosion, sedimentation, or pollutants.

Significant impairment is defined as reduction in vital resources (e.g., food, shelter, living space) or change in environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism. Indicators of a significantly impaired habitat focus on ecological alterations and may include but are not limited to reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

The *tolerance range* of an organism is not defined as the physiological range of conditions beyond which a species will not survive at all, but as the ecological range of conditions that supports the species population or has the potential to support a restored population, where practical. Either the loss of individuals through an increase in emigration or an increase in death rate indicates that the tolerance range of an organism has been exceeded. An abrupt increase in death rate may occur as an environmental factor falls beyond a tolerance limit (a range has both upper and lower limits). Many environmental factors, however, do not have a sharply defined tolerance limit, but produce increasing emigration or death rates with increasing departure from conditions that are optimal for the species.

The range of parameters which should be considered in applying the habitat impairment test include but are not limited to the following:

1. physical parameters such as living space, circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (including loss of littoral zone), morphology, substrate type, vegetation, structure, erosion and sedimentation rates;
2. biological parameters such as community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, meristic features, behavioral patterns and migratory patterns; and,
3. chemical parameters such as dissolved oxygen, carbon dioxide, acidity, dissolved solids, nutrients, organics, salinity, and pollutants (heavy metals, toxics and hazardous materials).

Although not comprehensive, examples of generic activities and impacts which could destroy or significantly impair the habitat are listed below to assist in applying the habitat impairment test to a proposed activity.

Any activity that degrades water quality, increases temperature or turbidity, reduces flows, or alters water levels in the Braddock Bay and Salmon Creek area would adversely affect many fish and wildlife species. Discharges of sewage or stormwater runoff containing sediments or chemical pollutants could result in adverse impacts on fish and wildlife resources of the area. Elimination of wetland vegetation, including submergent beds, through dredging, filling, or bulkheading, would result in a direct loss of valuable habitat area. However, habitat management activities, including

water level management, can be designed to maintain or enhance populations of certain species of fish or wildlife. Habitat disturbances would be most detrimental during fish spawning and incubation periods (late February - July for steelhead and most warmwater species, and September - November for most salmonids) and wildlife breeding seasons (April - July for most species). Barriers to fish migration, whether physical or chemical, would have a significant effect on salmonid populations in Salmon Creek. Public access to Braddock Bay and Salmon Creek should be maintained or enhanced to ensure that adequate opportunities are available for compatible human uses of the fish and wildlife resources. However, development of additional motorboat access to Lake Ontario from Braddock Bay could adversely affect the value of this area to migratory birds and resident fish populations, through boating impacts or inducement of further waterfront development on private lands. Development of shoreline areas could have significant impacts on fish and wildlife, through elimination or disturbance of productive wetland areas and littoral zones, and through pollution (e.g., sedimentation) of the bays from upland activities. Undisturbed areas of natural vegetation bordering Braddock Bay and Salmon Creek should be maintained to provide cover for wildlife, soil stabilization, and buffer zones. The continued implementation of the Braddock Bay Fish and Wildlife Management Plan by the Town of Greece and the DEC will help ensure the enhancement of the complex for fish, wildlife and public access.

Recognizing the environmentally sensitive nature of its waterfront areas, the Town of Greece will include the majority of the Lake Ontario and the Erie Canal LWRP planning areas in overlay districts. The thrust of the environmental protection overlay district along Lake Ontario is to protect the sensitive ecological resources which make up most of this area and to prevent adverse impacts from development. The Erie Canal overlay district is designed to protect the visual and historic resources along the Canal in addition to sensitive ecological areas.

The Braddock Bay Fish and Wildlife Management Plan will continue to be jointly administered by the Town of Greece and the Department of Environmental Conservation. The plan was created in 1982 to assure that the valuable wetlands are effectively and efficiently managed and developed. The plan also provides for the careful development of facilities which will enhance recreational and educational opportunities for the public.

The Braddock Bay Fish and Wildlife Management Plan Area Review Committee exists to advise the Town and the DEC on the implementation of the plan, and meets every six weeks to perform its function. In order to protect the preserve, the 2,500 acres in the Braddock Bay Fish and Wildlife Management Area, the Town and the DEC will continue to administer the plan.

Proposed Re-Write of Fish and Wildlife Habitat information on Page #42 of Town of Greece Local Waterfront Revitalization Program:

The State of New York recognizes Braddock Bay and Salmon Creek as a Significant Coastal Fish and Wildlife Habitat. The Braddock Bay and Salmon Creek Habitat was designated as a Significant Coastal Fish and Wildlife Habitat on October 15, 1987 by the NYS Secretary of State. (See Braddock Bay and Salmon Creek Habitat Narrative and Maps appended to this Inventory and Analysis Section of the LWRP.)

Braddock Bay and Salmon Creek comprise an approximate 5,000 acre fish and wildlife habitat within the Towns of Greece and Parma. The Braddock Bay and Salmon Creek area consists of large, shallow, open water areas (including Braddock Bay, Cranberry Pond, Long Pond, Buck Pond, and Round Pond), extensive freshwater wetlands (predominantly emergent marsh and submergent aquatic beds), forested and open upland areas, and approximately eight miles of Salmon Creek. Salmon Creek is a relatively large, medium gradient, warmwater stream, which drains approximately 70 square miles of relatively flat agricultural and rural residential lands. The habitat includes the segment of Salmon Creek from Braddock Bay to the Parma Center Road Dam, approximately two and one-half miles southwest of the Village of Hilton. The habitat includes all of the Braddock Bay Fish and Wildlife Management area which is jointly administered by the Town of Greece and the New York State Department of Environmental Conservation based on a management plan prepared in 1981 by the DEC. The Management Plan addresses the establishment of additional acreage of nesting cover for waterfowl, the protection of critical spawning habitats for pan and game fish and the enhancement of habitat for indigenous wildlife species. In addition, the plan calls for increased public use in the form of hunting, trapping, fishing, boating, bird watching, nature study and conservation education consistent with the overall objectives of the plan. The Department of Environmental Conservation's Bureau of Wildlife is specifically concerned with many activities and conditions in the Braddock Bay Fish and Wildlife Management Area, including:

- Maintaining nesting and feeding habitats.
- Raptor migration (birds of prey) - approximately 50,000 pass through the area each spring.
- Purple loosestrife control - populations are increasing annually.
- Dredging (the Town of Greece is permitted to maintain a depth of 4 feet for access to Braddock Bay.)
- Pot hole digging, photography blinds, and other wildlife enhancement measures.
- Acquiring property south of the Parkway.
- Water quality, especially regarding fishery areas.
- Fishing access facilities.

Braddock Bay and Salmon Creek comprise one of the largest and most important coastal freshwater wetland complexes in New York State. This area supports large concentrations of many fish and wildlife species, and provides outstanding opportunities for human use of these resources.

Throughout the year, Braddock Bay is a major concentration area for many species of migratory birds. From late winter through early spring, large concentrations of waterfowl congregate in the bays, including such species as canvasback, redhead, greater scaup, and Canada goose. Northern harriers (T), rough-legged hawks, short-eared owls (SC), and snowy owls commonly winter in the bay area. Probable or confirmed nesting species at Braddock Bay include green-backed heron, northern harrier, black tern (SC), least bittern (SC), American bittern, sedge wren (SC), Henslow's sparrow (SC), grasshopper sparrow (SC), eastern bluebird (SC), mallard, blue-winged teal, wood duck, Virginia rail, sora, common moorhen, and marsh wren. The abundance and diversity of breeding birds in this area is rare in the Great Lakes Plain ecological region. Extremely large numbers of hawks, herons, waterfowl, shorebirds, warblers, and other birds pass through the area during their spring and fall migrations. Approximately 60,000 raptors were observed moving through the Braddock Bay area during the spring of 1984 and 70,000 raptors during 1985, including bald eagle (E), golden eagle (E), and osprey (T).

Other fish and wildlife species found in Braddock Bay and Salmon Creek include muskrat, mink, and raccoon. These species are important for recreational trapping by local residents. Also found here are Jefferson salamander (SC) and spotted salamander (SC). A very diverse fishery exists in Braddock Bay and Salmon Creek. Warmwater fish species present include white sucker, smallmouth bass, largemouth bass, white perch, and brown bullhead. The bay provides one of the few areas on western Lake Ontario where northern pike and largemouth bass spawn. Coldwater fish species found in the bay and in Salmon Creek include chinook and coho salmon, brown trout, and steelhead (lake-run rainbow trout). These salmonids migrate into Salmon Creek to spawn (although unsuccessfully in most instances) between late August and December. In addition, steelhead migrate into the creek again between late February and April. Seasonal runs of salmonids occur as far inland as Parma Center Road dam, which is the first impassable barrier to fish. Salmonid concentrations in Salmon Creek are the result of an ongoing effort by the NYSDEC to restore the Great Lakes salmonid fishery through stocking. Approximately 10,000 steelhead were stocked in the creek in 1984, and chinook salmon may be reproducing naturally in the creek. Populations of coho and chinook salmon have been growing due to the stocking programs, however, the ability of these species to maintain populations on their own is still in question.

Recreational opportunities available in Braddock Bay and Salmon Creek include birdwatching, trapping, waterfowl hunting, and fishing. Braddock Bay is a major spring hawk-watching and year-round birdwatching area in western New York. The Wildlife Management Area provides easy access for people to use the fish and wildlife resources. Anglers from throughout the Rochester metropolitan area are attracted to the salmonid fisheries in Salmon Creek. Braddock Bay provides a productive warmwater fishery, but is more often used as a motorboat access site for fishing in Lake Ontario.