

Item # 1

The following claims have been filed in the Office of the City Clerk during the month of June 2009. The claims were subsequently referred to the Office of the Corporation Counsel.

**NOTICE OF CLAIM**

**ALLEGED DAMAGE**

Pecoraro, Russell  
2426 River Road

Water damage from flooding caused by City water lines

Buck, Elwood & Elisabeth  
5600 Porter Rd.

Property damage caused by water main break

Buck, Steven  
420-56<sup>th</sup> St.

Property damage caused by water main break

Agostino, Tina  
2910 Michigan Ave.

Automobile damage caused by fallen tree limbs

Progressive Direct Insurance Co.  
a/s/o Kevin Taylor

Automobile damage caused by sink hole

Maikranz, Marlene  
5604 Frontier Ave

Property damage and expenses caused by water main break

Roffle, Mary and Magee, Rose  
5691 Frontier Ave

Property damage and expenses caused by water main break

Kudela, Joan and Christopher  
6010 Frontier Ave

Property damage caused by water main break

Brinson, Tameka and Williams, Otis  
5697 Devlin Ave.

Property damage caused by water main break

Cheetham, Ruth  
5645 Frontier Ave.

Property damage caused by water main break

Komorowski, Thad  
167-67<sup>th</sup> St.

Automobile damage caused by potholes

Liberty Mutual Insurance Co  
a/s/o Amber Freeman  
C/O Loccisano & Larkin, Attys. At Law

Automobile damage caused by fallen City tree limbs

Christy, Richard F. Jr.  
2410 Cudaback Ave.

Personal injuries due to an accident caused by a pothole

Sclafani, Anthony  
300 Martine Ave. A7M  
White Plains, N.Y. 10601

Automobile damage caused by a pothole

McIntyre, Don L. 6289 Nash Rd. Sanborn, N.Y. 14132	Automobile damage caused by manhole cover
Mattoni, Joseph 2495 River Road	Automobile damage caused by hole in road
New York Central Mutual a/s/o Rosie L. Works	Damage to residence caused by ruptured water main
Perry, Mark J. 5642 Frontier Ave.	Expenses and damages caused by water main break
Jakobi, Leah 5694 Devlin Ave	Expenses and damages caused by water main break
Burns, Terry and Denise 5695 Devlin Ave.	Property damage caused by water main break
MacDonald, Erica Devlin Ave #2	Expenses and property damage caused by water main 5634 break
Saylor, Tammy PNG of John Philip Jones 35 A Street	Personal injuries caused by negligence of the NFPD
Lampkin, Shirley D. 21-C Center Court	Automobile damage caused by a pothole
Pitts, Sheila 639 Ashland Ave.	Property damage caused by a fallen City tree
Khakh, Sarbjit Singh 638-72 <sup>nd</sup> St	Property damage caused by City forestry crew
Saylor, Tammy as PNG of John Philip Jones 35 A Street	Personal injuries caused by negligence of the NFPD
Munne, Andrea 4116 Calkins Rd Youngstown, NY 14174	Automobile damage caused by a pothole
Hackmer, James O. and Sharon M. Hackmer 5640 Frontier Ave,	Damage caused by water main break
American International Recovery As agents for AIG Advantage Insurance co.	Automobile damage caused by a pothole

a/s/o Doris Streeter

Lester, Teresa A.  
5672 Devlin Ave

Damages caused by water main break

Mezhir, Louise  
2407 Ontario Ave

Damage to automobile caused by water due to  
road construction

Strope, Nelson  
1706 Willow Ave.

Damage to automobile caused by fallen City tree limb

Spicer, Steven  
POB 201  
Youngstown, NY 14174

Automobile damage caused by pothole

Stoneman, Tony R.  
8431 Buffalo Ave. Apt. 4

Damage caused by pothole

**NOTICE OF CLAIM ON**  
**APPOINTMENT OF ADMINISTRATOR**

Denise Skrzypek  
As Administrator of the Estate of Joshua A. Skrzypek

Damages caused by wrongful death

Item #2

**SUBJECT: LETTER OF AWARD FOR SIDEWALK PAVERS, BOLLARD LIGHTING AND LOT  
IMPROVEMENTS AT 448 3<sup>RD</sup> STREET**

The following was the result of bids received on June 29, 2009, for the above referenced project:

<b><u>CONTRACTOR</u></b>	<b><u>BASE BID</u></b>
Scott Lawn Yard 5552 Townline Road Sanborn NY 14132	\$ 28,800.00
Yarussi Construction Co.	\$ 38,400.00

It is the recommendation of the undersigned that this project be awarded to Scott Lawn Yard at its Base Bid of \$28,800.00. Funding is available in code H0916.2009.0916.0443.000.

Will the Council vote to so approve and authorize the Mayor to execute a contract in a form acceptable to the Corporation Counsel?

Item #3

*RE: Detention Aides*

Council Members:

At your June 29 meeting you approved a Settlement Agreement between the City and teamsters Local which represented the detention aides together with Separation Agreements for several of the former detention aides.

Attached are a Separation Agreement and General Release from Crystal Klein in exchange for a severance payment of \$3,073.33 minus applicable taxes and withholdings.

The funding for the payment of this severance amount will come from the detention aide line item in the Police Department budget.

Will the Council so approve and authorize the Mayor to enter into this Settlement Agreement on behalf of the City?

Item #4

*RE: Preliminary Engineering Agreement between the City and CSX Transportation, Inc.*

Council Members:

CSX requires a preliminary engineering agreement and advanced payment to cover their costs in reviewing plans related to the proposed train station and intermodal center.

Funding is available from the funds previously designated for the train station.

Attached is a copy of the proposed agreement.

Will the Council so approve and authorize the Mayor to execute same?

Item #5

**RE: *Family and Children's Service of Niagara, Inc.  
Employee Assistance Program Contract***

Council Members:

Attached is a proposed agreement with Family and Children's Service of Niagara, Inc. to provide an Employee Assistance Program for non-uniform employees of the City of Niagara Falls. Funding is included in the 2009 Budget and will also be provided for in the 2010 budget.

Will the Council so approve and authorize the Mayor to execute same?

Item #6

*RE: Freedom Trail Festival*

Council Members:

The Freedom Trail Festival is scheduled to occur on September 19, 2009. In an effort to assist the organizers of this festival, it is proposed that the City contribute the sum of \$1,000. Funding is available from the Tourism Fund balance.

Will the Council so approve?

Item #7

*RE: Niagara Festival & Entertainment Group*

Council Members:

The NIAGARA FESTIVAL & ENTERTAINMENT GROUP is once again proposing to sponsor and coordinate the second annual Niagara Falls Blues Festival 2009 to be held on September 11 and September 12, 2009. The location of the event will be Old Falls Street/Wintergarden area. The Niagara Festival & Entertainment Group is asking that the City contribute the amount of \$16,000 for this event. Funding is available from 2009 Tourism Fund (\$10,000) and 2007 Casino Funds (\$6,000).

Will the Council so approve?

Item #8

RE: Sale of 1325 Ontario Avenue to Deborah Blanchard and James Costanzo for a sum of \$250.00

Council Members:

The City has received a request from the adjoining property owner to purchase the above referenced City-owned property for the sum of \$250.00. This property was approved for sale by the Planning Board.

Will the Council approve the sale of these premises for this price in an "as is" condition and with the requirement to combine the properties, with the closing to be performed within 30 days, and with the standard pre-condition that the purchaser is not delinquent with any tax or water bill, and further authorize the Mayor to execute any deeds or other documents necessary to effectuate this transaction?

Item #9

*RE: Request for Fee Increase for 2010*

Council Members:

The Niagara Falls Police Department has requested that certain fees be increased for year 2010. Most of these fees charged have not been increased in several years. Attached is a communication from the Police Department detailing the existing fees and the requested increase.

Will the Council so approve?

Item #10

*RE: Request for Approval to Settle and Pay Casimir S. Tubinis  
2759 Orleans Avenue, Niagara Falls, NY 14303*

Council Members:

Date Claim Filed:	June 17, 2008
Date Action Commenced:	February 6, 2009
Date of Occurrence:	June 9, 2008
Location:	3054 Orleans Avenue, Niagara Falls, NY
Nature of Claim:	Automobile damage sustained due to milling of City street.
Status of Action:	Post-trial.
Recommendation/Reason:	Order of Niagara Falls City Court.
Amount to be Paid:	\$711.09
Make Check Payable to:	Casimir S. Tubinis
Conditions:	General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above be paid under the terms set forth above. Will the Council so approve?

RELATIVE TO FREEZING THE CASINO FUNDS APPROPRIATED TO THE  
NIAGARA TOURISM AND CONVENTION CORPORATION

BY:

Council Member Robert A. Anderson, Jr.  
Council Member Steve Fournier  
Council Member Sam Fruscione

WHEREAS, the Niagara Tourism and Convention Corporation (NTCC) was formed as a successor to the City of Niagara Falls Convention and Visitors Bureau and the Niagara County Tourism Office. As the county-wide successor of previously separate efforts, the NTCC is publicly funded by the City of Niagara Falls through bed tax money and casino money ; and

WHEREAS, the NTCC has not shown, to the satisfaction of the City Council, the amount of monies spent by the organization and the staff; and

WHEREAS, more transparency and accountability is needed since the City of Niagara Falls is the largest supporter of the NTCC financially; and

WHEREAS, the focus of the organization should be marketing the City of Niagara Falls; and

WHEREAS, we feel that the City is not receiving a sufficient return on its investment.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Niagara Falls is requesting the Niagara Falls City Controller freeze and not release any of the Casino funds to the Niagara Tourism and Convention Corporation until further investigative details can be acquired by the members of the Niagara Falls City Council.

**FACTORY OUTLET BOULEVARD NAME CHANGE TO FASHION OUTLETS BOULEVARD**

By: Council Chairman Christopher Robins

**WHEREAS**, by resolution adopted June 29, 2009 this Council directed the Clerk of the Council to publish a Notice of Intention to consider a change of name of Factory Outlet Boulevard to Fashion Outlets Boulevard at the regularly scheduled meeting of this Council on July 13, 2009 and to hold a public hearing thereon; which notice was published in the Niagara Gazette and which hearing was held as scheduled; and

**WHEREAS**, this Council has considered the aforesaid change of name and is of the opinion that said renaming is desirable; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Niagara Falls, NY that the name of Factory Outlet Boulevard be and is hereby changed to be henceforth known as Fashion Outlets Boulevard; and

**BE IT FURTHER RESOLVED**, that the Clerk of this Council is hereby directed to forward a copy of this resolution to the Mayor and City Administrator so that they can implement this change through the appropriate City departments and further that a certified copy of this resolution be forwarded to the Niagara County Clerk.

**City of Niagara Falls Proposed Comprehensive Plan  
and Zoning Ordinance Amendments**

**State Environmental Quality Review Act**

**FINDINGS STATEMENT**

Pursuant to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law and the implementing regulations of the New York State Department of Environmental Conservation at 6 N.Y.C.R.R. Part 617, the City Council as lead agency makes the following findings:

**NAME OF ACTION:** Adoption of New City of Niagara Falls Comprehensive Plan and Zoning Ordinance Amendments.

**LEAD AGENCY:** City of Niagara Falls City Council

**ADDRESS:** City Hall  
745 Main Street  
PO Box 69  
Niagara Falls, NY 14302-0069

**I. DESCRIPTION / LOCATION OF ACTION / PURPOSE AND NEED:**

The action involves a recommendation by the Planning Board to the City Council for adoption of a new Comprehensive Plan (the "Plan") and proposed amendments to the City of Niagara Falls Zoning Ordinance ("Zoning Amendments") designed to implement the Plan. The general intent of the Plan is to guide the physical revitalization of City of Niagara Falls neighborhoods and districts and to foster economic development within the City.

Part I of the Plan discusses the City's current urban and economic context and the challenges, opportunities and major economic drivers for the City. Part II of the Plan identifies specific planning policies with respect to land use, historic resources, built environment, environmental and open space resources, transportation, economic development and tourism, housing, brownfield / greyfield development and waterfront development. The Plan also sets forth strategies for urban revitalization and recommends specific renewal programs and "catalyst projects" designed to strengthen the City. In addition, Part II of the Plan calls for enhanced tourism amenities such as way-finding and signage strategies, visitor orientation centers, parking and shuttle systems, Rainbow Bridge Plaza Improvements and "pedestrian priority zones." Part III of the Plan outlines key policy changes and institutional improvements necessary to implement the plan. The recommendations include, among other things, a comprehensive revision of the City's existing zoning code.

Pursuant to the proposed Plan, the proposed Zoning Amendments are intended to harmonize City zoning regulations with historic development patterns within the city's residential areas and establish new opportunities for growth and enhancement in core commercial areas. The Zoning Amendments include new and revised zoning and overlay districts. While the City's 14 existing zoning districts are redistributed into 25 districts which are intended to be more closely tailored to the character of the City areas covered, the overall proportion of district classes do not change significantly and few properties undergo a change in zoning classification. The Zoning Amendments also include new and revised zoning district regulations and design standards including, among other things, revised bulk, density, setback, building height, parking and other requirements in certain districts of the City. The Zoning Amendments also include changes to zoning enforcement and administration provisions including, among other things, streamlined procedures for site plan approval.

## II. BACKGROUND AND PROCEDURAL HISTORY:

The Plan was developed pursuant to an open planning process dating back until at least 2003, which led initially to the release of the October 2004 Niagara Falls Strategic Master Plan. The planning process continued with public workshops in May of 2005, public meetings throughout 2005 and 2006, and the first of several duly noticed public hearings on February 14, 2007. During the early stages of plan development, the City of Niagara Falls retained an environmental consultant, Behan Planning Associates, LLC, to assist the City in preparing a draft Generic Environmental Impact Statement in accordance with the New York State Environmental Quality Review Act (SEQRA) to consider the environmental impacts and benefits of the proposed Plan and Zoning Amendments.

By resolution dated February 27, 2007, the Planning Board of the City of Niagara Falls recommended that the City Council adopt 2007 versions of the Plan and Zoning Amendments to promote economic and physical revitalization and enhanced quality of life in the City of Niagara Falls. The Planning Board subsequently made additional changes embodied in a 2008 version of the Plan and an October 11, 2008 version of the proposed Zoning Amendments which were designed to address concerns expressed by the public and to clarify and enhance the consistency of the proposed zoning changes with applicable enabling legislation and other legal and procedural requirements.

The Planning Board duly noticed and conducted another public hearing on November 5, 2008 concerning the aforementioned 2008 versions of the Plan and Zoning Amendments and received and considered all public comments concerning those proposals. By resolution dated November 12, 2008, the Planning Board recommended that the City Council adopt the aforementioned 2008 versions of the Plan and Zoning Amendments after undertaking all required review under SEQRA and other applicable requirements.

The City Council requested that the Planning Board modify the October 11, 2008 version of the proposed Zoning Amendments to address concerns expressed by the public, particularly with respect to the need for enhanced flexibility in building height restrictions in the downtown districts. The Planning Board thereafter developed and proposed an April 14, 2009 version of the proposed Zoning Amendments which included provisions designed to provide enhanced flexibility in building height restrictions in the downtown districts and to enhance the clarity of other proposed zoning requirements. The Planning Board also made a minor revision to the 2008 Plan, involving the removal of Part III, Section 3 ("Institutional Strengthening"), which was no longer applicable because it predated the creation of the City Department of Planning & Economic Development.

By resolution dated April 22, 2009, the Planning Board recommended that the City Council, as SEQRA lead agency, review the DGEIS and issue a Notice of Completion of the DGEIS. In accordance with the Planning Board's recommendation, on May 4, 2009, the City Council determined that the DGEIS concerning the proposed Plan and Zoning Amendments as recently revised was complete for purposes of conducting an appropriate review under SEQRA and directed the issuance of a Notice of Completion of the DGEIS and a Notice of a Joint Public Hearing of the Planning Board and City Council to be held on June 1, 2009. The Notice of a Joint Public Hearing also specified that public comments on the DGEIS would be accepted until June 15, 2009, beyond the minimum thirty-day public comment period mandated under SEQRA.

The City Council thereafter referred the Plan, Zoning Amendments and DGEIS to the Niagara County Planning Board pursuant to Gen. Mun. Law § 239-m. On or about May 12, 2009, the Niagara County Planning Board voted to recommend approval of the proposed Comprehensive Plan, Zoning Ordinance and DGEIS.

On June 1, 2009, the Planning Board and City Council conducted a joint public hearing to receive public comments on the DGEIS and further public comments

concerning the proposed Plan and Zoning Amendments in accordance with SEQRA, General City Law § 28-a(7) and City of Niagara Falls Zoning Code § 1308.06. By resolution dated June 24, 2009, after considering all public comments received during the public comment period, the Planning Board recommended that the City Council conduct its own independent review of all public comments received on the DGEIS; prepare and publish an FGEIS in accordance with SEQRA; render its independent findings under SEQRA with respect to the proposed 2008 Plan (with the aforementioned minor revision) and proposed Zoning Amendments dated April 14, 2009, and act affirmatively to adopt them.

The City Council subsequently caused to be prepared an FGEIS in accordance with the requirements of SEQRA including, among other things, the City Council's response to all public comments received during the joint public hearing on June 1, 2009 and through the public comment period ending June 15, 2009. By resolution dated June 29, 2009, the City Council determined that the FGEIS was complete for purposes of SEQRA review, and thereafter caused a Notice of Completion of the FGEIS be duly filed and published.

### **III. IDENTIFIED AREAS OF ENVIRONMENTAL CONCERN AND RELATED MITIGATION:**

#### **A. General**

The City Council has reviewed and duly considered all comments concerning the proposed Plan and Zoning Amendments and has undertaken its independent review and consideration of the conclusions in the DGEIS and FGEIS and all other relevant information in light of the environmental criteria contained in the SEQRA regulations. The conclusions in the DGEIS, FGEIS and the Plan are expressly incorporated by reference into these SEQRA Findings. Based upon its review, the City Council has determined that the below areas of potential environmental concern have been identified with regard to the project and has thoroughly considered each:

The proposed adoption of the Plan and related Zoning Amendments will not directly result in any building activity or otherwise directly affect the environment in the City of Niagara Falls. Neither the FGEIS nor these SEQRA Findings are intended to fulfill the SEQRA requirements for the approval of any future project- and / or site-specific proposals which may follow adoption of the Plan and Zoning Amendments. Rather, the FGEIS and these SEQRA Findings will serve as a general foundation for the review and consideration of such possible future actions.

Certain future project- and/or site- specific proposals will require the preparation of a supplemental or site-specific EIS if the particular proposal was not addressed or was not adequately or site-specifically addressed in the FGEIS. Further, depending upon the nature and scope of a given future project, it may require certain additional approvals from and/or collaboration with various federal, state and/or local agencies.

State law provides that a comprehensive plan may be designed to serve as, or be accompanied by, a GEIS. Gen. City Law 28-a(9). Because the Plan itself proposes numerous mitigation measures intended to alleviate various adverse environmental, social and economic impacts in the City of Niagara Falls associated with current conditions there, the Plan is expressly incorporated by reference into the FGEIS and these SEQRA Findings. The strategies and policies set forth in the Plan and corresponding Zoning Amendments are expected to have a significant beneficial impact on the City by ensuring that economic revitalization efforts proceed in accordance with sound urban planning strategies and in a manner that is protective of the natural environment.

#### **B. Focus of Public Comments**

##### **1. Visual Impacts / Building Heights**

The vast majority of public comments on the proposed Plan and Zoning Amendments focused on the issue of building height regulations. Comments received during the public review process reflect divergent opinions regarding the extent to which building heights should be regulated within the City of Niagara Falls. While some feel that very restrictive limitations are necessary to protect local view-sheds and the aesthetics of the Falls, others believe that there should be no barriers to economic development within a City that has suffered profound economic decline for several decades. The lead agency has carefully considered all comments in developing the current building height regulations and believes that the Plan and Zoning Amendments strike a reasonable and appropriate balance between view-shed protection and urban revitalization through sound and progressive design-based zoning regulations.

The lead agency finds that careful regulation of building heights is essential to preserve the quality of development in the City of Niagara Falls and to encourage an aesthetically pleasing, human-scale pedestrian environment. The proposed Zoning Amendments are intended to avoid a clustering of buildings with excessive heights, and are designed to prevent the uncontrolled development of high rise buildings along the waterfront and residential neighborhoods, while at the same time better integrating the City into the waterfront and surrounding park, particularly at important gateway locations.

The proposed Zoning Amendments include several tools to regulate building heights within the City Core. The tools incorporate, among other things, bonus incentives, design guidelines, as well as building height restrictions. The Zoning Amendments reflect reasonable and appropriate height restrictions that allow development flexibility while affording reasonable protections for the world class view-sheds occasioned by proximity to the Falls and the Niagara River Gorge.

The proposed bulk and density standards in the downtown districts generally encourage buildings to gradually rise in height as the development moves toward the center of downtown. This is intended to encourage high-density, vertical development, while preserving the City's valuable views and reducing street level impacts. The proposed regulations also include potential bonuses to exceed the base building height allowances in the D1-A, B and C sub-districts in a manner that will preserve and/or enhance important scenic view-sheds. The potential building height bonuses in these sub-districts are tied to the provision of public amenities, including public plazas and parks, structured parking, improved retail / commercial design and streetscape elements, subject to building height caps and square footage limitations at specified elevations. The incentives are intended to encourage greater creativity in the design component of buildings, and enhance the likelihood of pedestrian-friendly and other public amenities in exchange for building height increases.

To complement the City's proposed building height restrictions in the downtown districts, the proposed Zoning Amendments include a proposed Gorge View District (D-2) that would fall between the Robert Moses Parkway and Main Street just north of downtown, which district would allow recreational, cultural and tourist activities along the waterfront. The proposed D-2 district predominantly is composed of land currently zoned public space and downtown commercial district, with a small portion of an R-3 zone as well. The new D-2 district will not only promote tourist activity in a concentrated location, but promote the enhancement of the natural environment there as well.

The New York State Office of Parks, Recreation and Historic Preservation, Western District (OPRHP) has opined that the proposed zoning for a small area of the D1-A District south of Buffalo Avenue and east of John Daly Boulevard is inconsistent with the adjoining open space and institutional land uses. OPRHP has also opined that the proposed zoning for this area would allow for structures next to parkland that will obstruct views of the Niagara River and gorge.

The lead agency has determined that the area of concern to OPRHP is currently zoned M-1 Light Industrial, which currently permits buildings up to 200 feet tall and allows, among other uses, trucking terminals, public utility installations, food processing plants, motor vehicle repair establishments, and adult entertainment uses. The lead agency finds that such industrial uses create the potential for more objectionable impacts on adjoining parkland and open space, and that the Zoning Amendments will not facilitate development that will materially impair ground-level views of the River and Niagara Gorge. Rather, the lead agency finds that the proposed height restrictions for the downtown districts will foster economic revitalization and tourism, particularly at certain gateway locations along the waterfront, in a manner intended to mitigate potential adverse view-shed impacts to the maximum extent practicable. Again, any future project- and/or site- specific proposals likely will require additional SEQRA review and may require additional approvals from and/or consultation with various state or local agencies including, but not necessarily limited to, OPRHP.

### **C. Other Issues Identified in the GEIS**

#### **1. Community Character / Historic Resources**

As discussed more fully in Section III of the DGEIS, the Plan itself advocates various mitigation measures in the form of key "Principles for City Renewal" that have been vetted during the City's significant previous public outreach program. In order to facilitate the resultant "Core City" strategies and "Citywide Policies," the proposed Zoning Amendments include various zoning district reconfigurations and design standards for specified City zoning districts which are designed to enhance and protect community character.

The proposed Zoning Amendments also include measures designed to protect and enhance historic resources within the City. For example, a new R4 (Heritage) zoning district will encompass lands along Buffalo Avenue that are currently zoned NPD, located between the downtown core and the Robert Moses Parkway. The R4 District will build on the existing, historic character and scale of this neighborhood, while allowing for a variety of housing types as well as limited tourist and resident oriented commercial uses that are compatible with residential uses and would reinforce the area as an intimately scaled, vibrant tourist and residential area.

The lead agency finds that adoption of the Plan and Zoning Amendments will facilitate the protection and maintenance of stable, established areas of the City, while providing for flexibility, creativity and vitality in those areas of the City that are currently underutilized and/or in suffering from blight and economic decline. Adoption of the Plan and Zoning Amendments will not directly result in building activity or significant increases in the city population. Increases in population are considered to represent a positive impact to a City that has been steadily losing population since the 1950s.

No significant adverse impacts to community character are expected to result from the adoption of the proposed Plan and Zoning Amendments. In light of the planning policies and strategies embodied in the Plan and effectuated through the Zoning Amendments, no further land use mitigation measures at this preliminary stage are recommended.

#### **2. Transportation**

The lead agency has determined that the Plan and Zoning Amendments will not directly result in any significant adverse environmental impacts on the City's transportation resources. Rather, the Plan sets forth a number of recommendations for better integrating land use and transportation policies and providing alternative modes of transportation such as mass transit. While the proposed Zoning Amendments will allow for higher development densities and possible increases in traffic in the downtown "Core City" area, this is considered preferable to continued urban decay and economic stagnation.

At this conceptual planning phase, it is difficult to predict the precise type and location of development and corresponding traffic levels that might occur following adoption of the Plan and Zoning Amendments. However, the current City population is approximately 55,500, representing a significant decline from historical figures. The public infrastructure within the City of Niagara Falls was designed when the City was thriving and had a population of approximately 100,000. Therefore, the City infrastructure, though in disrepair, has excess capacity to service future growth within the City. Accordingly, it is expected that the City population would have to significantly increase, perhaps even double the current population figures, before City-wide traffic impacts would exceed the capacity of the City's major transportation corridors.

With respect to the deteriorating condition of the City's transportation infrastructure, the Plan and smart growth principles advocated therein are intended to leverage the limited resources now available to the City for infrastructure improvements. For example, the Plan and Zoning Amendments encourage mixed-use development and redevelopment and infill development of certain areas to lessen the necessity for expansion of infrastructure and accommodate an appropriate proportion of necessary development which might otherwise be located on undeveloped land.

In December 2005, U.S.A Niagara prepared a study entitled "Multi-Modal Access Program: Downtown Niagara Falls, New York" which concludes that the four major roadways within the City's downtown have sufficient capacity to absorb significant traffic increases. The study reports that four lane urban roadways with an additional center lane, such as Niagara Street, Rainbow Boulevard, and Daly Boulevard, can accommodate up to approximately 35,000 two-way trips. *Id.*, p. 2-12. These roadways currently operate at a third or less of their operating capacity.

Likewise, the Robert Moses Parkway, which serves as an economic detour around the City and a barrier to the Niagara River, is also significantly underutilized. According to the Multi-Modal Access Program study, the southern portion of the Parkway is operating at approximately half of its capacity, while the northern portion is operating at approximately one-third of its capacity. Significantly, the recent reconfiguration of the northern portion of the Parkway reportedly has not adversely affected local traffic volumes based upon data generated by the Greater Buffalo Niagara Regional Transportation Council ("GBNRTC"). A key strategy identified for the Core City is to reconfigure and redesign the Robert Moses Parkway to be a more pedestrian-friendly "Riverfront Drive," with enhanced connectivity between various City commercial nodes and corridors and the Niagara River. Any such future initiatives would be subject to the terms and conditions of a May 3, 2006 Memorandum of Understanding (MOU) between OPRHP, DOT, USA Niagara Development Corporation and the City of Niagara Falls, and will require various agency approvals and project and/or site-specific environmental reviews.

The City has analyzed pavement condition and traffic count studies conducted by GBNRTC, which are typically utilized in determining whether a given development will cause adverse impacts on roadway capacity. As compared to the Level of Service ("LOS") threshold levels applicable to local roadways, actual current traffic counts reveal that the road network within the City of Niagara Falls is operating significantly under capacity. For purposes of assessing potential traffic impacts associated with potential future developments following adoption of the Zoning Amendments, the capacity of affected roadways and the need for mitigation may be estimated based on existing road condition, width, traffic volumes and Trip Generation Rates reported in standard reference texts.

GBNRTC data indicate that public transit ridership has seen a slight increase over the last few years. Based on GBNRTC's population, household, and employment forecasts for 2030, the City of Niagara Falls is projected to experience minimal growth during that period, from 55,593 in 2000 to 57,373, absent planning reform and implementation of urban revitalization strategies. The number of households is projected to experience a modest increase from 24,099 in 2000 to 25,592

in 2030. Meanwhile, City employment figures are expected to increase from 24,541 in 2000 to 30,244 in 2030.

Based on these forecasts, the City does not anticipate that adoption of the proposed Plan and Zoning Amendments will result in significant adverse traffic impacts. Traffic impacts associated with specific future development proposals will be subject to a site-specific environmental review and development of appropriate mitigation measures. In addition, the Plan reflects an emphasis on "smart growth" principles and clearly favors the availability of enhanced public and other transportation options. The emphasis on pedestrian-scale streetscapes that facilitate walking and biking has the potential to reduce the traffic levels in the central parts of the City.

### 3. Parking

The lead agency finds that the City has an abundance of surface parking lots which are rarely fully occupied. Existing minimum parking requirements render the City streets less walk-able and pedestrian-friendly, occupy potential green space and landscaping, contribute to increased automobile usage and traffic congestion, greater exhaust emissions and corresponding reduction in air quality. The large impermeable surface areas created by surface parking lots increase the amount of surface water run-off substantially. This puts a strain on the city's storm water management system and can potentially reduce water quality. These parking-related factors limit the redevelopment potential of the City and have had a detrimental effect on the community character and streetscape vitality of the City.

According to the aforementioned Multi-Modal Access Program study, the peak occupancy of the entire parking lot inventory in downtown Niagara Falls in 2005 was only 63.9%. The City of Niagara Falls has one parking structure remaining, which is located on Rainbow Boulevard and Niagara, which has a peak occupancy rate of fewer than 40%. Based upon the available peak usage data, the lead agency finds that the City has sufficient parking available to support the current demands generated during peak usage, and notes that the occupancy rates during off-peak times is projected to be significantly lower.

The lead agency finds that the relaxation and elimination of minimum parking requirements is a recognized trend among smart growth and livable community advocates. To mitigate the current undesirable parking conditions within the City, the Zoning Amendments incorporate relaxed standards and, in select commercial districts, elimination of parking requirements. This is projected to not only substantially reduce the cost of development and create an attractive environment for new businesses, but also to increase the revenue the City will be able to generate from paid parking resources. The increased use of priced parking, and the promotion and encouragement of alternate transportation modes such as walking, bicycling, and public transit, will enable the City to expand its development potential and create a walkable, more densely populated downtown.

### 4. Affordable Housing

In accordance with Gen City Law § 81-d(3), the lead agency has determined that the proposed Downtown Districts (D1-A through D) contain adequate resources, environmental quality and public facilities, including adequate transportation, water supply, waste disposal and fire protection, to support the proposed system of potential zoning incentives or bonuses, and that such incentives or bonuses are compatible with the development that will otherwise be permitted in the Downtown Districts. The proposed system of zoning incentives or bonuses is not expected to have an adverse impact on the potential development of affordable housing. In this regard, implementation of the Plan and Zoning Amendments should improve the range and quality of housing choices, including housing in mixed-use developments. In the event that the availability of affordable housing somehow becomes adversely affected in the future, the City will take reasonable action to compensate for any such negative impact.

5. Natural Resources

a. *Niagara Falls / Niagara River Gorge*

The lead agency finds that the Zoning Amendments will continue to provide a protective buffer for the Niagara Falls / Niagara River Gorge through establishment of an expanded Open Space District adjoining the waterfront. Subject to the limitation that the proprietary functions of New York State, and OPRHP in particular, are not subject to municipal zoning regulations, strict development controls will remain in place in the Open Space District. The Open Space District is intended to "protect the function, integrity and health of the city's natural systems environment, provide for a balance between developed and undeveloped land, protect air and water quality, provide adequate open areas for recreation and conservation and to enhance the city's quality of life and the aesthetic qualities of the city, moderate climate, reduce noise pollution, provide wildlife habitat, and preserve open space in its natural state." Accordingly, the lead agency finds that, at this conceptual stage, no further mitigation of impacts on the Niagara Falls and Gorge is necessary.

b. *Wetlands*

As reflected in Schedule 9 of the Zoning Amendments, both state and federal wetlands are located in certain areas of the City. The lead agency finds that future development in the City that could have a negative impact on New York State Freshwater Wetlands will be carefully regulated by the New York State Department of Environmental Conservation (NYSDEC). To conduct any regulated activity in a state-regulated wetland or its adjacent 100 foot buffer area, an NYSDEC permit would be required. Compensatory mitigation often is required for significant impacts to wetlands. This may include creating or restoring wetlands to replace the benefits lost by the proposed project. Likewise, federal law prohibits the discharge of dredged and fill material into "navigable waters of the United States," without a permit. Absent coverage under a so-called "Nationwide Permit," such discharges require a permit from USACE under Section 404 of the Clean Water Act. For every authorized discharge to federal wetlands, adverse impacts to wetlands, streams and other aquatic resources must be avoided and minimized to the extent practicable. Accordingly, the lead agency finds that, at this conceptual stage, no further mitigation of impacts on wetlands within the City is necessary.

c. *Floodplains*

Schedule 9 of the Zoning Amendments also reflects that one or more 100 year FEMA flood zones are located within the City. The lead agency finds that any future projects proposed for property within these FEMA-regulated boundaries must comply with stringent FEMA-based flood zone regulations and any applicable local regulations. Any future development in the City would be subject to construction regulations if it occurs within a Special Flood Hazard Area (i.e., areas subject to inundation by the base (100-year) flood). In New York State, local communities that participate in the National Flood Insurance Program regulate development in Special Flood Hazard Areas. An exception is development funded and undertaken by the state or federal government, which is regulated by the responsible agency, subject to technical assistance by NYSDEC and FEMA. Accordingly, the lead agency finds that, at this conceptual stage, no further mitigation of impacts on floodplains within the City is necessary.

6. Air Quality

The lead agency finds that any future proposed development projects in the City will be the subject of a site-or project-specific environmental review under SEQRA to ensure that any potential adverse impacts, including air quality impacts, will be identified and mitigated to the maximum extent practicable.

The lead agency would note that the federal Clean Air Act requires any federally-supported transportation projects to be consistent with the federally-approved air compliance "state implementation plan" ("SIP") developed by the New York State Department of Environmental Conservation. Before any federal funding or approvals can be granted for any projects in ozone non-attainment areas, GBNRTC must determine that the project conforms with the SIP and that modeled emissions from the proposed project will not interfere with efforts to attain the air quality standards mandated by the Clean Air Act. Accordingly, the lead agency finds that, at this conceptual stage, no further mitigation of impacts on air quality within the City is necessary.

#### **IV. ALTERNATIVES CONSIDERED**

In developing the Plan and Zoning Amendments, the lead agency considered various alternative development approaches in light of the principles and strategies identified in the 2004 Strategic Master Plan and throughout the extensive open planning process that followed. As discussed more fully in Section V of the DGEIS, these alternatives included, among other things, the "No-Action" Alternative, whereby no changes to the City's existing planning policies or zoning regulations would be made. The lead agency finds that the no-action alternative fails to achieve the City's planning goals and objectives as determined during the open planning process.

The City also studied and incorporated, as appropriate, alternative planning approaches, zoning regulations and design standards utilized by other U.S. cities as detailed in DGEIS Section V. The lead agency finds that the planning approaches, zoning regulations and design standards in the Zoning Amendments are consistent with the City's planning goals and objectives as set forth in the Plan and will mitigate adverse environmental impacts to the maximum extent practicable.

#### **V. UNAVOIDABLE ADVERSE IMPACTS**

Again, adoption of the Plan and Zoning Amendments will not result in any direct unavoidable adverse environmental impacts. However, the anticipated future development of lands under the proposed Zoning Amendments may result in the unavoidable adverse impacts typical of all development, such as demand for community services; increased solid waste generation; increased water use and sewage generation; increased usage of electricity and energy resources; and increased traffic. Again, however, much of the City's infrastructure was designed and built for a peak population of approximately 100,000, so in many instances, excess capacity and infrastructure is available to absorb significant population change without requiring substantial infrastructure expansion.

The lead agency therefore finds that such increased community service and other demands will not exceed the City's capacity to meet them. In this regard, it is expected that implementation of the Plan in the long term will yield a corresponding improvement in the City's economic vitality, which will help the City to meet the increased service demands.

#### **VI. USE AND CONSERVATION OF ENERGY**

The lead agency finds that energy resources that may be indirectly affected in the long term by adoption of the Plan and Zoning Amendments are electricity, gas and oil. However, mixed-use development patterns and emphasis on pedestrian and other modes of transportation will potentially decrease the need for vehicular fuel. The use and conservation of other energy sources, such as electricity and oil, are not anticipated to be effected by the proposed action.

#### **VII. CERTIFICATION OF APPROVAL PURSUANT TO 6 N.Y.C.R.R. § 617.11(d)**

Having considered the DGEIS, FGEIS and the facts and conclusions set forth herein, the lead agency hereby certifies that:

1. The EIS process for the proposed Plan and Zoning Amendments is in compliance with Article 8 of the New York State Environmental Conservation Law and the implementing regulations of the New York State Department of Environmental Conservation, 6 N.Y.C.R.R. Part 617; and

2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

**RESOLUTION CONCERNING ADOPTION OF NEW  
CITY OF NIAGARA FALLS COMPREHENSIVE PLAN**

**By: Council Chairman Chris Robins  
Council Member Robert Anderson, Jr.  
Council Member Steve Fournier  
Council Member Samuel Fruscione  
Council Member Charles Walker**

**WHEREAS**, the City Council wishes to rescind the current 1992 City of Niagara Falls Comprehensive Plan and adopt a new 2008 City of Niagara Falls Comprehensive Plan (the "Plan") to promote greater social and economic opportunity and enhanced quality of life in the City of Niagara Falls; and

**WHEREAS**, by resolution dated July 13, 2009, the City Council adopted certain SEQRA Findings concerning the proposed Plan, based upon its independent review and consideration of the conclusions in a Draft Generic Environmental Impact Statement (DGEIS), Final Environmental Impact Statement (FGEIS) and all other relevant information in light of the environmental criteria contained in the SEQRA regulations; and

**WHEREAS**, the aforementioned SEQRA Findings are expressly incorporated herein by reference; and

**WHEREAS**; the development of the Plan involved several years of careful analysis and planning, involving extensive public input and participation, as detailed in the SEQRA Findings; and

**WHEREAS**; the City Council has referred the Plan, corresponding Zoning Amendments and DGEIS to the Niagara County Planning Board pursuant to Gen. Mun. Law § 239-m; and

**WHEREAS**; on or about May 12, 2009, the Niagara County Planning Board voted to recommend approval of the proposed Comprehensive Plan, Zoning Amendments and DGEIS; and

**WHEREAS**, the City Council has reviewed and duly considered all public and agency comments concerning the proposed Plan throughout the lengthy public review process, as detailed in the Council's SEQRA Findings; and

**WHEREAS**, the City Council has considered the Plan in light of the development goals and objectives of the City of Niagara Falls and with the purposes and intent of the current City of Niagara Falls Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council does hereby make the following additional findings:

1. The City Council duly noticed and conducted a joint public hearing with the Planning Board on June 1, 2009 concerning the Plan, and has heard and considered all public comments on those amendments submitted up to and including June 15, 2009; and

2. Due to the current social, economic, land use and other conditions described in Part I of the Plan, adoption of the Plan is required and necessary to promote greater social and economic opportunity and enhanced quality of life, and to guide the physical revitalization of City neighborhoods and other community districts in a manner that is protective of the natural environment; and
3. The Plan will further the purposes set forth in Section 1300.01 of the City's current Zoning Ordinance for the reasons detailed throughout the Plan itself and in the accompanying DGEIS, FGEIS and SEQRA Findings, all of which are incorporated herein by reference; and
4. The proposed Plan will otherwise be protective of the public health, safety and general welfare of City residents.

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the City Council does hereby:

- A. Rescind the current City of Niagara Falls Comprehensive Plan dated 1992; and
- B. Adopt in its place the new 2008 Plan, a copy of which shall be filed with both the City Clerk and the Niagara County Planning Board in accordance with New York Gen. City § 28-a(13).

**RESOLUTION CONCERNING RESCISSION OF CURRENT CHAPTER 1300  
OF THE CITY OF NIAGARA FALLS CODE AND ADOPTION  
OF NEW ZONING ORDINANCE IN ITS PLACE**

**By: Council Chairman Chris Robins  
Council Member Robert Anderson, Jr.  
Council Member Steve Fournier  
Council Member Samuel Fruscione  
Council Member Charles Walker**

**WHEREAS**, the City Council wishes to adopt amendments to the City of Niagara Falls Zoning Ordinance (the "Zoning Amendments") dated April 14, 2009 to further the important goals and objectives set forth in the new 2009 City of Niagara Falls Comprehensive Plan (the "Plan") adopted by the City Council on July 13, 2009; and

**WHEREAS**, by resolution dated July 13, 2009, the City Council adopted certain SEQRA Findings concerning the proposed Plan based upon its independent review and consideration of the conclusions in a Draft Generic Environmental Impact Statement (DGEIS), Final Generic Environmental Impact Statement (FGEIS) and all other relevant information in light of the environmental criteria contained in the SEQRA regulations; and

**WHEREAS**, the aforementioned SEQRA Findings are expressly incorporated herein by reference; and

**WHEREAS**; the development of the Zoning Amendments involved several years of careful analysis and planning, involving extensive public input and participation, as detailed in the SEQRA Findings; and

**WHEREAS**; the City Council has referred the Plan, Zoning Amendments and DGEIS to the Niagara County Planning Board pursuant to Gen. Mun. Law § 239-m; and

**WHEREAS**; on or about May 12, 2009, the Niagara County Planning Board voted to recommend approval of the Plan, Zoning Amendments and DGEIS; and

**WHEREAS**, the City Council has reviewed and duly considered all public and agency comments concerning the proposed Zoning Amendments throughout the lengthy public review process, as detailed in the Council's SEQRA Findings; and

**WHEREAS**, the City Council has considered the proposed Zoning Amendments in light of the goals and objectives of the City of Niagara Falls and with the purposes and intent of the current City of Niagara Falls Zoning Ordinance.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council does hereby make the following additional findings:

1. The City Council duly noticed and conducted a joint public hearing with the Planning Board on June 1, 2009 concerning the proposed Zoning Amendments, and has heard and considered all public comments on those amendments submitted up to and including June 15, 2009; and
2. Due to the current social, economic, land use and other conditions described in Part I of the Plan, adoption of the Plan is required and necessary to promote greater social and economic opportunity and

enhanced quality of life, and to guide the physical revitalization of City neighborhoods and other community districts in a manner that is protective of the natural environment; and

3. The proposed Plan will further the purposes set forth in Section 1300.01 of the City's current Zoning Ordinance for the reasons detailed throughout the Plan itself and in the accompanying DGEIS, FGEIS and SEQRA Findings, all of which are incorporated herein by reference; and

4. The proposed Zoning Amendments dated April 14, 2009 are fully consistent with, and were prepared in direct response to, the purposes and intent of the 2009 Plan; and

5. The 2009 Plan and Zoning Amendments dated April 14, 2009 will otherwise be protective of the public health, safety and general welfare of City residents.

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the City Council does hereby:

A. Rescind in their entirety current City of Niagara Falls Code Chapters 1300, 1302, 1304, 1306, 1308, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329 1330, 1331, 1332, and 1333 and all appendices, tables, figures, maps and schedules incorporated therein; and

B. Enact in their place as a new Zoning Ordinance the Zoning Amendments dated April 14, 2009, consisting of City of Niagara Falls Code Chapters 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, and 1328 and all appendices, tables, figures, schedules and maps incorporated therein, and

C. Declare that Figure 8 of the aforementioned April 14, 2009 Zoning Ordinance shall constitute the new Official Zoning Map of the City of Niagara Falls, and direct that such map be duly filed with the Clerk of the City of Niagara Falls and with the Niagara County Clerk.