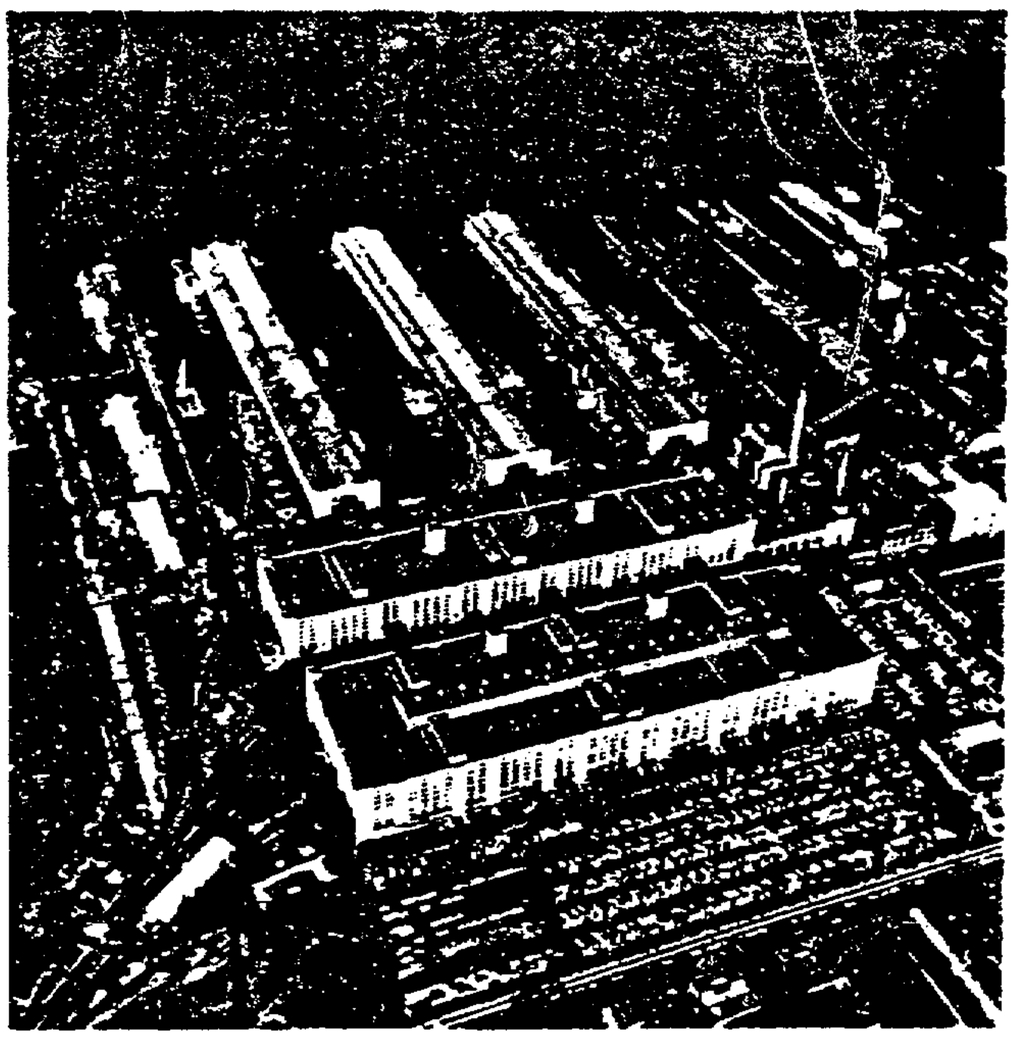
State Of New York Coastal Management Program and Final Environmental Impact Statement

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management



UNITED STATES DEPARTMENT OF COMMERCE

FINAL ENVIRONMENTAL IMPACT STATEMENT

AND THE

NEW YORK COASTAL MANAGEMENT PROGRAM

AUGUST 1982

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DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the New York Coastal Program

ABSTRACT: The State of New York has submitted its Coastal Program to the Office of Coastal Zone Management for approval. Approval would allow program administrative grants to be awarded to the State, and would require that Federal actions be consistent with the program. This document includes a copy of the program (Volume 1), which is a comprehensive management program for coastal land and water use activities. It consists of numerous policies on diverse management issues which are administered under existing State laws and is the culmination of several years of program development. New York's coastal policies either promote the beneficial use of coastal resources, prevent their impairment, or deal with major activities that substantially affect numerous resources. The program will improve decision-making processes used for determining the appropriateness of actions in the coastal area.

Approval and implementation of the program will enhance governance of the State's coastal land and water areas and uses according to the coastal policies and standards contained in the existing statutes, authorities and rules. Federal alternatives to program approval include delaying or denying approval, if certain requirements of the Coastal Zone Management Act have not been met. The State could modify parts of the program or withdraw their application for Federal approval if either of the above Federal alternatives result from circulation of this document.

APPLICANT: State of New York, Secretary of State

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
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STATE OF NEW YORK
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BASIL A. PATERSON
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August 13, 1982

Mr. William Matuszeski
Assistant Administrator
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3300 Whitehaven Street, N.W.
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Dear Mr. Matuszeski:

I am pleased to submit New York State's Coastal Management Program and Final Environmental Impact Statement.

As Secretary of State, I have been designated, pursuant to the Waterfront Revitalization and Coastal Resources Act of 1981, and Chapter 464 of the 1975 Laws of New York State, to prepare and implement a coastal management program. This document is the culmination of years of local, state and federal government efforts, as well as those of groups representing civic, environmental, development, and other interests.

The public and government officials have had numerous opportunities to shape this program. Public meetings, held in 1978, were followed by public hearings in early 1979 conducted by this agency. Legislative hearings were held in late 1979. There were over 1,000 meetings to assist in the preparation of this document. As a result of the comments received, the State's program uses a networking approach enforced primarily through the existing New York State Environmental Quality Review Act.

In accordance with the provisions of Section 102(2)(c) of the National Environmental Policy Act of 1969, 1,500 copies of the Draft Environmental Impact Statement on the proposed New York State Coastal Management Program were circulated for

review and comment to Federal, State, regional and local government agencies as well as to numerous private interest groups. In response to the many comments received, numerous changes have been made to the program.

In accordance with the requirements of the Coastal Zone Management Act regulations (Section 923.48), a letter from the Governor will follow after the minimum ten-day review following the notice of availability of the Final Environmental Impact Statement. This review period is a requirement of the New York State Environmental Quality Review Act regulations (6NYCRR Section 617.9).

Upon completion of the Federal review process, we anticipate New York State will have an approved Coastal Management Program in September, 1982.

Sincerely,

Basil A. Paterson

Basil A. Paterson

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PART I - OVERVIEW

I. OVERVIEW

1. Summary of the New York State Coastal Management Program

This document constitutes a framework for government decision-making which affects New York's coastal area. It provides statements of policy to which Federal and State agencies must adhere and also serves as a reference for local government action in the coastal area. In addition, the document complies with Federal regulations for submission of state coastal management programs set forth pursuant to the Coastal Zone Management Act of 1972, as amended, and constitutes the environmental impact statement for the State Program.

New York is unique among coastal states. It contains within its coastal boundary a great diversity of marine and freshwater areas divided into four distinct sectors: Long Island, a land mass fronting on the Atlantic Ocean; New York City, a major international port where the intensity of land and water uses is the greatest in the State; the Hudson River Valley, an ecologically and historically important corridor which extends 150 miles from New York City into upstate New York; and the Great Lakes - St. Lawrence River region, a vast freshwater, non-tidal coastal system.

While New York's coastal area is extensive and varied, a number of issues emerge as common to all sectors. The first and most obvious has been that, although New York has numerous laws, programs, and regulations to manage coastal resources and activities, State agencies were not fully coordinating their activities with each other and as a result, inconsistent decisions about the use of coastal resources were made.

The Coastal Management Program has provided a means for improving this situation by describing in this document the forty-four coastal policies with which all State agency actions must be consistent. Generally, the policies fall under three headings: promotion of beneficial use of coastal resources; prevention of their impairment; and management of major activities substantially affecting numerous resources. The criteria embodied in these policies require all agencies to take into account the interrelationships that exist or should exist in the coastal area.

The main instruments for implementing the forty-four policies are a number of State regulatory and management authorities assigned to the New York State Department of State, the Department of Environmental Conservation, the Department of Energy, the Public Service Commission, and the Office of Parks, Recreation and Historic Preservation. Among these authorities is the recently enacted Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) which forms the basis for coordinating all State actions affecting the coastal area. Article 42 requires that the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) be amended to assure adequate consideration of coastal policies and to provide that the Secretary of State review agency actions affecting achievement of coastal policies.

Nine other issues were found to affect all sectors of New York's coastal area. The Waterfront Revitalization and Coastal Resources Act gave the Coastal Management Program authority to advocate specific actions to meet or cope with these issues. The specific actions which the Coastal Management Program advocates include: promoting waterfront revitalization; promoting water dependent uses; protecting fish and wildlife habitats; protecting and enhancing scenic areas; protecting and enhancing historic areas; protecting farmlands; protecting and enhancing small harbors; protecting and enhancing public access; providing research, data, and information for participation of government agencies and citizens concerned with the State's coastal area; and coping with erosion and flooding hazards. The last action necessitated passage of the Coastal Erosion Hazards Area Act.

The Coastal Management Program, in its dual role of coordinator and advocate, also seeks the voluntary assistance of local governments to help further its goals. Coastal communities are encouraged to participate under the Waterfront Revitalization and Coastal Resources Act which provides the means and incentives for municipalities to prepare and implement local waterfront revitalization programs. The Department of State will provide financial and technical assistance, as well as guidelines for developing local programs. A community may receive one twelve-month grant of up to 50% of its costs to develop a local program.

New York City has already been developing a local program. The proposed program can be found in Volume III of this document.

When a local waterfront revitalization program has been approved by the Secretary of State, the local government will be eligible to receive additional funding for pre-construction activities related to projects recommended in the program. State consistency applies automatically to any approved local program. Furthermore, an approved local program may be incorporated into the State Coastal Management Program; federal consistency provisions of the Program would then apply.

2. Changes the Program Will Make

The New York Coastal Management Program, in addition to furthering national coastal management goals, will cause changes in the way existing environmental and economic development activities of State agencies affect the use of coastal resources, and it will offer local governments and private interests the means to focus on the waterfront and bring about solid improvements. More specifically:

-- Forty-four coastal management policies will apply to State agency decisions and voluntarily adopted local government waterfront revitalization programs. Twenty-nine of these policies are new or have significantly increased enforceability as a result of the State's Waterfront Revitalization and Coastal Resources Act. Fifteen of the policies are from such existing State laws as the Tidal and Freshwater Wetlands Acts.

-- Development in areas subject to erosion and on beaches and dunes will be set back from the shorelines a distance sufficient to minimize damage from erosion.

-- All activities involving a State permit, funding or other action will be undertaken in a manner consistent with the coastal policies.

-- Protection of significant fish and wildlife habitats, significant coastal scenic areas, and important agricultural lands will be increased.

-- The Department of State and the Office of Business Permits must consolidate, simplify, expedite or otherwise improve existing permit procedures which affect development in the coastal area.

-- Non-structural measures for erosion control will be promoted.

-- Land development will be encouraged to locate in areas where infrastructure and public services are adequate.

-- The Department of State, Urban Development Corporation, Environmental Facilities Corporation, Departments of Commerce, Environmental Conservation, Transportation, and others must seek new and alternative means of effectuating waterfront revitalization.

-- State agencies and local governments with approved waterfront revitalization programs must promote and protect the traditional character and uses of small harbors.

-- Within the existing major ports, State agencies and local governments with approved waterfront revitalization programs must site land uses and development which are essential to or in support of waterborne transporation of cargo and people.

-- Enforcement capabilities will be increased for existing State programs which protect natural coastal resources, and for those existing State programs which promote proper development of coastal resources.

-- Federal agency actions will be consistent with the coastal policies.

-- State and Federal agency actions will also be consistent with approved local waterfront revitalization programs.

-- Financial assistance will be provided to local governments to prepare and implement local ordinances for erosion hazard areas and waterfront revitalization programs.

-- State and local agencies will be provided technical assistance in solving coastal problems.

3. <u>The Federal Coastal Zone Management Act</u>

In response to intense pressure, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972 (CZMA) (P.L. 92-583). The Act authorizes a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Assistant Administrator for Coastal Zone Management, who heads the Office of Coastal Zone Management (OCZM).

The CZMA was substantively amended on July 16, 1976 (P.L. 94-370) and on October 1, 1980 (P.L. 96-464). The Act and its amendments affirm a national interest in the effective protection and careful development of the coastal zone, by providing assistance and encouragement to coastal states (and U.S. territories) to voluntarily develop and implement management programs for their coastal areas. Financial assistance grants under Sections 305 for program development and 306 for program implementation were authorized by the CZMA to provide coastal states and territories with the means for achieving these objectives.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction to states for developing their coastal management programs. The program development and approval provisions are contained in 15 CFR Part 923, revised and published March 28, 1979, in the Federal Register. In summary, the requirements for program approval are that a state develop a management program that:

1. identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state or territorial government;

2. re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

3. determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas to be subject to management should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

4. identifies the inland and seaward areas subject to the management program;

5. provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

6. includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the management program, states are obliged to follow an open process which involves providing information to and considering the interests of, the general public, special interest groups, local governments, and regional, state, interstate, and federal agencies.

Section 303 of the CZMA provides guidance of specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 305 of the CZMA authorizes a maximum of four annual grants to develop a coastal management program. After developing a management program, the state is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a state may continue development of a Federally approvable coastal management program using entirely state funding. However, new Federal funding assistance for program development is no longer authorized by the 1980 CZMA amendments.

Section 306 requires states to devote increasing portions (up to 30 percent) of their grant funds to activities leading to significant improvements in achieving national coastal management objectives. Section 306(i) also authorizes the award of grants for preservation of important natural areas, public access and urban development. Section 306(A) encourages states to inventory coastal resources of national significance and develop standards to protect them.

Section 307 of the Act stipulates that Federal agency activities shall be consistent, to the maximum extent practicable, with approved state management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal state with respect to a federal consistency issue.

Section 308 of the CZMA contains provisions for grants and loans to coastal states to enable them to plan for and respond to onshore impacts resulting from coastal energy activities including grants to mitigate the coastal impacts of coal transportation and alternative ocean energy activities. To be eligible for assistance under Section 308, coastal states must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants to states to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study, and training to support state management programs. The Secretary may also make grants to states to carry out research studies and training required to support their programs.

Section 312 directs OCZM to evaluate the performance of state coastal management programs on a continuing basis.

Section 315 authorizes grants to states to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the acquisition of islands for preservation, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

4. CROSS REFERENCE TO PROGRAM REQUIREMENTS (306)

How the New York Coastal Program Meets the Requirements of the Coastal Zone Management Act

Requirements	Regulations	New York Coastal Program
Sec. 306(a), which includes the requirements of Sec. 305:		
305(b)(1): Boundaries	923.21-923.34	Part II. Section 3
305(b)(2): Uses subject to management	923.11	Part II, Sections 4,6,8
305(b)(3): Areas of particular concern	923.21-923.23	Part II, Section 8
305(b)(4): Means of control	923.41	Part II, Sections 4,6,7,8;Appen.A,E,F
305(b)(5): Guidelines on priorities of uses	923.21	Part II, Sections 6,8
305(b)(6): Organizational structure	923.46	Part II, Section 4
305(b)(7): Shorefront planning process	923.24	Part II, Section 7
305(b)(8): Energy facility planning process	923.13	Part II, Section 7
305(b)(9): Erosion planning process	923.25	Part II, Section 7
Sec. 306(c),which includes:		
306(c)(1): Notice; full participation; consistent with Sec. 303	923.3, 923.51 923.55,923.58	Part II, Section 9; Part VI; Appendix D
306(c)(2)(A): Plan coordination	923.56	Appendix C
306(c)(2)(B): Continuing consultation mechanisms	923.57	Part II, Section 4
306(c)(3): Public hearings	923.58	Part II, Sections 1,9
*306(c)(4): Gubernatorial review and approval	923.48	
306(c)(5): Designation of recipient agency	923.47	Part II, Section 4
306(c)(6): Organization	923.46	Part II, Section 4
306(c)(7): Authorities	923.41	Part II, Sections 4,6;Appendix A,E,F
306(c)(8): Adequate consideration of national interest	923.52	Part II, Section 9
306(c)(9): Areas for preservation/restoration	923.22	Part II, Section 8
Sec. 306(d), which includes:		
306(d)(1): Administer regulation, control development; resolve conflicts	923.41	Part II, Section 4
306(d)(2): Powers of acquisition, if necessary	923.41	Part II, Sections 4,6; Appendix A,F
Sec. 306(e), which includes:		
306(e)(1): Technique of control	923.42-923.44	Part II, Sections 4,5,8; Appendix A
306(e)(2): Uses of regional benefit	923.12	Part II, Section 9
Sec. 307, which includes:		
307(b): Adequate consideration of federal agency views	923.51	Part VI; Part IX; Appendix C
307(f): Incorporation of air and water quality requirements	923.45	Part II, Section 6

* SEQR requires a minimum ten day review after notice of availability of FEIS prior to gubernatorial approval.

PART II - DESCRIPTION OF THE NEW YORK STATE COASTAL MANAGEMENT PROGRAM

SECTION 1

INTRODUCTION

New York State's coast is recognized as one of the State's greatest assets. It is unique, for it contains a variety of natural, recreational, industrial, commercial, cultural, aesthetic and energy resources of local, statewide and national significance. Unfortunately, the coast is severely threatened by competing demands. The resources of the State's Coastal Area are increasingly subject to the pressures of population growth and economic development, which include requirements for industry, commerce, housing, recreation and energy production. These demands result in the loss of living marine resources and wildlife, the diminution of open space areas, shoreline erosion, permanent adverse changes to ecological systems, and a loss of economic opportunities.

To address these coastal problems and provide a means for resolving them, the New York State Department of State has prepared, in cooperation with the Federal government, other State agencies, the State Legislature, local governments and the interested public, a statewide Coastal Management Program. This proposed Program has three major parts:

> The first establishes the boundaries of the Coastal Area within which the Program applies.
>
> The second describes the organizational structure to implement the Program.
>
> The third provides a set of statewide policies enforceable on all State and Federal agencies which manage resources along the State's coastline.

New York State's Coastal Management Program

The New York State Legislature has, over the years, enacted legislation and established programs for protecting the State's valuable natural and man-made resources. The proposed Coastal Management Program is built upon these existing laws and programs. However, during the development of the Program, it was found that additional legislation was needed: (1) to protect shoreowners and their property from the damages caused by severe erosion, (2) to provide a method to accomplish coastal management objectives through coordination of existing programs and by developing a consensus among all levels of government and the private sector to achieve these objectives, and (3) to establish enforceable policies for State and Federal actions in the coastal area. In 1981, the New York State Legislature passed and Governor Carey signed into law two bills which will enable New York to meet these requirements -- The Coastal Erosion Hazard Areas Act (Article 34 of the Environmental Conservation Law) and the Waterfront Revitalization and Coastal Resources Act (Article 42 of the Executive Law).

The Waterfront Revitalization and Coastal Resources law establishes a balanced statewide approach for encouraging development in the coastal area while protecting natural coastal resources. The law establishes boundaries for the State's Coastal Area by adopting a map which defines the area within which the Coastal Management Program will apply. It provides a set of policies which address significant coastal issues. State agencies will use the Department of State's review procedures and the existing State Environmental Quality Review Act (SEQRA) process to abide by these policies in their decisions.

The Act's coastal policies encourage the development and use of existing ports and other areas where infrastructure and public services are adequate. They also encourage facilitation of public access to coastal locations for recreational purposes. Certain policies affirm the need to protect and appropriately revitalize or develop such natural and man-made resources as fish and wildlife habitats, agricultural lands, other open space areas, and scenic and historic resources. One policy concerns protection of natural and man-made features from damage caused by flooding and erosion.

Optional Local Waterfront Revitalization Programs

The new law offers local governments the opportunity to participate in the State's Coastal Management Program on a voluntary basis. Localities are encouraged to prepare and adopt local waterfront revitalization programs which in turn, would provide more detailed implementation of the State's Program through use of existing broad powers such as those covering zoning and site plan review. With a waterfront revitalization program approved by the Secretary of State, a locality may take advantage of certain tangible benefits. First, the Department of State is empowered to provide technical and financial assistance for the preparation and implementation of local programs. Secondly, State agencies' actions must be consistent with approved local programs to the maximum extent practicable. Thirdly, if a State's Coastal Management Program is amended to include the approved local program, Federal agencies will be required to adhere to this program to the same degree which is required of State agencies.

Public Participation

The core of the State's public involvement is the New York State Citizen's Advisory Committee. The advisory body is made up of representatives from the five coastal regions of the State. The Committee met regularly during the development of the Program to review technical reports, make recommendations on its content and legislative proposals and assist in public participation activities.

The Coastal Management Program has also been shaped by comments and suggestions from a wide variety of interest groups. This was a deliberate attempt to involve people and groups who are interested in and potentially affected by the Program. The Department of State actively sought input from the public and local interest groups, including local government, in developing the State's Coastal Management Program. In all, over one thousand meetings were held during the Program's development. At a very early stage in its preparation, a series of sixteen public meetings were held at various points along the coast, to solicit public comments on the general approach. The initial draft document and the proposed legislation derived from this input. The draft Program, in turn, was aired publicly, at a series of eight public hearings held in all areas of the coast during the spring of 1979.

Based upon comments received at these hearings, the proposed legislation was substantially revised and introduced in the Legislature in May of 1979. Informational bulletins were at that time forwarded to all members of the public who had registered at the hearings, to update them, and demonstrate that their concerns were reflected in the proposed legislation.

In the fall of 1979, further hearings were held by the State Legislature, and following additional bill revisions, in the spring of 1980, the Department sent further informational bulletins to the interested public.

In response to further comment by public interest groups, the proposed legislation was again substantially revised and re-introduced in the 1981 legislative session where it was overwhelmingly approved. The Governor signed this legislation into law in July, 1981.

The State's proposed Coastal Management Program and Draft Environmental Impact Statement (CMP-DEIS) were distributed to interested agencies and organizations (See Part VII of this document). In July, 1982, hearings were held in Buffalo, Albany and New York City to receive additional public comment. This document contains responses to all comments received on the CMP-DEIS (See Part IX) as well as appropriate revisions.

Program Development

The Department of State relied heavily on local, county, regional and State agencies in the preparation of the Coastal Management Program. Under numerous contracts, State and local agencies analyzed coastal resources and provided recommendations which helped to shape the Program and ensure the necessary coordination.

To aid in the preparation of the Program, New York's coast was divided into five coastal regions. Advisory documents were prepared for each region:

New York City - prepared by the Department of City Planning, City of New York.

Nassau-Suffolk - prepared by the Long Island Regional Planning Board.

St. Lawrence River-Eastern Ontario Area - prepared by the St. Lawrence-Eastern Ontario Commission.

Hudson River Valley (including the Westchester County shore of Long Island Sound) - prepared by the New York State Department of State.

Great Lakes West - prepared by the New York State Department of State.

These regional reports were used in the preparation of the Coastal Management Program. Many of the recommendations on policies, boundaries, special areas of concern, and implementation have been incorporated into the State's Program and will provide a framework for developing coastal programs at the local level.

SECTION 2

COASTAL REGIONS OF NEW YORK: RESOURCES AND CONCERNS

Introduction

New York is unique among the coastal states. No other State encompasses three distinct coastal environments within its borders: the marine environment of Long Island and New York City; the tidal estuarine environment of the Hudson River; and the freshwater environment of the Great Lakes-St. Lawrence region. This richness of resources brings with it, however, a distinct complex of problems.

There are no common solutions for these three coastal environments. Both the Great Lakes-St. Lawrence and the Long Island regions, for example, are faced with serious erosion problems along portions of their coast; however, climatic conditions, land configuration, soil structure, and shoreline recession rates in each region differ so that solutions proposed for one region are not transferable to the other. Changing water levels mark both the freshwater environment of the Great Lakes-St. Lawrence and the marine environment of New York City-Long Island, but extreme tidal fluctuations and period differentials between freshwater inflow and outflow create additional concerns. While these problems may seem at times insurmountable, New York's Coastal Management Program provides an opportunity to devise ways not only to preserve but to enhance the environment in which its residents live and work. Distinctive characteristics and principal concerns of the State's three different coastal environments are identified in the following discussion.

Marine Coast of Long Island and New York City

Long Island

Long Island is a detached segment of the Atlantic Coastal Plain, separated from the mainland on the north by Long Island Sound and from Manhattan on the west by the narrow East River and New York Harbor. The Atlantic Ocean completes the Island's salt water encirclement. The Island is 120 miles long, varies in width from 20 miles to less than a mile, and is surrounded by a shoreline (including barrier islands) of approximately 1,475 miles, 46% of New York State's designated coastline.

The last continental ice sheets retreated from Long Island and elsewhere 10,000 years ago, leaving behind unconsolidated, highly erodible glacial materials. Since then, rising sea levels have shaped the Island's rough outline. Today, littoral forces of wind, wave, and tide constantly reform the coast. About once every two years, storms cause moderate damage to properties along the shoreline, and approximately three times a century a catastrophic storm rips over the Island. In a few hours severe storm conditions can alter the shore as much as normal conditions do in a hundred years. Thus, shoreline recession is a variable process, depending mostly on the frequency and severity of storms.

The north shore of Nassau County erodes at a rate of one half foot to a foot per year, and Suffolk County's north shore erodes at an even faster rate. Despite such vulnerability, people have continued to build all along this fragile shoreline. In order to protect shorefront property, it has been the practice to construct jetties, groins and seawalls and to nourish beaches. These measures, however, tend to be effective only in a limited area and may actually cause serious problems in adjacent areas.

West of Port Jefferson is a highly irregular configuration of deep harbors and bays separated by peninsulas projecting into Long Island Sound. Sand and gravel eroded from the peninsulas have been deposited as spits (e.g., West Beach on Eaton's Neck) and bay mouth bars (e.g., Old Field Beach at Port Jefferson). East of Port Jefferson, a line of uninterrupted bluffs rising as high as 130 feet extends all the way to Orient Point. Erosion rates of these bluffs range from 0.8 to 5.2 feet a year.[1]

The Island's south shore includes two distinct physiographic features: an eastern headlands section on the Island's south fork and an off-shore barrier complex. The eastern headlands section, extending 33 miles westward from Montauk Point to Southampton, is characterized by truncated hills of varying heights and steepness. Fronted by narrow beaches of gravel and coarse sand, these headlands have suffered severe erosion.

The barrier complex stretches parallel to Long Island for 73 miles west from Southampton to the Nassau County-New York City boundary. Fire Island National Seashore and Jones Beach State Park and other recreational areas are found on these formations. Consisting of ocean beach, irregular sand dunes and bayside tidal lagoons, these narrow islands are continually subject to the action of waves, wind and westward longshore currents. Most important, these barriers receive the brunt of severe storms and protect the bays and "mainland" from storm damage.

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[1]Lee E. Koppelman, et al, The Urban Sea: Long Island Sound (New York, 1976), p. 50.

In addition to the loss of land through erosion, valuable land resources on Long Island have been absorbed in the rapid population expansion from west to east. Although Suffolk County remains today the most productive agricultural county in New York State in terms of value of products sold, most of the farmland in Nassau and western Suffolk Counties has been developed, either for residential, commercial, and industrial purposes, or utilized for transportation services.

The salt marshes and meadows of Long Island are highly productive fish and wildlife habitats. They also serve as pollutant filters and as natural buffers dissipating the energy of storm waves. However, during the period 1954-1964, these multiple values were often overlooked as 8,200 acres of marshland in Nassau and Suffolk Counties were filled in for residential, recreational, industrial and related development. This ten-year period saw somewhat greater losses in Nassau County (33 percent of the total 1953 acreage) than in Suffolk County (17 percent of the total).[2]

Increased development has also put added stress on the Island's groundwater aquifer, its sole source of potable water. Since the aquifer is vast and continually replenished, the overall quantity and quality of Long Island's underground water supply is satisfactory. However, a greater demand for water from the western end of the aquifer has created an east-west imbalance in the system. Failing septic tanks in natural aquifer recharge areas threaten to elevate nitrate concentrations in the groundwater.

Stormwater runoff is another development-related problem affecting the groundwater supply. Recharge basins have been built throughout Long Island to retain this runoff and filter it back into the aquifer. Now, trace levels of toxic chemicals from lawns, roads, parking lots, industrial sites and other areas have been detected in some parts of the aquifer. Stormwater may require treatment to remove those chemicals.

Although the overall condition of Long Island's marine surface water is good, human uses of the coast cause localized degradation. Surface waters in and adjacent to highly developed areas are impacted by nitrates and BOD (biochemical oxygen demand) from municipal sewage treatment plants. These point sources of pollution contribute over 70% of the total internal loading of nitrogen in such areas as Manhasset Bay, Hempstead Harbor and Hempstead Bay in western Nassau County, and Flanders Bay in

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[2]Long Island Regional Planning Board, Fourteen Selected Marine Resources Problems of Long Island, New York: Description Evaluations (Hartford, 1970), p. 37.

eastern Suffolk County. Generally, sewage treatment plant effluents are not considered a major source of bacterial (coliform) contamination of surface waters, unless the plants are outmoded, as in Hempstead Bay. There are relatively few industrial discharges to surface waters on Long Island, and those that do occur (e.g., in Glen Cove Creek) have only localized impacts.

For certain areas, non-point sources of pollution carried by stormwater runoff, streamflow, and groundwater underflow are the major contributors of pollutants to surface waters. Areas where non-point sources are the major contributors include Oyster Bay and Port Jefferson harbors on the north and Great South Bay and Moriches Bay on the south. On-site sewage disposal systems (septic tanks and cesspools), landfills and scavenger waste treatment facilities, and fertilizers contribute directly to surface water quality by contaminating streams and groundwaters with nitrates and other soluble pollutants. Urban stormwater runoff contributes coliform bacteria to most surface waters and has necessitated the closing of large areas to shellfishing. Wastes from waterfowl populations and domestic animals on the Island's east end are collected in runoff and further degrade surface waters. Finally, development-related erosion, dredging and dredge spoil disposal add particulates and other pollutants to coastal waters. In addition to local point and non-point sources, pollution from New York City also affects the quality of Long Island's surface waters.

Offshore, a potential for additional pollution exists with Outer Continental Shelf oil exploration and related activities. Based on United States Geological Survey estimates, there is a 59% chance of one to four spills of greater than 1,000 barrels over the life of North Atlantic field operations. Tankers using the Nantucket to Ambrose traffic lanes could endanger the Island's barrier beaches as well.

Water quality problems may also affect the Island's important commercial fishing industry. Total landings of fish (finfish and shellfish) reached a peak of 31,000 metric tons in 1938, continued high for a decade, and declined steadily to about 15,000 metric tons in the late 1970's. This decline may have been caused by a combination of factors such as deteriorating water quality, overfishing, manmade environmental changes, and natural fluctuations.

Nonetheless, the water surrounding Long Island continues to be a permanent or seasonal home for a wide variety of finfish and shellfish. Although certain species of finfish are present throughout the year, seasonal migrants tend to dominate the fish population. The important deepwater species are found primarily on the southern side of the Island and also in the vicinity of Block Island Sound, Montauk Point and Georges Bank. Of all

shallow water species landed in 1978, hard clams accounted for the greatest tonnage and dockside value. They were found primarily in Great South Bay. Oysters and scallops were harvested primarily in the Gardiner-Peconic Bay area.

Not only do the vast expanses of water surrounding Long Island support commerce, they also constitute an extensive recreational resource serving residents of the entire New York metropolitan region. Public access, as well as good water quality, is essential to the enjoyment of coastal waters. The Fire Island National Seashore, seventeen State parks, and numerous county, town and private recreational areas provide access to coastal waters. In Nassau County, despite great development pressures, extensive lands have been set aside for recreation uses: 3,234 acres are Federally-owned, 5,261 State-owned, and 5,315 county-owned. In Suffolk County, where development pressures have been less, there was an opportunity to bank many more acres of parkland in anticipation of growth: 3,391 acres are Federally-owned, 18,545 State-owned and 14,787 county-owned.[3] Still, the Island will require additional recreational capacity over the next 25 years, not so much to meet new demand as to relieve current pressures.

New York City

Each of New York City's boroughs is situated on an island, with the exception of the Bronx which is part of the continental land mass. The topography of these islands range from abrupt rocky outcroppings in linear patterns, such as those found in northern Manhattan, to steep slopes of unconsolidated glacial material in random clusters which level out on the edges of the island, finally ending in wetlands and beaches.

Throughout the City's history, its land has been intensively used. Surface conditions have been radically altered by excavation, filling, construction and paving. The extent of wetlands has been significantly reduced and natural drainage patterns altered in many cases as filling activities extended the City's land area. Yet, with all these alterations, the general physiography remains predominantly as it was determined by geological formation and other forces.

The Hudson River flows along Manhattan's western shore carrying water from the distant Adirondack Mountains. It is a tidal estuary, as are all the straits surrounding this island. Fresh water laden with nutrients mixes with salt water in these estuaries to create an ideal environment for a wide variety of

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[3]Long Island Regional Planning Board, Nassau-Suffolk Regional Element Report, (Hauppauge, 1978) p. 18.

plant and animal species. Jamaica Bay, an estuary with associated wetlands, is a major spawning ground for finfish and crustaceans as well as a habitat for at least 200 species of birds.

New York Harbor is naturally divided into several parts. The Lower Bay at the entrance to the Atlantic Ocean is connected, via the Ambrose Channel, to the Upper Bay which in turn meets the Hudson River. Forty-two channels run throughout the Harbor. These channels require constant maintenance. Unfortunately, adverse environmental impacts have been associated with the processes of dredging spoil disposal, particularly when the dredged materials are polluted.

During dredging operations, sediments are resuspended and mixed with water, thereby increasing the potential for immediate release of contaminants into surrounding areas. When the dredged sediments or spoils are deposited at an open water disposal site, contaminants may be released slowly into the overlying water column for several years. Because of this threat, the Federal government is phasing out the disposal of polluted dredge spoils in open waters.

Alternate methods for dredge spoil disposal must be developed for the New York City region. These methods include inland disposal and placement behind diked enclosures. However, the shortage of available and suitable onshore disposal sites and the potential leaching of contaminants from such areas into adjacent ground and surface waters make these alternative methods expensive and hazardous.

Other important adverse impacts may result from dredging and disposal activities in New York City's waters. These include changes in bottom topography, local water circulation patterns, and flushing, erosion and sedimentation rates. Biological effects, such as the loss of the aquatic habitats mentioned above, may result from the physical and chemical impacts of dredging.

The potential for oil and hazardous spills is high in New York Harbor due to the substantial amount of commercial shipping. This possibility is compounded by the location of numerous oil and other bulk storage facilities along the City's and New Jersey's waterfronts. While the development of offshore oil and gas production and new energy facilities may contribute to the revitalization of some deteriorating shorefront areas in New York City, the chances for spillage multiply.

Floating debris in the Hudson River and New York Harbor is another serious problem. The debris comes from decaying piers and bulkheads, abandoned ships, and vegetation. It is estimated that the River and the Harbor annually receive over 600,000[4] cubic feet of debris which poses a threat to commercial shipping and recreational craft.

The Port of New York has been the nation's foremost maritime center since the Erie Canal opened in 1825. For many years, the volume of foreign cargo grew tremendously; and industries, associated with or dependent on water transportation, developed along Manhattan's shores.

However, the heyday of New York's port has passed. People and commerce have moved from inner city to suburb, leaving many underutilized, sometimes abandoned, sites along Manhattan's waterfront. New methods of production, increased reliance on the truck for product distribution, need for more space, antiquated physical plants, deteriorating neighborhoods, and spiraling property taxes compounded by the financial incentives provided by suburban counties and other states, are among the reasons for the reduction in manufacturing and commercial activity along New York's waterfront. Revitalization of these areas is the most effective way to encourage economic development without at the same time consuming valuable suburban and rural open space.

Some deteriorating waterfront areas might be redeveloped to meet the recreational needs of New York's seven million residents. Much of the City's outdoor recreation is based on structured activities, with opportunity for less structured relaxation provided along the southern shore in Gateway National Recreation Area and at other smaller sites in all five boroughs. Here, good water quality allows for such activities as swimming and fishing. However, a great many of the City's residents lack adequate means of transportation to outlying parks, are barred from their immediate shore by private development and forced to crowd into the more accessible facilities. Development of recreation sites in deteriorated waterfront areas closer to densely populated residential centers would relieve crowding at existing facilities, provide easier access, and at the same time contribute to an improved economic climate.

More important than inadequate recreation resources for the people of New York City are the basic problems of solid waste disposal, and water and air pollution. Partially treated sewage is discharged into adjacent waters, however new treatment facilities are under construction and existing plants are scheduled for upgrading.

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[4]Bruce Howlett Inc. New York City and Hudson River Waterway Use Study (Brewster, New York 1977) p. III-71

Urban stormwater runoff and combined sewer outflows significantly affect the quality of coastal waters in the New York City.

While many of the critical environmental and economic problems besetting New York City affect areas well beyond its boundaries, the City's vast natural and cultural resources are a boon and creative stimulus not only to the immediate region, but also to the State, the Nation and beyond.

Hudson River Estuary

The Hudson River estuary is a long arm of the sea, extending 150 miles inland. Its present geologic form dates from the period after the last glacier. As the glacier melted, rising seawater moved in and flooded the old course of the river. Today, because it is so large a tidal and navigable river, the Hudson is unique in the northeastern United States.

As an estuary, two major characteristics of the Hudson are its tidal action and its salinity. Up to Troy, the River's flow reverses with the tide, the mean tidal range at Albany being 5.3 feet. The limit of salt water intrusion in the Hudson varies. It is primarily determined by the interaction of the tidal force, which pushes salinity up the estuary, and the freshwater inflow, which flushes the estuary seaward. The limit, therefore, changes with the seasons; during spring runoff, freshwater inflow is greatest and salt water extends not far beyond Yonkers; while in the winter, salt water can extend nearly to Poughkeepsie, a distance of seventy miles.

The history of the Hudson River reflects a strong relationship between the natural environment and the economy. Access to the River, water transportation, fisheries, agriculture and the scenic quality of the area have been major factors in the development of the Valley. These factors, plus the proximity of large population centers, some of which depend on the river as a source of water supply, continue to make the Hudson a unique economic and environmental resource for the State, and therefore, are the major concerns of the Coastal Management Program for the Hudson Valley.

The Hudson is an important link in the State's transportation network, being navigable for ocean-going vessels as far as Albany. Beyond Albany, the State Barge Canal provides a system for shallow draft vessels which connects the Port of New York with the Great Lakes and the St. Lawrence River. The Port of Albany is the most diversified of the upstate New York ports. It is a significant economic force in the Hudson Valley because of its location at the center of a large market area with excellent highway and railroad access, a 12-month operating capability, and a strong commitment from both the State and the Albany-Rensselaer

business community to see to it that the Port realizes its potential as a shipping and industrial center. Between the Port of New York and the Port of Albany, the Hudson River serves a limited but important group of water-related industries including petroleum, sand and gravel, cement, and gypsum. Without access to the River, these industries would operate at an economic disadvantage. In general, the region benefits from the lower cost of water transportation as compared to land routes. In some cases (particularly gypsum and gravel), the cost savings of water shipment are directly responsible for the location of those industries along the Hudson.

In the mid-eighteenth century, rail lines were built along both sides of the Hudson. For almost the entire length of the east shore, and for half the length of the west shore, these railroads were built directly on the River's edge. Thus, railroads have severely limited access to the Hudson. However, the railroad must also be seen as essential to economic life in the State. It should also be noted that while the railroads have limited physical access, they have also served to prevent other development of the shore which might have had greater adverse impact on the quality of the coast.

The Hudson River is inhabitated by an extraordinarily rich variety of fish species. Some of the best known are diadromous forms, those fish which spend part of their life cycle in freshwater and part in salt water. Among the important diadromous species are the American eel, shad, alewife, striped bass, and sturgeon. Two species of sturgeon, shortnose sturgeon (Acipenser brevirostrum) and Altantic sturgeon (Acipenser oxyrhynchus) are found in the river. The former is a listed endangered species. Indeed, the River is one of the major spawning grounds for several commercially significant Atlantic species, particularly striped bass. In the past, commercial fishing in this estuary was a viable industry. However, fishing activity has been reduced because of the sharply increased pollution, the unpredictability of the catches, and changing social conditions. While the quality of its waters has improved through treatment of municipal wastes, past discharges of toxic wastes still contaminate the River. Because of this toxic pollution, all commercial fishing in the River below Troy is banned except for shad, goldfish, and large sturgeon. Within this estuary and its immediate environs, there are many important wildlife habitats, particularly the numerous wetlands which are used by migratory waterfowl and other forms of wildlife.

The Hudson Valley is an important fruit growing area. Orchards in Columbia, Ulster, Dutchess and Orange counties account for more than a fifth of the value of fruit grown in New York State. Most of this production occurs close to the River. It is found there because of the way the Hudson and the surrounding landforms have influenced the microclimate. The area's greatest concentration of orchards is found in southern Ulster County and northern Orange County. Microclimate and soil conditions make these orchards among the most productive in New York. It is in this area also that the Hudson Valley's best vineyards and wineries are found. This is a small but significant industry with a long

history and a strong potential for growth. The agricultural land in the Hudson Valley is under pressure for conversion to other uses. However, reflecting a local concern for preserving farmland, most of the important coastal agriculture now lies within agricultural districts.

The Hudson Valley coastal region is one of the most outstanding scenic attractions of the United States. Its scenery includes the dramatic vertical rise of the Palisades at the lower end, beautiful views of the Catskills along its upper reaches, the magnificent Hudson Highlands which rise straight from the water's edge, long stretches of farms and historic estates, and a scattering of urban waterfronts. The outstanding scenic resources of the Hudson Valley inspired one of the most significant and first truly American schools of painting. Most of the scenic area in the Hudson River Valley is in public ownership, notably that land owned by the Palisades Interstate Park Commission. In the Highlands, much scenic land is either in State parks or occupied by the U.S. Military Academy. However, significant areas of these scenic resources are not in public ownership and are not protected.

Because the Hudson River can provide large amounts of water for cooling purposes, energy production facilities have been located along its banks. Numerous proposals for additional facilities, mostly nuclear, have been made and have engendered much controversey over their potential impact on existing industry, fisheries, agriculture, and the scenic quality of the region.

Great Lakes - St. Lawrence Region

The Great Lakes - St. Lawrence area has the most diverse shoreline of New York State's three coastal environments. Although the area has problems common to the State's other coastal regions, there are additional concerns unique to this area, which includes the State's second and third largest cities and its principal heavy industrial center. Its borders encompass the vast freshwater bodies of Lake Erie, the Niagara River, Lake Ontario, St. Lawrence River and internationally renowned scenic resources of Niagara Falls and the Thousand Islands.

The mainland coast of the Great Lakes area extends for over 700 miles. When 340 miles of island shoreline - located mostly in the two rivers - are added to this mainland frontage, New York's Great Lakes - St. Lawrence coastline comprises about one-third of the State's entire coast. The greater areal extent is represented by its waters - approximately 4,000 square miles. Onshore, the area of the 78 communities which are located along the coast totals almost 3,000 square miles.

The coastal lands lie in the Erie-Ontario Plain and in the St. Lawrence Marine Plain, areas of generally low relief broken only by drumlin formations along sections of eastern Lake Ontario.

Despite the absence of significant variations in the relative altitude of landforms along the coastline, there are many prominent topographic features which give the area a unique character. In addition to Niagara Falls and the Thousand Islands, which attract millions of visitors each year, those features include: the Genesee River gorge; embayments, such as Braddock Bay, Sodus Bay and Henderson Bay; and the area's only dunes which stretch for five miles along the eastern shores of Lake Ontario.

A particularly significant topographic form are the bluffs found along a substantial portion of the coasts of Lake Erie and from Niagara to Oswego County on Lake Ontario, rising in many places to over 120 feet in height. These bluffs provide superb vantage points for sweeping views of the coast, an amenity which is prized by tourists as well as shoreline residents. However, the bluffs also severely limit access to the shores and to the waters of the coast. This means that the multifaceted relationships between land and water found in other regions are lacking along much of this Great Lakes coast. Because of the single dimension of the coastal experience in most of these bluff areas, and the lack of viewing points further inland owing to the flat land configuration, connection with the coastal waters fades quickly as one moves away from the shore's edge. Another characteristic of the Great Lakes coast is the scarcity of wide beaches, even when the lakes are at their average levels. This is due principally to the absence of suitable beach-building materials.

The waters of the area's lakes, rivers and tributary streams constitute one of the State's most valuable fisheries. Because of previous over-exploitation, water pollution, destruction of habitats and introduction of certain non-native fish, many valuable species, such as lake sturgeon (Acipenser fulvescens) and Atlantic Salmon, became virtually extinct. In recent years, because of intensely focussed fishery management practices such as the salmonid stocking program, many species highly prized by fishermen have been on the increase. Numerous fish habitats of significance are located throughout the area and include: Cattaraugus Creek; Strawberry Island in the Niagara River - a major spawning ground for muskellunge; Eighteen Mile Creek in Niagara County which serves as a spawning habitat for salmonids, northern pike and smallmouth bass; Oak Orchard Creek in Orleans County; Braddock Bay, a major wetland complex which supports bass and perch populations; the embayment habitats of Wayne and Oswego counties; the renowned fishery in the Salmon River; the northern pike fishery which extends from Henderson Harbor through the Thousand Islands; Chaumont Bay which provides not only sport but commercial fishing opportunities; and, Cranberry Creek Marsh on the St. Lawrence River. The area's fishing resources not only offer fine recreation to the residents of the coastal communities but contribute to the region's economic life by attracting large numbers of sports fishermen from both the United States and Canada.

The Great Lakes - St. Lawrence region has a wide array of opportunities for waterfowl hunting, or simply observation of hundreds of species including such rare birds as bald eagles, double-crested cormorants and red phalaropes. Of special note is the location of much of the area in the "flyway" used by thousands of migrating birds each year. These important fish and wildlife resources are located not only in rural communities but in or near urban centers such as Buffalo and Rochester.

Unfortunately, these valuable natural resources continue to be subjected to intense pressures. Toxic substances released into the area's waters have been found in certain Lake Ontario fish. Wetlands, streams and other habitat areas are endangered by development which directly interferes with the life cycle of species or lowers water quality below that necessary for their optimum production. In many places, access to harvest or to observe those species is limited.

Erosion is a regional problem, but it is more severe on Lake Ontario and on sections of the St. Lawrence River, because the shorelands there are composed mainly of vulnerable glacial soils. As the land is undercut, buildings gradually topple onto the beaches or into the water. Many structures, built at great expense to protect the shore, prove to be inadequate; in some cases they have caused erosion of adjacent lands. The financial losses incurred directly and indirectly by both public and private interests are substantial.

The Great Lakes - St. Lawrence area differs from the Hudson River and the marine coast in one important respect -- its waters are not subject to tidal movements. However, the levels of Lake Erie and Lake Ontario respond first to inflows not only from their own drainage basins but also from Lake Michigan, Lake Superior and Lake Huron, whose waters eventually reach the sea through the St. Lawrence River. Water levels are also affected by the speed with which waters can flow down from Lake Erie and Lake Ontario. In the case of the former, the depth of Niagara River's existing channel limits the rate of outflow. Because Lake Erie in recent years has been at a level higher than the long-term average, studies are under way to determine the feasibility of changing the Niagara River's channel configuration to allow more water to escape from the Lake. On the other hand, Lake Ontario's outflow channel, the St. Lawrence River, was modified in 1958 so that the Lake's water level could be managed for three purposes: to allow deep draft ships to enter Lake Ontario from the sea; to provide for the operation of hydro-electric power plants; and, to permit a greater outflow from the Lake. In 1973, a severe storm, occurring during a period of very high water level, caused extensive damage to shoreline properties. Since then, coastal residents, fearful of the continuing high levels, have criticized the International Joint Commission for failing to take their interests into account.

Recreation is a major concern in the area, not only as to the extent of the resources but also their quality and the public's accessibility to them. State, county and local governments and the private sector are all suppliers of such resources. Forty State parks line the shores, placed to take advantage of such features as: scarce wide sand beaches on low-lying lands, as at Lake Erie State Park, Evangola State Park, Hamlin Beach and Selkirk Shores; areas of high scenic quality, as can be viewed from the cluster of State parks around Niagara Falls and the river gorge; and the unique juxtaposition of land and water in the Thousand Islands region where several State parks are sited. County and municipal parks and facilities, and those owned by private interests, add considerably to the region's total number of recreational resources. Despite this abundance, a number of problems remain. In the urban areas of Buffalo and Rochester, there are still pressing needs for swimming, boating and fishing opportunities. In some instances, resources exist, but because of poor water quality, swimming is precluded. In Buffalo and in other places, highways block access to shorelands, thereby reducing the opportunities for residents to enjoy their coastal resources.

The anticipated expansion of interest in boating will impose greater demands on existing facilities in the region which are not sufficient to satisfy needs in many areas, particularly on Lake Erie and Lake Ontario where the fisheries are attracting great attention. More harbors of refuge are required, because of the larger number of smaller craft being used by fishermen and the dangerous storms which can arise very quickly on both lakes.

The residents of the Great Lakes - St. Lawrence area also share a major concern with those of other coastal regions - how to bring new life to the often abandoned, and run-down, waterfront sections of their communities, both large and small. This concern reflects a growing recognition of the unrealized economic and social potential of ports and harbors, such as Buffalo, Rochester, Oswego and Clayton, which served in the past as mainsprings for the area's development. The challenge is to revitalize those waterfront locations in a balanced way and thus restore them to their historic role as major contributors to the well-being of the region.

SECTION 3

COASTAL BOUNDARIES

Introduction

The Coastal Management Program has established statewide boundaries in accordance with the requirements of the Coastal Zone Management Act of 1972, as amended, and its subsequently issued rules and regulations. This was not a simple task; New York is unique among the coastal states in the diversity of its "coastal areas" and "coastal waters." As indicted previously, the State's Coastal Area is comprised of distinct sectors: Long Island, a land mass fronting on the Atlantic Ocean, which exhibits strong land and water interrelationships; New York City, where the intensity of land and water uses is the greatest in the State; the Hudson River Valley, with a unique estuary that extends 150 miles into upstate New York; and the Great Lakes - St. Lawrence River region, which contains a vast non-tidal freshwater coastal system.

The Coastal Zone Management Act and the Federal rules and regulations pertaining to it define a number of general and specific requirements that must be followed in determining statewide coastal management boundaries:

1. A determination of the inland boundary necessary for the management program to control shorelands, the use of which have a direct and significant impact on the coastal waters;

2. A determination of the extent of the territorial sea, or, where applicable, of State waters in the Great Lakes;

3. An identification of all federally-owned land or lands which are held in trust by the Federal government, its officers and agents in the coastal area and over which the State does not exercise any control as to use;

4. An identification of tidal and saline waters, transitional and inter-tidal areas, salt marshes, wetlands, and beaches; and,

5. A process for consultation with adjoining coastal states so as to minimize the possibility of incompatible uses occurring at boundary junctures.

Both State and local agencies provided input to the definition of New York's Coastal Area. Regional and municipal planning agencies mapped in sketch form an initial coastal boundary, employing guidelines developed by the Department of State. The Department of Environmental

Conservation, under contract with the Department of State, proposed a statewide boundary determination process based upon work performed during the initial phase of the program by the various agencies. The Department of State summarized the initial boundaries which were developed and recommended by the local agencies. The recommended boundaries were delineated on maps at a scale of 1:24,000.

Boundary Criteria

Following this preliminary work, the Department of State adopted a set of boundary delineation criteria which were in accord with the Federal requirements and also recognized a variety of State and local concerns. These criteria, outlined below, were employed in defining the final coastal boundary:

1. Utilize a one-tier boundary rather than a multiple-tier concept. Despite proposals by several jurisdictions for a multiple tier approach to boundary definition, the single tier boundary was adjudged to provide for simpler admininistration.

2. Conform with the nearest cultural feature or political boundary. Employment of recognizable or known land-marks such as a road, railroad, utility right-of-way, or municipal boundary as the onshore feature to delineate coastal boundaries permits speedy determination as to whether a particular parcel of land lies within the defined coastal boundary. Unless otherwise indicated, the shoreward side of a road, railroad or other right-of-way is to be considered the boundary line.

3. Include all land and water uses directly impacting coastal waters. The boundary encompasses all those "land and water uses of direct and significant impact on coastal waters" specified in the Coastal Zone Management Act.[1] Such impact is defined as that which changes the physical, chemical, biological, littoral, or aesthetic characteristics, or the socio-economic values of coastal waters to the extent that the character, use or availability of its resources and/or the environmental quality standards of the coastal waters are so adversely affected that they can only be maintained or restored at high cost to society.

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[1]Coastal Zone Management Act of 1972, as amended, Section 304 (1)

4. Include any specially designated management areas. These comprise State parks along the shore, and areas for which a local waterfront revitalization program has been approved by the Secretary of State, and areas designated as estuarine sanctuaries.

5. Include tidal and saline waters, wetlands, islands and beaches. The State's Coastal Area includes all coastal waters which, as defined by the Waterfront Revitalization and Coastal Resources Act, include "lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East and Harlem rivers, the Kill von Kull and Arthur Kill, Long Island sound, and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes." All barriers and other islands situated in these waters are within the coastal boundary. Also, significant portions of creeks, streams and rivers which are tributaries to these coastal waters are found within the Coastal Area.

6. Exclude present federally-controlled lands. The Federal legislation specifies that such lands be identified and then excluded from the boundary. All Federal lands and facilities situated in New York's Coastal Area are listed in Appendix D. Major land holdings are delineated on the Coastal Area maps.

7. Provide buffer areas, where appropriate. Where desirable for aesthetic or other reasons, a landward buffer area of up to 1,000 feet from an identified political/cultural feature is provided, where otherwise the feature itself would serve as such boundary.

8. Coordinate boundary lines with those of adjacent states. Such action is necessary to avoid incompatible use conflicts at the juncture of New York's coastal boundary with those of Connecticut, New Jersey, and Pennsylvania. Throughout the development of New York State's Coastal Management Program, discussions were held and information was exchanged with officials from neighboring coastal states regarding the location of the coastal boundaries. It was determined that no major conflicts would arise due to any differences in the location of the inland boundaries at the borders of the respective coastal states.

9. Incorporate, to the greatest extent possible, local agency recommendations. Preliminary boundary proposals made by local agencies provided a basis

for final boundary determination, although some modifications were made to incorporate one or more of the preceding criteria.

Special Accommodations

The following were additional concerns, reflecting existing State policies and local circumstances which were recognized in the final landward boundary delineation:

1. Agricultural lands - The boundary was extended inland to include certain areas of coastal dependent agriculture where that use was very intensive, covered a large contiguous area and there was a clear inland boundary, i.e., a change in land use.

2. Viewsheds - Efforts were made to include within the boundary those avenues of visual access to the shore from public viewing points such as roads and public recreation areas. The ridgeline that defined the limits of what could be seen, for example, from the Hudson River or its shore was used to include the most scenic areas, primarily the Hudson Highlands and the Palisades.

3. Power Plant Sites - All existing steam-electric generating facilities of 50 megawatts or more, all sites for which application has been made to the State Siting Board to construct such a facility and all hydroelectric facilities, if coastal waters are used for cooling or generation purposes, were included within the coastal boundary. If a site for which application has been made is rejected by the State Siting Board, the boundary will be re-evaluated according to the boundary criteria listed above.

4. Historic Sites - Those historic sites which have a close association with the history of New York's coast were included. Also included were small coastal villages with historic relationships to the coastal waters.

5. Industrial areas - All areas of coastal-dependent industrial activity and areas with known potential for such development were included, primarily areas zoned industrial and located adjacent to existing coastal dependent industrial areas.

6. 100 Year Flood Line - The area encompassed by this line, as identified by the Federal Emergency Management Administration under the National Flood Insurance Program, is the area most directly

affected by the dynamics of the coastal process. Where the 100 year flood plain is clearly coastal related, it is included within the boundary. This flood line is a significant boundary determinant on many of the downstream segments of creeks, around embayments and along the shoreline itself.

7. Coastal Recreation Areas - Those recreation areas that are not State parks but are on or near the coast were included within the boundary. These areas include municipal and county parks and beaches, fishing and boating access sites, and campgrounds.

It should be noted that the above were not rigidly applied; in some areas additional specific information from counties, citizen groups, and other sources was used in determining boundaries.

Figures 1-4 illustrate the application of the boundary criteria and special accommodations at various locations in the State's Coastal Area.

New York State Coastal Area

Landward Boundary

Generally, boundary proposals made by local government agencies form the basis for the delineation of New York's landward coastal boundary. Understandably, modifications were necessary where local recommendations did not satisfy the criteria established for the statewide approach. Where a local agency could not agree on a boundary proposal, the Department of State developed the boundary line in accord with the indicated criteria.

As a result of the above process, the landward boundary of New York State's Coastal Area varies from region to region. Generally, the following conditions prevail:

1. The inland boundary is approximately 1,000 feet from the shoreline of the mainland.

2. In urbanized and other developed locations along the coast, the landward boundary is about 500 feet from the mainland's shoreline or less than 500 feet at locations where a major roadway or railroad line runs parallel to the shoreline.

3. At locations where major State-owned lands and facilities and electric power generation facilities abut the shoreline, the boundary extends inland to include such lands and facilities.

In the Long Island region, the State's Coastal Area includes all barrier and other islands which are situated in coastal waters. On the mainland, the landward boundary is generally 1,000 feet from the shoreline, however, at major tributaries and headlands it extends several thousand feet inland. Along the Long Island Sound coast of Westchester County, the boundary extends 1,000 to 8,000 feet inland.

In New York City, this boundary extends 500 to 1,000 feet inland at most locations. However, on Staten Island and along major tributaries, such as the Bronx River, Newtown Creek and Flushing Creek, the landward boundary is several thousand feet from the mainland's shoreline.

Throughout most of the Hudson River Valley region, the landward boundary is generally 1,000 feet, but at some locations over 10,000 feet, from the River's shoreline. The latter occurs at places which are exceptionally scenic (for example, Hudson Highlands) or have significant agricultural and recreational lands.

Finally, the Coastal Area in the Great Lakes region of the State is about 1,000 feet inland from the shoreline. However, in many of the urbanized and developed areas of the coast (for example, Buffalo, Rochester, Oswego, Alexandria Bay and Ogdensburg) and at several locations where State highways and rail lines parallel the shoreline, the boundary extends 500 feet or less inland.

Seaward Boundary

The Federal requirements regarding the seaward boundary are explicit. The State's Coastal Area must include all coastal waters that are within its territorial jurisdiction. In accordance with these requirements, the Department of State has established the following seaward boundaries:

- Great Lakes - St. Lawrence Area - Beginning at the Lake Erie Pennsylvania/New York line, the boundary follows the international boundary through Lake Erie, the Niagara River, Lake Ontario and the St. Lawrence River to that point where the St. Lawrence River leaves the United States.

- Atlantic Ocean Area - Beginning at the New York/New Jersey line, the boundary follows the State boundary in the Hudson River, Upper Bay, Arthur Kill and Raritan Bay to the three-mile limit of the territorial sea in the Atlantic; follows the New York/Rhode Island boundary in Block Island Sound and the New York/ Connecticut boundary within Long Island Sound.

Mapping

As indicated above, a set of maps, presenting the entire Coastal Area of New York State at a scale of 1:48,000, has been filed with State agencies. Additionally, appropriate copies of these maps have been filed with the clerks of coastal counties, cities, towns and villages. These maps show the location of the State coastal boundary and major areas of excluded Federal lands.

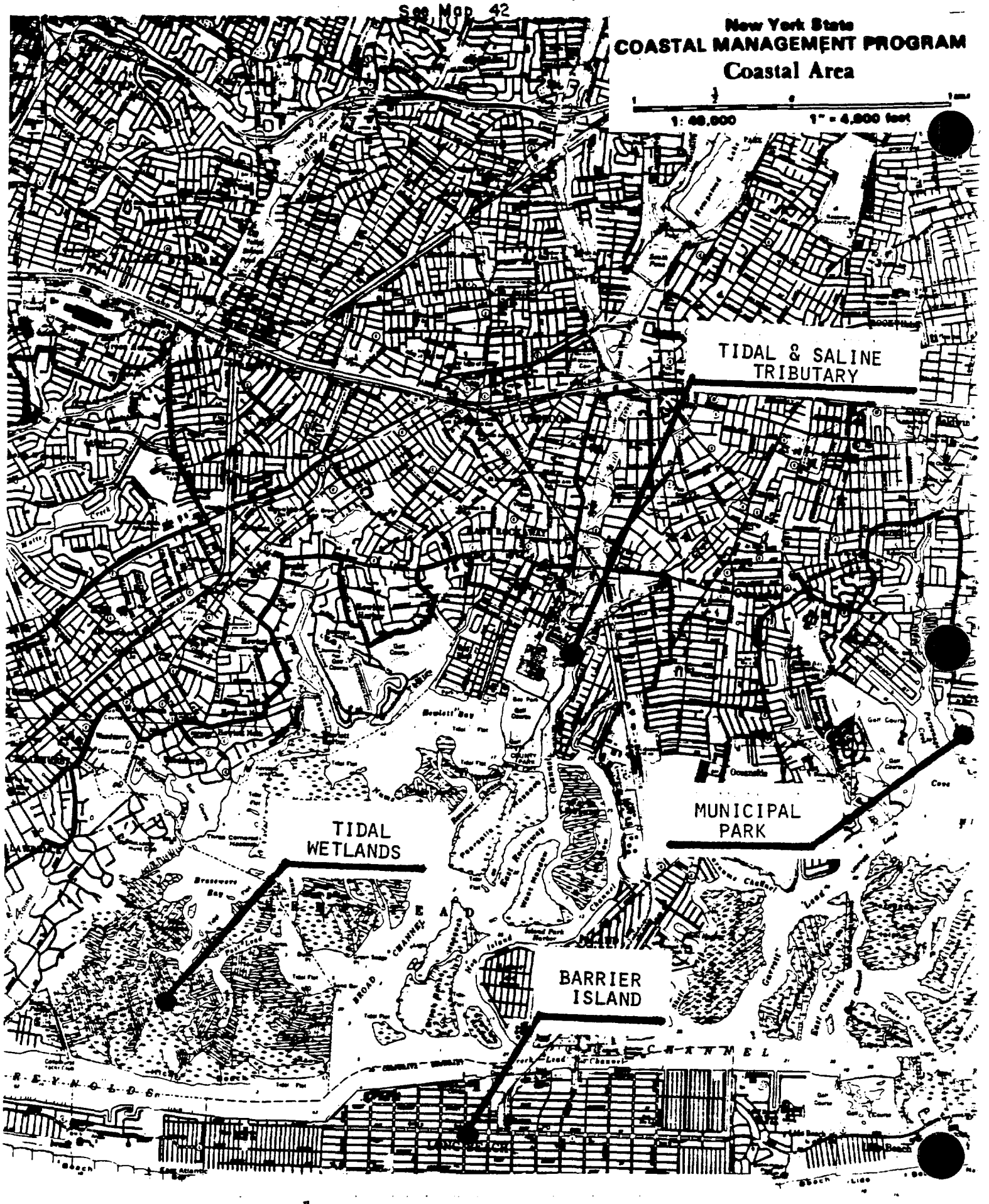

FIGURE 1 APPLICATION OF BOUNDARY CRITERIA

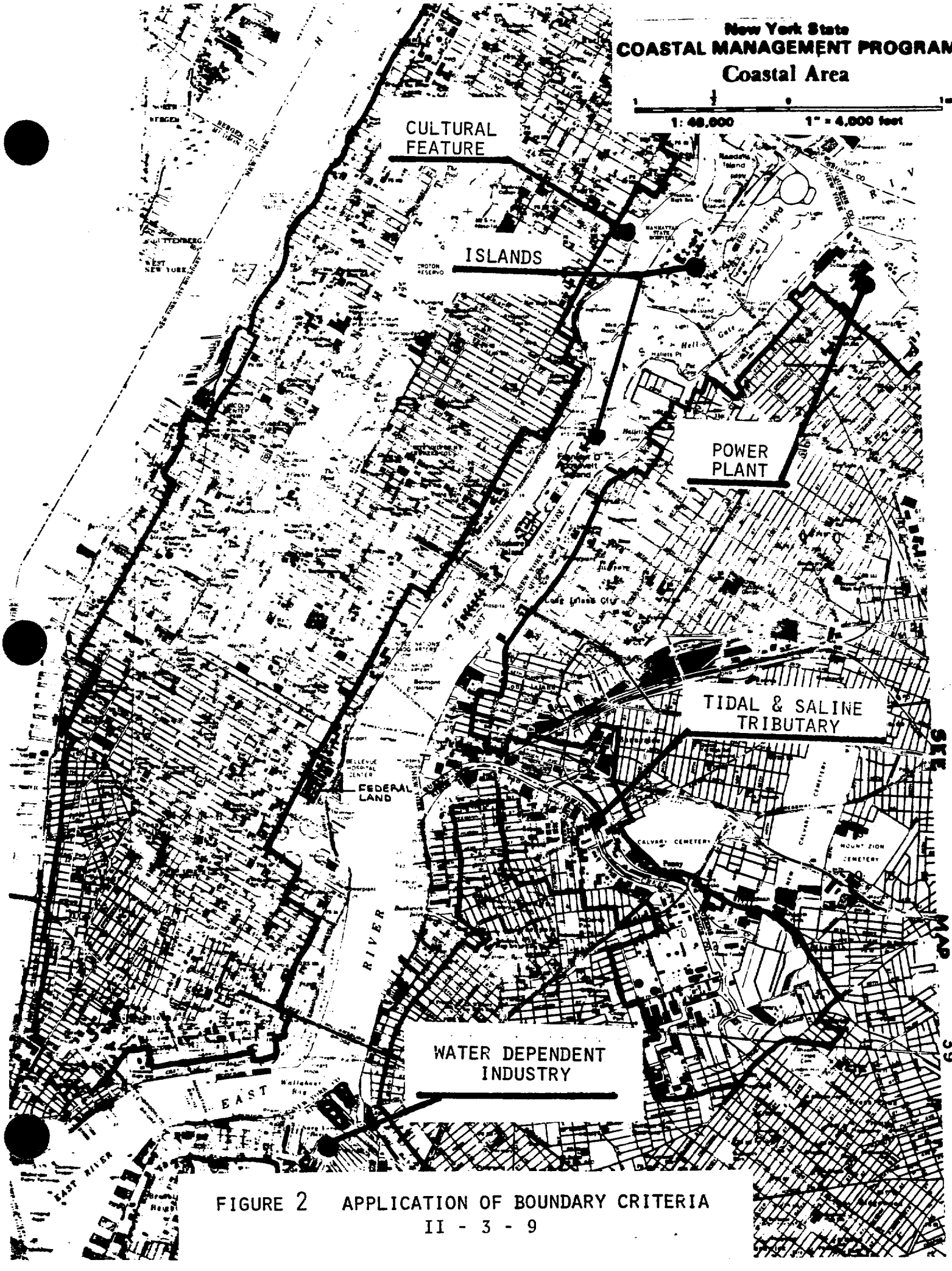

FIGURE 2 APPLICATION OF BOUNDARY CRITERIA

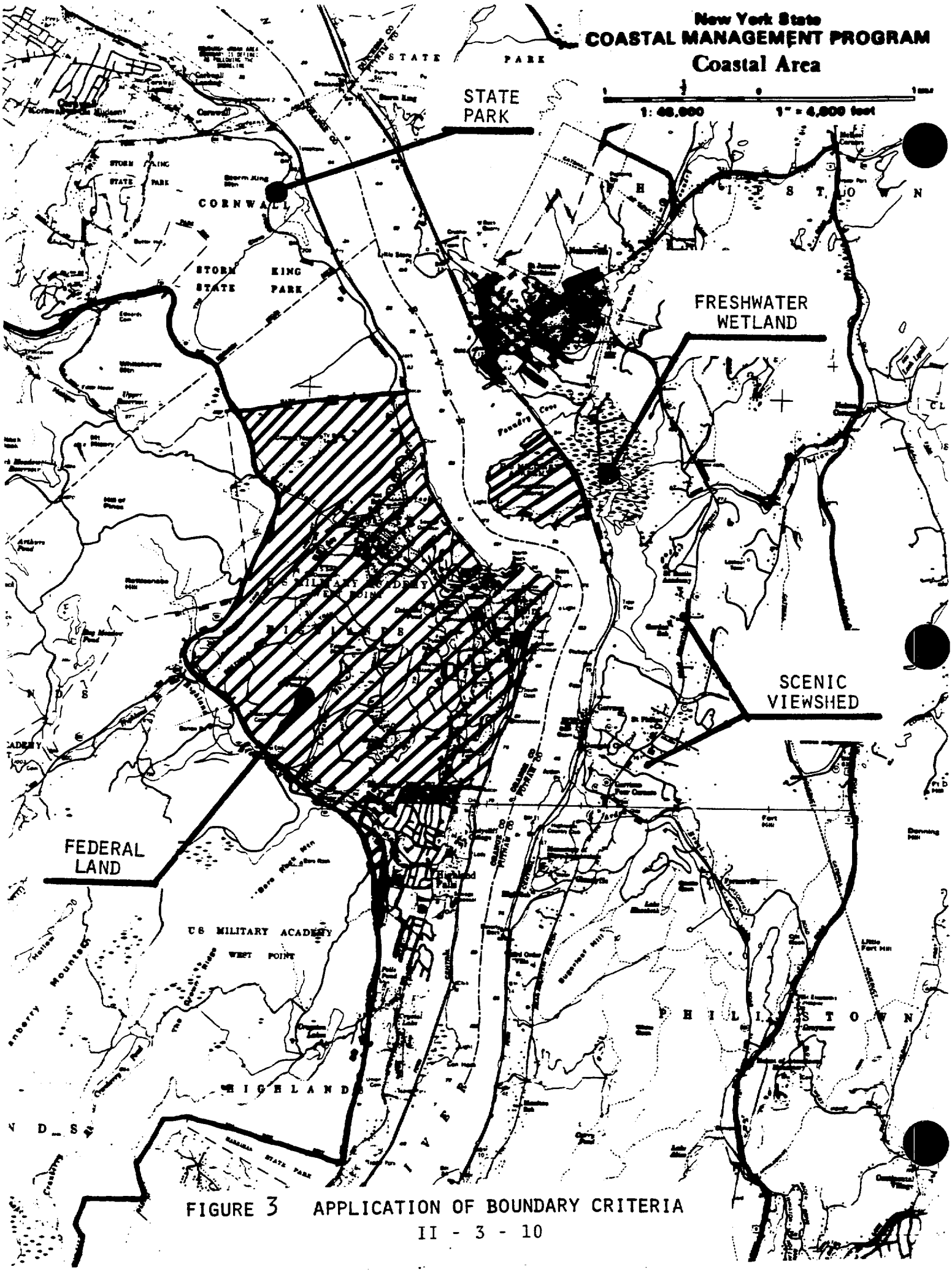

FIGURE 3 APPLICATION OF BOUNDARY CRITERIA

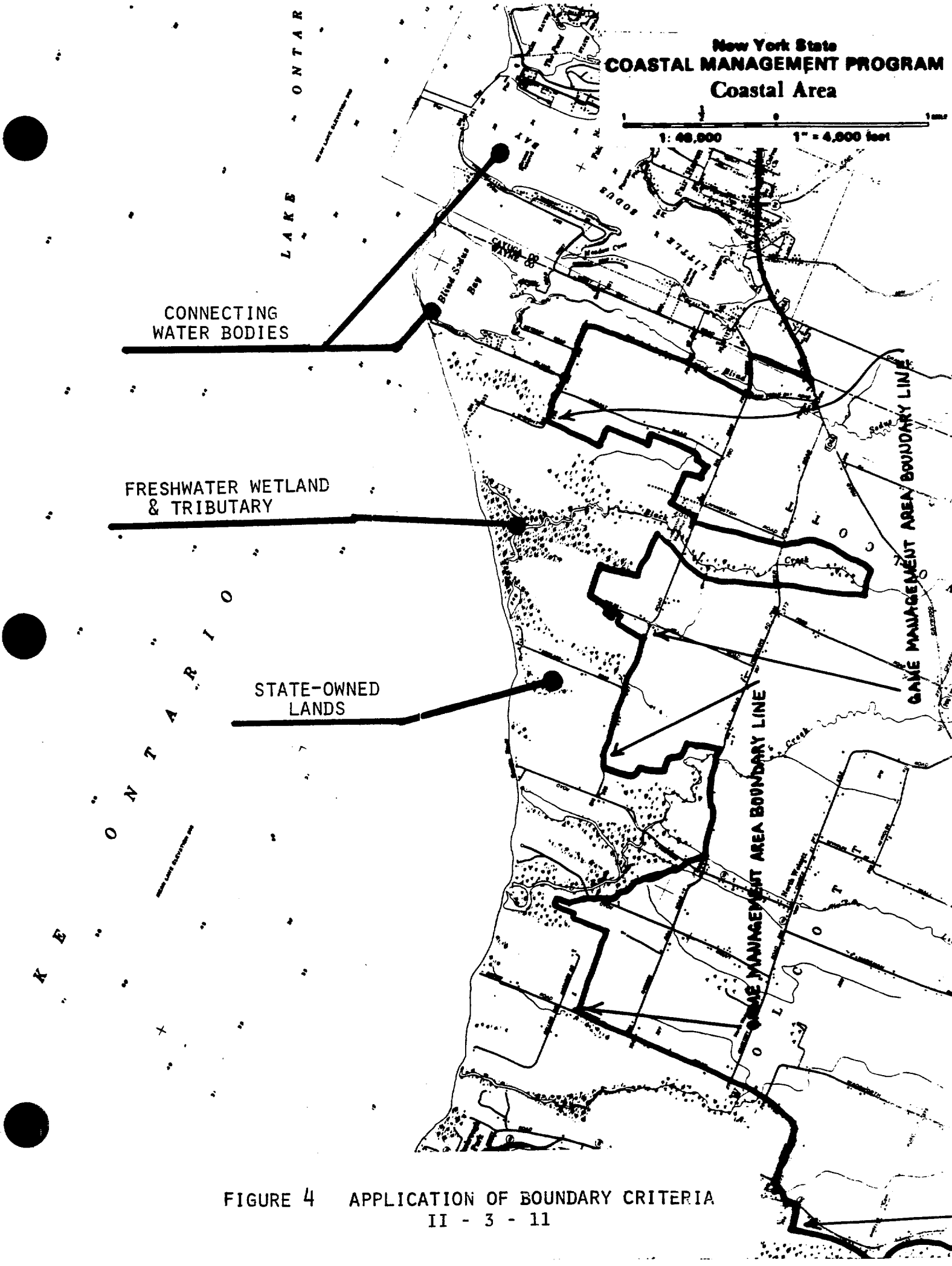

FIGURE 4 APPLICATION OF BOUNDARY CRITERIA

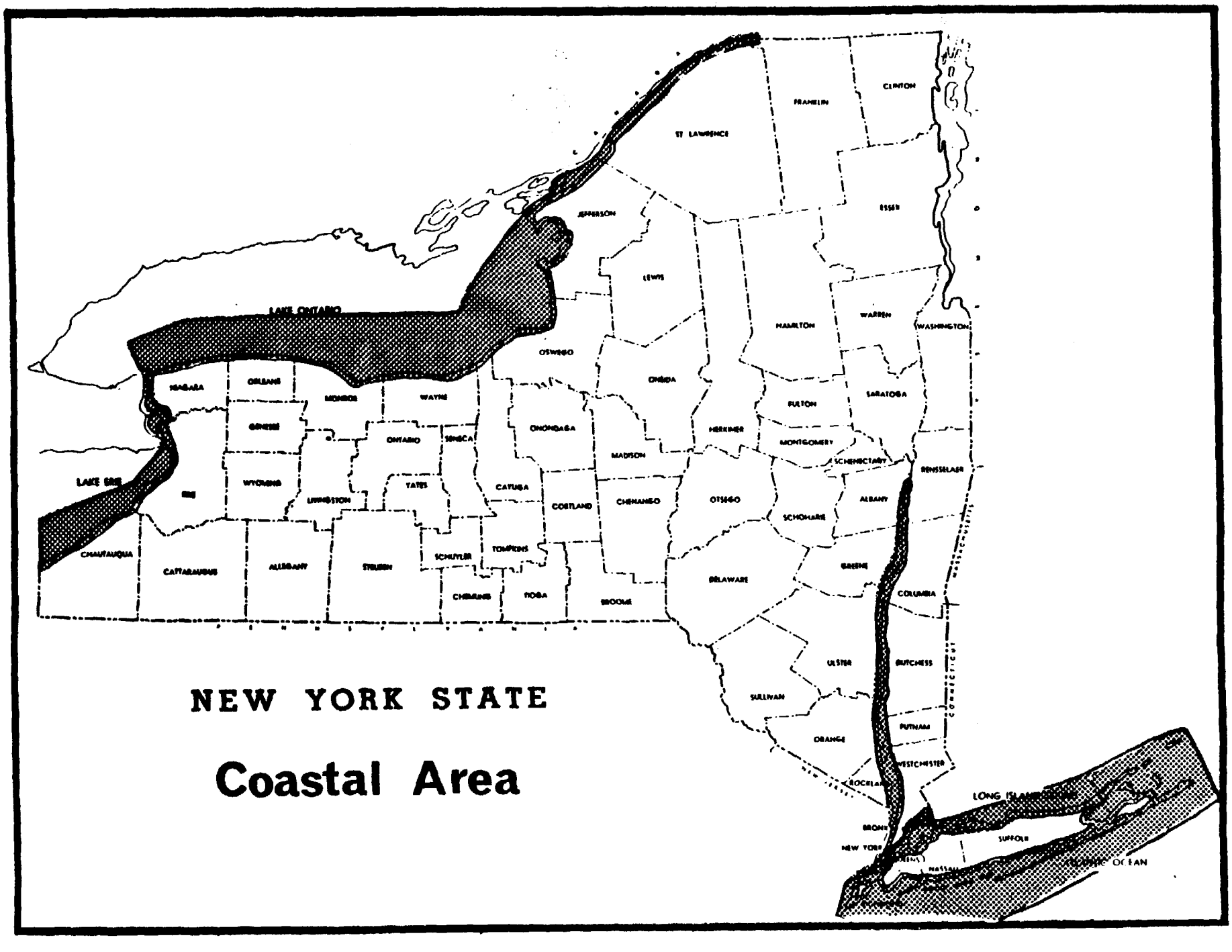
NEW YORK STATE
Coastal Area
LAKE ONTARIO
LAKE ERIE
ST LAWRENCE
FRANKLIN
CLINTON
ESSEX
JEFFERSON
LEWIS
HAMILTON
WARREN
WASHINGTON
OSWEGO
ONEIDA
FULTON
SARATOGA
NIAGARA
ORLEANS
MONROE
WAYNE
GENESEE
ONTARIO
SENECA
ONONDAGA
HERKIMER
MONTGOMERY
SCHENECTADY
RENSSELAER
MADISON
ERIE
WYOMING
LIVINGSTON
YATES
CAYUGA
COSTLAND
CHENANGO
OTSEGO
SCHOHARIE
ALBANY
CHAUTAUQUA
CATTARAUGUS
ALLEGANY
STEUBEN
SCHUYLER
TOMPKINS
CHEMUNG
TIOGA
BROOME
DELAWARE
GREENE
COLUMBIA
ULSTER
DUTCHESS
SULLIVAN
PUTNAM
ORANGE
WESTCHESTER
ROCKLAND
BRONX
NEW YORK
QUEENS
NASSAU
SUFFOLK
LONG ISLAND
ATLANTIC OCEAN
CONNECTICUT
MASSACHUSETTS

Figure 5

SECTION 4

PROGRAM MANAGEMENT

Introduction

New York State's Coastal Management Program must perform two major roles in order to achieve its overall purpose. One is to coordinate existing programs, activities, and decisions affecting the State's coast. The second is to advocate specific desired coastal activities. These two functions are supported by regulations promulgated by the Federal Office of Coastal Zone Management which require a State's program to satisfy the following criteria:

1. The management program must contain policies relating to resource protection, land use and development, and governmental processes (15 CFR 923.3).

2. The State must have sufficient legal authority to carry out and assure compliance with the program's policies (15 CFR 923.40, 923.41 and 923.43).

3. The State must indicate the organizational structure that is to be used to implement and administer its program (15 CFR 923.46).

4. A single State agency must be designated to administer the management program (15 CFR 923.47).

This section addresses all of the above-listed criteria. However, the criteria pertaining to program policies and legal authority are discussed in some detail in Section 6.

In the development of New York State's Coastal Management Program, several determinations were made in response to the above Federal requirements:

1. New York State would, to the greatest extent possible, rely upon existing laws and programs to implement the Program's objectives.

2. In July, 1981, two bills -- the Waterfront Revitalization and Coastal Resources Act and the Coastal Erosion Hazard Areas Act -- were signed into law. This legislation filled gaps in existing laws and programs, thus enabling the State to have an approvable Program.

3. Comprehensive review processes, such as the Environmental Quality Review (Environmental Conservation Law, Article 8) and Siting of Major Steam Electric Generating Facilities (Public Service Law, Article VIII), would be used to determine an action's consistency with the Program's policies.

4. Local governments would be encouraged, to develop and implement waterfront revitalization programs, thus participating in the State's Coastal Management Program.

The above factors were important in shaping the basic framework of New York State's Coastal Management Program, particularly the State's response to the Federal requirement as to the method for ensuring compliance with the Program's policies. New York State must clearly demonstrate that the entities (e.g., State agencies) responsible for the implementation of its Coastal Management Program will exercise their authorities in conformance with the Program's policies.

The Coastal Zone Management Act of 1972, as amended, requires that one of three techniques (or any combination of the three) be used to ensure compliance with a State's coastal policies. New York State's Coastal Management Program utilizes the first two techniques identified by the Act, but primarily, the second technique, "direct State land and water use planning and regulation", because New York already has many regulatory, capital construction and other programs in effect at the State level which address coastal concerns. There are two ways of operating a coastal management program under this technique: 1) to adopt comprehensive legislation that addresses all coastal concerns and requires State agencies to comply with the law's policies; or 2) to "network" existing programs so that when taken together they result in a comprehensive and unified approach for managing coastal land and water uses. New York's Coastal Management Program employs the networking approach, and compliance with coastal policies is ensured by the consistency provision of Article 42 of the Executive Law and the proposed regulations which implement this requirement.

For specific parts of the State's Coastal Management Program, the first technique will be utilized. Essentially, this technique involves implementation by local governments of State-established standards, criteria and procedures. New York State has enacted several laws for the protection and management of particular resources and areas -- freshwater wetlands, coastal erosion hazard areas -- which authorize the use of this technique. In each case, the State has established criteria and standards that have been or must be incorporated into these local programs prior to implementation by a local government. The State must review and approve such programs and is responsible for assuring that the programs are implemented in accordance with the established criteria and standards. Where non-compliance is found, the State may withdraw its approval of the local programs.

Where local implementation is not approved, the State will continue to rely upon the second technique.

Management Role of State Agencies

Most State agencies will have a role in the implementation of the Coastal Management Program. The extent of their involvement will vary due to the nature and, in some instances, the geographic jurisdiction of the programs that they operate. Their participation will involve the promotion and coordination of activities which occur within or affect the State's Coastal Area.

Coastal Management Agency

As the designated coastal management agency of New York State (L. 1975, C. 464, §47), the Department of State will be responsible for administering the Coastal Management Program as well as coordinating activities essential to its implementation.

Chapter 464 of the Laws of 1973 authorizes the Secretary to apply for, receive and administer any Federal funds which are made available to the State under the Coastal Zone Management Act of 1972, as amended. These Laws also permit the Secretary to enter into agreements with other State, regional, county and local agencies which could assist the Department of State in the administration and/or implementation of the Coastal Management Program.

The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) requires the Secretary to file, maintain and, when appropriate, amend the Coastal Area map. As discussed in Section 3, this map shows the lands and waters in New York State to which the Act's coastal policies apply. The Act also charges the Secretary to review and approve waterfront revitalization programs prepared by coastal communities. As part of this review process, State agencies and appropriate county and local governments will be consulted before the Secretary of State approves any local waterfront revitalization program. In situations where a conflict between a local program and an existing State policy arises, the Secretary must attempt to resolve the difference.

The Department of State will perform other activities which are essential to the State's Coastal Management and Waterfront Revitalization Programs. Monitoring the decisions of State agencies as to the consistency of their proposed actions with coastal policies will be an important administrative activity. The Department will track actions proposed in the Coastal Area through the State Environmental Quality Review Act (SEQRA) process and will evaluate the consistency determinations made by State agencies. When appropriate, the Department will advise the agencies on the consistency of such actions with the coastal policies. The Program-related administrative and implementation activities of agencies under contract to the Department will also be monitored and reviewed.

Changes to policies and boundaries of the Coastal Area require the review and approval of the Secretary of State.[1] If appropriate, such changes may necessitate notification, review and/or approval by Federal and local governments. Procedures covering amendments to local waterfront revitalization programs are found in the draft regulations pertaining to the Department's review and approval of such local programs.

The Department of State will also be responsible for conducting the Federal consistency review process at the State level. Generally, the Department will evaluate major actions proposed in the Coastal Area of the State by Federal agencies or by entities requiring Federal permits and determine the consistency of those actions with the Program's policies. Specific procedures governing this review process are contained in Section 9 of this report.

Departmental of Environmental Conservation (DEC)

DEC has the major responsibility for protecting the natural resources of the coastal area. This responsibility includes new administrative authority for protecting coastal erosion hazard areas as well as its existing permit authority for wetlands, both tidal and freshwater, and air and water quality.

In its permitting role, DEC reviews most activities that have the potential to impact coastal resources. Those with the potential for significant impact are thoroughly reviewed in connection with the SEQRA process and can be approved only after DEC has found that the activity will be consistent with the policies of the coastal management program. This review will ensure comprehensive implementation of the program with respect to a wide variety of activities.

In addition, DEC is responsibile for a number of direct and funding activities, some of which, such as the construction of wastewater treatment facilities, have major consequences for coastal development. The assured consistency of these activities will have major long range beneficial effects on the coastal area.

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[1]Amendments to the State's Coastal Management Program are also subject to National Oceanic and Atmospheric Administration's regulations under 15 CFR 923.

Other State Agencies

State agencies, including State created authorities, commissions and boards, operate a number of programs which are critical to and may affect the proper management of New York's coastal resources. In addition to the Departments of State and Environmental Conservation, some of the other agencies include the Offices of Parks, Recreation and Historic Preservation, Business Permits, Energy, and General Services; the Departments of Transportation and Commerce; the Public Service Commission; the Power Authority of the State of New York; and the Port Authorities of Albany, Buffalo, Ogdensburg, Oswego, and New York - New Jersey; and the St. Lawrence-Eastern Ontario Commission. The State's property disposition, acquisition and leasing, capital project construction, financial assistance, regulatory and planning programs cover many land and water activities that beneficially use and adversely affect these resources. Some of the land and water activities affected by the agencies' programs include the construction of highways; acquisition and development of parklands; siting of energy facilities; construction of seawalls, bulkheads, groins and jetties; and leasing of underwater lands. Most of these programs serve singular purposes, but collectively they form an impressive block of State programs which are aimed at the wise use and protection of coastal resources. Thus, agencies of New York State are equipped and are expected to perform a vital role in the implementation of the Coastal Management Program.

The Waterfront Revitalization and Coastal Resources Act is the basis for bringing together all of the appropriate State agencies' programs for the purpose of implementing New York State's Coastal Management Program. Section 912 of the Act establishes several general policies applicable to the Coastal Area of the State and provides the legal basis for most of the policy statements contained in Section 6 of this report. The intent of these policies is to provide direction to State agencies when operating their programs in the Coastal Area. These policies cover a range of concerns pertaining to the use and protection of natural and man-made coastal resources, but one significant declaration is "...to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing the loss of marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems". This policy sets the tone for New York State's Coastal Management Program, and the objective that State agencies' should strive to achieve in the Coastal Area.

Section 919(1) of the Waterfront Revitalization and Coastal Resources Act requires that "...actions directly undertaken by State agencies within the coastal area... shall be consistent with the coastal area policies of this Article." This provision of law effectively ties together the programs of State agencies by binding their decision-making actions to the coastal policies. Thus, the assurance that these agencies act in accordance with these policies is provided by Section 919(1). Actions which are not consistent with applicable coastal policies are to be prevented or, where appropriate, modified to an extent that they may be found consistent with the policies. The State agency having jurisdiction over a proposed action is responsible for determining the consistency of that action with the coastal policies. In instances where two or more agencies may have some jurisdiction over a proposed action, each agency is expected to make its own consistency determination. The actions of State agencies must also be consistent, to the maximum extent practicable, with local waterfront revitalization programs which have been approved by the Secretary of State.

Advocacy Role of State Agencies

In carrying out their respective administrative and coordination responsibilities, the Department of State and other State agencies will promote a number of interests that are central to the overall purpose of the Coastal Management Program. These interests include: (1) the revitalization of waterfront areas; (2)the siting of water dependent uses; (3) the protection of significant fish and wildlife habitats, scenic and historic areas and farmlands; (4) the enhancement of economic and other activities in small harbors; (5) the reduction of damages caused by flooding and erosion; and, (6) the stimulation of research, dissemination of information, and the participation of the public and private sectors on coastal-related activities.

The major vehicle for promoting waterfront revitalization is through the implementation of voluntary local government waterfront revitalization programs. Section 8 of this document details the minimum requirements to be met by local waterfront revitalization programs. The implementation of these programs, once approved by the Secretary of State, is substantially assisted by the requirement that State agencies are to be consistent with the approved programs. In addition, when such local waterfront revitalization programs are incorporated into the State's Coastal Management Program through the amendment or routine implementation processes established by the U.S. Department of Commerce, Federal agencies must also be consistent.

In addition to the local government effort, the Department of State, as the Coastal Management agency, will further revitalization by:

- Assisting State agencies in establishing priorities for waterfront projects.

- Investigating and establishing alternative funding and land use mechanisms which would not unduly burden the public or private sector. This would include investigating the feasibility and appropriateness of such mechanisms as simplification of State permits and other similar permits between levels of government, incentive zoning, revolving loan funds, special tax districts, dedication of property taxes, public benefit assessments, sand and gravel mining fees, tax increment financing, and Outer Continental Shelf revenue sharing.

- Fostering interagency involvement in revitalization efforts on a continuing basis.

There are two major vehicles for promoting water dependent uses. First, State agencies are required to avoid undertaking funding or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses. State agencies must also utilize appropriate existing programs to encourage water dependent uses. Second, the Department of State will work with other State agencies responsible for those coastal resources whose proper use could be water dependent. For example, the Department of State will work with the Departments of Agriculture and Markets, Environmental Conservation, and Commerce to determine methods for expanding the State's commercial fishing industry at proper locations, and then work with selected coastal communities that can feasibly increase this industry.

A primary vehicle for protecting significant fish and wildlife habitats is through the authority granted the Department of Environmental Conservation by the Waterfront Revitalization and Coastal Resources Act. Significant habitats will be identified and mapped on the State's Coastal Area map. In most instances, it will be possible to avoid or mitigate adverse effects of an action through careful timing or conditioning of that action.

Two means will be utilized in the Coastal Management Program's advocacy for scenic areas. The first is through waterfront revitalization programs, described in Section 8. The Department of State will also provide assistance on the usefulness of several approaches available to local governments for increasing the quality of and/or protecting scenic areas.

The second means is through the Department of State's identification of a limited number of scenic resources of State-wide significance on the Coastal Area Map. Once identified, State agencies must determine whether a proposed action could affect this resource. If the proposed action does affect the resource, agencies are encouraged to choose an alternative site for the action. If it is not feasible, special siting and design guidelines are offered which will minimize degradation of this resource.

The Program actively promotes the preservation of all historic and cultural resources which have a coastal relationship, by requiring protection of the area around historic sites, as well as areas of significance. Further, the Program requires State agencies and local governments with approved waterfront revitalization programs to actively seek to restore or revitalize appropriate areas through adaptive reuse.

The Department of State's research efforts will include working with the Office of Parks, Recreation and Historic Preservation to develop additional means of augmenting preservation and development of coastal historic areas.

Important agricultural lands will be identified and mapped on the Coastal Area map. State agencies are required to prevent actions that would result in a significant loss of such identified agricultural lands. Local waterfront revitalization programs are required to protect important farmlands if they are within the waterfront areas.

State agencies are required to consider whether any proposed action would detract from recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits and other compatible activities which enhance small harbor areas and hence make significant contributions to the State's tourism industry. Local waterfront revitalization programs are required to recognize the social benefits of small harbors and ensure their protection. Further, through the Programs's research activities, alternative means for effectuating these actions will be sought.

Visual and physical access to and along the shore will be protected and increased, in part thorugh a single coordinated statewide access planning process. This process will result in the identification of a list of the specific access improvement areas to which the State will give priority within financial and legal limits. Local waterfront revitalization programs must also increase access and protect existing access. Various procedures that may be used are discussed in Appendix B.

The damage to property inflicted annually by flooding and erosion in the State's Coastal Area is not only a burden on individual shorefront residents, but on local governments and the State who lose valuable facilities and are called upon to expend substantial sums for the replacement and for the installation of protective structures. The Coastal Management Program's advocacy stance seeks to reduce this ever-increasing economic waste by setting standards for land development and for the protection of natural defenses which reduce the risk of damage in flood and erosion prone areas.

National recreation objectives drawn from the above sources are: (1) to consider recreation as an equal among other uses competing for space along coastlines; (2) to provide high quality recreational opportunities to all people while protecting the coastal environment; (3) to increase public recreation possibilities in high density areas; (4) to protect existing recreation areas from the adverse effects of contiguous uses; (5) to improve coordination and management of recreation areas; and, (6) to accelerate the no-cost transfer of surplus Federal property for recreational uses.

New York's coast possesses many fine and varied public recreation areas, including the Fire Island National Seashore and a portion of the Gateway National Park System. The State's Coastal Management Program recognizes the multiple values of these facilities in terms of their contribution to the economy, their role in achieving more desirable land use patterns, and their immeasureable benefit to the health of residents and visitors. In support of these values and the national interest, New York's Program supports increasing the number of recreation facilities in its coastal area while protecting them from excessive use and incompatible adjacent development. For a complete discussion of recreation policies, see Part II, Section 6 of this report.

Conflicts between various national and State interests arise inevitably when activities, such as residential, transportation or energy development, compete with recreational facilities for use of limited waterfront space. Frequently, the other uses prevail because they are considered more profitable and more critical.

A number of State laws, plans and processes ensure that, among other critical concerns, the national interest in recreation will be adequately considered in New York State. First, the State Comprehensive Recreation Plan, administered by the Office of Parks, Recreation and Historic Preservation (OPRHP) contains a priority rating system for allocating funds for recreation purposes. One factor in that system gives positive weight to an activity which will contribute to the achievement of State, regional and national goals for recreation. OPRHP also administers the Urban Cultural Park Program which is intended to improve the physical, economic and recreational environments of the State's historic communities.

Under the State Environmental Quality Review Act, recreational concerns must be considered as part of the environmental assessment process; so too under Article VII and VIII of the Public Service Law which requires environmental impact analysis for proposed energy facilities. Finally, under the Parks, Recreation and Historic Preservation, Environmental Conservation, Transportation, and Highway Laws, the State may acquire land for recreational purposes. Appendices E and F contain additional information on these laws and programs.

air and water resources (Policies 30-35 and 40-43). Other agencies, such as the Office of Parks, Recreation and Historic Preservation, Public Service Commission and the State Board on Electric Generation Siting and the Environment administer programs which provide coastal recreational facilities, regulate the siting of energy transmission facilities and regulate the location of electric power plans, respectively.

Other Program policies are based upon the provisions of Article 42 of the Executive Law. These policies carry out the intention of the State Legislature that there be "a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems" (Executive Law, Article 42, Section 912(1)). Executive Law, Article 42, requires that actions directly undertaken by State agencies within the State's coastal area be undertaken in a manner consistent with this second group of policies. In addition, the procedures of the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) will insure that all State agency actions, of whatever type, will be consistent with these policies.

The Department of State, in cooperation with the Department of Environmental Conservation, has prepared draft regulations to ensure that State agencies carry out their responsibilities under section 915(8) and 919(1) of the Waterfront Revitalization and Coastal Resources Act. These regulations take two forms: (1) amendments to Part 617 of the State Environmental Quality Review regulations; and (2) new rules to be promulgated by the Department of State.

State Environmental Quality Review Process

Generally, SEQRA is a comprehensive review process that is applicable to all actions of State and local agencies which may have significant effects upon the environment. Agencies are required to determine whether or not a proposed action is subject to the review process. Exempt, emergency and ministerial actions (Type II actions) are exempted from this process, but other proposed activities must be evaluated for their probable impact on the environment. If an agency finds that an action will have significant adverse environmental effects, a "positive declaration" must be made and an environmental impact statement (EIS) must then be prepared. Before making any decision on an action that requires the preparation of an EIS, an agency must prepare written findings which indicate the following: (1) "consistent with social, economic and other essential considerations from among the reasonable alternatives thereto,

the action to be carried out or approved is one which minimizes or avoids adverse environment effects to the maximum extent practicable; including the effects disclosed in the relevant environmental impact statement," and (2) "consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable."

New York State's Coastal Management Program relies upon SEQRA as a means for implementing the consistency requirement under Section 919(1) of the Waterfront Revitalization and Coastal Resources Act. This review process already contains points of consideration which would help a State agency determine the consistency of a proposed action with coastal policies. In amending the SEQRA regulations to accommodate the waterfront legislation's directives, two conditions were set: (1) the existing review procedures would not be substantially altered or made complicated; and, (2) the agencies be alerted "up front" of any new procedural and substantive requirements.

The principal amendments to Part 617 of the SEQRA regulations address the following:

> For those actions having a significant effect upon the environment and necessitating the preparation of an environmental impact statement, State agencies must ensure that such actions are consistent with the applicable coastal policies contained in the Department of State regulations.

Department of State Regulations

As the State's Coastal Management Agency, the Department of State must be knowledgeable of the activities occurring in or affecting the Coastal Area. The amendments of SEQRA, as described above, will in part enable the Department to track major activities, for it will receive copies of the EIS documents and have the opportunity to comment on such proposed actions. Draft SEQRA amendments are located in Appendix A.

To avoid burdening the SEQRA regulations with additional procedures, requirements and criteria, the Department of State will promulgate regulations which are applicable to "Type 1" and "Unlisted" actions occurring in the Coastal Area. These proposed regulations dovetail with the SEQRA process. Essentially, the Department's regulations include the following requirements and/or items:

1. The completion of a Coastal Assessment Form (CAF) is required for all state agency actions in the Coastal Area. This CAF is to be used to supplement other information in order to assist that agency in determining the significance of the action, pursuant to SEQRA. If the action will not have a significant effect, the CAF will assist state agencies in arriving at their certification decisions, as discussed below.

2. Certificates of consistency must be filed with the Secretary of State for actions that do not have a significant effect upon the environment (as determined under the SEQRA process) and which occur in or affect the Coastal Area or an area covered by an approved local waterfront revitalization program.

3. Coastal policies are described and made a part of these regulations.

All proposed regulations needed to implement the Coastal Management Program will be final prior to approval of the Program.

Judicial Review of Agencies' Decisions

State agencies will be responsible for determining the consistency of their actions with coastal policies. The Department of State will work with the agencies and assist them in fulfilling this requirement under Article 42 of the Executive Law. The Department is not authorized to override the decisions of its sister agencies on matters relating to this Law. A third party may seek judicial review of an agency's determination of consistency pursuant to Article 78 of the Civil Practice Law.

Article 78 proceedings exist primarily to afford relief to parties personally aggrieved by governmental actions. One of the questions that may be raised in such proceedings is whether a determination was arbitrary and capricious or an abuse of discretion. This is a legislative enactment of what has long been the case law of New York. The courts have consistently held that administrative action which is arbitrary, capricious, unreasonable, or an abuse of discretion is subject to judicial review and annulment. In reviewing the action of a public body, the court determines not only whether the action is within the body's statutory power but whether, within the frame of power,the action is arbitrary. Even in the presence of a delegated power of discretion and legislative standards, a determination of a body is reviewed for arbitrariness or unreasonableness within the standards set down.

The test usually applied in deciding the arbitrariness of a determination is whether it has a rational or adequate basis, or, stated in another way, whether the record discloses circumstances which leave no possible scope for the exercise of discretion. Under both the substantial evidence rule and the arbitrary and capricious standard, rationality is what is reviewed by the court.

With respect to who would be "personally aggrieved" so as to have standing to seek relief under Article 78, that hurdle is not a high one in New York State. While a respondent in an Article 78 proceeding may occasionally contest the aggrieved petitioner's standing to sue, the Court of Appeals (the highest court in New York State) has indicated that the right to challenge administrative action should be enlarged rather than diminished. Dairylea Cooperative, Inc. v. Walhley, 38 NY2d 6, 377 NYS2d 451, 339 NE2d 865 (1975). The Court stated that "only where there is a clear legislative intent negating review...or lack of injury in fact ...will standing be denied. Dairylea, supra., 38 NY at 11, 377 NYS2d at 455, 339 NE2d at 868. No such intent is expressed or manifest in Executive Law, Article 42, nor in any other of the State statutory authorities relied upon for implementation of this program.

When taken together, the Department's proposed regulations, the amendments to the SEQRA process and the judicial review of actions will ensure that State agencies will carry out their actions consistent with the policies of the Coastal Management Program. Table 1 lists the major authorities which State agencies will utilize to implement the Program.

TABLE 1

Legal Authorities Essential to
the Implementation of New York State's
Coastal Management Program

1. Agriculture and Markets Law

. Article 25AA - Agriculture District Program

2. Energy Law

. Article 3 - State Energy Policy
. Article 5 - State Energy Office; Organization and Powers, Functions and Duties

3. Environmental Conservation Law

. Article 3 - General Powers and Duties
. Article 8 - State Environmental Quality Review Act
. Article 9 - Lands and Forests
. Article 11 - Fish and Wildlife
. Article 13 - Marine and Coastal Resources
. Article 15 - Water Resources
. Article 17 - Water Pollution Control
. Article 19 - Air Pollution Control
. Article 23 - Mineral Resources
. Article 24 - Freshwater Wetlands Act
. Article 25 - Tidal Wetlands Act
. Article 27 - Collection, Treatment and Disposal of Refuse and Other Solid Waste
. Article 34 - Coastal Erosion Hazard Areas
. Article 36 - Participation in Flood Insurance Programs
. Article 37 - Substances Hazardous to the Environment
. Article 45 - State Nature and Historical Preserve Trust
. Article 49 - Protection of Natural and Man-Made Beauty
. Article 51 - Implementation of Environmental Quality Bond Act of 1972

4. Executive Law

. Article 42 - Waterfront Revitalization and Coastal Resources Act

5. Highway Law

. Article II - Commissioner of Transportation
. Article III - State Highways

6. Navigation Law

- Article 3 - Navigable Waters of the State
- Article 11 - Improvement and Preservation of Waterways
- Article 12 - Oil Spill Prevention, Control and Compensation

7. Parks, Recreation and Historic Preservation Law

- Article 3 - Office of Parks, Recreation and Historic Preservation
- Article 11 - State Board for Historic Preservation
- Article 14 - Historic Preservation
- Article 20 - State Park Preserve System

8. Public Buildings Law

- Article 2 - Commissioner of General Services
- Article 4B - Historic and Cultural Properties

9. Public Health Law

- Article 2 - Department of Health
- Article 11 - Public Water Supplies, Sewerage and Sewage Control

10. Public Lands Law

- Article 2 - Office of General Services
- Article 3 - Unappropriate State Lands
- Article 6 - Grants of Lands Under Water

11. Public Service Law

- Article 3C - Provisions Relating to Liquid Petroleum Pipeline Corporations
- Article 4 - Provisions Relating to Gas and Electric Corporations; Regulation of Price of Gas and Electricity
- Article VII - Siting of Major Utility Transmission Facilities
- Article VIII - Siting of Major Steam Electric Generating Facilities

Local Government Involvement

Many coastal communities have adopted regulatory programs which reflect State-established standards and criteria on matters relating to the protection of freshwater wetlands and flood and erosion control. Federal approval of the State's Program is not, however, dependent upon the preparation and adoption of similar programs by local governments.

The State of New York strongly supports a coastal management effort that encourages local governments to prepare and implement waterfront revitalization programs. Throughout the Coastal Area of the State, many communities have undertaken a variety of activities directed at protecting valuable resources and bringing new vitality to decayed and unused waterfronts. Other waterfront municipalities wish to do so, but lack the financial and/or technical support necessary to accomplish this objective. The State's Coastal Management Program will, therefore, focus its attention on communities which want to initiate and/or continue activities that result in the wise use and protection of natural and man-made coastal resources.

The Waterfront Revitalization and Coastal Resources Act provides the means and incentive for municipalities in the Coastal Area to prepare programs for their waterfront areas and then work with the Department of State and other State agencies implement such programs. By participating, local governments will be eligible to receive financial and technical assistance for the preparation of their waterfront revitalization programs. Upon approval of these programs by the Secretary of State, the communities may also receive assistance for pre- construction activities (e.g., feasibility studies, engineering and architectural designs) essential to projects that are recommended in the approved programs. Further, Section 916(1) of the Act requires State agencies to carry out their various regulatory, capital construction, funding assistance and acquisition activities in ways which are consistent to the maximum extent practicable with the approved local waterfront revitalization programs.

For the purposes of the State's Coastal Management Program, approved local waterfront revitalization programs will provide more specificity to the coastal policies and their geographic application. Since these local programs contain a more detailed approach for managing activities in the Coastal Area, the waterfronts affected by such programs will be treated as special management areas. One of the ways to increase the specificity of the State's Coastal Management Program is the designation and adoption of a program for a special management area.[2] Section 8 of this report provides more information on special management areas.

Local Program Approval Process

Draft rules and regulations have been prepared which establish review and approval procedures for local waterfront revitalization programs. These proposed rules and regulations are contained in the Appendix of this report.

As required by the authorizing legislation, a local waterfront revitalization program must: clearly identify the geographic area to which it applies; state the goals and specific objectives of the program; demonstrate its consistency with the Act's purposes and coastal policies; inventory the waterfront's natural and historic resources; identify current and future land and water uses in the area; describe the municipality's activities essential to program implementation; demonstrate the community's authority and capability to carry out its program; and, identify specific actions by State agencies which would aid local implementation efforts. This information will assist State agencies in determining the effect, if any, that the local program will have upon their activities. Also, the required information is necessary to increase the specificity of the State's Coastal Management Program.

In reviewing a local waterfront revitalization program, the Secretary of State will consider:

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[2]Amendments to the State's Program are also subject to National Oceanic and Atmospheric Administration's regulations under 15 CFR 923

1. Its consistency with the Act's policies.

2. Its fulfillment of the Act's criteria on water dependent and water enhanced uses; public access to coastal waters and water-related activities; promotion and protection of scenic, historic and natural resources; utilization of existing infrastructure; protection of sensitive ecological areas; promotion of port and harbor activities; and incorporation of aesthetic consideration in development activities.

3. Its compliance with existing State policies and State agencies'programs.

4. Its effect upon the facilities, policies and programs of the county and adjacent local governments.

5. Comments provided by the general public, public interest groups, and business organizations.

Notification of the Secretary's approval of a local waterfront revitalization program will be sent to all State agencies and appropriate county and local governments. Amendments to such local programs may be made, but are subject to review and approval by the Secretary. Periodically, the Secretary of State will review the administrative and implementation actions of local governments affecting the coastal area for which there is an approved waterfront revitalization program in order to determine if these actions are being carried out in accordance with the goals and objectives of the approved local waterfront revitalization program.

Program Funding

Pursuant to Congressional appropriations, New York State may receive $3 million in Federal funds in FY 82 for the administration and implementation of its approved Coastal Management Program. The State will provide $.75 - $1 million as its match to the Federal monies. State funds which are provided for the implementation of the Waterfront Revitalization and Coastal Resources and the Coastal Erosion Hazard Areas Acts may be counted as part of the State's required match as appropriate.

State Agencies' Activities

The Coastal Management Program is a statewide program that relies upon State agencies for its implementation. Previous parts of this Section indicated what is expected of the various State agencies. Generally, funds will be provided to the Department of State for its administration of the Program, including its administrative functions required under the Waterfront Revitalization and Coastal Resources Act. The Department's technical assistance to State agencies and to local governments will also be funded by these Program monies.

Where necessary, State agencies will be eligible for funding to cover the costs associated with the consistency determination process. It is anticipated that only the Departments of Environmental Conservation and Transportation and the Office of Parks, Recreation and Historic Preservation, and the Office of General Services may require funds for this purpose. The implementation of State programs critical to the continued approval of the Coastal Management Program will receive necessary financial support. Some State agencies may assist the Department of State in providing technical assistance to local governments and in turn be compensated for their efforts. Finally, some agencies will be encouraged to undertake special studies that will advance Program objectives, including those contained in approved local waterfront revitalization programs. Such studies may focus on one or more coastal concerns and apply to the entire or some portion of the State's Coastal Area.

Local Government Activities

During the preparation of the State's Coastal Management Program, the Department of State encouraged coastal communities to become involved in the Program. Many local governments did participate.

Funding was provided to some for the preparation of waterfront management programs; others received financial assistance to conduct special studies related to a local coastal issue or project. The desire of local governments to bring new or additional vitality to their waterfronts far exceeded the funds that the Department had for this purpose.

Local governments' interest and participation in the State's Coastal Management Program are expected to be substantial. In anticipation of this level of involvement, approximately 50% of the available funds will be allocated for local government efforts. The preparation of waterfront revitalization programs and preconstruction activities for projects recommended in approved waterfront programs will be eligible activities. Special studies which address one or more coastal issues affecting two or more adjacent coastal communities will be eligible for funding under the State's Program. A maximum of one, 12 month grant, not exceeding 50% of the cost for preparing a local waterfront revitalization program may be available.

Local governments will be expected to draw upon their own agencies for the technical expertise that is needed to perform any of the eligible activities. In instances where a local government may not have the capability to undertake such tasks, the Department of State, other State, county and regional agencies should be consulted and, if appropriate, requested to provide the necessary technical expertise. Program funds would be made available to the local government for this purpose.

Funding Priorities

Pursuant to Congressional appropriations, the State of New York may receive $3 million. Given this uncertainty, it is not possible at this time to determine how much money will be allocated to the various Coastal Management Program related activities. However, some general priorities are established to guide the Department of State in its allocation of these funds.

Coastal Management Program funds will be used by State agencies for implementation of State programs critical to the continued approval of the Coastal Management Program, including consistency activities and special studies, if necessary.

Program funds for local government activities will be used for:

1. Preparation and implementation of local waterfront revitalization programs and local ordinances for erosion hazard areas; and,

2. Pre-construction projects and other activities recommended in approved waterfront revitalization programs.

SECTION 5

COASTAL ISSUES

DEVELOPMENT

Introduction

Coastal development is an all pervading concern of New York's Coastal Management Program, and its consideration is recognized and reflected throughout the other policy discussions -- most notably in Agriculture, Energy, Fish and Wildlife, and Recreation. There are several other aspects of coastal development which are discussed below and form the basis for the policies that will guide the State in its various development decisions along the shore.

Deteriorated and Underutilized Waterfront Space

The exodus of people and commerce from the inner city is most clearly manifested in the underutilized, sometimes abandoned and often deteriorated sites found along urban waterfronts. Outdated and deteriorating private and public facilities, the need for more space, increased reliance on trucking, deteriorated surrounding neighborhoods, spiraling property taxes, and financial incentives provided by suburban counties and other states, are some of the reasons for the reduction in development activity along New York State's urban waterfronts.

The Program seeks to reverse this trend so that revitalized urban waterfronts can regain their position as focal points for industry, commerce, culture, recreation and housing.

Competition for Space

Although much of the State's coastline is underutilized, some areas are subject to intense use pressures. The reasons a particular site becomes desirable for development vary, but are generally related to such factors as topography, local climatic and soil conditions, access to transportation, aesthetic value, and surrounding land uses. Unfortunately, where there is competition for a particular site, the market mechanism and existing regulations do not always ensure that the public interest will be served. For example, many uses which are dependent on a waterfront location are preempted by development that merely seeks the convenience of a visually-enhanced setting, or by happenstance. The problem of competition for space can be particularly acute in urban areas.

Because it is the obligation of the Coastal Management Program to consider the long-range interest of the public, the task of the Program thus becomes one of determining which uses should receive priority treatment in the coastal areas, and what form that treatment should take.

Incompatible Adjacent Uses

Because certain sites are desirable locations for a number of uses, a situation often develops where incompatible activities are forced to locate next to one another. An example of this would be in port areas where heavy industrial uses may lower air, water and visual quality, and raise surrounding noise levels, with a consequent reduction in the enjoyment of those people who are participating in nearby recreation activities. Recreational uses within harbor areas, on the other hand, can inhibit port development by restricting industrial expansion, forcing port interests to alter dredging operations, interfering with shipping movements, or by creating safety hazards.

When incompatible uses are, or are proposed to be, located adjacent to one another, the Coastal Management Program, in conjunction with other State and local programs, is faced with the task of mitigating the negative aspects. When new development is to take place, steps should be taken to ensure it will locate where adjacent uses are compatible and, preferably, supportive.

Transportation Issues

State transportation policies have a substantial role in shaping the course of development. Following are those transportation issues which have particularly important implications for the Coastal Management Program:

A. Consequences of Major Transportation Improvements

Most of the State's planned transportation system is already in place. However, significant new developments or modifications may occur in the future. Such improvements would probably bolster the economy of an area, but negative consequences are also possible insofar as another area might be put at a competitive disadvantage, orderly or planned growth patterns might be disrupted, or serious environmental problems might be caused.

B. Access to the Waterfront

While the State's coastlines have served as natural corridors for highways and railroads, the coastlines have frequently been made inaccessible by the existence of these same transportation facilities. For the most part, the damage is done and is, for the foreseeable future, irreversible. However, where new facilities are being planned and where existing facilities do not preempt use of the shoreline, opportunities to increase public access can be accommodated if cost and safety considerations are not prohibitive. This issue is further discussed in the Public Access section.

C. Competition Between Transportation Modes

Relationships among the various modes of transport (particularly the relationship between rail and ship) will vary according to circumstance. In many cases, rail and ship lines are mutually supportive (as in Oswego, where the local Port Authority has opposed the abandonment of the Erie-Lackawanna rail line, and as in New York Harbor, where rail service is being re-established on the Brooklyn waterfront with the objective of enhancing general port activity.) In other situations, various modes of transportation may directly compete with each other, and State supportive action in favor of one may have negative effects on another. The State must encourage a relationship between the various modes of transportation that is based on healthy competition, if not mutual support.

D. Water Transportation Issues

Continued dredging of harbor areas and rivers is a necessary component in any long range improvement of the State's water transportation facilities. The depth to which the channels should be dredged, the precise location, and the manner in which the dredge spoils should be disposed of, are problems that must be addressed. Dredge spoils are further discussed in the Water Resources issue section.

The shipping industry needs accurate knowledge of tides, wind and water depths so that ship movements can be effectively planned. To meet this need, New York State will soon install, and then begin testing, a tidal gauge system for New York Harbor and the Hudson River.

Non-port related activities often have been proposed, or located, adjacent to major port areas, in a manner that could inhibit normal port operations. Mechanisms need to be developed that will recognize the needs of port development when potentially conflicting activities are proposed within or adjacent to port areas.

Navigation on the Hudson River, in New York Harbor and in commercial boat harbors is severely constrained by floating debris. The debris comes from sources such as decaying piers and bulkheads, abandoned barges and ships, and vegetation such as large tree trunks. (It is estimated that approximately 600,000 cubic feet of debris enter the Hudson River and New York Harbor annually.) The debris poses a serious threat to commercial shipping and recreational craft.

Concentration of Development

The argument for concentrating development is based on the need to increase energy efficiency, reduce the cost of public services, make more efficient use of existing infrastructure, increase the likelihood of downtown revitalization, and improve the protection of valuable natural resources.

The Program considers the concentration of development to be crucial in coastal areas because development pressures there are more severe, while the unique natural functions performed by coastal areas are critical to attaining both a sound economy and a sound environment.

The issue faced by the Program is how to accomplish concentrated development, not with a negative approach that merely restricts development, but by adopting a positive approach that seeks to stimulate and guide development where it would be desirable.

Permitting Procedures

The public perceives that increased costs of "doing business" results from burgeoning government regulations. Builders state their costs have increased, in part, because of unnecessary regulations and excessive design standards.

Some manufacturers view regulations in New York State as a reason not to expand and in some cases a reason to relocate out of State.

The Coastal Management Program agrees that the accumulation of single purpose environmental and land use controls has frequently resulted in overlaps, redundancies and inequities in the administration of regulations. The way in which regulations of local, State and Federal government agencies are integrated can be improved.

Consequently, the Waterfront Revitalization and Coastal Resources bill was enacted so as to require the Secretary of State to work with other agencies in an effort to determine ways of expediting development and seeking additional means of effectuating waterfront revitalization. Simplifying and consolidating permit procedures is one means to achieve this desirable goal.

FISH AND WILDLIFE

Introduction

The abundant fish and wildlife found in New York's coastal areas, particularly its estuaries, have long been recognized as important food resources and for their recreational and commercial value. As an indicator of their direct value to the State, the economic benefits derived in 1976 from commercial and sport utilization of New York's marine fisheries were estimated to be $87.8 million and $222.5 million respectively. In 1981, resources from sport fishing in freshwaters was estimated to be $405 million.

The State's fish and wildlife resources also provide a less direct but equally important social benefit in that they function as indicators of the quality of man's environment. The decline of certain species (often the rarer species) is frequently an early symptom of environmental stress and degradation.

Finally the State's living coastal resources are important in terms of their own intrinsic ecological value. Diversity of flora and fauna provides stability to an ecosystem. In addition, these living resources contribute to the productivity of coastal environments through their conversion of energy and recycling of materials.

Hence, the basic goal of New York's fish and wildlife management programs has been to protect, manage, and develop these resources so that they sustain their capacity to continue providing these economic, social, and ecological benefits.

Habitat Protection

Valuable fish and wildlife species cannot be protected and maintained without preserving their habitats. While loss of individual animals can usually be made up by reproduction, loss of habitat will likely result in an irreversible loss to fish and wildlife. A habitat is an area where there exists a unique combination of resources (food, shelter, living space, etc.) and environmental conditions (temperature, climate, salinity, etc.) which animals need for their survival. When man destroys a vital resource or alters an environmental condition beyond an organism's range of tolerance, he destroys its habitat.

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

In New York, a category of habitats which has been suffering the greatest losses are freshwater and tidal wetlands. Until 1973, draining and filling of wetlands for development purposes was largely unregulated.* Wetlands provided convenient, inexpensive sites for disposal of dredge spoils. Such practices resulted in the loss of breeding, nesting and feeding grounds for reptiles, amphibians, mammals, shorebirds and waterfowl, as well as the loss of spawning and nursery areas for fish, shellfish and crustaceans. Many of the wetland areas around the highly developed waterfront sections in Buffalo, Rochester and New York City have been drained and filled.

Less direct, upland land use practices have also contributed to the loss of wetland and aquatic habitats. Vegetation removal, stream channelization, and certain farming practices have increased the variability of water temperatures and surface runoff. Increased fluctuations in surface runoff induces stream bank erosion and sedimentation in coastal tributaries. Important littoral areas used for fish spawning habitat are being blanketed with silt. The silty bay areas are then invaded by nuisance aquatic weed species which radically alter the ecology of the bay systems and thereby destroy vital habitats. Unfortunately, this pattern of habitat degradation is becoming increasingly common throughout the developed areas of New York's coastal region.

*Prior to 1973, some freshwater wetlands (except those on Long Island) were being protected under the Stream Protection Act (Environmental Conservation Law, Article 15, Title 5). Wetlands contiguous to navigable waters and wetlands associated with protected waters (streams and rivers with a classification of C (t) or higher) were and still are being regulated under this Act. In 1973, however, New York increased its regulatory controls over wetlands along the marine coast with the passage of the Tidal Wetlands Act. In 1975, the State adopted the Freshwater Wetland Act.

Toxic Substances and Other Pollutants

In New York, a critical problem is the contamination of fish, wildlife and their habitats with toxic substances, in particular Polychlorinated Biphenyls (PCBs), Mirex, Dioxin heavy metals (mercury and cadmium) and some pesticides. These compounds enter the environment from industrial and municipal discharges, atmospheric fallout, leachate from landfills, or agricultural run-off.

Of particular concern is the accumulation and transfer of toxic substances in the aquatic food chain. For example, Mirex had been discharged into the Niagara River where it collected in the bottom sediments. Small invertebrates feeding on the bottom organic food materials directly ingest the Mirex. It then becomes increasingly concentrated at successive levels of the food chain. Unacceptably high concentrations of Mirex now exist in certain predator fish species such as salmon, lake trout, and smallmouth bass.

In 1976, New York State restricted the possession of these and other fish species caught in Lake Ontario and its tributary streams. Although these restrictions were replaced by a health advisory in March, 1978, the contamination of Lake Ontario fish by Mirex and other toxic compounds persists. As recently as the summer of 1981, Dioxin was detected in Lake Ontario fish. The New York State Health Department has broadened the health advisory for eating certain species known to be contaminated with Dioxin.

An equally serious problem has occurred in the Hudson River where 440,000 pounds of PCBs were discharged into the River and these PCBs have contaminated the bottom sediments, as well as resident and migratory fish species. Cleanup costs for dredging the "hot spots" in the river were estimated to be approximately $49.5 million. Today, commercial fishing for striped bass and the American eel is banned. Recreational fishing is also prohibited in certain portions of the Hudson.

The more conventional pollution problems created by combined overflows, failing septic systems, urban stormwater runoff, oil spills, discharge of vessel wastes and solid wastes, adversely affect fish, shellfish, wildlife and their habitats. These problems persist in areas surrounding the major metropolitan areas of the State such as western Long Island, New York City, Albany, Rochester and Buffalo.

Recreational Use of Fish and Wildlife Resources

Throughout most of New York's coastal area, inadequate public access constrains present hunting and fishing as well as non-consumptive uses such as bird watching, wildlife photography and nature study. Posted lands, strip development, highways and railroads located along the coastline severely limit physical access to the marshes and estuaries

which support valuable fish and wildlife populations. Substantial efforts have been made by State, county and local governments to improve access to these resources through acquisition programs and construction of boat ramps and dock facilities. However, increasing cost of land and construction materials and decreasing amounts of available public funding will limit future efforts to meet increasing demands for public access.

Commercial Fisheries Development

For years, New York's commercial fishing industry has been sadly neglected. New York City, once a prominent fishing port, is used today as a home port by only one commercial fishing vessel. Although the Long Island commercial fishing fleet is still active, not one of the Long Island fishing ports is large enough to be included on the National Marine Fisheries' list of the top 100 fishing ports. Commercial fishing in the Hudson River and Lake Ontario has been severely curtailed due to toxic substance contamination of the fishery resources in these waters.

However, a tremendous opportunity for expanding the State's commercial fishing industry was created with the passage of the Federal Fishery Conservation Management Act of 1976. This law provides U.S. fishermen priority rights to harvest the millions of tons of fish previously being caught by foreign fishing fleets. To realize this development potential, New York must make adjustments in the harvesting, processing and marketing sectors of its fishing industry. Inadequate channel access and limited availability of docking, unloading, and processing facilities presently impede the growth of offshore, deepwater fisheries. An insufficient number of boat ramps, inadequate catch transfer sites, and lack of shellfish processing and gear storage facilities limit development of the near-shore fisheries. Also, it will be necessary to address and reconcile user conflicts between sport and commercial fishermen if growth of the fishing industry is to occur.

Another opportunity for increased commercial fishery development exists with the possible expansion of acquaculture. As a process very analogous to agriculture, aquaculture has been a practice on Long Island since the mid-1800's. By 1880, the Blue Point Oyster had gained international fame. Approximately 10,000 metric tons of oyster meats were produced annually at the turn of the century.

Today, however, only a few of the original private oyster farms still exist. Some firms have converted their facilities to grow hard clams. One recently formed enterprise is experimenting with growing striped bass to marketable size for sale to restaurants. But current production levels of these high-value seafood products do not meet domestic and export market demand. Results of a recent study of the feasibility for expanding acquaculture activities on Long Island indicate that the constraints on aquaculture are primarily institutional and economic rather than technological. Limited access to capital, restrictive State and local laws and insufficient acreage of underwater lands available for leasing to aquaculturists are the primary constraints to future industrial growth.

FLOOD AND EROSION HAZARDS

Introduction

Flood and erosion hazards in the State's coastal areas can be classified into two types by location: along the exposed coasts of Long Island, New York City, Lake Erie and Lake Ontario and along the banks of its major rivers and tributary streams. The first category is the more crucial in New York State's coastal areas.

Flooding and erosion on the State's coasts are generated by powerful natural processes setting water and wind against the shorelands. To maximize their benefits from resources in the coastal area, people have often ignored or been unaware of those processes and have built structures on beaches, dunes, barrier islands, erodible bluffs, and flood plains, where they are subject to damage or loss, or cause harm to natural protective landforms. People have also attempted to defend their property against flooding and erosion by installing protective structures, many of which have been inadequately designed and constructed, and have caused damage to adjacent property. As a result, great economic loss and public expense have been incurred, and human lives endangered.

Beaches are the most valuable of the hazardous coastal landforms, because they are subject to the impact of both wave and current energy as well as continually rising sea levels in the tidal zone. In their natural state, with their movements unaffected by man, beaches may be reduced in extent (erosion), rebuilt (accretion) or remain stable over time, depending on the varying power and direction of the agents acting upon them and on the type and availability of beach materials. Wave energy is the principal agent of change on beaches although wind can also supply sediment to them or deplete them. Waves attacking a beach at oblique angles also generate longshore transport which, on extensive stretches of the State's coast, travels generally in one direction (for example, west to east on Lake Ontario, and east to west along Long Island's south shore). This redirected wave energy will carry beach materials along its path, periodically depleting beaches at one point and augmenting them at others. In some cases, as on Lake Ontario, the sand particles are eventually lost in deep troughs offshore and thus permanently removed from the process.[1] The most extensive beaches in the State's coastal area are found on the barrier islands and "mainland" of Long Island, particularly along its south shore. Although the width of beaches on Lake Ontario and Lake Erie varies with the water levels of the lakes, for the most part the relative scarcity of sand in the coastal lands and, in the case of Lake Ontario, the sharp drop in the beach terrain offshore, have not permitted accumulation of beach materials to the same extent as on Long Island. Beaches are valuable as a first defense against storm waves.

Dunes are formed from sand blown by onshore winds from adjacent beaches and, except for the Deer Creek Marsh and Sandy Pond Marsh area on Lake Ontario, are found only on Long Island. They are constantly changing form, reaching a degree of stability only as vegetation establishes itself. Those on Lake Ontario are of special concern because they were formed thousands of years ago when the lake was at a lower level. Once destroyed, they will never reform because their source of sand is now underwater. Dunes are fragile and very susceptible to damage by man's activities. Dunes have a high value as a second tier of defense against the powerful actions of storm-driven waters and as part of the shore system.

Barrier islands are a unique shore form, the most significant being found on Long Island at Fire Island and Jones Island. (Smaller scale barrier features are also located elsewhere on Long Island and at the mouths of several bays and streams of Lake Ontario). These long, narrow accumulations of unconsolidated materials comprise a beach fronting the ocean, a dune system, and tidal wetlands or beaches and bays on their landward side. The islands are separated by tidal inlets which help flush the inner bays. This combination of shoreforms and natural coastal processes creates the most fragile and unstable of coastal lands which, because of their location, are most attractive for development. When unaltered by man, barrier islands respond to natural forces by absorbing wave energy which, in major storms, is dissipated on the beach and over the dunes, with beach materials often being carried into the bay beaches or wetlands. Barrier islands earn their name in this way by protecting the waters of the inland bays and the shoreline of the "mainland".

After beaches, bluffs are the most prevalent landform in the State's coastal area. Erodible bluffs can be damaged by wave attack and by landward sources such as surface runoff and groundwater seepage. The degree to which waves contribute to bluff erosion depends principally on the geologic composition and structure of the bluffs, the strength of the waves, and the energy-absorbing capacity of the beach at the base of the bluffs. Strong waves, combined with high tides or lake levels which reduce the width and thus the protection provided by the beaches, will produce a high rate of bluff recession.

The attack on bluffs by landward sources can have an effect at least as severe as that caused by waves, and includes: groundwater seeping along permeable layers of sand, carrying soil with it; the gradual slippage of upper bluff materials along a clay stratum; and direct erosion of the bluff face by run-off. The following estimates of annual bluff recession rates on the State's coasts reflect differences in the geologic composition of the bluffs, as well as the relative strength of erosion or other destructive agents at the bluff location: at Old Field Point on Long Island, 5.2 feet per year;[2] on the Lake Erie shoreline of Chautauqua and Erie counties, from 0.5 to 1.1 feet per year;[3] and in the stretches of bluff in Oswego County on Lake Ontario, up to 2.35 feet annually.[4] Average annual recession rates, of course, do not necessarily mean that the bluffs erode steadily at a fixed rate. In some cases, individual storms or slumping may remove land at many times the average rate.

Damages Resulting from Flooding and Erosion

On beaches, barrier islands, bluffs, and other hazard areas such as low-lying flood plain lands, man has built houses and other permanent facilities. Measures of the hazard risks and of the large scale of investments made in those areas are suggested by the following examples. In March 1973, storm waves resulting from the action of strong northerly winds on a high lake level caused damage estimated at $25 million to both public and private property along the New York shore of Lake Ontario.[5] As an indicator of extreme conditions, 1977 estimates showed that over $750 million in damages could be inflicted on the south shore of Long Island between Fire Island Inlet and Montauk Point if the coast were assailed by the most severe hurricane likely in that locale at record high tide levels (a standard project hurricane).[6] The effects of erosion and flooding, however, are not linked solely to catastrophic weather disturbances. For instance, the Corps of Engineers has calculated that annual damages along the 120 mile length of Long Island's south shore are in excess of $30 million. [7] In developing those hazard areas, private as well as public investments are threatened. The burden of maintenance or replacement of local, county or State facilities, and post-storm debris removal, necessitated by erosion and flooding, is borne by public funds. Thus, the drive to locate as close as possible to the shorefront has resulted in the commitment of massive private and tax-financed public expenditures in areas where it is subject to damage or loss.

An additional consequence of development on hazardous shorelands is that it may destroy natural protective landforms such as beaches and dunes which could absorb the energy of stormwaters. Thus, inland development which otherwise would be considered outside the principal hazard zone may become vulnerable.

Damage from riverine flooding and erosion, while not of major proportions compared with that incurred on the marine and Great Lakes frontal shorelands, is significant. Some of the damage occurs on the banks of tributary streams at points near the coast where ice jams, or sediments carried down by the streams or by longshore transport, block their flows. In the narrow channels of the Hudson and St. Lawrence Rivers, erosion caused by ship waves is of concern. Residents on the St. Lawrence River are also particularly disturbed by the threat of erosion caused by the movement of ice resulting from the Winter Navigation/Season Extension Program now under consideration by the Secretary of the Army. The State has affirmed its opposition to the Program.[8] The State is not opposed to shipping on the St. Lawrence River at any time of year when ice conditions are not present. However, the State finds that adequate economic and environmental information does not exist to demonstrate the justifiability of any season extensions on the River which are defined solely by calendar dates. [9] The Program would have little economic benefit to the State while it would impose serious effects upon the management of levels and flows, fish and wildlife and their habitats, production of hydroelectric power, rates of shoreline erosion, and upon shoreline property.

Responses to Coastal Hazards

There are four types of responses to coastal hazards: (1) the building of protective structures, including those which use natural materials such as sand, to defend coastal property against damage by flooding or erosion - the "structural" response; (2) such actions as the planting of vegetative cover, the re-shaping of bluffs or, perhaps the most prudent approach, the avoidance of the hazards by siting buildings in safe locations - the "non-structural" response; (3) the purchase of insurance against the hazards - the "insurance" response; and (4) acceptance of the risk of damage to, and eventual loss of property - the "do-nothing" response. The latter response is one not deliberately chosen by riparian owners but rather forced upon them, most often due to their unawareness of the hazards, or because of their inability to pay for the other alternatives. The other responses are often used in combination with one another.

The "Structural" Response

The most common type of structural response is the installation parallel to the shoreline of frontal protective devices against erosion or flooding. There are several difficulties associated with those widely used devices. Because of the great force generated by coastal processes, the structures must be soundly designed and constructed in order to be effective. However, one study showed that along the eastern end of Lake Ontario and the shores of the St. Lawrence River, less than half of the frontal structures inventoried were of more than limited effectiveness.[10] In addition, improperly designed frontal structures such as bulkheads, revetments and seawalls may accelerate the loss of beach materials as storm wave energy is focused on the beach. Thus, a natural shield may be lost. Difficulty also arises from attempts to protect a house located on a narrow stretch of shoreland. Because erosion may continue on the unprotected sides of the structure which are vulnerable to lateral wave attack, the useful life of an otherwise sound structure could be shortened considerably and erosion conditions on adjacent lands exacerbated.

Protective structures are not only used as defenses against direct frontal attack but also to prevent the loss of, and to build up, beaches. However, the process of littoral transport will add sand on the desired side of a groin or jetty only at the expense of beaches down current which, being deprived of their natural supply of sand, will be more subject to recession, thus eventually threatening buildings at that location. A breakwater may create a similar effect by blocking wave energy and slowing littoral transport, thus causing sand to accumulate on the landward side of the structure.

One group of structural responses takes advantage of natural materials. Dune-building and the replenishment of beaches require sand in great quantities. Sand and gravel mining to meet the future needs of the construction industry is a potentially significant activity in the State's coastal waters. However, care must be taken to ensure that these materials are not obtained from sites, onshore or offshore, which are parts of the delicately-balanced coastal process. The particle sizes of the beach-building materials must also be compatible with the local beach environment or the investment will be lost.

The high cost of protective devices is another problem of the structural response. Because the cost of the most appropriate structure will vary with specific site conditions, the following estimates for a 100-foot stretch of shoreline are only illustrative: stone revetment, eight feet high - $23,000; steel bulkhead, ten feet high - $58,000; timber crib bulkhead, seven feet high - $8,500.[11] A further cost often overlooked by riparian property owners is that necessary to implement a program of maintenance for protective devices. Most structures, although built to reasonable standards and design, will succumb over time to the powerful forces of the sea or lakes and must be inspected and repaired to preserve their effectiveness. The long-term protective capacity design of devices, and thus their original cost may be reduced if property owners follow a prudent maintenance program.

A final cost consideration arises from the case cited above of the property owner who attempts to protect his own small length of shoreline. On a stretch of coast possessing generally similar characteristics of form, geologic materials, and exposure to waves (technically termed a "reach"), the most efficient method may be to protect the entire shoreline. This would require, of course, the agreement of all property owners on the reach to finance the undertaking. However, there may be economies of scale which could make it attractive.

An important aspect of structural responses to coastal erosion and flooding is public sector activities in providing costly large-scale structural solutions including major groin fields, bulkheads, beach nourishment, sand-bypass installations and dune-building. The Federal government is the principal source of those activities with the United States Army Corps of Engineers assigned the greatest responsibility. Generally, the Corps is authorized to become involved in shore, hurricane and tidal, and lake flood protection studies and projects on the Great Lakes and marine coasts as well as in riverine areas. However, in the case of shore erosion and restoration projects, Federal funds may not be used for the protection of private property unless it: (1) is incidental to the protection of public property; (2) would result in public benefits; or (3) is necessary to mitigate shore damages on private property caused by Federal navigation works. An exception to this principle is sometimes made in the event of the threat of extreme flooding as in the Operation Foresight Program initiated during a period of high water levels in the Great Lakes area in 1972-73 through which emergency assistance was provided to private property owners.

The Corps of Engineers may also provide technical assistance to private property owners on flooding and erosion problems. Most Corps projects require cost-sharing with State and local governments for both construction and maintenance.

The largest Corps of Engineers coastal flood and erosion projects are undertaken on the State's marine shorelands principally because: the coastal processes there are more powerful; above mean high water, many of the beaches are in public ownership while almost all of them are owned by the State below mean high water; and shoreline development is more intensive. However, those projects often provoke controversy reflecting disagreement as to their effects on shoreline resources as well as the substantial expenditures involved, particularly in regard to the State and local cost-sharing requirement.

Those elements are seen in the project to protect 83 miles of Long Island's coast from Fire Island Inlet to Montauk Point at an estimated cost of $138 million (1976 prices). Only five percent of this project (authorized by Congress in 1960) has been completed by the placement of 17 of 50 proposed groins and 2,000,000 cubic yards of fill. However, the 15 groins in the Westhampton Beach area, while stablizing the beach on the site, are alleged to have caused heavy erosion to the west and consequent storm damage to shorefront homes in early 1978. An interim project to cure this problem would cost initially $42 million and an additional $8 million every five years thereafter. The State's share of first costs would be over $8 million while Suffolk County would be required to provide almost $4 million.

Although many of the Corps' projects are single purpose (beach erosion, or hurricane protection), some are multi-purpose. On Lake Erie, a new project at Cattaraugus Creek is expected to reduce flooding upstream by preventing ice jams and longshore transport sedimentation at the mouth of the stream. The primary purpose of the project, however, is to create a harbor of refuge to protect recreation craft from storm driven waters. The Corps also has completed, or is investigating a few small projects which do not require Congressional approval: examples include the St. Columbans-on-the-Lake Emergency Bank Protection and Wendt Beach Park Shoreline Erosion projects.[12]

The "Non-Structural" Response

The first component of the "non-structural" response is the strengthening of landforms and the use of appropriate design features in buildings as protection against flooding. A common technique of this type is the planting and careful preservation of suitable vegetation on dunes and on the top or on the face of bluffs to reduce erosion caused by wind, run-off or other agents.

This technique, however, does not prevent wave erosion and is often used in combination with frontal structures at the base of the landform. Other "non-structural" responses of this type include: sand-fencing on dunes to help build up and hold the sand; drainage systems on bluffs to prevent slumping and the formation of gullies; mechanically reshaping the face of bluffs to an angle of repose which will help prevent slumping, and the flood-proofing of buildings or their elevation above the base flood level.

The second component of the "non-structural" response to coastal flooding and erosion is the initial siting of development entirely out of the hazard areas. This method is the most economical as it avoids the various difficulties, including the high cost, of the "structural" approach. Yet it has not been widely followed by shorefront owners. Although this approach does not guarantee perpetual protection, it does significantly improve property owners' chances of reducing the hazard potential.

Some shore property owners with foresight, the necessary funds, and available land, are able to move their buildings out of the hazard zone before damage is incurred. Clearly, the less elaborate the building, the greater the savings; some cottages can be pulled to safety by a tractor while more substantial residences must be carefully and expensively transported.

The "Insurance" Response

Structural and non-structural measures and combinations thereof, are allowable alternatives under the National Flood Insurance Program which offers insurance against property damage caused by flooding and flood-related erosion. Property owners in a community which is participating in this program may purchase insurance, provided the local government regulates development in the flood hazard area. Regulation includes requirements for flood-proofing of buildings and restrictions on their siting in the floodway. A special National Flood Insurance Program regulation is applicable only to identified Coastal High Hazard Areas on the marine coast which comprise lands subject to high velocity waters caused by tidal surges or hurricane wave wash. Designation of those areas has been made in the majority of communities on New York State's marine coast. The main requirements applicable to such areas are that new construction or substantial improvements must be: located landward of the mean high tide line; elevated above the 100-year flood level with space under the first floor to permit tidal or storm waters to pass freely; and securely anchored. New mobile homes are prohibited. Additionally, alteration of sand dunes which would increase potential flood damage is prohibited. State-owned and State-financed facilities are subject to special regulations to ensure that public investment in flood hazard areas is carefully analyzed and appropriate steps taken to reduce the risk of damage and loss of life.

The National Flood Insurance Program also provides for the sale of insurance to property owners against flood-related erosion damage. However, the regulatory part of this program, which by law must include restrictions on building in flood-related erosion hazard areas, has not been initiated because the Federal Emergency Management Agency has not issued final regulations. The major obstacle is the difficulty in ascribing property damage to flood-related erosion as opposed to other types of erosion.

Lake Levels

A further coastal hazard issue pertains to high water levels on Lake Ontario and Lake Erie.[13]

The International Joint Commission (IJC), established by treaty between the United States and Canada, exercises control over the rate of outflow from Lake Ontario, and thus influences the lake's level, by ensuring implementation of the "Orders of Approval for the Regulation of Lake Ontario" (which it issued for the operation of the St. Lawrence Power and Seaway Project in 1958). This document sets forth the range within which the lake level will be maintained, and the specific ways in which the interests of navigation, power and shoreline property owners are to be taken into account in regulating the lake's outflow. Direct responsibility for implementing the Orders of Approval has been delegated by the IJC to its arm, the International St. Lawrence River Board of Control (SLRBC). The SLRBC has developed a Plan of Regulation to provide a systematic framework for its decisions.

Since the March 1973 storm mentioned earlier, the lake's water levels have been more often in the upper part of the range set by the Orders of Approval than in the lower half. Coastal property owners, fearful of these continuing high water levels, have criticized the IJC and the SLRBC for their failure to lower them.

The property owners' criticisms are threefold. First, they claim that in its day-to-day examination of level and flow data and implementation of the Order of Approval, the SLRBC tends to favor navigation and power interests over shore property owners who have no direct representation on that body. Second, the shoreline residents claim that the regulatory plan and Orders of Approval are inadequate and should be re-examined to find ways to accommodate better the needs of shore property owners. Third, it is argued that the IJC should investigate the feasibility of changing the capacity of the St. Lawrence River to allow a greater overall rate of outflow from Lake Ontario and thus a greater flexibility for regulating its level.

At least partial satisfaction of the first criticism was achieved in 1981 when an official of the State's St. Lawrence-Eastern Ontario Commission was appointed to the SLRBC, replacing a representative of the Federal Power Commission.[14]

A second action taken in response to these criticisms was the Lake Ontario Shore Protection Act of 1976 (PL 94-587, Section 180-a), which directs the Corps of Engineers "...to develop a plan for shoreline and beach erosion control along Lake Ontario" ... and "...include recommendations on measures of protection and proposals for equitable cost sharing, together with recommendations for regulating the level of Lake Ontario to assure maximum protection of the natural environment and to hold shoreline damage to a minimum". The first phase of this study was completed, but funding for the remaining two phases is uncertain.

The proposed Winter Navigation Program mentioned earlier is also of concern to lakeshore property owners because in addition to its other effects, the necessary ice breaking activities in the St. Lawrence River may increase the level of Lake Ontario.

Shoreline residents of Lake Erie have also been concerned about high water as, during the past decade, the mean monthly lake levels have rarely been below the long term average. As a result, flooding and erosion have caused damage along the coasts of Erie and Chautauqua counties although, because of their more erosion-resistant shorelands, the magnitude of erosion is not as great as that on the Lake Ontario coast. The IJC's Lake Erie Regulation Study Board recently completed an investigation of the feasibility of limited regulation of the lake and found that: "the magnitude of the losses as compared to the benefits is such that no reasonable changes in assumptions or evaluative techniques could result in net benefits approaching the cost of the Niagara regulatory works" necessary to implement regulation.[15]

In response to the United States and Canadian governments' recognition of the need for a system-wide examination of levels and flows problems throughout the Great Lakes, the IJC established the International Great Lakes Levels Advisory Board (IGLLAB) in 1979. The U.S. and Canadian members of IGLLAB, who include U.S. Section Chairman Robert C. Hansen, Coastal Program Manager, N.Y.S. Department of State, have been directed to: (1) find ways to increase public awareness and involvement in decisions regarding levels and flows; and (2) make recommendations to the IJC on actions which the Commission may wish to take regarding ongoing and proposed activities such as the regulation of lake levels and the Winter Navigation Program.

The lake level issue is complex. The fluctuating flow of waters into and out of the Great Lakes system has produced in the past both low and high water conditions causing varying amounts of damage to the many interests which depend or front on the lakes' waters. The issue, therefore, is not how to avoid entirely loss to any one interest, but, rather how to ensure an equitable distribution of benefits among all interests.

Evacuation Needs

Climatological hazards such as hurricanes, northeasters, or seismic disturbances can seriously impact the coastal area. During the last 100 years, seven hurricanes have directly hit the coast of New York State, and several other hurricanes have affected the coast while passing offshore. The methods of dealing with storm surge, wind, and flooding associated with these natural hazards are addressed in the coastal management program policies, particularly policies 11-17.

Evacuation planning is a necessary component of Coastal Management, particularly when existing protection from natural hazard impacts is inadequate. The New York State Office of Disaster Preparedness has primary responsibility for evacuation planning. Department of State will work with the office to ensure adequacy of evacuation plans which may be necessary for coping with these natural hazards.

FOOTNOTES

1 St. Lawrence Eastern Ontario Commission, A Report on Coastal Resources.

2 Nassau-Suffolk Regional Planning Board, A Coastal Erosion Subplan for Nassau and Suffolk Counties, 1978.

3 Seibel, Erwin, et al, Technical Report on Determination of Quantity and Quality of Great Lakes U.S. Shoreline Eroded Material, International Reference Group on Great Lakes Pollution from Land Use Activities, International Joint Commission, 1976.

4 St. Lawrence-Eastern Ontario Commission, Report on Coastal Resources.

5 St. Lawrence-Eastern Ontario Commission, Lake Ontario and the St. Lawrence River: Analysis and Recommendations Concerning High Water Levels, 1975.

6 U.S. Army Corps of Engineers, New York District, Final Environmental Impact Statement for Fire Island Inlet to Montauk Point, New York Beach Erosion Control and Hurricane Protection Project, 1977, in Nassau-Suffolk Regional Planning Board, op. cit.

7 U.S. Army Corps of Engineers, New York District New York, telephone conversation, August, 1981.

8 Letters of Governor Hugh L. Carey dated March 11, 1980 to the U.S. Board of Engineers for Rivers and Harbors, and October 19, 1981 to Chief of Engineers, U.S. Army Corps of Engineers.

9 Carroll, J.L., et al, Season Extension on the Great Lakes/ St. Lawrence Seaway: A Critique of the Recommended Plan of the Corps of Engineers, prepared for the NYS Department of Transportation, July 1979; and Department of Environmental Conservation, Environmental Assesment, FY1979 Winter Navigation Demonstration on the St. Lawrence River, Summary volume and 15 studies appended as technicial report volumes, June 1978, prepared for the Winter Navigation Board.

10 St. Lawrence-Eastern Ontario Commission, A Report on Coastal Resources.

11 U.S. Army Corps of Engineers, North Central Division, Help Yourself, 1978. Those data were prepared for the guidance of private property owners.

12 U.S. Army Corps of Engineers, Buffalo District, Current Civil Works Projects of the U.S. Army Corps of Engineers Buffalo District, May, 1977 and May, 1981.

13 See N.Y.S. Department of State, Coastal Management Program, Draft Regional Element-Great Lakes West, 1978 and St. Lawrence-Eastern Ontario Commission, Analysis and Recommendations Concerning High Water Levels, 1975 for more detailed information on the Lake Ontario water level issue.

14 The affiliations of the other three members of the SLRBC are: U.S. Army Corps of Engineers, the federal St. Lawrence Seaway Development Corporation and the Power Authority of the State of New York.

15 International Lake Erie Regulatory Study Board, International Joint Commission, Lake Erie Water Level Study: Main Report, 1981

PUBLIC ACCESS

Introduction

Public access to both the recreational and aesthetic resources of the coast is a key element in the management of coastal areas in New York State. There are two prinicpal components of public access: access to existing recreation resources; and, access to publicly-owned lands and waters of the coastline at large. The first is linked to the coastal recreation issue discussed separately in this section. Therefore, this public access discussion does not delve into the need for recreation facilities or resources, but focuses on problems in getting to these facilities and the coastline at large.

Access to the Coast at Large

There are two types of conditions which impede public access to those lands available for public use along the coast: development and private ownership of land which create man-made barriers to shorefront access; and natural shoreline topography or conditions which make access difficult or impossible. A large portion of New York's coastline is devoted to private residential, commercial and industrial use. Along much of this shoreline, the existing land uses effectively block physical and visual access to the shore, even where there are lands immediately adjacent to the shore as well as lands underwater that are publicly-owned. In other cases, owners of private property that is adjacent to the publicly-owned foreshore and underwater lands often legally and illegally restrict lateral access along the foreshore. Where public rights-of-way to the shoreline do exist, use of the shore itself is often restricted by private beach/no trespassing signs.

Transportation facilities are another major man-made barrier blocking access to the shore. Highways and railroads, both in urban and rural areas, often provide views of the shoreline and the water, but their presence usually makes it difficult to get to the shore. The railroad tracks and highways lining the Hudson River clearly illustrate this problem and indicate why the River has failed to fulfill its potential as a recreational amenity. The railroad tracks follow both shorelines for long stretches; highways are located adjacent to the river in cities such as Albany and Poughkeepsie. Where these conditions prevail, the Hudson, aside from its visual value, remains detached from the community. Moreover, where significant parcels of public land do exist between transportation rights-of-way and the river, one's ability to reach them is often restricted because it is either too dangerous to cross the right-of-way or too expensive to provide a safe crossing. The need to provide safe pedestrian and vehicle crossings is becoming even more acute now that high speed rail travel has begun.

Similar conditions exist along Lake Ontario, where the Lake Ontario State Parkway is a distinct barrier to physical access to the shore. In New York City, highways hinder much of the access to the shore in all boroughs.

In many urban areas, there are numerous obstacles to increasing public access to waterfronts. In addition to industrial and commercial land uses, decaying piers, and abandoned buildings, unsafe neighborhoods have made the waterfront an undesirable location for almost any activity.

Opposition from the coastal residential community also serves to impede efforts to increase general public access to the shore. Community opposition, somewhat justifiable, is rooted in the fear that increased public access would lead to: (1) diminished individual enjoyment; (2) decreased value of private property adjacent to access points; (3) increased pollution, litter, and noise; (4) undesirable commercial development; and (5) intensified use conflicts as competition for waterfront space increases.

Visual access problems are caused by development patterns and specific structural designs that either block the coastline from view or intrude upon the scenic coastal landscape. The discussion on aesthetics contained in this Section deals with the particular problems of visual access.

Public access is also limited by natural shoreline conditions. Along parts of Lakes Erie and Ontario, Long Island, and the Hudson River, cliffs and steep slopes, while they provide great scenic value, preclude all but the most ambitious from shoreline use.

The nature of public ownership of underwater lands and the foreshore and the terms and legitimacy of their sale have a long and complex legal history. The rekindled public awareness of the value of coastal lands requires increased circumspection before the public lands along the shore are disposed of or existing public rights of access are restricted or constrained in any way.

Unfortunately, in a practice that still prevails, the State has sold off underwater lands and the foreshore without full consideration of the value of such lands for public use and access to the water. This should not be construed to mean that all sales must cease, but that each such proposed sale must be carefully evaluated from both a public interest and riparian rights standpoint. The public interest must include the concept that such lands can have value for public use and access to the water, and are held in trust.

Access to Coastal Recreation Resources

The other major component of the public access issue is access to existing or potential coastal recreation resources. A beach is the most commonly identified coastal recreation resource. People want to get to the coast to use beaches for swimming, sun-bathing, fishing, walking, or simply for enjoyment of scenery. A problem in many areas is lack of access to beaches. Thus, there is a need to identify existing and future beach areas requiring additional access. To aid in this identification, a technical definition of "beach" has been developed (See Public Access Planning Process in Part II, Section 7).

Various forms of coastal beaches are found in New York State. Steep headlands fronted by narrow beaches are common along Lake Erie, Lake Ontario, the Hudson River, and the Long Island Sound. Barrier complexes, formed by a sequence of long, narrow barrier islands or bars, separated from the mainland by a lagoon or marsh, are found along the south shore of Long Island and the Port Ontario-Ellisburg region of Lake Ontario. Sandy beaches fronting the continuous ridges of sand dunes are also common, especially along the southshore of Long Island. Barrier spits are formed when littoral transport causes the projection of a sediment body into a bay; i.e., Rockaway spit and Southhampton spit on Long Island. The bays and harbors that are found in many coastal areas of the State normally contain narrow beaches backed by bluffs or pocket beaches with associated dunes.

There are several factors associated with the concern for access to existing or potential coastal recreation resources. One relates broadly to transportation limitations and inadequate parking facilities. The lack of adequate public transportation to many coastal recreation areas effectively limits access for many people, particularly urban residents unable to reach facilities located in suburban or rural areas. In some areas, the lack of public waterborne transportation limits access to key barrier beaches, preventing them from being fully utilized for recreation. Related to this problem are the limited parking facilities found at many coastal recreation areas. Beaches are often closed, not when the facilities are crowded, but when the parking lot is full. In many instances, recreation areas could accommodate increased use by limiting automobile access and providing public transportation such as shuttle buses from remote parking areas.

Restrictions on use of public recreation areas to local residents exist in a number of coastal areas, such as along Lake Ontario and on municipal beaches of Long Island. These restrictions take the form of outright legal prohibitions against non-residents using the facilities, or more indirect means, such as restricting parking to residents only, allowing no parking on streets adjacent to beaches, and charging higher user fees for non-residents.

RECREATION

Introduction

Coastal areas are New York's most important outdoor recreation resource. Within these areas a narrow band along the shore provides a wide variety of water dependent and enhanced recreational activities. Coastal residents and visitors make the coast the most heavily utilized recreation area in the State. This activity is often intensive and is an important contributor to the State's economy, with many coastal communities depending on the recreation industry for their economic well being.

The appeal and importance of New York's coasts for recreation creates several concerns. The principal issue is: how can the special qualities of the coastal area best serve the demand for recreation, while ensuring that other land and water use needs will be accommodated and that the natural resource base will be protected? Flowing from this broad issue are several more specific concerns. These include conflicts with other uses of the coast; overuse of existing coastal recreation areas; the deficiency of water based recreation in urban areas; conservation of historic and cultural resources; the particular needs of recreation boating and fishing; and the desire to promote the private sector's role in recreation.

Use Conflicts

Use conflicts are major barriers to coastal recreation. A number of land uses which require coastal locations restrict recreational use of the coast. For example, use of the shoreline for rail transportation on both sides of the Hudson River has limited physical access to the river. Yet, the economic and social value of the railroad is such, that needs for recreation must be secondary to improved rail service. In urban areas, because the commerce and industry of an earlier day was heavily water-dependent, many such structures occupied shorefront locations. A number of these facilities still remain, often in a deteriorated or dilapidated condition, and limit access to the recreation opportunities of the shore. The costs of their removal, where absolutely necessary, or more preferably their rehabilitation are, along with land acquisition, often prohibitive to cities wishing to reclaim the land for parks and recreational use. However, structures such as existing piers are readily adaptable for recreational uses at reasonable costs. Other barriers to the enjoyment of coastal recreation include the presence of industrial plants, nearby sludge and spoil disposal heaps, pollution control facilities, and elevated transportation routes. In rural areas, residential development along the shoreline consumes potential public recreation space as well as blocks access to the coast.

Use conflicts also take the form of destruction of resources necessary for recreation. Poor water quality plagues existing swimming beaches and limits development in some coastal locations. Water pollution is also a major deterrent to the growing sport fishery in the State. Toxic chemicals, such as Mirex, polychlorinated biphenols and mercury, have resulted in fishing bans on some species in the Hudson River and the issuance of health advisories regarding the consumption of fish from Lake Ontario. Air and noise pollution additionally limit the recreational appeal of waterfronts for many outdoor activities.

Natural coastal processes create problems for recreation. Shifting sand bars intermittently block the openings to bays, creeks and rivers, thereby cutting off boater access to the coastal waters. Thus, if boating access is desired, dredging of channels is necessary. Heavy seas erode beaches and sudden storms create hazards for boaters if harbors of refuge are not nearby. In addition, natural, and in some cases even artificial fluctuations in water levels can adversely affect fish resources by disrupting breeding habitats[1] and can severely reduce the size of beaches for swimming.

On the other hand, the intensity or nature of recreation activities may pose threats to natural resources. For example, an embayment or estuary, which is now a productive fish and wildlife habitat, may be an ideal location for a harbor of refuge,but the attendant noise and pollution from motor boats and marine activity may disrupt the fish and wildlife habitat. Recreation development may also have an adverse impact on the character of existing shorefront residential areas by encouraging increased activity levels, commercial development, and other conflicts with existing development.

Excessive Use

Each recreation resource has a maximum capacity. Over-use can impair the quality of the resource and the recreation experience. Thus, with the increasing number of people participating in coastal recreation activities, there is a potential for excessive use of the coastal resources of the State. Excessive use has a number of effects. It can frequently result in water and noise pollution. Fragile coastal resources such as wetlands and dunes, may be damaged

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[1]New York State Department of Environmental Conservation, Environmental Assessment, FY 1979 Winter Navigation Demonstration on the St. Lawrence River, Technical Summary Volume, p. 32.

merely by excessive foot traffic or off-road vehicles. Other areas, such as islets and offshore rocks that provide protected bird sanctuaries are often disturbed by any human intrusion.

Most coastal recreation is seasonal due to climate and existing vacation habits. The coastal recreation season consists, for the most part, of weekends and the summer vacation months. This is an unavoidable complication encountered when providing parks and recreation facilities for a large population.

Urban Area Needs

In New York State, urban areas generally exhibit the greatest recreation deficiencies along with the highest use of existing facilities. Poor water quality, restricted coastal access, high development costs, and many alternative demands for limited space severely restrict attempts to overcome these deficiencies. The needs of the poor, elderly, and handicapped are particularly affected.

Historic and Cultural Resources

New York State is rich in historic, archeological, and cultural resources which are important for their recreational as well as aesthetic and educational value. Unfortunately, there is yet no program or law to prevent the owner of a significant historic resource from impairing its historic character or demolishing it. Many significant historic sites have already been destroyed. Other sites are threatened by deterioration, lack of maintenance, and encroaching adjacent incompatible uses.

Recreational Boating and Fishing

Boating and fishing are significant recreational activities in the coastal waters of New York State. The fundamental requirement is to provide safe and desirable facilities to accommodate the demand. While some areas have adequate facilities now, growing demand indicates increased deficiencies in the future. A recent study indicates future growth in recreational boating in the Great Lakes basin area.[2] The Department of Environmental Conservation has initiated a fish stocking program in both Lake Erie and Lake Ontario. This also promises to increase demand for boating

[2] New York State Department of Environmental Conservation, "Report on Regional Facilities in New York's Coastal Area", 1977.

facilities. A boating survey indicates the marina industry on Long Island is grossing $55 million annually, yet marina facilities are being lost to other more profitable land uses.[3] At the same time, existing facilities are not meeting current demands. Public and private marinas report backup lists of 200-300 requests. Furthermore, an undocumented but apparent trend seems to indicate that demand for small boat launching sites to service smaller boats is growing. In New York City in particular, the high costs of boat ownership combined with an inadequate number of marina facilities discourage recreational boating in spite of the opportunities that exist in the waters around the City for enjoying this activity.

New York State has the potential for developing one of the best sport fisheries in the nation (cf. section on FISH AND WILDLIFE). Realizing this potential will require the provision of adequate support facilities at the shoreline. Among the facilities needed are a sufficient number of "Harbors of Refuge" along the shoreline of the Great Lakes. These harbors must be provided at suitable intervals to assure safety in the event of rapidly developing inclement weather. In addition, adequate public marina facilities, including boat launching ramps, docks and storage areas, are needed to serve the sport fishermen.

Public vs. Private Ownership

Both the public and private sectors provide recreation facilities. In most cases there is little or no overlap. For example, lodging is generally provided by the private sector and large developed beaches are generally accepted as a public responsibility. Where government and private enterprise are providing the same type of facilities, they usually serve different markets. However, in some instances, direct competition has developed. This can create economic problems for private enterprise and utimately less service to the public. For example, in the Buffalo area several firms lost a significant number of their customers to a recently constructed state-owned marina. On the other hand, in some areas of the State, public marinas have attracted additional boats to the area and boatyard owners have concluded that public facilities actually helped their businesses.[4]

[3]Sea Grant Advisory Service, Cornell University, Ongoing Research of Recreational Boating on the Shoreline of Westchester County, New York City and Long Island, Ithaca, NY, 1974.

[4]Noden and Brown, The New York Commercial Marina and Boatyard Industry, 1972, pp. 31, 45

Often the laws and practices of the various levels of government have inhibited or at least not promoted cooperation with private enterprise in the provision of recreation facilities. Many jurisdictions do not permit the development of commercial facilities on public parkland.[5] The term of a lease to a private individual that a municipality may grant for operation on public land is limited by State law. Since large recreation facilities require a long amortization period, this limitation has discouraged private investment in some aspects of public recreation.

Because both public and private investment is necessary to ensure adequate recreation opportunities, the State must continue to address the issue of how to assure that a mutually beneficial relationship evolves between private and public investment in recreational facilities.

[5] Bureau of Outdoor Recreation, National Urban Recreation Study, New York, Newark, Jersey City, 1977, p. 94.

SCENIC QUALITY

Introduction

Of the shoreline's many attributes, coastal scenery is perhaps the most universally appreciated. At least three basic characteristics contribute to the visual quality of coastal landscapes: water in its many moods; dynamic coastal landforms; and expansive views. This environment attracts wildlife of all forms which also contributes to the aesthetic quality of the coast. To a degree, even the more ordinary coastal landscapes possess these attributes.

In great part, scenic resource studies have concentrated on natural characteristics. This emphasis results from the perception that natural landscapes are more visually pleasing than man-modified environments. However, in many locations, man has changed coastal landscapes in ways which harmonize with or even enhance their natural scenic qualities. Old fishing villages, rolling farmlands, and dynamic city skylines are examples of man's intervention which have added character and interest to coastal areas.

Beyond their inherent worth, scenic attributes of the coast augment other values. They combine with recreational possibilities to make the coast a prime location for vacationers and thus offer the potential for growth of the tourist industry.

We have long recognized the importance of scenic resources for recreational, psychological, educational, and economic purposes. In 1972, Congress gave coastal aesthetic quality even greater importance through the Coastal Zone Management Act which states:

> The Congress finds that the coastal zone is rich in a variety of natural, commercial, recreational, industrial and aesthetic resources of immediate and potential value to the present and future well-being of the Nation. (§302(b))

Similarly, the New York State Legislature in the Waterfront Revitalization and Coastal Resources Act of 1981 has found that:

> New York State's coastal area is unique with a variety of...aesthetic resources of state-wide and national significance. (§910)

Degradation of Scenic Resources

While the New York State Legislature has recognized the value and benefits of scenic resources, its concerns are frequently not translated into real protection and enhancement of these resources. Instead, large and small-scale development projects often ignore and degrade natural coastal landforms and attractive man-made features. Large-scale development -- whether industrial, commercial or residential -- has a greater chance of impairing aesthetic value, but even a single prominent structure can significantly affect the scenic quality of an area.

Other degrading conditions may accompany development and reduce the aesthetic quality of the coast. Such unattractive conditions include: deteriorated buildings and piers, billboards and signs, power lines, transportation networks, litter, and visible air and water pollution.

The most complete degradation occurs when development blocks views of coastal waters. In urban areas, the problem is especially serious, because few visual access points remain. But the problem exists as well in rural areas where linear residential and commercial development often spreads to prevent visual access for all but shorefront property owners.

Protection of Scenic Quality

In order to protect scenic quality, the characteristics of scenic landscapes must be more completely considered during the course of making development decisions. Scenic quality assessment and protection is a relatively new and complex field. The complexity results from the uniqueness of each landscape area and from varying opinions about what constitutes scenic beauty. Even where there is agreement about the outstanding quality of a given resource, there may still be varying opinions about what would seriously impair this quality.

As a result of the many complexities and differing opinions, scenic resources have been unsystematically inventoried and assessed; as noted above, they have often been disregarded altogether when development decisions were made. To assure more complete consideration of scenic quality, the State Coastal Management Progam will identify certain significant coastal resources and will provide more specific guidelines for protecting and enhancing scenic quality. Local, State and Federal agencies will, thus, be able to more fully consider the potential effect of proposed developments and avoid despoiling coastal scenery.

AGRICULTURE

Introduction

Agriculture is New York State's largest industry, with 1979 sales of $2.2 billion.[1] Dairy farming accounts for more than 50% of these sales.[2] Fruit and vegetable production, the second largest source of income, accounts for 13% of the total. To produce this wealth, New York farming occupies 8.7 million acres, of which 35% (3.0 million acres) are in the coastal counties. These counties are the primary location of the State's important fruit and vegetable farming, which in 1978 had a market value of $240.5 million.

While only a small portion of the agricultural land in coastal counties is devoted to fruit and vegetable farming, it produces nearly 10% of the total market value of all agricultural products produced in New York State. Because of the positive climatic influences of coastal waters, most of this farming, particularly that devoted to fruit, is concentrated in areas immediately adjacent to the coast.

Loss of Agricultural Lands

Although the latest U.S. Census of Argiculture[3] reveals that, for first time in decades, the amount of land devoted to farming in New York has not decreased, the following factors indicate that the preservation of good farmland is a continuing problem for the State. Since 1945 nearly half of the land then being farmed has been lost to other uses. Though much of this loss is irrevocable, it is not all so. And while it is understandable that a highly urbanized state might not, or need not, be self-sufficient in food production, New York's present very low level of self sufficiency increases the cost of food to the State's population and the State's vulnerability to agricultural calamity elsewhere. Finally, while the trend toward continual loss of land in farming may now not be alarming for New York State, the trend is not consistent across the State. Much land in the

[1] New York Crop Reporting Service New York State Department of Agriculture & Markets.

[2] Unless otherwise identified all data is from the 1978 U.S. Census of Agriculture (published in 1982) and is for farms with sales of over $2,500.

[3] According to the U.S. Censuses of Agriculture for 1969 and 1978, the amount of land in New York in farms with sales over $2,500 was 2,998,395 and 3,010,231 respectively, an increase of .4 per cent.

State is continuing to go out of production, often in areas that possess the most agriculturally significant land. These lands produce crops that are a unique or significant part of national food production e.g., grapes, sour cherries, carrots, and onions. In two of the three important fruit growing areas along the coast, land in orchards has declined. Along the southern shore of Lake Ontario from Niagara to Wayne County, land in orchards has declined by 13.3% between 1969 and 1978. In the Hudson Valley the principal fruit growing counties of Columbia, Ulster, and Dutchess have experienced 5.3% decline in orchards over the period. In Chautauqua County, however, there has been a 20% increase in the amount of land in vineyards. In Suffolk County, where much farmland is near the shore and where farming has consistently generated the highest market value of farm products of any county in the State, land in farming has declined by 16.4% between 1969 and 1978.

While there is widespread recognition of the problem of the loss of farmland, mechanisms for addressing the problem remain at issue. To be effective, programs to preserve agricultural land must be comprehensive and authoritative, yet they must also be adaptable to changing market forces and responsive to the legitimate property interests of farmers.

Urban development, as it expands outward into farming areas, is the major cause of farm loss. In addition, land goes out of farming at the urban/rural fringe for the following, often interrelated, reasons: 1) Farming is dependent on nearby agribusiness enterprises; these, in turn, require a minimum number of active farms. Once a certain number of farms cease production and the level of agribusiness is reduced, the economic viability of the remaining farms is in question. 2) The proximity of an urban labor market begins to provide alternative employment opportunities to farmers and farm laborers. 3) In urban/rural fringe areas, local ordinances often restrict farm operation. 4) Declining or low net farm income and high inheritance taxes[4] are factors in the loss of farmland. 5) Urban land values raise local property taxes to levels beyond what is appropriate for its value for agricultural use. And, 6) Major public infrastructure investment can accelerate or direct urban growth into farming areas.

[4] Recent changes in tax law have reduced this burden on farm owners

Definition of Important and Valuable Farmland

Different approaches to identifying important farmland have been taken. Howard Conklin's 1968 study[5] rated farms based on high, medium, and low economic viability. The State Development Plan[6] restructured this identification into categories referred to as exceptional, high viability and medium viability farming areas. The Soil Conservation Service identifies soils according to several categories of capability and also has a system for identifying important farmland as prime, unique, or of statewide or local importance. In a report prepared for the State '701' Land Use Element, the Agricultural Resources Commission recommended that "No one all-encompassing definition of important farmlands is practical or desirable." Rather, the Commission recommended that agricultural land use policy be based on various combinations of information about soil quality, economic viability of farming, climate, and existing land use patterns. This recommendation was considered the best approach. Therefore, for the operation of the Coastal Management Program, important farmland has been defined as: 1) those lands which meet the United States Soil Conservation Service's criteria as being prime, unique, or of statewide importance; 2) active farmland within Agricultural Districts; and 3) agricultural areas identified as having high economic viability.[7]

Note: Since the above definition was adopted, the State has developed a new system for identifying and valuing farmland. In the near future the program will shift to this definition. The land captured by it is essentially the same.

[5] Howard Conklin, The Nature and Distribution of Farming in New York State, New York State College of Agriculture, 1968

[6] New York State Office of Planning Coordination, New York State Development Plan 1, 1971, p. 48

[7] This term is defined in the explanation of Program Policy 26.

ENERGY

Introduction

New York's coast plays an important role in satisfying the energy needs of the State. It provides sites for numerous energy facilities, including steam-electric generating plants (oil, coal, nuclear); hydro-electric generating plants; electric and gas transmission lines; oil and gas exploration, development, transfer and storage facilities (including LNG facilities); and alternative energy facilities. All these facilities are located near the coast for one or more reasons: (1) access to shipping corridors for fuel; (2) proximity to the consumers of energy; (3) abundance of cooling water for electric generating plants; and (4) use of water for direct production of energy from hydropower and possibly in the future from wind, wave and tidal power.

Some energy facilities depend on coastal locations in order to function, while others, such as closed-cycle power plants and oil and gas storage tanks, are able to operate at sites inland from the shoreline. Therefore, in view of the competition among many types of uses for shorefront locations, proposed energy facilities must be carefully studied to determine their dependency on coastal sites and resources. In addition to technical requirements, other factors must be considered, including public need, environmental impacts, and construction and operation costs of various site alternatives.

The New York State Coastal Management Program (CMP) recognizes that all energy facilities have certain positive and negative aspects. They satisfy energy demands of individuals, commerce and industry and create employment opportunities. But these facilities often require large parcels of land and present potential dangers to the people and natural resources of the coast.

A special issue concerns ice management practices. The annual placement of an ice boom in the Niagara River is essential to protect power facility water intakes from ice jams and simultaneously to safeguard downstream shorelines from excessive ice scouring and flooding. The timing of installation and removal of the boom, however, must be carefully reckoned to ensure the greatest benefits from its use. In other instances, skillful control of ice formation helps avoid loss of power production crucial to the State's economic growth while reducing the risk of flooding and erosion damage.

Possible impacts of energy facilities on coastal resources include the following:

- Chemical, thermal and/or radioactive discharges into the air and water of the coast and entrainment and thermal shock of fish resulting from the operation of various types of steam electric generating plants;

- Alteration of landforms and vegetative cover, degradation of scenic resources and possible health hazards from electric transmission lines or fuel pipelines. The extent of impact from transmission lines and pipelines on the coastal area will, of course, depend on whether they run perpendicular or parallel to the coastline;

- Spills associated with the transport and storage of petroleum products;

- Explosions and fires associated with petroleum or LNG facilities;

- On-shore land use conflicts and disruption of underwater habitats from possible Lake Erie gas exploration and production and from OCS activities.

- Degradation of air quality becasue of dust emissions resulting from the transportation and handling of coal for an increasing number of coal-fired power plants as well as the stack gases emitted from these fossil fuled facilities.

New Energy Sources

The State's coast may play an additional role in supplying new sources of energy. Natural gas is present under Lake Erie, and there is commercial as well as public interest in recovering this resource. Also, a high resource find on the Outer Continental Shelf (OCS) could be an important supplemental source of energy for the State. However, significant environmental problems could be associated with production in Lake Erie or the Atlantic Ocean.

One issue in Lake Erie is the potential for damage to the lake's biota and water quality. Drilling operations and the placement of gas pipelines underwater would result in increased localized turbidity due to disposal of drilling muds and disturbance of bottom materials. These operations would have temporary adverse effects on benthic organisms. Mobile organisms such as fish should be able to avoid the area and thus any harmful effects, although significant fish habitats could be threatened. Damaging impacts would result if construction operations stirred up toxic wastes which were previously dumped in the lake. Concerns have also been expressed about the effect of gas exploitation on Lake Erie's waters upon which Buffalo and other communities depend for their water supply.

A second issue in Lake Erie centers upon the possibility of accidental oil and gas spills. It is generally accepted by geologists that the chances of finding oil under the lake are very small. As for natural gas, the extremely high pressures associated with well blowouts are not expected to be encountered in Lake Erie. If a leak does occur, the gas would bubble to the surface and disperse. A large leakage of gas would present an immediate hazard although such an occurrence would cause minimal environmental damage.

OCS production could result in significant environmental problems, including impacts on important fish wintering grounds and migration routes. Drilling, dredging, and laying pipelines could present possible dangers, but the most serious danger is that of oil spills, both at the platform and from tankers traveling the Nantucket-Ambrose lanes. Major and minor spills could adversely affect fish, wildlife and vegetation in the Long Island area. Controlling such spills is difficult at best and made all the more so by severe weather conditions which frequently occur in the Atlantic. Oil spills could not only damage shore and near-shore natural resources but also have drastic impacts on the economic health of Long Island's multi-million dollar fishing, tourism and recreation industries. A spill during harvesting or vacation periods could be devastating. In addition, potential OCS operations pose navigational risks to ships transiting the Nantucket - Ambrose lanes. Discarded equipment resting on the ocean bottom also poses a threat to fishing trawls. Finally, onshore support facilities, if any are sited in the New York City - Long Island area, may have beneficial and adverse impacts. The primary benefit would be the creation of jobs and an income producing industry. On the other hand, the nature and extent of any adverse effects would depend upon the facility. For instance, a supply base would generate excessive noise and reduce navigational safety due to increased shipping and helicopter traffic.

WATER RESOURCES

Introduction

One of New York State's major assets is its abundant water resources available to meet domestic, commercial, and industrial water supply demands. The tourist industries thrive in the Eastern Ontario and Long Island regions of the State because of the distinctive water recreation and scenic values of these areas. Vast quantities of high quality water from Lake Ontario proved to be a key incentive for locating several breweries in upstate New York. The natural, deep-water harbor at New York City and the Hudson River provide an important transportation artery linking the Atlantic Ocean and upstate New York.

New York State is committed to protecting and developing its water resources. Since 1962, the State has spent about ten million dollars to develop comprehensive sewerage studies. Under the Pure Waters Program established in 1965 and subsequent bond issues, voters have authorized nearly $1.7 billion for construction of sewage treatment facilities.

In 1975, the State, after bringing its long standing pollutant discharge control program into conformance with requirements of the Federal Water Pollution Control Act (FWPCA) Amendments of 1972 (PL-92-500), established the State Pollutant Discharge Elimination System (SPDES) which, like its predecessor programs, regulates municipal and industrial discharges into surface and groundwaters of the State.

Under the FWPCA, the State has also conducted basinwide water quality surveys (303(e)) and areawide water quality management (208)[1] studies. These studies provide a reassessment of the State's water quality problems and management needs. Of the six primary water basins with greatest water quality management problems, four of them encompass New York's entire coastal frontage. In addition, these studies indicate that although the State has been able to make great strides in controlling water pollution from raw sewage and easily discernable industrial wastes, there remains an even more complex set of water quality problems including toxic substances, surface runoff and residual wastes. These problems are nationwide in scope and their significance went unnoticed until previously unregulated point source pollutants were eliminated. More attention has been given to such pollution problems under the 1977 amendments to the FWPCA (the Clean Water Act, PL 95-217).

[1]The references are to sections of the Federal Water Pollution Control Act of 1972 (PL 92-500)

Integration of State water quality and coastal management programs are precisely what was intended by Congress under Section 307 (f) of the Coastal Zone Management Act of 1972, as amended. This section specifies that water quality management requirements developed under or pursuant to FWPCA, as amended, shall be the water pollution control requirements applicable under such coastal programs.

Industrial Wastes and Toxic Substances

New York State presently regulates the direct discharge of industrial wastes into surface and groundwaters through its State Pollutant Discharge Elimination System. Most of these wastes must be treated before being discharged. The effectiveness of this permit program is dependent on the availability of the information pertaining to the relative toxicity and the technology to treat these wastes. Without this information, certain chemical wastes may be unknowingly discharged into the environment in amounts greater than should occur, only to be discovered later to have dangerously adverse health effects. Such has been the case with the toxic industrial chemicals, Mirex and PCB's which have created serious biological consequences in Lake Ontario and the Hudson River. Presently, the annual proliferation of new chemicals creates a tremendous challenge to State and Federal governments' efforts to monitor their production and distribution, establish discharge tolerance limits, develop treatment technologies and regulate their discharge into the environment.

Municipal Sewage Treatment

Through the State's 208 program, the twenty-year population projections used for determining municipal waste water treatment needs have been updated, refined and disaggregated to a minor civil division level. Procedures are being developed to ensure that facilities planning and design will be consistent with these revised projections. The construction of new and upgrading of existing municipal sewage treatment plants is funded with monies made available by the State Environmental Quality Bond Act of 1965 and Section 201 of the FWPCA.

Unfortunately, there have been construction delays due to difficulty in financing the local share; length of lead time required for planning, design and site preparation; delays in the processing of applications; and increasing costs. Hence, partially treated sewage is still polluting the State's waters, particularly in the vicinity of large metropolitan areas. Recent budget cuts for the federal Construction Grants Program may even further delay construction of sewage treatment plants scheduled to be built. It should be noted that the Federal Environmental Protection Agency and Congress are considering a reduction in the biochemical oxygen demand (BOD) standard from 85% to 50%.

If this lower standard is adopted, the cost of treatment facilities that meet this requirement will be less, thus reducing future construction delays.

Because of rising costs, conventional sewage collection and treatment systems may not be economically feasible in many small coastal communities and rural areas. In many of these areas, failure of on-site septic systems or absence of sewage treatment has resulted in excessive nutrient enrichment of surface waters, groundwater contamination and sanitary problems.

Urban Stormwater Runoff and Combined Sewer Overflows

As New York State has progressed in treating industrial and municipal point sources of pollution, the relative significance of the pollution effects of urban stormwater runoff and combined sewer overflows has become more apparent. In many of New York's major urban areas, a single sewer system collects and transports sanitary sewage and stormwater runoff to the municipal treatment plants. During storms, the volume of flow through the system exceeds the plant's treatment capacity. The excess, therefore, is not treated and is discharged directly into the receiving waters. Such discharges include nutrients, coliform and pathogenic bacteria, organic wastes, lawn and garden chemicals, animal wastes, petroleum wastes from streets and parking lots, road salt, garbage and other assorted debris. Even where separated storm and sanitary sewer systems are used, such as on Long Island, untreated waters are discharged from the storm sewer systems with high levels of many of the same contaminants.

Untreated discharges have forced the closing of public beaches near Rochester, restricted shellfishing on Long Island, reduced dissolved oxygen levels in the New York and Buffalo Harbors, and may be contributing to degradation of groundwater on Long Island.

A major constraint to addressing the problems created by urban stormwater runoff and combined sewer overflows is the expense of structural control measures such as the installation of separate sewer lines, large underground storage systems or construction of large catchment basins. At present, Federal financial assistance is not available for constructing stormwater treatment facilities. Non-structural methods, such as control of lawn and garden chemicals and pet control ordinances, may prove difficult to enforce, because they often depend on voluntary citizen compliance.

In some parts of the coastal area, such as Long Island, there are close relationships between stormwater runoff and groundwater quantity and quality. These issues are discussed further in the sub-section on "Groundwater".

Agricultural Runoff and Wastes

In recent years there has been considerable controversy over (1) the relative magnitude and significance of the pollution of State waters generated by agricultural activities and (2) the determination of which management practices are most cost effective in mitigating the water quality impacts of agricultural operations. The non-point water quality problem associated with agricultural practices is the transport of nutrients, pesticides, herbicides, organic matter and sediment by storm runoff into surface waters. Silting in of fish spawning habitats, excessive growth of algae or rooted aquatic plants, decrease in dissolved oxygen concentrations and contamination of certain aquatic organisms are impacts associated with this water quality problem.

The variability in data from recent rural non-point studies makes it difficult to formulate a clearly defined cause and effect relationship between a given agricultural practice and an associated water quality impact. A case by case examination of potential problem areas and application of "Best Management Practices" for specific problems at a given site is presently the most practical approach to handling agricultural and other rural surface water runoff problems.

Vessel Wastes

Commercial and recreation boat discharges of shipboard wastes (e.g., sewage, garbage, bilge and cleaning wastes) degrade surface water quality, particularly in enclosed embayments and estuaries where diluting water volumes are low and vessel usage may be high. Serious public health hazards may result when untreated vessel wastes are discharged near shellfishing areas, bathing areas or public water supply intakes.

The Coast Guard enforces Federal regulations established by the Environmental Protection Agency in waters of the United States, including territorial seas. Federal sanitary vessel waste treatment standards, however, are less stringent than New York's standards. Present technological constraints for treating sanitary wastes, particularly on smaller recreational craft, make statewide enforcement of the State's stricter effluent standards impractical. However, the prohibition of all vessel waste discharge is feasible on an area-specific basis, i.e., near shellfishing and bathing areas, and where adequate pumpout and treatment facilities are available. Federal law now prohibits discharges near public water supply intakes.

Dredging and Dredge Spoil Disposal

Dredging is a useful management tool serving a variety of purposes such as navigation channel maintenance, marina and shoreline development, beach nourishment, and pollutant removal. There is also substantial interst in the extensive offshore sand and gravel deposits in the State's coastal waters, especially in the New York Bight. These are viewed as a future supply of materials for the construction industry in urban areas which now depends largely on decreasing local terrestrial supplies. Unfortunately, many adverse environmental impacts have been associated with the processes of dredging and dredge spoil disposal, particularly when the sediments are polluted.

During dredging operations, sediments are resuspended and mixed with water; this process thereby increases the potential for immediate release of contaminants into surrounding environments. After the dredge sediments are deposited at an open water disposal site, contaminants may be released slowly from the spoil mound into the overlying water column for several years. Because of this threat, the U.S. Environmental Protection Agency requires that polluted dredge spoils be "capped" with clean sediments.

Alternative dredge spoil disposal methods include upland disposal and placement behind diked enclosures. The shortage of suitable onshore disposal sites and the potential leaching of contaminants into adjacent ground and surface waters make these alternative methods expensive and environmentally unsafe. For example, New York State faces a difficult challenge in the safe removal and disposal of sediments that are contaminated with PCB's from "hot spots" in the upper Hudson River.

Important adverse physical impacts on coastal waters may result from dredging and disposal activities. These include changes in bottom topography, local water circulation patterns, and flushing, erosion and sedimentation rates. Secondary biological effects, such as the loss of habitats, may result from the physical and chemical impacts identified above.

Environmental problems associated with dredging and spoil disposal can be minimized through careful selection of the disposal sites and timing of the dredging and spoil disposal operations. Such efforts, however, are thwarted by a lack of baseline data, e.g., location of important habitats, seasonal distribution of fish populations, local hydrologic conditions and sediment transport patterns.

Oil and Other Hazardous Substances Spills

The potential for oil and hazardous substances spills in New York's coastal waters is high because of the substantial amount of commercial shipping. The possibility of such spills occurring in these waters is greater in major urban areas which have numerous oil and other bulk storage facilities. Nearly 1,000 oil and hazardous material spills were reported in New York State in 1976. In addition to spills, many bulk storage facilities also present air quality and fire hazard problems.

The potential development of offshore oil and gas resources along New York's Atlantic shore and the onshore facilities essential to this activity increase the chances for spillage. The recent lifting of the ban on gas drilling beneath Lake Erie and the possibility of extending the Great Lakes navigation season increase the potential of the spillage of oil and hazardous substances in these coastal waters.

The cumulative effects of a series of small spills on water quality and other environmental degradation may be as great or greater than those caused by a single large spill. Consequently, a sophisticated surveillance and cleanup program is needed.

Adequate baseline data indicating the distribution patterns of important living aquatic resources is necessary in order to identify critical areas where spill incidents would cause serious biological damage. The data would assist in the proper siting of facilities and transportation routes and would be utilized in establishing cleanup priorities for New York Harbor and the Hudson and St. Lawrence Rivers and other vulnerable areas along New York's coastline where there is intense shipping traffic.

Nutrients

High nutrient levels in coastal waters can stimulate excessive growth of rooted aquatic plants and algae blooms, and thus lower dissolved oxygen levels. These conditions disrupt water-oriented recreational activities such as swimming, boating and fishing.

In marine waters, nitrogen is usually the limiting nutrient to plant growth, while phosphorous is generally the limiting nutrient in fresh waters. While nutrients do not generally create a problem in open waters, recent episodes of anoxic conditions in the New York Bight indicate that the effects of nutrient overload have extended to the outer continental shelf. The effects of nutrients are most evident in bays and harbors of Long Island and the Great Lakes.

The accumulation of nitrates in groundwater can create a health problem, especially when an underground aquifer is the only source of drinking water. On Long Island, nitrate concentrations have, in some cases, approached maximum drinking water tolerance levels.

Nutrients are discharged into surface and groundwater from a variety of sources, including municipal treatment plants, urban stormwater, combined sewer overflows, malfunctioning septic systems, animal wastes, and agricultural runoff. For any given nutrient problem, and depending on the nature of sources in a tributary watershed, unique regulatory and structural measures may be required for its correction.

These may range from the sewering of shoreline cottages to application of special agricultural best management practices, or to nutrient removal at municipal treatment plants.

Groundwater

The relationship between land use activities occurring in the vicinity of ground water aquifer recharge areas and the water quality of the groundwater has become more apparent in recent years. For instance, excessive application of lawn fertilizers, failing septic systems and use of road salts for de-icing can cause elevated nitrate and chloride concentrations in groundwater. Where communities, such as those on Long Island, must rely on groundwater as their primary source of drinking water, serious health problems could result.

The challenge to Long Island communities is not only to protect the quality but also the quantity of their groundwater resources. In an effort to reduce the leaching of contaminants from failing cesspools and septic systems into the groundwater aquifer, several communities have installed public sewage treatment systems. Although this results in a net removal and treatment of pollutants, significant quantities of water which otherwise would have recharged the aquifer are instead treated and discharged into marine waters or their tributaries. This practice causes the volume of the freshwater aquifer to shrink, and the salt water intrusion from the surrounding sea to increase. A loss of potable groundwater results. Recharge basins have been built throughout Long Island to retain storm water and allow it to filter into the groundwater aquifer.

When stormwater flows over roads, parking lots, industrial sites, and other areas, it picks up contaminants. It appears that treatment of the stormwater collected in the recharge basins may be necessary, since trace levels of toxic contaminants are now being detected in some of Long Island's groundwater aquifers.

Solid Wastes

As water pollution efforts lead to higher levels of municipal and industrial wastewater treatment, greater volumes of residual sludges will result. Because of their physical and chemical properties, there are no easy solutions for the disposal of most sludges. Traditional methods have included land disposal either in landfills or by spreading on land, incineration, and ocean dumping. Land disposal poses problems with odors, runoff and leaching; incineration affects air quality conditions; and ocean dumping may have adverse effects upon water quality and aquatic life.

Water Quality Management Planning programs being carried out at both the State and regional levels under Section 201 and 208 of Federal Water Pollution Control Act of 1972 (PL 92-500) are currently studying the available alternatives for environmentally sound sludge management and disposal, as well as the disposition of certain other residual wastes. In addition, the Clean Water Act of 1977 (PL 95-217) calls for EPA to conduct a study on the utilization of treated municipal wastewater and sludge.

In New York State the most severe impacts from sludge disposal occur in the New York City metropolitan area. Open water dumping in the New York Bight adversely affected fishery resources. Discussions are ongoing as to whether or not any dumping will be allowed at the present site or at some other undetermined location in the Bight.

Solid wastes such as certain manufacturing wastes and residue from incinerators also pose substantial hazards to water quality, especially in the New York metropolitan area where suitable onshore disposal sites are limited. Even where these sites are available, the toxicity or hazardous nature of some solid wastes necessitates expensive treatment and dispoal methods and long-term monitoring of land disposal sites.

Thermal Discharges

Most of New York State's electric generating facilities and certain other industrial activities are located along the coast because of the availability of large volumes of water needed for cooling purposes. The production of electric power results in large amounts of waste heat. Water used as a coolant is then discharged into water bodies. This discharge of warm water can create serious problems for the aquatic species and the quality of coastal water, especially if discharged intermittently as is customary with the start up and shut down of generating facilities.

Thermal discharges in small embayments or semi-enclosed areas (such as estuaries) are likely to have more negative effects on fish than discharges in open waters. These enclosed water bodies have low dilution capacities and flushing rates and thus cannot easily dissipate thermal discharges. These coastal waters, therefore, are less appropriate as locations for major stream electric generating facilities.

During winter months fish often congregate in the warmer waters created by discharged water. However, should a generating facility be shut down for a period of time, the sudden drop in water temperature could cause thermal shock and subsequent death to large numbers of fish.

Also, warmer water contains less dissolved oxygen which is needed by a water body to neutralize certain wastes. By discharging heated water into a water body, its capacity to assimilate waste is reduced.

Water Supply

Generally, New York State is blessed with ample annual precipitation to recharge the State's reservoirs, lakes, rivers, and groundwater aquifers. But from 1979-81, particularly the winter and spring of 1981, precipitation levels declined and drought-related impacts and problems started to become evident. In December 1980, Governor Carey established the State Drought Management Task Force to coordinate New York State agency efforts to manage the intensifying drought in the State. This Task Force prepared the New York State Drought Preparedness Plan which provides a staged plan of action for local and State agencies in the event of a drought emergency.

Several short and long-range water supply projects were outlined in the Plan. While most of the water supply projects are proposed for inland water systems, one particular proposal to use the Hudson River to augment New York City's water supply is noteworthy. The Hudson River Flow Skimming Project would draw water from the river above the City of Poughkeepsie. This project poses a number of water quality and other environmental issues of concern to the State and coastal communities located along the Hudson which presently utilize the river as a water supply. A considerable effort will be needed to build broad-based support of this project before it can be implemented.

Precipitation levels increased to normal levels in the following fall and winter of 1981 through the present, and New York is not presently threatened by drought. However, the State has prepared itself in the event of a future drought by completing a strategy for coping with drought-related problems.

Other Water Resource Related Issues

Issues related to flooding, lake level management, and winter navigation are described under the Issue Section on Flooding and Erosion. Infrastructure related problems are addressed in the guidelines for implementing Policy 5 on Concentration of Development.

Data and information gathered in the numerous water resource studies such as the 303e Basin Studies, and the Level "B" Studies and the River Basin Studies, were used in developing the New York Coastal Atlas and in the preparation of the Coastal Management Regional Elements, published in 1979.

AIR QUALITY

Introduction

All of the State's coastal areas are affected by Federal and State policies to abate and prevent air pollution. The Coastal Zone Management Act, as amended, reflects this, for any State air pollution control program requirements developed pursuant to the Federal Clean Air Act must be incorporated into a State's Coastal Management Program.

The State's Air Pollution Control and Coastal Management Programs must be coordinated to ensure that each can be effectively utilized to support mutually desirable objectives. New York State's air pollution regulatory programs can be enlisted to achieve coastal management objectives such as protection of habitats, farmland, or scenic areas. At the same time, these programs could conflict with some coastal management objectives such as those related to economic development. Coordination requirements are essential to develop and implement an effective coastal management program.

Major air quality management concerns in the coastal area, as elsewhere, are grouped into four general categories: the attainment and maintenance of National Ambient Air Quality Standards as proposed in the State Implementation Plan; protection of clean air areas from significant deterioration; air pollution control problems in rural areas; and control of toxic discharges into the air.

Attainment and Maintenance of National Air Quality Standards

Under the Federal Clean Air Act, National Ambient Air Quality Standards have been established for seven pollutants. Recent amendments to the Act (1977) require that the compliance status of all areas of the country be determined for five of the seven pollutants. The Act further requires that all areas not in compliance with these pollutant standards be brought into compliance by the end of 1982 or, in special cases, by the end of 1987. The Act also requires states to prepare "State Implementation Plans" which detail the mechanisms that will be utilized to attain the standards by the statutory date.

Table I indicates the coastal areas designated for nonattainment of the health related National Ambient Air Quality Standards for various pollutants. With the exception of the New York Metropolitan Air Quality Control Region, where extensions to 1987 have been granted by the United States Environmental Protection Agency for ozone and carbon monoxide, the entire coastal area is expected to attain all health-related National Ambient Air Quality Standards by the end of 1982.

TABLE 2

Coastal Areas Designated as Nonattainment Areas for Health-Related Pollutants

Location	Carbon Monoxide	Ozone	Total Suspended Particulates	Sulfur Dioxide
New York Metropolitan AQCR*				
New York City	X	X		
Nassau County	X	X		
Suffolk County		X		
Westchester County	X	X		
Rockland County		X		
Hudson Valley AQCR				
Albany County		X		
Rensselaer County		X		
Putnam County		X		
Ulster County		X		
Dutchess County		X		
Greene County		X		
Columbia County		X		
Niagara Frontier AQCR				
Erie County		X	X	X
Niagara County		X	X	
Genesee Finger Lakes AQCR				
Orleans County		X		
Monroe County		X		
Wayne County		X		
Central AQCR				
Cayuga County		X		

*AQCR - Air Quailty Control Region

In coastal areas not meeting air quality standards, any new major source of air pollution must install air pollution controls, and existing sources must reduce their air pollution emissions. These reductions in emissions from existing sources are often difficult to obtain. Because of this, nonattainment areas are not as desirable for certain types of economic activities.

Maintenance of air quality standards is ensured through the review of the air quality impact of major new sources. Areas which have recently improved from the nonattainment to the attainment category will have little room for increased pollution emissions before violating air quality standards. Therefore, the air quality maintenance program may make it more difficult to locate certain types of activities in coastal areas which have just recently become attainment areas.

Protection of Clean Air Areas from Significant Deterioration

The 1977 amendments to the Clean Air Act require a State to protect "clean air areas" from significant deterioration through regulations that classify the entire State into one of three land area classifications based upon allowable deterioration of air quality. This program can be supportive of the overall coastal management environmental goal to preserve, protect, enhance, or restore natural resources. At the present time, all of New York State is classified "Class II" which allows for moderate increases in air pollution. After obtaining agreement from the affected local governments and the State Legislature, the Governor may redesignate areas as either Class I, where minimal increases in air pollution are allowed, or Class III where substantial increases in air pollution are allowed. The difficulty in obtaining and coordinating all of the approvals and the fact that the quality of air in most coastal locations is too near the established standards to allow full utilization of the increment permissable under Class II indicate that there will be few, if any, redesignations to Class III. Similarly, it is unlikely that there will be any redesignations of areas of the State to Class I, since the State air pollution source review system, other State development review programs, and local land use regulations are more suitable for preserving undeveloped areas than the inflexible Prevention of Significant Deterioration program.

Air Pollution Control Problems in Rural Areas

Air quality conditions outside metropolitan areas are generally good, and concentration levels for most pollutants are below national standards. Throughout the State, however, pollutants which are carried long distances from where they are produced can adversely affect agriculture, fish, wildlife and water quality. These pollutants, such as ozone and the acid rain precursors, sulfates and nitrates, are generated by motor vehicles, refineries, chemical plants and power plants which are often hundreds of miles from the rural areas affected. New York State has embarked upon a comprehensive program of documenting the mechanisms and effects of acid rain while utilizing Section 126 of the Clean Air Act to attempt to force upwind states to limit their contributions to air pollution within New York State. Achieving coastal management policies for agriculture, fish, wildlife, and water quality will be, in part, dependent upon the State's continuing effort to reduce air pollution from sources which affect the rural areas of the State's coast.

Control of Toxic Discharges into the Air

Toxic discharges into the air, water and land are of major national and State concern. In some areas of New York, toxics have a significant adverse impact on the use of coastal resources for economic and recreational purposes. While the State has long regulated toxic emissions directly into the air from industrial facilities, toxic air pollution from old chemical dumps such as Love Canal, from the demolition of contaminated buildings and from facilities which detoxify waste products are presenting new challenges. Detoxification facilities and the potential use of toxic wastes as fuel in some industrial processes may foster the economic development potential of the State's coastal area.

UNITED STATES DEPARTMENT OF COMMERCE

FINAL ENVIRONMENTAL IMPACT STATEMENT

AND THE

NEW YORK COASTAL MANAGEMENT PROGRAM

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SECTION 6

COASTAL POLICIES AND IMPLEMENTATION

The Coastal Management Program has a dual role. In one respect, it acts as an advocate for specific, desired coastal actions. In another respect it serves as a coordinator of existing State programs, activities, and decisions which affect the coastal area. The need for this double function became clear during the analysis of the State's coastal area. This analysis resulted in the identification of ten specific issues which were not then being adequately addressed by existing State law or regulations.

The first and most obvious problem was that government agencies, assigned disparate responsibilities and programs, were not required to coordinate, and as a result, decisions affecting the appropriate uses of the State's coastal resources were inconsistent. Obviously, there was a need to coordinate decision-making within and between each level of government. With the passage of the Waterfront Revitalization and Coastal Resources Act, Section 919 of that Act provided the authority to solve this problem.

The nine other issues which required additional attention include: promoting waterfront revitalization; promoting water dependent uses; protecting fish and wildlife habitats; protecting and enhancing scenic areas; protecting and enhancing historic areas; protecting farmlands; protecting and enhancing small harbors; enhancing and protecting public access; providing solid and useful data and information on coastal resources and activities to decision makers; and coping with erosion and flooding hazards. Each of these items necessitated a specific action. The last problem -- coping with erosion and flooding hazards -- required passage of the Coastal Erosion Hazard Areas Act. The Waterfront Revitalization and Coastal Resources Act gave the Coastal Management Program the authority to further advocate each of these activities. A more complete discussion of the Program's role in connection with these activities appears in PART II, Section 4, Program Management.

Coordination

In the past, agencies usually pursued single purpose programs without considering their interrelationships or combined effect on the coastal area. The Coastal Management Program provides the basis for coordinating these programs, in part by spelling out the 44 policies discussed below. For the first time, all State agencies are required to advance these policies toward their logical conclusion, not allowing one policy to override another. More specifically, the use of this particular set of additional criteria as embodied in the 44 policies requires agencies to take into account the interrelationships that exist and/or should exist in the coastal area -- not just interrelationships evident

in a single ecosystem, i.e., wetlands, but the coastal area as a whole. This approach assures that future actions in the coastal area will, at a minimum, not interfere with the State's long term commitment to achieving for society the most beneficial use of coastal resources.

Policies

While the distinction can never be complete, for the most part, each of the 44 policy statements either promotes the beneficial use of coastal resources, prevents their impairment, or deals with major activities that substantially affect numerous resources. In all cases State agencies are required to adhere to each policy statement as much as is legally and physically possible.

The policies designed to promote the use of coastal resources are summarized as follows:

- revitalize underutilized waterfronts (Policy 1)
- facilitate water dependent uses (Policy 2)
- expand the State's major ports (Policy 3)
- expand the State's commercial fishing industry (Policy 10)
- expand public access and water related recreation (Policies 9, 19-22)
- develop coastal energy resources (Policy 27, 29)
- redevelop the existing built environment (Policies 1, 4, 5, 23)
- expedite permitting procedures (Policy 6)

Use of all coastal resources is, however, constrained by the realization that to assure a reasonable quality of life for the long term, the coastal resources essential to society must be carefully husbanded. This frugal use necessitates strong protection measures for certain fragile or rapidly diminishing resources. These resources identified as being in need of protection are as follows:

- significant fish and wildlife habitats (Policies 7, 8)
- the traditional character and purposes of small harbors (Policy 4)
- historic and cultural resources (Policy 23)
- exceptional scenic areas (Policy 24)

- agricultural land (Policy 26)
- dunes, beaches, barrier islands and other natural protective features (Policy 12)
- water and air resources (Policies 31, 32, 33, 26-28, 40-43)
- wetlands (Policy 44)

Supplementing the above, are a few policies which address major activities. These policies clearly state that in undertaking these activities, special care must be taken not to impair valued coastal resources.

- siting energy facilities (Policy 17)
- dredging for navigation, mining, and excavation in coastal waters (Policy 15)
- managing solid water (Policy 39)
- ice management practices (Policy 28)
- siting and building structures in erosion hazard areas (Policies 11, 13, 14, 16, 17)
- adequate consideration of State and public interests for all major coastal activities (Policy 18)

The policies in this Section of the document constitute all the policies of the program and provide a source of information for all state agencies. All of the Program's policies are derived from existing laws and regulations administered by state agencies. Table IV-1 identifies the various laws that provide the basis for and are essential to the enforcement and implementation of the coastal policies. Many of the Program's policies are carried out by programs administered by the Department of Environmental Conservation. For example, the Department operates regulatory programs which provide protection to tidal and freshwater wetlands (Policy 44), restrict development and other activities in flood and erosion hazard areas (Policies 11-17), and protect air and water resources (Policies 30-35 and 40-43). Other agencies, such as the Office of Parks, Recreation and Historic Preservation, Public Service Commission and the State Board on Electric Generation Siting and the Environment administer programs which provide coastal recreational facilities, regualte the siting of energy transmission facilities and regulate the location of electric power plants.

Other Program policies are based upon the provision of Article 42 of the Executive Law. These policies carry out the intention of the State Legislature that there be "a balance between economic development and preservation that will permit the beneficial use

of coastal resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems" (Executive Law, §912(1)). Executive Law, Article 42, requires that actions directly undertaken by State agencies within the State's coastal area be undertaken in a manner consistent with this new, second group of policies. In addition, the procedures of the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) will insure that all State agency actions will be consistent with these policies.

It is important to note that no policy applies to the exclusion of the others. In applying these policies to a given action, all policies relevant to the action are to be adhered to. 19 NYCRR Part 600 and 6 NYCRR Part 617 dictate the only circumstances under which a policy need not be fully adhered to.

The following pages in this section contain an explicit statement of State policy, followed by a more detailed explanation of that statement. In many instances, the explanation is followed by guidelines to be used by agencies in their decision making.

POLICY 1 Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses.

A. Explanation of Policy

State and Federal agencies must ensure that their actions further the revitalization of urban waterfront areas. The transfer and purchase of property; the construction of a new office building, highway or park; the provision of tax incentives to businesses; establishment of enterprise zones, are all examples of governmental means for spurring economic growth. When any such action, or similar action is proposed, it must be analyzed to determine if the action would contribute to or adversely affect a waterfront revitalization effort.

It must be recognized that revitalization of once dynamic waterfront areas is one of the most effective means of encouraging economic growth in the State, without consuming valuable open space outside of these waterfront areas. Waterfront redevelopment is also one of the most effective means of rejuvenating or at least stabilizing residential and commercial districts adjacent to the redevelopment area.

In responding to this policy, several other policies must be considered: (1) Uses requiring a location abutting the waterfront must be given priority in any redevelopment effort. (Refer to Policy 2 for the means to effectuate this priority); (2) As explained in Policy 5, one reason for revitalizing previously dynamic waterfront areas is that the costs for providing basic services to such areas is frequently less than providing new services to areas not previously developed; (3) The likelihood for successfully simplifying permit procedures and easing certain requirements (Policy 6) will be increased if a discrete area and not the entire urban waterfront is the focus for this effort. In turn, ease in obtaining permits should increase developers' interest to invest in these areas. Further, once this concentrated effort has succeeded, stabilization and revitalization of surrounding areas is more likely to occur.

Local governments through waterfront revitalization programs have the primary responsibility for implementing this policy. Though local waterfront revitalization programs need not be limited

to redevelopment, local governments are urged to identify areas as suitable for redevelopment, and establish and enforce redevelopment programs.

1. When a Federal or State action is proposed to take place in an urban waterfront area regarded as suitable for redevelopment, the following guidelines will be used:

   a) Priority should be given to uses which are dependent on a location adjacent to the water;

   b) The action should enhance existing and anticipated uses. For example, a new highway should be designed and constructed so as to serve the potential access needs for desirable industrial development;

   c) The action should serve as a catalyst to private investment in the area;

   d) The action should improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration. For example, a building could not be abandoned without protecting it against vandalism and/or structural decline;

   e) The action must lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use;

   f) The action should have the potential to improve the existing economic base of the community, and, at a minimum, must not jeopardize this base. For example, waterfront development meant to serve consumer needs would be inappropriate in an area where no increased consumer demands were expected and existing development was already meeting demand;

   g) The action should improve adjacent and upland views of the water, and, at a minimum, must not affect these views in an insensitive manner;

   h) The action should have the potential to improve the potential for multiple uses of the site.

2. If a State or Federal action is proposed to take place outside of a given deteriorated, underutilized urban waterfront area suitable for redevelopment, and is either within the relevant community or adjacent coastal communities, the agency proposing the action must first determine if it is feasible to take the action within the deteriorated, underutilized urban waterfront area in question. If such an action is feasible, the agency should give strong consideration to taking the action in that area. If not feasible, the agency must take the appropriate steps to ensure that the action does not cause further deterioration of that area.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' action, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for the restoration and revitalization of natural and man-made resources. This provision of law is implemented by amendments to SEQR (cf. 2. below) and by DOS regulations. DOS regulations (19 NYCRR 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses"; 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations will be amended to reflect consideration of the need to restore and revitalize coastal resources.

Section 915 of the Act requires local governments, if they choose to participate in the Waterfront Revitalization Program, to: identify uses, public and private to be accommodated in the waterfront area; describe means for long-term management and maintenance of waterfront development; and

specify their authority and capability to implement the program. Further, as appropriate to the area, local programs must facilitate the location of industrial, commercial and other uses which benefit from a waterfront location.

During the preparation of a program, local governments will be required to analyze the entire coastal area to determine the most desirable activities. (See Section 8 for a more detailed description of local Waterfront Revitalization Programs). Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environment Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial, industrial, cultural, recreational and other compatible uses".

3. Public Building Law (Article 4-B)

   The Commissioner of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

4. New York State Urban Development Corporation Act, Unconsolidated Law (§6251).

   The Urban Development Corporation (UDC) created by this Act has the power to issue bonds and notes to obtain the capital resources necessary to carry out its powers to acquire, construct, reconstruct, rehabilitate or improve industrial, manufacturing, commercial, educational, recreational, and cultural facilities as well as housing for low income persons and families in urban areas of the State. Where appropriate, and consistent with the other coastal policies, the power of UDC can be used to implement the intent of this policy.

POLICY 2 Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.

A. Explanation of Policy

There is a finite amount of waterfront space suitable for development purposes. Consequently, while the demand for any given piece of property will fluctuate in response to varying economic and social conditions, on a statewide basis the only reasonable expectation is that long-term demand for waterfront space will intensify.

The traditional method of land allocation, i.e., the real estate market, with or without local land use controls, offers little assurance that uses which require waterfront sites will, in fact, have access to the State's coastal waters. To ensure that such "water dependent" uses can continue to be accommodated within the State, State agencies will avoid undertaking, funding, or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses; furthermore State agencies will utilize appropriate existing programs to encourage water dependent activities.

The following uses and facilities are considered as water dependent:

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

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

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

4. Structures needed for navigational purposes (for example: locks, dams, lighthouses);

5. Flood and erosion protection structures (for example: breakwaters, bulkheads);

6. Facilities needed to store and service boats and ships (for example: marinas, boat repair, boat construction yards);

7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);

8. Uses that rely heavily on the waterborne transportation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near to shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);

9. Uses which operate under such severe time constraints that proximity to shipping facilities becomes critical (for example: firms processing perishable foods);

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

11. Support facilities which are necessary for the successful functioning of permitted water dependent uses (for example: parking lots, snack bars, first aid stations, short-term storage facilities). Though these uses must be near the given water dependent use they should, as much as possible, be sited inland from the water dependent use rather than on the shore.

In addition to water dependent uses, uses which are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water dependent uses. A water-enhanced use is defined as a use that has no critical dependence on obtaining a waterfront location, but the profitability of the use and/or the enjoyment level of the users would be increased significantly if the use were adjacent to, or had visual access to, the waterfront. A restaurant which uses good site design to take advantage of a waterfront view, and a golf course which incorporates the coastline into the course design, are two examples of water-enhanced uses.

If there is no immediate demand for a water dependent use in a given area but a future demand is reasonably foreseeable, temporary non-water dependent uses should be considered preferable to a non-water dependent use which involves an irreversible, or nearly irreversible commitment of land. Parking lots, passive recreational

facilities, outdoor storage areas, and non-permanent structures are uses of facilities which would likely be considered as "temporary" non-water dependent uses.

In the actual choice of sites where water dependent uses will be encouraged and facilitated, the following guidelines should be used.

1. Competition for space -- competition for space or the potential for it, should be indicated before any given site is promoted for water dependent uses. The intent is to match water dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a water dependent use area. The choice of a site should be made with some meaningful impact on the real estate market anticipated. The anticipated impact could either be one of increased protection to existing water dependent activities or else the encouragement of water dependent development.

2. In-place facilities and services -- most water dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water dependent uses, consideration should be given to the following factors:

   a. The availability of public sewers, public water lines and adequate power supply;

   b. Access to the area for trucks and rail, if heavy industry is to be accommodated; and

   c. Access to public transportation, if a high number of person trips is to be generated.

3. Access to navigational channels -- if commercial shipping, commercial fishing, or recreational boating are planned, the locality should consider setting aside a site, within a sheltered harbor, from which access to adequately sized navigation channels would be assured.

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

5. Preference to underutilized sites -- the promotion of water dependent uses should serve to foster development as a result of the capital programming, permit expediting, and other State and local actions that will be used to promote the site. Nowhere is such a stimulus needed more than in those portions of the State's waterfront areas which are currently underutilized.

6. Providing for expansion -- a primary objective of the policy is to create a process by which water dependent uses can be accommodated well into the future. State agencies and localities should therefore give consideration to long-term space needs and, where practicable, accommodate future demand by identifying more land than is needed in the near future.

In promoting water dependent uses the following kinds of actions should be considered:

1. Favored treatment to water dependent use areas with respect to capital programming. Particular priority should be given to the construction and maintenance of port facilities, roads, railroad facilities, and public transportation within areas suitable for water dependent uses.

2. When areas suitable for water dependent uses are publicly owned, favored leasing arrangements could be given to water dependent uses.

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

4. State and local planning and economic development agencies should actively promote water dependent uses. In addition, a list of sites available for non-water dependent uses should be maintained in order to assist developers seeking alternative sites for their proposed projects.

5. Local, State and Federal agencies should work together to streamline permitting procedures that may be burdensome to water dependent uses. This effort should begin for specific uses in a particular area.

6. Local land use controls, especially the use of zoning districts exclusively for waterfront uses, can be an effective tool of local government in assuring adequate space for the development of water dependent uses.

B. <u>State Means for Implementing the Policy</u>

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires: 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls for the facilitation of the siting of water dependent uses and facilities. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulation. Those DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is "Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters," 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations be amended to reflect consideration of coastal activities such as water dependent uses.

Section 2 of the Act requires that State agencies analyze their program's consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the legislature.

Section 915 of Article 42 provides for development of local waterfront revitalization programs (See Section 8 on Special Management Areas for a description of these programs.) A requirement of such local programs is that they must incorporate "the facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location, such as, but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture."

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is "Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters".

3. New York State Urban Development Corporation Act, Unconsolidated Laws (§6251)

   The Urban Development Corporation (UDC) created by this Act has the power to issue bonds and notes to obtain the capital resources necessary to carry out its power to acquire, construct, reconstruct, rehabilitate or improve industrial manufacturing, commercial, educational, recreational, and cultural facilities as well as housing for low income persons and families in urban areas of the State. Where appropriate, and consistent with other coastal policies, the powers of UDC can be used to implement this policy.

4. Capital Construction

The capital construction authority of various State agencies, particularly the Departments of Transportation and Environmental Conservation and the Offices of Parks, Recreation and Historic Preservation and General Services, can be used to provide the infrastructure or other amenities which would support or facilitate the development of water dependent uses along the shore.

POLICY 3 Further develop the State's major ports of Albany, Buffalo, New York, Ogdensburg and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of State public authorities, of land use and development which is essential to, or in support of, the waterborne transportation of cargo and people.

A. Explanation of Policy

The aim of this policy is to support port development in New York, Albany, Buffalo, Ogdensburg and Oswego. Three other development policies, discussed in this Section, have significant implications for port development, namely: water dependency, concentration of development, and the expediting of permit reviews. In implementing this policy, state agencies will recognize the legally-established jurisdictional boundaries of the port authorities. If an action is proposed for a site within or abutting a major port, or if there is a reasonable expectation that a proposed action elsewhere would have an impact on a major port, then the following guidelines shall be used in determining consistency:

1. In assessing proposed projects within or abutting a major port, given that all other applicable policies are adhered to, the overriding consideration is the maintenance and enhancement of port activity, i.e., development related to waterborne transportation, which will have precedence over other, non-port related activities.

2. Dredging to maintain the economic viability of major ports will be regarded as an action of regional or statewide public benefit if: a clear need is shown for maintaining or improving the established alignment, width, and depth of existing channels or for new channels essential to port activitiy; and, it can be demonstrated that environmental impacts would be acceptable level according to State regulations governing the activity.

3. Landfill projects in the near-shore areas will be regarded as an acceptable activity within major port areas, provided adverse environmental impacts are acceptable under all applicable environmental regulation and a strong economic justification is demonstrated.

4. If non-port related activities are proposed to be located in or near to a major port, these uses shall be sited so as not to interfere with normal port operations.

5. When not already restricted by existing laws or covenants, and when there is no other overriding regional or statewide public benefit for doing otherwise, surplus public land or facilities within or adjacent to a major port shall be offered for sale, in the first instance, to the appropriate port authority.

6. In the programming of capital projects for port areas, highest priority will be given to projects that promote the development and use of the port. However, in determining such priorities, consideration must also be given to non-port related interests within or near the ports that have demonstrated critical capital programming needs.

7. No buildings, piers, wharves, or vessels shall be abandoned or otherwise left unused by a public agency or sold without making provisions for their maintenance in sound condition or for their demolition or removal.

8. Proposals for the development of new major ports will be assessed in terms of the anticipated impact on: a) existing New York State major ports; b) existing modes of transportation; and c) the surrounding land uses and overall neighborhood character of the area in which the proposed port is to be located; and other valued coastal resources.

9. Port development shall provide opportunities for public access insofar as these opportunities do not interfere with the day-to-day operations of the port and the port authority and its tenants do not incur unreasonable costs.

B. <u>State Means for Implementing the Policy</u>

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires: 1) that State agencies' actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls for encouraging the development and use of existing ports and reinforcing their role as valuable components within the State's transportation and industrial network. This provision of law is implemented by amendments to SEQR (See 2. below).

DOS regulations (19 NYCRR Part 600.5) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Further develop the State's major ports of Albany, Buffalo, New York, Ogdensburg and Oswego as centers of commerce and industry and encourage the siting in these port areas, including those under the jurisdiction of state public authorities, of land use and development which is essential to or in support of the waterborne transportation of cargo and people". 2) that the Secretary of State may review actions of State agencies that may affect achievement of the policies; and 3) that SEQR regulations be amended to reflect consideration of coastal resources that can accommodate encouragement of development and use of major ports. Section 2 of the Act requires that State agencies analyze their programs' consistency with Coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Further develop the State's major ports of Albany, Buffalo, New York, Ogdensburg and Oswego as centers of commerce and industry and encourage the siting in port areas, including those under the jurisdiction of state public authorities, of land use and development which is essential to or in support of the water-borne transportation of cargo and people."

3. Transportation Law, Article 2, Sections 14 and 15.

   This law gives the New York State Department of Transportation overall responsibility for developing, coordinating, and carrying out comprehensive, balanced transportation policy and planning, to be expressed in a comprehensive statewide master plan for transportation. The Department also has responsibility

to coordinate and assist in the balanced development and operation of transportation facilities and services, including marine facilities.

All proposed revisions to the comprehensive statewide master plan for transportation are to be reviewed by the Department of State, with any recommendations to be submitted to the Governor, who must approve such revisions.

4. Council of Upstate Ports

This Council, made up of representatives of the major upstate ports, acts to increase coordination among the ports and to increase cooperation between the ports and the State (State agencies, particularly the Departments of Commerce and Transportation, regularly attend meetings).

5. New York State Urban Development Corporation Act, Unconsolidated Law (§6251).

The Urban Development Corporation (UDC) created by this Act has the power to issue bonds and notes to obtain the capital resources necessary to carry out its powers to acquire, construct, reconstruct, rehabilitate or improve industrial, manufacturing, commercial, educational, recreational, and culutural facilities as well as housing for low income persons and families in urban areas of the State. Where appropriate and consistent with other coastal policies, the powers of UDC can be used to implement the intent of this policy.

POLICY 4 Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.

A. Explanation of Policy

This policy recognizes that the traditional activities occurring in and around numerous smaller harbors throughout the State's coastal area contribute much to the economic strength and attractiveness of these harbor communities. Thus, efforts of State agencies shall center on promoting such desirable activities as recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits, and other compatible activities which have made smaller harbor areas appealing as tourist destinations and as commercial and residential areas. Particular consideration will be given to the visual appeal and social benefits of smaller harbors which, in turn, can make significant contributions to the State's tourism industry.

The following guidelines shall be used in determining consistency:

1. The action shall give priority to those traditional and/or desired uses which are dependent on or enhanced by a location adjacent to the water.

2. The action will enhance or not detract from or adversely effect existing traditional and/or desired anticipated uses.

3. The action shall not be out of character with, nor lead to development which would be out of character with, existing development in terms of the area's scale, intensity of use, and architectural style.

4. The action must not cause a site to deteriorate, e.g., a structure shall not be abandoned without protecting it against vandalism and/or structural decline.

5. The action will not adversely affect the existing economic base of the community, e.g., waterfront development designed to promote residential development might be inappropriate in a harbor area where the economy is dependent upon tourism and commercial fishing.

6. The action will not detract from views of the water and smaller harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires: 1) that State agencies' actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls for efforts to encourage the development and use of smaller harbors. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies one of which is: "Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity"; 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations be amended to reflect consideration of the need to use coastal resources.

Section 915 of the Article requires local governments if they choose to participate in the Waterfront Revitalization Program to: identify uses, public and private, to be accommodated in the waterfront area; to describe means for long term management and maintenance of waterfront development; and specify their authority and capability to implement the program. Further, as appropriate to the area, local programs must facilitate the location of industrial, commercial and other uses which benefit from a waterfront location. During the preparation of a program, local governments will be required to analyze the entire coastal area to determine the most appropriate activities which should occur. Refer to Section 8 for a more detailed description of local Waterfront Revitalization Programs.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity."

3. New York State Urban Development Corporation Act, Unconsolidated Law (§6251)

   The Urban Development Corporation (UDC) created by this Act has the power to issue bonds and notes to obtain the capital resources necessary to carry out its powers to acquire, construct, reconstruct, rehabilitate or improve industrial, manufacturing, commercial, educational, recreational, and cultural facilities as well as housing for low income persons and families in urban areas of the State. Where appropriate, and consistent with other coastal policies, the powers of UDC can be used to implement the intent of this policy.

POLICY 5 Encourage the location of development in areas where public services and facilities essential to such development are adequate.

A. Explanation of Policy

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, development, particularly large-scale development, in the Coastal Area will be encouraged to locate within, contiguous to, or in close proximity to, existing areas of concentrated development where infrastructure and public services are adequate, where topography, geology, and other environmental conditions are suitable for and able to accommodate development.

The above policy is intended to accomplish the following:

- strengthen existing residential, industrial and commercial centers
- foster an orderly pattern of growth where outward expansion is occurring
- increase the productivity of existing public services and moderate the need to provide new public services in outlying areas
- preserve open space in sufficient amounts and where desirable
- foster energy conservation by encouraging proximity between home, work, and leisure activities.

For any action that would result in large scale development or an action which would facilitate or serve future development, a determination shall be made as to whether the action is within, contiguous to, or in close proximity to an area of concentrated development where infrastructure and public services are adequate. The following guidelines shall be used in making that determination.

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

2. Other locations in the coastal area may also be suitable for development, if three or more of the following conditions prevail:

   a. Population density of the area surrounding or adjacent to the proposed site exceeds 1,000 persons per square mile;

   b. Fewer than 50% of the buildable sites (i.e., sites meeting lot area requirements under existing local zoning regulations) within one mile radius of the proposed site are vacant;

   c. Proposed site is served by or is near to public or private sewer and water lines;

   d. Public transportation service is available within one mile of the proposed site; and

   e. A significant concentration of commercial and/or industrial activity is within one-half mile of the proposed site.

3. The following points shall be considered in assessing the adequacy of an area's infrastructure and public services:

   a. Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;

   b. Development's water needs (consumptive and fire fighting) can be met by the existing water supply system;

   c. Sewage disposal system can accommodate the wastes generated by the development;

   d. Energy needs of the proposed land development can be accommodated by existing utility systems;

   e. Stormwater runoff from the proposed site can be accommodated by on-site and/or off-site facilities; and

   f. Schools, police and fire protection, and health and social services are adequate to meet the needs of the population expected to live, work, shop, or conduct business in the area as a result of the development.

It is recognized that certain forms of development may and/or should occur at locations which are not within or near areas of concentrated development. Thus, this coastal development policy does not apply to the following types of development projects and activities.

1. Economic activities which depend upon sites at or near locations where natural resources are present, e.g., lumber industry, quarries.

2. Development which by its nature is enhanced by a non-urbanized setting, e.g., a resort complex, campgrounds, second home developments.

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

4. Water dependent uses with site requirements not compatible with this policy or when alternative sites are not available.

5. Development which because of its isolated location and small-scale has little or no potential to generate and/or encourage further land development.

6. Uses and/or activities which because of public safety consideration should be located away from populous areas.

7. Rehabilitation or restoration of existing structures and facilities.

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

In certain urban areas where development is encouraged by this policy, the condition of existing public water and sewage infrastructure may necessitate improvements. Those State and Federal agencies charged with allocating funds for investments in water and sewer facilities should give high priority to the needs of such urban areas so that full advantage maybe taken of the rich array of their other infrastructure components in promoting waterfront revitalization.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires: 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for the encouragement of concentration of development.

This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies one of which is: "Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas"; 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations be amended to reflect consideration of the use and conservation of coastal resources.

Section 915 of the Article requires local governments to analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to State programs.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development, and land resources. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for State agency actions for

which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas".

3. New York State Land Use Element[2]

As approved by the Governor, the Land Use Element calls for a "concentrated pattern of development (that) would not only utilize existing services and facilities to their fullest capacity but would reduce growth pressures on valuable open lands and resources. Thus, both the economic vitality and environmental quality of the State would be improved". The Land Use Element is used to guide the State's funding and capital facilities decision-making processes.

[2] New York State Land Use Element, Department of State, 1978, p. 25.

POLICY 6 Expedite permit procedures in order to facilitate the siting of development activities at suitable locations.

A. Explanation of Policy

For specific types of development activities and in areas suitable for such development, State agencies and local governments participating in the Waterfront Revitalization Program will make every effort to coordinate and synchronize existing permit procedures and regulatory programs, as long as the integrity of the regulations' objectives is not jeopardized. These procedures and programs will be coordinated within each agency. Also, efforts will be made to ensure that each agency's procedures and programs are synchronized with other agencies' procedures at each level of government. Finally, regulatory programs and procedures will be coordinated and synchronized between levels of government, and if necessary, legislative and/or programmatic changes will be recommended.

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

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 916 (2) of the Act calls for the Office of Business Permits (OBP), with assistance from the Secretary of State, to determine means for expediting development called for in approved Waterfront Revitalization Programs, based on the consistency provisions of the Act. This activity of the OBP and Secretary of State is to include consolidating, simplifying, expediting or otherwise improving permit procedures.

Section 915 of the Act requires local governments, if they choose to participate in the Waterfront Revitalization Program, to identify means for the long term management and maintenance of waterfront development including organizational structures, responsibilities and land use controls. To meet this requirement, a local government will have to, in part, determine if existing controls can be simplified in an effort to expedite desired development in areas suitable for such development. Further, the local government must identify those State and Federal permit programs requiring simplification in order to expedite the desired development [Section 915 (5) (h)].

As explained in Section 8 of this document, a local program must be approved by its legislative body. This approval will require local regulatory agencies to adhere to the program policies, which, if the program is approved by the Secretary of State, will be adhered to by State and Federal agencies. This adherence to one set of specific policies will provide the basis for improving the ease of obtaining permits. This requirement, in conjunction with the requirement for all interests to be consulted during the program's preparation [915 (3)], lessens the time necessary for public review of individual actions when proposed, providing another means for expediting permits.

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

Section 2 of the Act requires the Secretary of State to report to the Governor and Legislature additional means to further the purposes of the Act. Practical and efficient means for permit simplification will be a part of these recommendations.

2. Article 39 of the Executive Law

The Office of Business Permits "will provide comprehensive permit information, one-step service for permit applicants, and the coordination of permit processing and review". [Section 975 (3)].

3. Uniform Procedures Act, Environmental Conservation Law (Article 70)

The Act establishes uniform procedures and specific time periods for the processing of permits applications by the Department of Environmental Conservation.

POLICY 7 Significant coastal fish and wildlife habitats will be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.

A. Explanation of Policy

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

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

(b) support populations of rare and endangered species;

(c) are found at a very low frequency within a coastal region;

(d) support fish and wildlife populations having significant commercial and/or recreational value; and

(e) would be difficult or impossible to replace.

In order to protect and preserve a significant habitat, land and water uses or development shall not be undertaken if such actions destroy or significantly impair the viability of an area as a habitat. When the action significantly reduces a vital resource (e.g., food, shelter, living space) or changes environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism, then the action would be considered to "significantly impair" the habitat. Indicators of a significantly impaired habitat may include: reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

The range of generic activities most likely to affect significant coastal fish and wildlife habitats include but are not limited to the following:

1. Draining wetlands, ponds: Cause changes in vegetation, or changes in groundwater and surface water hydrology.

2. Filling wetlands, shallow areas of streams, lakes, bays, estuaries: May change physical character of substrate (e.g., sandy to muddy, or smother vegetation, alter surface water hydrology).

3. Grading land: Results in vegetation removal, increased surface runoff, or increase soil erosion and downstream sedimentation.

4. Clear cutting: May cause loss of vegetative cover, increase fluctuations in amount of surface runoff, or increase streambed scouring, soil erosion, sediment deposition.

5. Dredging or excavation: May cause change in substrate composition, possible release of contaminants otherwise stored in sediments, removal of aquatic vegetation, or change circulation patterns and sediment transport mechanisms.

6. Dredge spoil disposal: May induce shoaling of littoral areas, or change circulation patterns.

7. Physical alteration of shore areas through channelization or construction of shore structure: May change in volume and rate of flow or increased scouring, sedimentation.

8. Introduction, storage or disposal of pollutants such as chemical, petrochemical, solid wastes, nuclear wastes, toxic material, pesticide, sewage effluent, urban and rural runoff, leachate of hazardous and toxic substances stored in landfills: May cause increased mortality or sublethal effects on organisms, alter their reproductive capabilities, or reduce their value as food organisms.

The range of physical, biological and chemical parameters which should be considered include but are not limited to the following:

1. Physical parameters such as: Living space, circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (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, behavioral patterns, and migratory patterns.

3. Chemical parameters such as: Dissolved oxygen, carbon dioxide, ph, dissolved solids, nutrients, organics, salinity, pollutants (heavy metals, toxic and hazardous materials).

When a proposed action is likely to alter any of the biological, physical or chemical parameters as described in the narrative beyond the tolerance range of the organisms occupying the habitat, the viability of that habitat has been significantly impaired or destroyed. Such action, therefore, would be inconsistent with the above policy.

In cooperation with the State's Coastal Management Program, the Department of Environmental Conservation has developed a rating system incorporating these five parameters (The Development and Evaluation of a System for Rating Fish and Wildlife Habitats in the Coastal Zone of New York State Final Report, January, 1981, 15 pp.).

To further aid Federal and State agencies in determining the consistency of a proposed action with this policy, a narrative will be prepared for each significant habitat which will: (1) identify the location of the habitat; (2) describe the community of organisms which utilize the habitat; (3) identify the biological, physical and chemical parameters which should be considered when assessing the potential impacts of a project on that habitat; (4) identify generic activities which would most likely create significant impacts on the habitat; and (5) provide the quantitive basis used to rate the habitat. Prior to formal designation of significant fish and wildlife habitats, copies of the individual habitat narratives plus copies of habitat maps and completed rating forms will be provided to Federal and State agecies and the public for the review and comment.

B. State Means for Policy Implementation

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires actions directly undertaken by the State agencies within the coastal area be consistent with coastal area policies including the policy calling for the protection of significant habitats. When a State agency provides funding assistance, develops a plan, sells, leases, transfers or buys land, or directly uses or develops land within the coastal boundaries, it must find that its action will not adversely affect any significant habitat within or near the proposed project area.

This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with coastal policies, one of which is: "Significant coastal fish and wildlife habitats, as identified on the Coastal Area Map, shall be protected and preserved so as to maintain their viability as habitats." The Secretary of State can review actions of State agencies that may effect achievement of the policy. SEQR regulations have been amended to reflect consideration of significant coastal fish and wildlife habitats.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law, (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that is likely to have a significant impact upon the environment. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement.

In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Significant coastal fish and wildlife habitats, as identified on the Coastal Area Map, shall be protected and preserved so as to maintain their viability as habitats."

3. Tidal Wetlands Act, Environmental Conservation Law, (Article 24)

Of the 3,107 total miles of New York coastal shorelines, about, 1,600 miles are subject to regulation under the Program. Tidal wetlands often provide wildlife habitats which include breeding, nesting, feeding grounds, and vegetative cover for many types of wildlife, waterfowl and shorebirds. Approximately two-thirds of New York's marine sport and commercial finfish and shellfish species utilize tidal wetlands at some stage of their life cycle. Under this permit program the State regulates any land use activities that would diminish the value of wetlands as fish and wildlife habitats.

Regulated activities include any form of draining, dredging, excavation, dumping, filling, construction, pollutant discharge or any other activity which directly or indirectly impairs the tidal wetland's ability to provide habitat. The Department of Environmental Conservation has inventoried, classified and mapped the State's tidal wetlands.

4. Freshwater Wetland Act, Environmental Conservation Law (Article 24)

Freshwater wetlands also function as important fish and wildlife habitat. The program established under this Act regulates activities such as draining, dredging, and filling, thus protecting many significant habitats. This program can be administered by local governments pursuant to State guidelines and after official filing of wetland maps by the State. Counties, or the State, may administer the program in municipalities where local governments fail to exercise this responsibility. Until the maps are filed with the communities, the Department of Environmental Conservation regulates freshwater

wetlands through its interim permit program. Before granting or denying a permit, the municipality must determine if the activity will have an adverse impact on the habitat value of the wetland.

5. Stream Protection Act, Environmental Conservation Law (Article 15, Title 5)

   This law was enacted to minimize disturbances to the beds and banks of certain streams (Class C (t) and above) which cause increased turbidity, and irregular variations in velocity, temperature and water levels, in order to protect fish and wildlife and their habitats. The Department of Environmental Conservation regulates dredging and filling in navigable waters and adjacent wetlands, and construction of certain dams and docks. Further, it requires the removal, replacement or repair of illegal or unsafe structures, fills or excavations. This could accomplish restoration of physically altered habitats.

6. Wild, Scenic and Recreational Rivers System, Environmental Conservation Law (Article 15, Title 27)

   Along stretches of rivers designated as "wild", "scenic", or "recreational", the State Department of Environmental Conservation is authorized by this law to exercise land use controls in order to protect the outstanding natural, scenic, historic, ecological and recreational resources of these rivers. This may include the protection of fish and wildlife resources and their habitats in the preparation and implementation of adopted management programs.

   Presently, portions of the Connetquot and Carmens Rivers in Suffolk County have been designated as scenic and recreational rivers. Studies are underway in other coastal areas of the State to determine which additional rivers should be included in this system.

7. Fish and Wildlife Management Practices Cooperative Program, Environmental Conservation Law (Article 11-0501)

   This law enables the Department of Environmental Conservation to enter into cooperative agreements with private property owners to manage fish and wildlife resources and their habitats on privately owned lands.

8. New York State Park Preserve System, Parks and Recreation Law (Article 20)

This legislation gives the Office of Parks, Recreation, and Historic Preservation the power (in conjunction with Section 3.09 of PRL, authorizing acquisition of land for State recreational facilities) to purchase park preserve areas in or near metropolitan regions in order to "maintain the integrity of fauna..." and to "provide for the management of all unique, rare, or endangered species of fauna within park preserves areas." By purchasing fish and wildlife habitat areas for passive recreational uses, their preservation and management is assured. Assistance in identifying such areas can be provided to the Office of Parks, Recreation, and Historic Preservation through the Coastal Management Program.

9. State Nature and Historical Preserve Trust, Environmental Conservation Law (Article 45)

This section of Environmental Conservation Law authorizes the Department of Environmental Conservation, after recommendation by the State Nature and Historical Preserve Trust Board of Trustees and authorization by the State Legislature, to purchase property for inclusion. Lands that can be a part of the preserve include those of ecological significance, including coastal fish and wildlife habitats.

10. Implementation of Environmental Quality Bond Act of 1972, Environmental Conservation Law (Article 51)

Title 7 of Article 51 directs the Department of Environmental Conservation to appropriate monies from the Environmental Quality Bond Act for land preservation and improvement projects. These projects include acquisition of important tidal and freshwater wetlands. Section 3-0305 of the Environmental Conservation Law gives the Department of Environmental Conservation the power to acquire property for any of the functions of the Department.

POLICY 8 Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bioaccumulate in the food chain or which cause significant sublethal or lethal effect on those resources.

A. Explanation of Policy

Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, waste is defined in Environmental Conservation Law [S27-0901(3)] as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious charactertics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or otherwise managed." A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

The handling (storage, transport, treatment and disposal) of the materials included on this list is being strictly regulated in New York State to prevent their entry or introduction into the environment, particularly into the State's air, land and waters. Such controls should effectively minimize possible contamination of and bio-accumulation in the State's coastal fish and wildlife resources at levels that cause mortality or create physiological and behavioral disorders.

Other pollutants are those conventional wastes, generated from point and non-point sources, and not identified as hazardous wastes but controlled through other State laws cited below.

B. State Means for Implementing the Policy

1. Industrial Hazardous Waste Management Act, Environmental Conservation Law (Article 27, Title 9)

The purpose of this State law is to authorize the NYS Department of Environment Conservation (DEC) to regulate the handling of hazardous wastes generation, storage, transportation, treatment and disposal in a manner consistent with the Federal Resource Conservation and Recovery Act of 1976 (RCRA).

This State law mandates DEC to identify and list hazardous wastes, to develop and implement a manifest system for tracking the wastes "from cradle to grave", and to regulate all phases of handling hazardous wastes. Strict enforcement of this law by DEC will minimize new introductions of hazardous wastes into the environment, thereby protecting Coastal fish and wildlife resources.

2. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)

   The Department of Environmental Conservation regulates all industrial, commercial and municipal discharges as well as those from residential subdivisions of five or more lots, into the State's surface and groundwaters. Through this program, the State can control the discharge of toxics and other pollutants from point sources which contaminate fish and wildlife resources.

3. State Certification, Federal Water Pollution Control Act (Section 401)

   This section of the Federal Water Pollution Control Act Amendments of 1972 provides the State with authority to review applications for licenses or permits submitted to any Federal agencies to conduct activities within the State and to certify whether discharges into the State's navigable waters are in compliance with water quality requirements stipulated under various sections of the Federal Water Pollution Control Act and its amendments. Federal permits covered by this section are primarily those issued by the Army Corps of Engineers for dredging and spoil disposal, by the Environmental Protection Agency for certain waste water discharges, and by the Nuclear Regulatory Commission and Federal Energy Regulatory Commission for nuclear and hydroelectric energy generating facilities. The discharge of pollutants resulting from such Federal projects, which may affect the State's coastal fish and wildlife resources, can be regulated accordingly.

4. Toxic Substance Monitoring Program, Environmental Conservation Law(Article 17)

   This program is designed to monitor the occurrence and significance of 17 different toxicants in fish from 102 sampling locations statewide over a three-year period. This effort will enable the State to trace the distribution of toxic substances once they are discharged into the environment, identify those biological resources being affected, and direct clean-up operations accordingly.

5. Substances Hazardous to the Environment, Environmental Conservation Law(Article 37)

   Substances which are hazardous and tend to accumulate in the food chain threaten fish and wildlife and other living coastal resources. The State recently passed this law in an effort to control the discharge of hazardous substances into the environment. Rules and regulations pertaining to the storage and discharge of these substances are under preparation. The hazardous substances identified will be included within these rules and regulations.

6. Solid Waste Management, Environmental Conservation Law (Article 27, Title 7)

   Garbage, refuse, industrial and commercial wastes, incinerator residue, sludge and other solid wastes can cause physiological disorders in fish and wildlife and contaminate their habitats if not treated and disposed of properly. The construction and operation of solid waste management facilities are regulated as authorized by this law, and such regulations are directed at the prevention or reduction of pollution of resources.

7. Stream Pollution Prohibited, Environmental Conservation Law (Article 11-0503)

   Deleterious or poisonous substances (e.g., dyestuffs, coal tar, and refuse from a gas house) may not be discharged into any waters either private or public, in quantities injurious to fish life, protected wildlife or waterfowl inhabiting those waters or injurious to the propagation of fish, protected wildlife or waterfowl. Also, vessel wastes (oil, sludge, cinders, or ashes) may not be discharged into the Hudson River.

8. Control of Pollution Injurious to Fish/ Shellfish, Environmental Conservation Law (Article 13-0345 and 17-0503)

These sections of the law provide for the protection of shellfish and fin fish from contaminants (e.g., sludge, acid, refuse, and sewage) which affect the flavor, odor, color, or sanitary condition of these fishery resources.

9. Oil Spill Prevention, Control and Compensation, Navigation Law, (Article 12)

Unregulated discharge of petroleum or oil spills associated with the transport and storage of such products can damage the State's coastal fish, shellfish, wildlife and other biotic resources. This law authorizes the Department of Transportation and the Department of Environmental Conservation to control the methods of petroleum storage and transfer and to require prompt cleanup and compensation to damaged parties when spills or discharges occur.

10. Siting of Major Steam-Electric Generating Facilities (Public Service Law, Article VIII)

Prior to construction of a major steam-electric generating facility, an applicant must obtain a certificate of public need and environmental compatibility from the State Siting Board. The applicant is required to collect detailed environmental data and be able to demonstrate that minimum adverse environmental impacts (including impacts on fish and wildlife resources) would result from construction and operation of the proposed facility at the selected site. The process established under Article VIII addresses Coastal Management Policies in connection with siting of major steam-electric generating facilities.

11. Sanitary Code, Public Health Law, (Article 3)

Municipalities are authorized by this law to adopt a Local Sanitary Code. These sanitary codes are designed to insure that individual sewage disposal systems do not create health hazards, do not adversely affect the environment, or do not impair the use of property. Obviously, fish and wildlife habitats can be protected from pollutants through the local adoption of such a sanitary code.

POLICY 9 Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources.

A. Explanation of Policy

Recreational uses of coastal fish and wildlife resources include consumptive uses such as fishing and hunting, and non-consumptive uses such as wildlife photography, bird watching and nature study.

Any efforts to increase recreational use of these resources will be made in a manner which ensures the protection of fish and wildlife resources in marine and freshwater coastal areas and which takes into consideration other activities dependent on these resources. Also, such efforts must be done in accordance with existing State law and in keeping with sound resource management considerations. Such considerations include biology of the species, carrying capacity of the resource, public demand, costs and available technology.

The following additional guidelines should be considered by State and Federal agencies as they determine the consistency of their proposed action with the above policy.

1. Consideration should be made by Federal and State agencies as to whether an action will impede existing or future utilization of the State's recreational fish and wildlife resources.

2. Efforts to increase access to recreational fish and wildlife resources should not lead to overutilization of that resource or cause impairment of the habitat. Sometimes such impairment can be more subtle than actual physical damage to the habitat. For example, increased human presence can deter animals from using the habitat area.

3. The impacts of increasing access to recreational fish and wildlife resources should be determined on a case-by-case basis, consulting the significant habitat narrative (see Policy 7) and/or conferring with a trained fish and wildlife biologist.

4. Any public or private sector initiatives to supplement existing stocks (e.g. stocking a stream with fish reared in a hatchery) or

develop new resources (e.g. creating private fee-hunting or fee-fishing facilities) must be done in accord with existing State law.

B. State Means for Implementing the Policy

1. General Powers and Duties of the Department of Environmental Conservation, Environmental Conservation Law, (Article 11, Title 3)

The Department of Environmental Conservation manages the State's fish and wildlife resources. It propagates fish and wildlife to supplement existing stocks; regulates their harvest through restricted seasons, bag limits, and gear restrictions, and develops new or improve existing habitats with such devices as stream improvement structures.

2. Stream Rights Acquisition, Environmental Conservation Law (Article 51-0701)

This law enables the Department of Environmental Conservation to acquire access rights (fee-simple or less-than-fee-simple) on quality streams guaranteeing fishermen access to various stretches of streams and rivers. Additional information needed for determining priorities in this acquisition program will be provided to the Department of Environmental Conservation through the Coastal Management Program.

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919, of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls the promotion of the recreational use of fish and wildlife resources. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations.

DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the following policy: "Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing

existing stocks and developing new resources." Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them. Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

Section 915 of this law provides for funding of local government waterfront revitalization plans by the Department of State. Increased access to coastal waters for the purposes of fishing is strongly encouraged as one of the management objectives for a local waterfront revitalization plan.

4. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is:

> "Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them."

5. Other State Acquisition Powers, Parks Recreation Law (Section 3.09)

This law authorizes the Office of Parks, Recreation, and Historic Preservation to acquire, establish, and operate facilities for recreational purposes, including valuable fishing and hunting areas. For further information on the Office of Parks, Recreation, and Historic Preservation's powers, see the recreation policies contained in this report.

6. Urban Fisheries Program, Environmental Conservation Law (Article 11)

   The Department of Environmental Conservation has elected to increase fishing activity in several metropolitan areas of the State, including Buffalo, Albany, Troy, and New York City, through its Urban Fisheries Program. Public education, eliminating problems of access to existing, under-utilized fisheries, and creation of new fisheries through stocking of ponds or establishing suitable habitat are specific means by which the objectives of this program will be accomplished. In most cases, these fishing areas are accessible by public transportation. However, in some instances, inadequate mass transportation constrains public use of these resources.

7. Urban Wildlife Program, Environmental Conservation Law (Article 11)

8. Fish and Wildlife Management Practices Cooperative Program, Environmental Conservation Law (Article 11-0501)

POLICY 10 Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities.

A. Explanation of Policy

Commercial fishery development activities must occur within the context of sound fishery management principals developed and enforced within the State's waters by the New York State Department of Environmental Conservation and the Management plans developed by the Regional Fisheries Management Councils (Mid-Atlantic and New England) and enforced by the U.S. National Marine Fisheries Service within the Fishery Conservation Zone. (The Fishery Conservation Zone is the area of coastal waters extending from the three mile State waters boundary to the 200 mile offshore boundary of U.S. Waters. The Conservation Zone is authorized by the U.S. Fishery Conservation and Management Act of 1976.) Sound resource management considerations would include optimum sustained yield levels developed for specific commercial fish species, harvest restrictions imposed by State and Federal governments, and the economic, political (uses conflicts) and technological constraints to utilizing these resources.

The following additional guidelines should be considered by State and Federal agencies as they determine the consistency of their proposed action with the above policy:

a. A public agency's commercial fishing development initiative should not preempt or displace private sector initiative.

b. A public agency's efforts to expand existing or create new on-shore commercial fishing support facilities should be directed towards unmet development needs rather than merely displacing existing commercial fishing activities from a nearby port. This may be accomplished by taking into consideration existing State or regional commercial fishing development plans.

c. Consideration should be made by State and Federal agencies whether an action will impede existing utilization or future development of the state's commercial fishing resources.

d. Commercial fishing development efforts should be made in a manner which ensures the maintenance and protection of the renewable fishery resources.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act Executive Law, (Article 42)

Section 915 of this law authorizes the Department of State to encourage municipalities which choose to develop local waterfront revitalization programs to implement commercial fishing port development projects. Such facilities might include the construction or rehabilitation of piers; facilities for catch transfer, freezer storage, fishing processing and packaging; or acquaculture facilities.

Section 919, of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which is: Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing onshore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities. This provision of law is implemented by amendments to SEQR (of 2 below) and by DOS regulations.

DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the following policy: "Further develop commercial finfish, shellfish and crustacean resources in the coastal area by: (i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of the State's seafood products; (iii) maintaining adequate stocks and (iv) expanding aquaculture facilities. Such efforts shall be made in a manner which insures the protection of such renewable fish resources and considers other activities dependent on them.

2. State Environmental Quality Review Act Environmental Conservation Law (Article 8)

Environmental impact as defined in this law include not only impact on the State's natural resources but also the State's economy.

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is:

> "Further develop commercial finfish, shellfish and crustacean resources in the coastal area by: (i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of New York seafood products; (iii) maintaining adequate stocks and (iv) expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them."

POLICY 11 Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.

A. Explanation of Policy

On coastal lands identified as coastal erosion hazard areas, buildings and similar structures shall be set back from the shoreline a distance sufficient to minimize damage from erosion unless no reasonable prudent alternative site is available as in the case of piers, docks and other structures necessary to gain access to coastal waters to be able to function. The extent of the setback will be calculated, taking into account the rate at which land is receding due to erosion, and the protection provided by existing erosion protection structures as well as by natural protective features such as beaches, sandbars, spits, shoals, barrier islands, bay barriers, nearshore areas, bluffs and wetlands. The only new structure allowed in coastal erosion hazard areas is a moveable structure as defined in Section 505.3(u) of the regulations for ECL, Article 34. Prior to its construction, an erosion hazard areas permit must be approved for the structure. Existing, non-conforming structures located in coastal erosion hazard areas may be only minimally enlarged.

In coastal lands identified as being subject to high velocity waters caused by hurricane or other storm wave wash - a coastal high hazard area - walled and roofed buildings or fuel storage tanks shall be sited landward of mean high tide; and no mobile home shall be sited in such area. In coastal lands identified as floodways, no mobile homes shall be sited other than in existing mobile home parks.

Where human lives may be endangered by major coastal storms, all necessary emergency preparedness measures should be taken, including disaster preparedness planning.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including natural protective features such as beaches

and dunes. The law also requires the calculation of rates of recession of coastal lands. Standards and criteria are also prescribed for the regulation of the siting of buildings and other structures in relation to those defined areas.

2. Flood Plain Management Act, Environmental Conservation Law (Article 36)

   This law ensures that, if a community fails to qualify for the Federal flood insurance program, the State will develop flood hazard regulations for that community to make it eligible for participation in the program. The regulations are, at a minimum, those specified by the Federal Emergency Management Agency.

   State agencies are also constrained by this law through regulation of such activities as the financing of projects, or the authorization of implementation of projects, on State lands. The regulations are, at a minimum, those specified by the Federal flood insurance program.

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

   Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires the use of non-structural measures whenever possible to minimize damage from flooding and erosion. This provision of law is implemented by amendments to SEQR (see 4 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing or elevation of buildings above the base flood level."

(2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the use of set backs as a non-structural measure.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

4. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing or elevation of buildings above the base flood level."

5. State and Local Natural and Man-made Disaster Preparedness Act, Executive Law (Article 2-B)

This law provides for the establishment of a State Disaster Preparedness Commission and the preparation of a State Disaster Preparedness Plan. The Act also declares that it is a policy of the State that local governments "continue their essential role as the first line of defense in times of disaster" and authorizes counties and cities to prepare Local Disaster Preparedness Plans.

POLICY 12 Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs.

A. Explanation of Policy

Beaches, dunes, barrier islands, bluffs, and other natural protective features help safeguard coastal lands and property from damage, as well as reduce the danger to human life, resulting from flooding and erosion. Excavation of coastal features, improperly designed structures, inadequate site planning, or other similar actions which fail to recognize their fragile nature and high protective values, lead to the weakening or destruction of those landforms. Activities or development in, or in proximity to, natural protective features must ensure that all such adverse effects are minimized. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   This law requires the identification of coastal erosion hazard areas, including natural protective features such as beaches, dunes, bluffs and barrier islands. Standards and criteria are also authorized for the promulgation of regulations which will require that activities and development will have minimal adverse effects on such natural protective features.

2. Flood Plain Management Act, Environmental Conservation Law (Article 36)

   (See also Policy 11, B, 2 above)

   Regulations promulgated under this law include a prohibition on the alteration of sand dunes in coastal high hazard areas so as to prevent an increase in potential flood damage to lands and property.

3. Water Resources Act, Environmental Conservation Law (Article 15)

Sections 15-0503 and 15-0505 regulate the placement of permanent docks, piers and similar structures, as well as the placement of fill, in the waters of the State. The law also recognizes the adverse effect of such activities on soil erosion and will be used to implement this policy.

4. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage to natural resources from flooding and erosion be minimized, including the protection of beaches, dunes, barrier islands, bluffs and other natural protective features. This provision of law is implemented by amendments to SEQR (see 5 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of activities or development on natural protective features.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

5. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity."

POLICY 13 The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

A. Explanation of Policy

Erosion protection structures are widely used throughout the State's coastal area. However, because of improper design, construction and maintenance standards, many fail to give the protection which they were presumed to provide. As a result, development is sited in areas where it is subject to damage or loss due to erosion. This policy will help ensure the reduction of such damage or loss.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   Within coastal erosion hazard areas identified by this law, standards and criteria required by the Act will be used to regulate the construction or reconstruction and maintenance of erosion protection structures.

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

   Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which states that it is State policy to minimize damage to property from erosion. This provision of law is implemented by amendments to SEQR (see 3 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs."

(2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of improperly designed, constructed or maintained erosion protection structures.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs."

POLICY 14 Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.

A. Explanation of Policy

Erosion and flooding are processes which occur naturally. However, by his actions, man can increase the severity and adverse effects of those processes, causing damage to, or loss of property, and endangering human lives. Those actions include: the use of erosion protection structures such as groins, or the use of impermeable docks which block the littoral transport of sediment to adjacent shorelands, thus increasing their rate of recession; the failure to observe proper drainage or land restoration practices, thereby causing run-off and the erosion and weakening of shorelands; and the placing of structures in identified floodways so that the base flood level is increased causing damage in otherwise hazard-free areas.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   Within coastal erosion hazard areas identified pursuant to this law, standards and criteria will be established to regulate activities and development, including the construction or reconstruction of erosion control structures, so that on-site erosion, and erosion of other lands, will not measurably increase.

2. Water Resources Act, Environmental Conservation Law (Article 15)

   Subsections 15-0503 and 15-0505 regulate the placement of permanent docks, piers and similar structures, as well as the placement of fill, in the waters of the State. The law also recognizes the adverse effect of such activities on soil erosion and will be used to implement this policy.

3. Flood Plain Management Act, Environmental Conservation Law (Article 36)

(See also Policy 11, B, 2 above)

This law regulates encroachments in floodways identified under the federal flood insurance program so as to prevent increases in floodwater levels.

4. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which states that it is State policy to minimize damage to natural resources and property from flooding and erosion. This provision of law is implemented by amendments to SEQR (see 5 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of activities or development upon coastal lands.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

5. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations."

POLICY 15 Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

A. Explanation of Policy

Coastal processes, including the movement of beach materials by water, and any mining, excavation or dredging in nearshore or offshore waters which changes the supply and net flow of such materials can deprive shorelands of their natural regenerative powers. Such mining, excavation and dredging should be accomplished in a manner so as not to cause a reduction of supply, and thus an increase of erosion, to such shorelands. Offshore mining is a future alternative option to land mining for sand and gravel deposits which are needed to support building and other industries.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage to natural resources from erosion is minimized. This provision of law is implemented by amendments to SEQR (see 2 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of mining, excavation and dredging upon coastal lands.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

   Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. The environment is broadly defined to include land and minerals: hence, sand, gravel, and other materials in coastal waters are viewed as environmental resources. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land."

3. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   This law provides for the identification of coastal erosion hazard areas, including nearshore natural protective features such as shoals, bars and spits, which if altered might lower the reserves of sand or other natural materials available to replenish storm losses through natural processes. The law requires also that excavation or other alteration of land will be regulated to minimize adverse effects on those natural protective features as well as to prevent erosion of other lands.

4. Public Lands Law (Article 2)

New York State owns the underwater lands in the State's coastal area, except where its rights have been sold, leased or otherwise transferred, or where they have been reserved to other interests. This law provides for the leasing of certain underwater lands for the mining of sand and gravel. Such mining activities must be implemented consistent with the policies of Executive Law, Article 34.

5. Protection of Waters Act, Environmental Conservation Law (Article 15)

This law recognizes the adverse effects on soil erosion of activities such as excavation in the State's navigable waters, or in marshes, estuaries, tidal marshes and wetlands adjacent thereto, and requires the regulation of such activity by permit.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The regulatory jurisdiction of this law in the State's tidal waters includes: (1) coastal shoals, bars and flats, as well as other lands no more than 6 feet underwater at low mean water, and adjacent areas; and (2) the dredging, excavation or removal of sand, or other aggregate. To protect the contribution which those lands make to flood, hurricane and storm control, those uses are presumed incompatible and a permit must be obtained from the Department of Environmental Conservation, upon demonstration that those values will not be adversely affected.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This law provides for the identification of freshwater wetlands and for the regulation of activities therein, including dredging, mining and excavation.

POLICY 16 Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

A. Explanation of Policy

Public funds are used for a variety of purposes on the State's shorelines. This policy recognizes the public need for the protection of human life and existing investment in development or new development which requires a location in proximity to the coastal area or in adjacent waters to be able to function. However, it also recognizes the adverse impacts of such activities and development on the rate of erosion and on natural protective features and requires that careful analysis be made of such benefits and long-term costs prior to expending public funds.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   This law contains a provision that, within identified coastal erosion hazard areas, consideration be given to both the public benefits and long range adverse effects of proposed activities and development which use public funds.

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

   Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage from erosion to natural resources and property is minimized by proper location of new development, protection of critical coastal features and the use of non-structural measures whenever possible. This provision of law is implemented by amendments to SEQR (see 3 below) and by Department of State regulations.

Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features." (2) The the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the costs and benefits of publicly funded erosion protective structures.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features."

POLICY 17 Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible.

A. Explanation of Policy

1. This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the coastal area as well as the costs of protection against those hazards which structural measures entail.

2. "Non-structural measures" shall include, but not be limited to: (1) within coastal erosion hazard areas identified under Section 34-104, Coastal Erosion Hazard Areas Act (Article 34, Environmental Conservation Law), and subject to the permit requirements on all regulated activities and development established under that Law, (a) the use of minimum setbacks as provided for in Section 34-108; and (b) the strengthening of coastal landforms by the planting of appropriate vegetation on dunes and bluffs, the installation of sand fencing on dunes, the reshaping of bluffs to achieve an appropriate angle of repose so as to reduce the potential for slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce runoff and internal seepage of waters which erode or weaken the landforms; and (2) within identified flood hazard areas, (a) the avoidance of risk or damage from flooding by the siting of buildings outside the hazard area, and (b) the flood-proofing of buildings or their elevation above the base flood level.

3. This policy shall apply to the planning, siting and design of proposed activities and development, including measures to protect existing activities and development. To ascertain consistency with the policy, it must be determined if any one, or a combination of, non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development, and to the hazard. If non-structural measures are determined to offer sufficient protection, then consistency with the policy would require the use of such measures, whenever possible.

4. In determining whether or not non-structural measures to protect against erosion or flooding will afford the degree of protection appropriate, an analysis, and if necessary, other materials such as plans or sketches of the activity or development, of the site and of the alternative protection measures should be prepared to allow an assessment to be made.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls for minimizing damage to natural resources and property from flooding and erosion by the use of non-structural measures whenever possible. This provision of law is implemented by amendments to SEQR (See 2 below) and by the Department of State regulations. The Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of the use of non-structural measures to minimize damage from flooding and erosion.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level."

3. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   Within coastal erosion hazard areas identified pursuant to this law, standards and criteria will be established to regulate activities and development as well as to protect natural protective features such as dunes, bluffs, beaches and barrier islands through a permit system.

POLICY 18 To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

A. Explanation of Policy

Proposed major actions may be undertaken in the coastal area if they will not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the purposes of the safeguards which the State has established to protect those waters and resources. Proposed actions must take into account the social, economic and environmental interests of the State and its citizens in such matters that would affect natural resouces, water levels and flows, shoreline damage, hydro-electric power generation, and recreation.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

In part, Article 42 declares that it is the public policy of the State within its coastal area: to conserve and protect fish and wildlife and their habitats; achieve a balance between economic development and preservation needs that will permit the beneficial use of coastal resources while preventing permanent adverse changes to ecological systems; and minimize damage to natural resources and property from flooding and erosion. The Act's policies also call for the assurance of consistency of State actions and Federal actions with policies within the coastal area and cooperation and coordination with other states, the Federal government and Canada "to attain a consistent policy towards coastal management". Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of the Act. This provision of law is implemented by amendments to SEQR (See 2 below) and by the Department of State regulations. The Department of State

regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of this policy.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas."

3. Water Resources Act, Environmental Conservation Law (Article 15)

Section 15-0101 states in part that "... the sovereign power to regulate and control the water resources of this State ever since its establishment has been and now is vested exclusively in the State of New York except to the extent of any delegation of powers to the United States..."

4. Wild, Scenic and Recreational Rivers System, Environmental Conservation Law (Article 15, Title 27)

   Along stretches of rivers designated by the State as "wild", "scenic", or "recreational", the State Department of Enviromental Conservation is authorized by this law to exercise land use controls in order to protect the outstanding natural, scenic, historic, ecological and recreational resources of these rivers.

5. Protection of Waters, Environmental Conservation Law (Article 15, Title 5)

   This law was enacted to minimize disturbances to the beds and banks of certain streams (Class C (t) and above) which cause increased turbidity, and irregular variations in velocity, temperature and water levels, in order to protect fish and wildlife and their habitats. The Department of Environmental Conservation regulates dredging and filling in navigable waters and adjacent wetlands, and construction of certain dams and docks. Further, it requires the removal, replacement or repair of illegal or unsafe structures, fills or excavations.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   This Act requires that a permit be issued for activities or development in identified tidal wetlands. It must be demonstrated that proposed activities or development will not adversely affect water quality, flood and storm control, marine food production, wildlife habitat, open space, and aesthetically significant areas.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   This law recognizes the value of freshwater wetlands in providing flood protection, wildlife habitats, open space and water resources. The program established under this Act regulates activities such as draining, dredging, and filling. It is administered by local governments pursuant to state guidelines and after official filing of wetland maps by the State. The Department of Environmental Conservation regulates fresh-

water wetlands through its interim permit program in communities where maps have yet to be filed. Before granting or denying a permit, the municipality or DEC must determine if the activity will have an adverse impact on the value of the wetland.

8. General Powers and Duties of the Department of Environmental Conservation, Environmental Conservation Law (Article 11, Title 3)

   The Department of Environmental Conservation is empowered by this law to manage the State's fish and wildlife resources. The Department propagates fish and wildlife to supplement existing stocks, regulates their harvest through restricted seasons, bag limits, gear restrictions, and develops new or improves existing habitats with such devices as stream improvement structures.

9. Stream Pollution Prohibited, Environmental Conservation Law (Article 11-0503)

   Deleterious or poisonous substances (e.g., dyestuffs, coal tar, and refuse from a gas house) may not be discharged into any waters either private or public, in quantities injurous to fish life, protected wildlife or waterfowl inhabiting those waters or injurious to the propagation of fish, protected wildlife or waterfowl. Also vessel wastes (oil, sludge cinders or ashes) may not be discharged into the Hudson River.

10. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)

    The Department of Environmental Conservation regulates all industrial, commercial and municipal discharges, as well as those from residential subdivisions of five or more lots, into the state's surface and groundwaters. Through this program, the State can control the discharge of toxics and other pollutants from point sources which contaminate valuable resources.

11. Control of Pollution Injurious to Fish/Shellfish, Environmental Conservation Law (Article 13-0345 and 17-0503)

    These sections of the law provide for the protection of shellfish and finfish from contaminants (e.g., sludge, acid, refuse, and sewage) which affect the flavor, odor, color, or sanitary condition of these fishery resources.

12. Substances Hazardous to the Environment, Environmental Conservation Law (Article 37)

    Substances, which are hazardous and tend to accumulate in the food chain, threaten fish and wildlife and other living coastal resources. The State recently passed this law in an effort to control the discharge of hazardous substances into the environment. Rules and regulations pertaining to the storage and discharge of these substances are under preparation. The hazardous substances identified will be included within these rules and regulations.

13. Industrial Hazardous Waste Management Act, Environmental Conservation Law (Article 27, Title 9)

    The Department of Environmental Conservation (DEC) regulates the handling of hazardous wastes generation, storage, transportation, treatment and disposal in a manner consistent with the Federal Resource Conservation and Recovery Act of 1976 (RCRA). This state law mandates DEC to identify and list hazardous wastes, to develop and implement a manifest system for tracking the wastes "from cradle to grave", to regulate all phases of handling hazardous wastes. Enforcement of this law will minimize new introductions of hazardous wastes into the environment, thereby protecting coastal resources.

14. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12)

    Unregulated discharge of petroleum or oil spills associated with the transport and storage of such products can damage the State's coastal fish, shellfish, wildlife, beaches and other resources. This law

authorizes the Department of Transportation and the Department of Environmental Conservation to control the methods of petroleum storage and transfer and to require prompt cleanup and compensation to damaged parties when spills or discharges occur.

15. Public Health Law (Article 11)

This law provides for the Department of Health to make rules and regulations for the protection from contamination of public supplies of potable waters.

16. Solid Waste Management, Environmental Conservation Law (Article 27, Title 7)

Garbage, refuse, industrial and commercial wastes, incinerator residue, sludge and other solid wastes can cause physiological disorders in fish and wildlife and contaminate their habitats if not treated and disposed of properly. The construction and oepration of solid wastes management facilities are regulated as authorized by this law, and such regulations are directed at the prevention or reduction of pollution of resources.

17. Transportation Law (Article 2, Section 14-F)

This law authorizes the Commissioner of Transportation to regulate the transportation of hazardous materials.

18. Flood Plain Management Act, Environmental Conservation Law (Article 36)

This law ensures that, if a community fails to qualify for the federal national flood insurance program, the State will develop flood hazard regulations for that community to make it eligible for participation in the program. The regulations are, at a minimum, those specified by the federal program, administered by the Federal Emergency Management Agency.

State agencies are also constrained by this law through regulation of such activities as the financing of projects, or the authorization of implementation of projects on state lands. The regulations are, at a minimum, those specified by the federal national flood insurance program.

19. Coastal Erosion Hazards Area Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including natural protective features such as beaches, dunes, barrier islands and nearshore areas, and coastal lands subject to significant erosion. Standards and criteria are also prescribed for the regulation of activities and development in relation to those defined areas so as to minimize damage to natural resources and property from erosion.

20. Protection of Natural and Man-Made Beauty, Environmental Conservation Law (Article 49)

Under this law, DEC has the power and duty to: (1) "develop policies and programs to preserve and enhance the natural and man-made beauty of the State" and (2) "designate scenic sites, areas and highways in the State and develop programs for their preservation and enhancement".

21. Implementation of Enviornmental Quality Bond Act of 1972, Environmental Conservation Law (Article 51)

Title 7 of Article 51 directs the Department of Environmental Conservation to appropriate monies from the Environmental Quality Bond Act for land preservation and improvement projects. These projects include acquisition of important tidal and freshwater wetlands. Section 3-0305 of the ECL gives the Department of Environmental Conservation the power to acquire property for any of the functions of the Department.

22. Stream Rights Acquisition, Environmental Conservation Law (Article 51-0701)

This law enables the Department of Environmental Conservation to acquire access rights (fee-simple or less-than-fee simple) on quality streams guaranteeing fishermen access to various stretches of streams and rivers.

27. New York State Historic Preservation Act of 1980, Parks & Recreation Law (Section 11.03, 11.09, 14); Public Building Law (Article 4-B); General Municipal Law (Article 5-K)

The New York State Historic Preservation Act greatly expands the responsibilities of New York State agencies and municipalities with regard to historic preservation. Specifically the Act provides several means for preserving the historic architectural, archeological, and cultural resources of the State (including resources under water). Each State agency must designate a historic preservation officer to coordinate and implement state historic preservation programs. A State Register of historic places is created and an inventory of properties which may qualify for the Register is established. A Statewide Preservation Plan is to be prepared and updated annually. A review process has been established, to be undertaken concurrently with existing environmental reviews; this process requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if a state-funded project will have an adverse effect upon a historic property. The review process requires consideration of alternatives and that adverse effects be avoided or mitigated. The Secretary of State is added to State Board of Historic Preservation, and the Commissioner of the Office of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

28. Parks and Recreation Law (Section 3.09)

This statute authorizes the NYS Office of Parks, Recreation and Historic Preservation to acquire, establish, operate, and maintain state parks, parkways, historic sites, and state recreational facilities.

29. State Nature and Historical Preserve Trust, Environmental Conservation Law (Article 45)

This program provides for acquisition, when authorized by act of the Legislature, of real property (including less than fee interests) and administration of lands, outside the Forest Preserve counties, "... of special natural beauty, wilderness character or geological, ecological, or historical signficance."

30. New York State Park Preserve System, Parks and Recreation Law (Article 20)

This legislation gives the Office of Parks, Recreation and Historic Preservation the power (in conjunction with Section 3.09 of PRL, authorizing acquisition of land for state recreational facilities) to purchase park preserve areas in or near metropolitan regions in order to "maintain the integrity of fauna..." and to "provide for the management of all unique, rare, or endangered species of fauna within park preserves areas." By purchasing fish and wildlife habitat areas for passive recreational uses, their preservation and management is assured.

31. Harbors of Refuge, Navigation Law (Article 11, Section 141)

This law authorizes the Office of Parks, Recreation and Historic Preservation to enter into agreement with the federal government and with municipalities to construct, operate, and maintain such harbors. Priorities for locating harbors of refuge are determined by the State Comprehensive Recreation Plan Priority System.

32. State Marina Facilities, Navigation Law (Article 11, Section 143)

This section of the Navigation Law authorizes the State to construct, operate, and maintain State marina facilities, including those incidental to a harbor of refuge. Priorities for location of these facilities are also determined by the State Comprehensive Recreation Plan Priority System.

33. Local Marina Facilities, Navigation Law (Article 11, Section 142)

Municipalities can help meet the demand for marinas by participating in this program which authorizes state financial assistance to municipalities in the construction of local marina facilities, including those incidental to a harbor of refuge. Priorities for giving financial assistance to municipalities are determined by the State Comprehensive Recreation Plan Priority System.

POLICY 19 Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities.

A. Explanation of Policy

This policy calls for achieving balance among the following factors: the level of access to a resource or facility, the capacity of a resource or facility, and the protection of natural resources. The imbalance among these factors is the most significant in the State's urban areas. Because this is often due to access-related problems, priority will be given to improving physical access to existing and potential coastal recreation sites within the heavily populated urban coastal areas of the State and to increasing the ability of urban residents to get to coastal recreation areas by improved public transportation. The particular water related recreation resources and facilities which will receive priority for improved access are public beaches, boating facilities, fishing areas and waterfront parks. In addition, because of the greater competition for waterfront locations within urban areas, the Coastal Management Program will encourage mixed use areas and multiple use of facilities to improve access. Specific sites requiring access improvements and the relative priority the program will accord to each will be identified in the Public Access Planning Process.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access.

   The following is an explanation of the terms used in the above guidelines:

a. Access - the ability and right of the public to reach and use public coastal lands and waters.

b. Public water-related recreation resources or facilities - all public lands or facilities that are suitable for passive or active recreation that requires either water or a waterfront location or is enhanced by a waterfront location.

c. Public lands or facilities - lands or facilities held by State or local government in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands and the foreshore.

d. A reduction in the existing level of public access - includes but is not limited to the following:

(1) The number of parking spaces at a public water-related recreation resource or facility is significantly reduced.

(2) The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use and such reduction cannot be reasonably justified in terms of meeting systemwide objectives.

(3) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

(4) There are increases in the following: already existing special fares of public transportation to a public water-related recreation resource or facility; and/or admission fees to such a resource or facility, and an analysis shows that such increases will significantly reduce usage by individuals or families with incomes below the State government established poverty level.

e. An elimination of the possibility of increasing public access in the future includes, but is not limited to the following:

(1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.

(2) Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility.

(3) Construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.

2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:

a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource or facility. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

3. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.

4. In their plans and programs for increasing public access to public water-related resources and facilities, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the boundaries of the Federal-Aid Metropolitan

Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42).

Section 919 of Article 42 requires 1) that State agencies' actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing diminution of public access to the waterfront and another for encouraging and facilitating public access for recreational purposes. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, among which are the following:

-- Protect, maintain, and increase the levels and types of access to public water related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas, and waterfront parks;

-- Expand recreational use of fish and wildlife resources by increasing access to existing resources (19 NYCRR 600.5); and

-- Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast provided it is consistent with the preservation and enhancement of other coastal resources taking into account demand for such facilities. In facilitating such activities, priority shall

be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development (19 NYCRR 600.5);

2) that the Secretary of State review actions of State agencies that may affect achievement of the policies; and

3) that SEQR regulations be amended to reflect consideration of coastal resources that can accommodate public access needs.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8).

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have an impact upon the environment. Such actions include those contiguous to any publicly-owned or operated park land, recreation area or designated open space. Since actions deal with the provision of access, under this policy, to public water-related recreation resources and facilities, any action would require an environmental impact statement to be prepared if it exceeded 25 percent of any threshold specified for a Type I action (6 NYCRR Part 617). In addition, Article 42 of the Executive Law requires that SEQR regulations be amended to require that environmental impact statements address coastal policies whenever a proposed action would affect achievement of a coastal policy. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8).

In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, among which are:

-- Expand recreational use of fish and wildlife resources by increasing access to existing resources (19 NYCRR 600.5);

-- Protect, maintain, and increase the levels and types of access to public water related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority will be given to public beaches, boating facilities, fishing areas, and waterfront parks (19 NYCRR 600.5); and

-- Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast provided it is consistent with the preservation and enhancement of other coastal resources, taking into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development (19 NYCRR 600.5).

3. Acquisition-Parks and Recreation Law (3.09); Environmental Conservation Law (3-0305); Highway Law §22.

One of the most effective means of providing access to public beaches and other public areas of the type listed above is acquisition of real property, including either the full fee interest in real property or some lesser interest therein, such as an easement, or contractual right to use the real property. There are presently a number of specific

statutory acquisition powers which could be used to implement this public access policy. The cited Parks and Recreation Law and the Environmental Conservation Law provided broad acquisition powers to the Office of Parks, Recreation and Historic Preservation and the Department of Environmental Conservation respectively.

The State Department of Transportation is authorized to acquire land for highway and specific transportation purposes, but these acquisition powers could be used to achieve their intended purposes as well as to implement coastal access policies. In addition to the basic power to acquire property for transportation facilities per se, such powers include "Acquisition of Property...in order to provide multi-use areas adjacent to state highways and recreational, natural and scenic areas along, but not necessarily contiguous to, state highways..." (Highway Law §22). This is a power which could be used to carry out a number of coastal policies involving actual physical access. The "multi-use areas" are to complement highway facilities. The statute provides that multi-use areas may include, but are not limited to walking, hiking, bicycle, and recreational vehicle trails, and there is express power to acquire less than fee interest.

Acquisitions for this program must be reviewed by the Department of State, the Office of Parks, Recreation and Historic Preservation, and the Department of Environmental Conservation. The Secretary of State will review such acquisitions which are located within the coastal area.

Pursuant to its general acquisition powers (see above), the Department of Environmental Conservation has instituted a program to acquire public fishing access to lakes, rivers and streams, including provision of boat launching sites. Substantial access has been provided through acquisition of easements on private lands. The Parks and Recreation Bond Act of 1960 and the Environmental Quality Bond Act of 1972 have provided a source of funds for such acquisition. (See Environmental Conservation Law, §51-0701). Within the coastal area acquisition will be made in accordance with

the priorities established by the "access planning process."

Acquisition for improved coastal access made by these agencies or other funds must be consistent with the priorities described in Policy 20.

4. Access Road, Highway Law §10 (37)

This section of the Highway Law gives the Commissioner of Transportation the authority, upon request of any head of a State agency, to construct an access road from a State highway to an agency facility (the agency would, however, be required to reimburse DOT for all incurred costs). Thus, access to coastal recreational facilities may be increased at those facilities where road access has been identified as deficient.

5. Abandoned Railway Acquistion, Transportation Law (§18)

Railroads are a common feature of much of New York's coast and often restrict access to it. This section of the Transportation Law gives the Commissioner of the Department of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. Where such abandoned property would improve access to existing or proposed public recreation areas and there is no viable transportation use for it, the Commissioner should give priority to the public agency that has jurisdiction over such coastal lands. This Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to right-of-way, where a conflict over use exists between one or more government agencies, shall take action consistent with the effectuation of State plans and policies. This provision plus the State consistency provisions of the Coastal Management Program indicate coastal management policies will influence the decision where a conflict exists.

6. Siting of Energy Facilities, Public Service Laws (Article VII and VIII) and Commission Opinion 72-3, case #26108

Many transmission lines are located in the coastal area. Use of their rights-of-way can provide a suitable means of assuring additional access to water-related recreation opportunities including use by recreational vehicles. Under this Law a utility company is required to allocate an amount equal to two percent of the total construction cost of the transmission facilities to a fund to be used for recreational development of the right-of-way. Where the right-of-way could be used for needed additional access, this provision of the Law will be employed to provide that access. At the present time, however, recreational use of such rights-of-way is not being acted upon because of research that is underway in connection with health and safety effects which may be associated with high voltage transmission facilities.

Because power plants generally locate along the coast and a large land area around the facility is often owned by the utility, these sites present significant opportunities for multiple use. At a minimum they can provide additional access to water-related recreation opportunities such as fishing.

7. Fish and Wildlife Management Act, Environmental Conservation Law, (Article II, Title 5)

The Environmental Conservation Law provides for a "Fish and Wildlife Management Practices Cooperative Program", the purpose of which is to: "...obtain on the privately owned or leased lands and waters of the state practices of fish and wildlife management which will preserve and develop the fish and wildlife resources of the state and improve access to them for recreational purposes by the people of the state." The program is used to provide, by agreement with landowners, public rights to access to such lands for hunting and fishing purposes. Within coastal areas, efforts to obtain agreements will reflect coastal management policies.

8. State Comprehensive Recreation Plan, Parks and Recreation Law (§3.15)

The State Comprehensive Recreation Plan has a priority system for allocating funds available for outdoor recreation acquisition and development projects under State and Federal grant programs and the State Environmental Quality Bond Act. One of the positive-rated allocation factors is the degree to which the project contributes to the implementation of State plans such as that for Coastal Management. In addition, consistency between the Coastal Management Program and the State Comprehensive Recreation Plan will be assured by the Secretary of State's review of such plan, and by the State Waterfront Revitalization and Coastal Resources Act which requires State agencies to act consistent with the Act's policies.

9. Parks and Recreation Law, §3.09 (7-a)

The Office of Parks, Recreation and Historic Preservation is required to promulgate a comprehensvie plan for the establishment of a statewide trails system. Trails are to include footpaths, bike ways, snowmobile trails, horse trails, cross-country ski trails, roads and other rights-of-way suitable for hiking, strolling, cycling, horseback riding, skiing, and other means of motorized and non-motorized travel for recreational purposes. Included are to be combinations and systems of trails leading to scenic and recreational areas, such as those in coastal areas.

POLICY 20 Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses.

A. Explanation of Policy

In coastal areas where there are little or no recreation facilities providing specific water-related recreational activities, access to the publicly-owned lands of the coast at large should be provided for numerous activities and pursuits which require only minimal facilities for their enjoyment. Such access would provide for walking along a beach or a city waterfront or to a vantage point from which to view the seashore. Similar activities requiring access would include bicycling, birdwatching, photography, nature study, beachcombing, fishing and hunting.

For those activities, there are several methods of providing access which will receive priority attention of the Coastal Management Program. These include: the development of a coastal trails system; the provision of access across transportation facilities to the coast; the improvement of access to waterfronts in urban areas; and the promotion of mixed and multi-use development.

While such publicly-owned lands referenced in the policy shall be retained in public ownership, traditional sales of easements on lands underwater to adjacent onshore property owners are consistent with this policy, provided such easements do not substantially interfere with continued public use of the public lands on which the easement is granted. Also, public use of such publicly-owned underwater lands and lands immediately adjacent to the shore shall be discouraged where such use would be inappropriate for reasons of public safety, military security, or the protection of fragile coastal resources.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. Existing access from adjacent or proximate public lands or facilities to existing public coastal lands and/or waters shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or nearby public lands or facilities to public coastal lands and/or waters be

eliminated, unless such actions are demonstrated to be of overriding regional or statewide public benefit, or in the latter case, estimates of future use of these lands and waters are too low to justify maintaining or providing increased access.

The following is an explanation of the terms used in the above guidelines:

a. (See definitions under first policy of "access", and "public lands or facilities").

b. A reduction in the existing level of public access - includes but is not limited to the following:

   (1) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

   (2) Pedestrian access is diminished or blocked completely by public or private development.

c. An elimination of the possibility of increasing public access in the future - includes but is not limited to, the following:

   (1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public coastal lands and/or waters.

   (2) Sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters.

   (3) Construction of private facilities which physically prevent the provision of convenient public access to public coastal lands and/or waters from public lands and facilities.

2. The existing level of public access within public coastal lands or waters shall not be reduced or eliminated.

   a. A reduction or elimination in the existing level of public access - includes but is not limited to the following:

      (1) Access is reduced or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

      (2) Access is reduced or blocked completely by any public development.

3. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new land use or development except where (a) it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; (b) adequate access exists within one-half mile; or (c) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

4. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.

5. In their plans and programs for increasing public access, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

6. Proposals for increased public access to coastal lands and waters shall be analyzed according to the following factors:

a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the coastal lands or waters. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing diminution of public access to the waterfront and another for encouraging and facilitating public access for recreational purposes. This provision of law is implemented by amendments to SEQR (of 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided and it shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership"; 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations be amended to reflect consideration of the use of coastal resources for including accommodation of public access needs.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership."

3. Acquisition of Property for Construction of Bikeways, Highway Law (§22)

An important component of coastal trails systems would be the inclusion of bikeways, which are particularly desirable for providing access because they create few disturbances of the natural environment and are compatible with the protection of private property rights. This section of the Highway Law could be the principal means to acquire land for bikeways, since it authorizes the Commissioner of Transportation to acquire property for the purpose of constructing such facilities.

4. Abandoned Railway Acquisition, Transportation Law (§18)

Where railroad transportation property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to a coastal trails system that will increase access to the coast. This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. The Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict

over use exists between one or more government agencies, shall take action consistent with the effectuation of State plans and policies. This provision plus the State consistency provisions of the Coastal Management Program indicate coastal management policies will influence the decision where a conflict exists.

5. Statewide Trails System, Parks and Recreation Law §3.09 (7-a)

This provision of the Parks and Recreation Law could be used in conjunction with the above provision, since it requires the Commissioner of the Office of Parks, Recreation and Historic Preservation to promulgate a comprehensive plan for the establishment of a statewide trails system which may be implemented by the purchase and improvement of abandoned railroad rights-of-way. Through coordination with the Office of Parks, Recreation and Historic Preservation, the Coastal Management Program will ensure that development of trails in coastal areas receives a high priority, and within the coastal area the Secretary of State will identify areas where trail development should receive priority.

6. Highway Law (Article II, §22)

Recreational, scenic and natural areas adjacent to coastal highways enhance not only the setting of the highway, but can provide access to coastal areas that, for example, would otherwise be cut off by the highway. This applies to both rural and urban areas. This section of the Highway Law could be used to provide for such areas because it authorizes the Commissioner of Transportation to acquire property in order to provide multi-use areas adjacent to State highways, and recreational, natural, and scenic areas along but not necessarily contiguous to State highways. Multi-use areas can be used for such facilities as walking, hiking, bicycle, trail-bike, recreational vehicle, and snowmobile trails. Plans for any acquisitions will be submitted to the Secretary of State for his review and recommendation.

7. Siting of Major Steam Electric Generating Facilities, Public Service Law (Article VIII)

Because power plants generally locate along the coast and a large land area around the facility is often owned by the utility, these sites present significant opportunities for multiple use, including access. Recognizing this, the law specifically provides for consideration of recreational use of power plant sites, which could, of course, include access to the shore. The law requires utilities to state "why the primary proposed location and source is best suited to promote the public health and welfare, including the recreational and other concerned uses which the site may serve." The Secretary of State will participate in the proceedings and will formally present to the Siting Board his recommendations on access.

8. Development of Transportation Corridors; Multiple Use Outside the Counties of Kings and Queens of Rights-of-Way, Transportation Law (Article 14-e)

All transportation facilities, especially those in coastal areas, have the potential for development and multiple-use activities, including recreation and its necessary component access, in their rights-of-way. This article of the Transportation Law could be used for general access purposes to coastal areas, since it gives the Commissioner of Transportation the power to provide for the multiple-use of transportation facility rights-of-way in connection with the construction of such facilities. This applies throughout the State with the exception of Kings and Queens Counties (New York City).

9. Wild, Scenic and Recreational Rivers Act, Environmental Conservation Law (Article 15, Title 27)

This statute empowers the Department of Environmental Conservation to promulgate regulations for the control of land use and development within an area up to one half mile from the banks of designated rivers. While this statute provides for police power regulations, not acquisition, the Commissioner of Environmental Conservation is authorized to order discontinuance of land uses, with payment of compensation.

Along designated rivers in coastal areas where development patterns deter access, this power could be indirectly used to facilitate the provision of access.

10. State Nature and Historical Preserve Trust, Environmental Conservation Law (Article 45)

    This program provides for acquisition, when authorized by act of the Legislature, of real property (including less than fee interests) and administration of lands, outside the Forest Preserve counties, "... of special natural beauty, wilderness character or geological, ecological, or historical significance." Wherever properties are purchased in coastal areas, an indirect benefit of the program could be the improvement of access to the coast for a variety of passive activities, provided physical access would not conflict with preservation of the resource.

11. Tidal and Freshwater Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

    These acts contain authority for programs applying both performance standards and land use regulations for the protection of wetlands. The exercise of the police power in relation to wetlands is to be accomplished within the context of the broadly stated purpose of these acts. While public access is not specifically listed, several listed purposes relate to access, including recreational benefits ("provision of areas for hunting, fishing, boating, hiking, birdwatching, photography, and other uses"); "...education and scientific research by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources"; and "...open space and aesthetic appreciation by providing often the only remaining open areas along crowded river fronts and coastal Great Lakes regions..."

POLICY 21 Water dependent and water enhanced recreation will be encouraged and facilitated, and will be given priority over non-water related uses along the coast.

A. Explanation of Policy

Water-related recreation includes such obviously water-dependent activities as boating, swimming, and fishing as well as certain activities which are enhanced by a coastal location and increase the general public's access to the coast such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of coastal scenery.

Provided the development of water-related recreation is consistent with the preservation and enhancement of such important coastal resources as fish and wildlife habitats, aesthetically significant areas, historic and cultural resources, agriculture and significant mineral and fossil deposits, and provided demand exists, water-related recreation development is to be increased and such uses shall have a higher priority than any non-coastal dependent uses, including non-water-related recreation uses. In addition, water-dependent recreation uses shall have a higher priority over water enhanced recreation uses. Determining a priority among coastal dependent uses will require a case by case analysis.

Among priority areas for increasing water-related recreation opportunities are those areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and those areas where the use of the shore is severely restricted by highways, railroads, industry, or other forms of existing intensive land use or development. The DOS, working with the Office of Parks, Recreation, and Historic Preservation and with local governments, will identify communities whose use of the shore has been so restricted and those sites shoreward of such developments which are suitable for recreation and can be made accessible. Priority shall be given to recreational development of such lands.

The siting or design of new public development in a manner which would result in a barrier to the recreational use of a major portion of a community's shore should be avoided as much as practicable.

Among the types of water-dependent recreation, provision of adequate boating services to meet future demand is to be encouraged by this Program. The siting of boating facilities must be consistent with preservation and enhancement of other coastal resources and with their capacity to accommodate demand. The provision of new public boating facilities is essential in meeting this demand, but such public actions should avoid competition with private boating development. Boating facilities will, as appropriate, include parking, park-like surroundings, toilet facilities, and pumpout facilities. Harbors of Refuge are particulary needed along Lake Erie and Lake Ontario. There is a need for a better locational pattern of boating facilities to correct problems of overused, insufficient, or improperly sited facilities.

Also to be encouraged is non-motorized recreation in the State's coastal area. Water-related off-road recreational vehicle use is an acceptable activity, provide no adverse environmental impacts occur. Where adverse environmental impacts will occur, mitigating measures will be implemented, where practicable to minimize such adverse impacts. If acceptable mitigation is not practicable, prohibition of the use by off-road recreational vehicles will be posted and enforced.

B. <u>State Means for Implementing the Policy</u>

1. Parks and Recreation Law (Section 3.09)

This statute authorizes the NYS Office of Parks, Recreation and Historic Preservation to acquire, establish, operate, and maintain state parks, parkways, historic sites, and state recreational facilities. This Law is employed by the Office to implement the State Comprehensive Recreation Plan (SCRP) and funding priority system described below.

2. State Comprehensive Recreation Plan, Parks and Recreation Law (Section 3.15)

The State Comprehensive Recreation Plan has a priority system to allocate funding for public parks and outdoor recreation acquisition, development and rehabilitation projects under available State and Federal grant assistance funds and State Environmental Quality Bond Act monies. One of the positive rated allocation factors is the degree to which the project contributes to the implementation of the State Comprehensive Recreation Plan or other State, national or regional plans. Thus, the Coastal Management program would require that projects proposed for coastal areas be evaluated positively under this Priority System if they are water-related or negatively if they are not water-related. The DOS will work with the OPR & HP in a review of the State Comprehensive Recreation Plan to ensure that it assigns priority to water-related recreational facilities and activities within the coastal area.

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Article 42, Section 919 provides: (1) that all State agency actions, including funding, planning, land transaction, as well as direct development activities must be consistent with the policies of this Act which call for the encouragement and facilitation of public access to the shore for recreation, recreational fishing, maintaining open space, and in general, the beneficial use of coastal resources, particularly for recreation whenever appropriate. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Water dependent and water enhanced recreational activities shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast, provided it is consistent with the preservation)and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas

where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development." (2) that the Secretary of State review actions of State agencies that would affect achievement of the policies of the Act; and (3) that SEQR regulations be amended to require consideration of impacts on the use of coastal resources for recreation.

Section 2 of the Act requires State agencies to analyze their programs' consistency with coastal policies and that the Secretary of State review such analyses and make recommendations to the Governor and Legislature for any needed changes. The formula for allocating funding to localities and the State Comprehensive Recreation Plan are among the programs that will be analyzed.

4. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. In assessing the significance of an action's impact on the environment, the impacts on open space and future recreational opportunities are among those considered. The SEQR regulations (NYCRR 617.12) set a much lower threshold for triggering an environmental assessment for an action in or near a recreation area. In addition, as Article 42 of the Executive Law, requires SEQR regulations are being amended to require the consideration of impacts on the use of coastal resources, such as potential recreational use of coastal resources. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent

with the coastal policies, one of which is: "Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non water-related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development."

5. Plan for an Urban Cultural Park System; Parks and Recreation Law (Section 3.21)

   This Law has resulted in the formulation of a plan for the creation of a statewide system of urban cultural parks, many located within the coastal boundary and which include, among other areas of concern, consideration or urban waterways and other natural areas that offer active and passive recreational opportunities.

6. Parks and Recreation Law (Section 3.09 (7-a))

   Where railroad property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to recreational use and for increasing access to the land shoreward from the railroad. This provision of the Parks and Recreation Law gives the Commissioner of the Office of Parks, Recreation and Historic Preservation the power to purchase and improve such abandoned railroad rights-of-way as can be used to implement a comprehensive plan for the establishment of a statewide trails system.

7. Abandoned Railroad Acquisition, Transportation Law (Section 18)

   This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies; metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such

abandoned property. The Department of Transporation is required to notify all interested State agencies of the availability of abandoned railway rights-of-way. This Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict over use exists between one or more government agencies, shall be consistent to the extent practicable with the effectuation of all State plans, policies, and objectives. This provision fits well with the State consistency provisions of the Executive Article 42.

8. Highway Law (Article II, Section 22)

Recreational, scenic, and natural areas located adjacent to coastal highways enhance not only the setting of a highway, but can provide access to coastal areas that would otherwise be cut off by the highway. This section of the Highway Law can provide for such areas because the Commissioner of the State Department of Transportation is authorized to acquire property for multi-use areas adjacent to State highways, as well as recreational, natural, and scenic areas along, but not necessarily contiguous to, such highways. Multi-use areas can be used for such purposes as walking, hiking, bicycling, trail biking, and for snowmobile trails. Acquisition and development of such areas must be consistent with the coastal policies of Article 42, Executive Law.

9. Harbors of Refuge, Navigation Law (Article 11, Section 141)

This law authorizes the Office of Parks, Recreation and Historic Preservation to enter into agreement with the Federal government and with municipalities to construct, operate, and maintain such harbors. Priorities for locating harbors of refuge are determined by the State Comprehensive Recreation Plan Priority System. It is particularly important that the location of such harbors be consistent with the preservation and enhancement of coastal resources so that resource use conflicts are avoided.

10. Local Marina Facilities, Navigation Law (Article 11, Section 142)

Municipalities can help meet the demand for marinas by participating in this program which authorizes State financial assistance to municipalities in the construction of local marina facilities, including those incidental to a harbor of refuge. Priorities for giving financial assistance to municipalities are determined by the State Comprehensive Recreation Plan Priority System.

11. State Marina Facilities, Navigation Law (Article 11, Section 143)

This section of the Navigation Law authorizes the State to construct, operate, and maintain State marina facilities, including those incidental to a harbor of refuge. Priorities for location of these facilities are also determined by the State Comprehensive Recreation Plan Priority System.

POLICY 22 Development when located adjacent to the shore will provide for water-related recreation whenever such use is compatible with reasonably anticipated demand for such activities, and is compatible with the primary purpose of the development.

A. Explanation of Policy

Many developments present practical opportunities for providing recreation facilities as an additional use of the site or facility. Therefore whenever developments are located adjacent to the shore they should to the fullest extent permitted by existing law provide for some form of water-related recreation use unless there are compelling reasons why any form of such recreation would not be compatible with the development, or a reasonable demand for public use cannot be foreseen.

The types of development which can generally provide water-related recreation as a multiple use include but are not limited to:

- parks
- highways
- power plants
- utility transmission rights of way
- sewage treatment facilities
- mental health facilities*
- hospitals*
- prisons*
- schools, universities*
- military facilities*
- nature preserves*
- large residential subdivisions (50 units)
- shopping centers
- office buildings

Prior to taking action relative to any development, State agencies should consult with the State Office of Parks, Recreation, and Historic Preservation, and if there is an approved local waterfront program, with the municipality in which the development is to locate, to determine appropriate recreation uses. The agency should provide OPRHP and the municipality with the opportunity to participate in project planning.

* the types of recreation uses likely to be compatible with these facilities are limited to the more passive forms, such as trails or fishing access. In some cases, land areas not directly or immediately needed by the facility could be used for recreation.

Appropriate recreation uses which do not require any substantial additional construction shall be provided at the expense of the project sponsor provided the cost does not exceed 2% of total project cost.

In determining whether compelling reasons exist which would make inadvisable recreation as a multiple use, safety considerations should reflect a recognition that some risk is acceptable in the use of recreational facilities.

Whenever a proposed development would be consistent with CMP policies and the development could, through the provision of recreation and other multiple uses, significantly increase public use of the shore, then such development should be encouraged to locate adjacent to the shore (this situation would generally only apply within the more developed portions of urban areas).

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act. These policies call for increased public access to the shore for recreation purposes. The Act therefore makes it incumbent on all State agencies to promote water-related recreation whenever there is an opportunity to do so. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the enviroment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Developments when located adjacent to the shore shall provide for water-related recreation whenever appropriate in light of reasonably anticipated demand for such activities and the primary use of such land." Further, this Act requires review by the Secretary of State of State agency actions which may affect achievement of coastal policies. In addition SEQR regulations will be amended to require consideration of impacts on the use of coastal resources for such purposes as recreation.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant effect on the environment. In assessing the significance of an action's impact on the environment, the impacts on open space and future recreational opportunities are considered. Article 42 of the Executive Law requires that SEQR regulations be amended to require the consideration of impacts on the use of coastal resources for such activities as recreation. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable the adverse environmental effects revealed in the impact statement (ECL S 8-0109-S). In addition, pursuant to Article 42 of the Executive Law SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Developments when located adjacent to the shore shall provide for water-related recreation whenever appropriate in light of reasonably anticipated demand for such activities and the primary use of such land."

3. Utility Transmission Facility Siting (Commission Opinion 72-3, Case #26108)

Transmission line rights-of-way are often suitable for recreational activities such as hiking, cycling, cross-country skiing or horseback riding. Many transmission lines are located in coastal areas. Under this Commission opinion, a utility company is required to allocate an amount equal to two percent of the total construction cost of the

transmission facility to a fund for the recreational development of the right-of-way. The program applies to electric transmission lines of 115KV ten miles or more in length, or for higher voltage lines of one mile or more. Municipalities traversed by any part of the right-of-way, as well as State and Federal agencies, are eligible to use the fund, which provides fifty percent of the cost of any particular recreational development. The sponsor must pay the rest of the cost. The Public Service Commission policy relating to actual recreational development of a specific right-of-way is decided on a case-by-case basis. It is not an automatic part of every order issued by the Commission in connection with transmission line decisions. At the present time, the joint funding of recreational development for rights-of-way is not being acted upon because of research that is underway in connection with health and safety effects that may be associated with high-voltage transmission facilities.

4. Siting of Major Steam Electric Generating Facilities, Public Service Law (Article VIII)

   Because power plants tend to locate along the coast and require a large land area around the facility, these sites present significant opportunities for multiple use. Recognizing this, this Law specifically provides for consideration of recreational use of power plant sites. It requires utilities to state "why the primary proposed location and source is best suited to promote the public health and welfare including the recreational and other concurrent uses which the site may serve."

5. Multi-use Areas Adjacent to Recreational, Natural, and Scenic Areas Along State Highways, Highway Law (Article 22)

   Areas adjacent to highways in the coastal area can provide numerous opportunities for multi-use recreation. This part of the Highway Law authorizes the Department of Transportation to acquire property adjacent to State highways for multi-use recreational purposes and along, but not necessary contiguous to, State highways for recreational, natural and scenic purposes. Multi-use areas may be utilized for, but not limited to, hiking, bicycle, trailbike, recreational vehicle and snowmobile trails.

6. Development of Transportation Corridors; Multi-Use Outside the Counties of Kings and Queens of Right-of-Way, Transportation Law (Article 14-e)

   All transportation facilities, especially those in coastal areas, have the potential for development of multi-use activities, including recreation, in their rights-of-way.

   This article of the Transportation Law gives the Commissioner of the Department of Transportation the power to provide for the multi-use of transporation facility rights-of-way in conjunction with the construction of such facilities. This applies everywhere in the state except in Kings and Queens Counties.

7. Acquisition of Reforestation Areas, Environmental Conservation Law (9-0501)

   Numerous coastal recreational activities are compatible with reforestation and forest management. This law gives the Department of Environmental Conservation the power to acquire lands for reforestation and for establishment and maintenance of forests for watershed protection, timber production and other forest products, and for recreation and other purposes. The reforestation areas must consist of at least five hundred acres of contiguous lands.

POLICY 23 Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation.

A. Explanation of Policy

Among the most valuable of the State's man-made resources are those structures on areas which are of historic, archeological, or cultural significance. The protection of these structures must involve a recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites but with areas of significance, and with the area around specific sites. The policy is not to be construed as a passive mandate but must include active efforts when appropriate to restore or revitalize through adaptive reuse. While the program is concerned with the preservation of all such resources within the coastal boundary, it will actively promote the preservation of historic and cultural resources which have a coastal relationship.

The structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation comprise the following resources:

(a) A resource which is in a Federal or State park established, among other reasons, to protect and preserve the resource.

(b) A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.

(c) A resource on or nominated to be on the State Nature and Historic Preserve Trust.

(d) An archeological resource which is on the State Department of Education's inventory of archeological sites.

(e) A local landmark, park, or locally designated historic district that is located within the boundary of an approved local waterfront revitalization program.

(f) A resource that is a significant component of an Urban Cultural Park.

All practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities or the Nation shall be deemed to include the consideration and adoption of any techniques, measures, or controls to prevent a significant adverse change to such significant structures, districts, areas or sites. A significant adverse change includes but is no limited to:

(a) Alteration of or addition to one or more of the architectural, structural, ornamental or functional features of a building, structure, or site that is a recognized historic, cultural, or archeological resource, or component thereof. Such features are defined as encompassing the style and general arrangement of the exterior of a structure and any original or historically significant interior features including type, color and texture of building materials; entry ways and doors; fenestration; lighting fixtures; roofing; sculpture and carving; steps; rails; fencing; windows; vents and other openings; grillwork; signs; canopies; and other appurtenant fixures and, in addition, all buildings, structures, outbuildings, walks, fences, steps, topographical features, earthworks, paving and signs located on the designated resource property. (To the extent they are relevant, the Secretary of the Interior's "Standards For Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be adhered to.)

(b) Demolition or removal in full or part of a building, structure, or earthworks that is a recognized historic, cultural, or archeological resource or component thereof, to include all those features described in (a) above plus any other appurtenant fixture associated with a building structure or earthwork.

(c) All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archeological resource and all actions within an

historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgement about compatibility should focus on the visual and locational relationship between the proposed action and the special character of the historic, cultural, or archeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the proposed actions. With historic districts this would include infrastructure improvements or changes, such as, street and sidewalk paving, street furniture and lighting.

This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthwork, or component thereof of a recognized historic, cultural or archeological resource which has been officially certified as being imminently dangerous to life or public health. Nor shall the policy be construed to prevent the ordinary maintenance, repair, or proper restoration according to the U.S. Department of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings of any building, structure, site or earthwork, or component thereof of a recognized historic, cultural or archeological resource which does not involve a significant adverse change to the resource, as defined above.

B. <u>State Means for Implementing Policy</u>

1. Waterfront Revitalization and Coastal Resources Act; Executive Law (Article 42)

Article 42 §919 requires: 1) that all State agency actions including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act. One of these policies calls for "restoration and revitalization of natural and man-made resources"; elsewhere the Legislature has determined that among most important man-made resources of the State are its historical, architectural, archeological, and cultural assets[1]; this

[1] Park & Recreation Law §14.01

provision of the Act will be implemented through amendments to SEQR regulations (see 2 below) and the regulations issued pursuant to Article 14 of the Parks and Recreation Law (see 3 below), and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities, or the Nation." 2) that the Secretary of State may review actions of State agencies that may affect achievement of the policies of the Act; and 3) that SEQR regulations be amended to, among other things, require consideration of the effects of an action on the use and conservation of coastal resources, such as the historical, architectural, archeological, and cultural resources of the coastal area.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. In determining whether an action may have a significant effect on the environment, impairment of the character or quality of important historical, archeological, architectural, or of community or neighborhood character are to be considered as indicators of such significant effects. The SEQR regulations set a very low threshold for triggering an environmental assessment -- "any action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to any facility or site listed on the National Register of Historic Places, or any historic building, structure, or site, or prehistoric site that has been proposed by the Committee on the Registers for consideration by the NYS Board on Historic Preservation for a recommendation to the State Historic Officer for nomination for inclusion in said National Register". Actions which have been subject to an environmental impact statement must, consistent with social,

economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement. In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Protect, enhance and restore structures, districts, areas, or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities, or the Nation."

3. New York State Historic Preservation Act of 1980, Parks & Recreation Law (Sections 11.03, 11.09, 14); Public Building Law (Article 4-B); General Municipal Law (Article 5-K)

The New York State Historic Preservation Act greatly expands the responsibilities of New York State agencies and municipalities with regard to historic preservation. Specifically, the Act provides several means for preserving the historic architectural, archeological, and cultural resources of the State (including resources under water). Each State agency must designate a historic preservation officer to coordinate and implement State historic preservation programs. A State Register of Historic Places is created and an inventory of properties which may qualify for the Register is established. A Statewide Preservation Plan is to be prepared and updated annually. A review process has been established, to be undertaken concurrently with existing environmental reviews; this process requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if a State-funded project will have an adverse effect upon a historic property. The review process requires consideration of alternatives and that adverse effects be avoided or mitigated. The Secretary of State is added to State Board for Historic Preservation, and the Commissioner of the Office of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

4. State Nature and Historical Preserve Trust, Environmental Conservation Law (Article 45)

This program provides for the acquisition and administration of lands and waters which should be preserved for their historical significance, among other purposes. The Environmental Quality Bond Act of 1972 (ECL, Article 51, Section 51-0701) is the current source of State funds to acquire lands under this program.

POLICY 24 Prevent impairment of scenic resources of statewide significance.

A. Explanation of Policy

The Coastal Management Program will identify on the coastal area map scenic resources of statewide significance. A list of preliminarily identified resources appears in the Appendix. The following general criteria will be combined to determine significance:

Quality. The basic elements of design (i.e., two-dimensional line, three-dimensional form, texture and color) combine to create all high quality landscapes. The water, landforms, and man-made components of scenic coastal landscapes exhibit variety of line, form, texture and color. This variety is not, however, so great as to be chaotic. Scenic coastal landscapes also exhibit unity of components. This unity is not, however, so complete as to be monotonous. Example: the Thousand Islands where the mix of water, land, vegetative and man-made components creates interesting variety, while the organization of these same components creates satisfying unity.

Often, high quality landscapes contain striking contrasts between lines, forms, textures and colors. Example: A waterfall where horizontal and vertical lines and smooth and turbulent textures meet in dramatic juxtaposition.

Finally, high quality landscapes are generally free of discordant features, such as structures or other elements which are inappropriate in terms of siting, form, scale, and/or materials.

Uniqueness. The uniqueness of high quality landscapes is determined by the frequency of occurence of similar resources in a region of the State or beyond.

Public Accessibility. A scenic resource of significance must be visually and, where appropriate, physically accessible to the public.

Public Recognition. Widespread recognition of a scenic resource is not a characteristic intrinsic to the resource. It does, however, demonstrate people's appreciation of the resource for its visual, as well as evocative, qualities. Public recognition serves to reinforce analytic conclusions about the significance of a resource.

When considering a proposed action, agencies shall first determine whether the action could affect a scenic resource of statewide significance. This determination would involve: 1.) a review of the coastal area map to ascertain if it shows an identified scenic resource which could be affected by the proposed action, and 2.) a review of the types of activities proposed to determine if they would be likely to impair the scenic beauty of an identified resource. Impairment will include: (i) the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction, or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

The following siting and facility-related guidelines are to be used to achieve this policy, recognizing that each development situation is unique and that the guidelines will have to be applied accordingly. Guidelines include:

-- siting structures and other development such as highways, power lines, and signs, back from shorelines or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore;

-- clustering or orienting structures to retain views, save open space and provide visual organizaton to a development;

-- incorporating sound, existing structures (especially historic buildings) into the overall development scheme;

-- removing deteriorated and/or degrading elements;

-- maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest;

-- maintaining or adding vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters;

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

-- using appropriate scales, forms and materials to ensure that buildings and other structures are compatible with and add interest to the landscape.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing impairment of scenic beauty. This provison of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600), provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Prevent impairment of scenic resources of statewide signficance, as identified on the coastal area map. Impairment shall include: (i) the irreversible modification of geological forms; destruction or removal of vegetation; modification, destruction or removal of structures, whenever the geologic forms, vegetation, or structures are significant to the scenic quality of an identified resource and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource." 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to relect consideration of coastal resources such as scenic resources.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development and land resources; hence scenic areas are viewed as an environmental resource. The SEQR regulations (6 NYCRR Part 617) require that

actions which have been subject to an environmental impact statement must, consistent with social, economic and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse effects revealed in the impact statement (ECL §8-0109-8).

In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include: (i) the irreversible modification of geological forms; destruction or removal of vegetation; modification, destruction or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource."

3. Protection of Natural and Man-Made Beauty, Environmental Conservation Law (Article 49-0103.1 and 0.0314)

Under these two parts of the law, DEC has the power and duty to: (1) "develop policies and programs to preserve and enhance the natural and man-made beauty of the State" and (2) "designate scenic sites, areas and highways in the State and develop programs for their preservation and enhancement". Where such programs exist for areas in the coastal zone, they can be used as a guide for determining the consistency of proposed actions with coastal policy. The Coastal Management Program will work closely with DEC to designate additional sites and develop programs for their protection.

4. State Nature and Historic Preserve Trust, Environmental Conservation Law (Article 45)

The Trust provides for the acquisition and administration of lands and waters which should be preserved for their natural beauty. Scenic resources of particular significance in the coastal area would, thus, be eligible for acquisition. The Environmental Quality Bond Act of

1972 (ECL, Article 51, Section 51-0701) is the major state funding mechanism to implement this acquisition program.

5. Utility Transmission Facility Siting Act and Power Plant Siting Act, Public Service Law, (Article VII and VIII)

   Transmission lines and power plants are highly visible and sometimes unwelcome intrusions upon scenic landscapes. These two legislative devices require that Certificates of Environmental Compability and Public Need be issued for major utility transmission facilities and steam-electric generating facilities. Aesthetic factors in utility planning and development are incorporated into Article VII and VIII deliberations.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   The issuance of permits for regulated uses or activities in tidal wetlands requires that the preservation and protection of aesthetic resources be considered. 6 NYCRR, Part GG 1.10, specifically includes aesthetic considerations among the permit issuing standards.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   The preservation and protection of aesthetic resources is one of the objectives of this act. The regulations require the consideration of aesthetics in the issuance of a permit.

8. Coastal Erosion Hazards Area Act, Environmental Conservation Law, (Article 34)

   While the purpose of this law is not to protect the quality of coastal scenery, those natural protective features (dunes, beaches, spits, barrier islands, bluffs) which the act protects are major components of coastal scenery.

POLICY 25 Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area.

A. Explanation of Policy

When considering a proposed action, which would not affect a scenic resource of statewide significance, agencies shall undertake to ensure that the action would be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. Activities which could impair or further degrade scenic quality are the same as those cited under the previous policy, i.e., modification of natural landforms, removal of vegetation, etc. However, the effects of these activities would not be considered as serious for the general coastal area as for significant scenic areas.

The siting and design guidelines listed under the previous policy should be considered for proposed actions in the general coastal area. More emphasis may need to be placed on removal of existing elements, especially those which degrade, and on addition of new elements or other changes which enhance. Removal of vegetation at key points to improve visual access to coastal waters is one such change which might be expected to enhance scenic quality.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing impairment of scenic beauty. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area." 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources such as scenic resources.

Section 2 of the Act requires that State agenices analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Qualify Review Act, Environmental Conservation Law (Article 8)

   Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development and land resources; hence actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area."

3. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   See Policy 24.

4. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   See Policy 24.

5. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   See Policy 24.

POLICY 26 Conserve and protect agricultural lands in the State's coastal area.

A. Explanation of Policy

The first step in conserving agricultural lands is the identification of such lands. The Department of State is mapping all important agricultural lands within the State's coastal area. The following criteria have been used to prepare the maps, and the mapped information will be incorporated in the New York State Coastal Resources Inventory and on the Coastal Area Map.

Land meeting any of the following criteria is being mapped.[1]

1. Land which meets the definition of the U.S. Department of Agriculture as being prime farmland, unique farmland, or farmland of statewide importance.

   a. Prime farmland is defined by USDA Soil Conservation Service in CRF #7 Agriculture Part 657.5(a), January, 1979. A list of the soil associations that meet this definition has been prepared for each coastal county.[2]

[1] After mapping according to this definition was substantially completed, the NYS Department of Agriculture and Markets completed development of a new agricultural land classification system. As soon as is practical the following definition will be the basis for revising the maps of coastal agricultural land. Important agricultural land shall include all land within an agricultural district or subject to an eight-year commitment which has been farmed within at least two of the last five years, or any land farmed within at least two of the last of the last five years in soil groups 1-4 as classified by the Land Classification System established by the NYS Department of Agriculture and Markets, or any land farmed within at least two of the last five years which is influenced by climate conditions which support the growth of high value crops. Additionally, agricultural land not meeting the above criteria but located adjacent to any such land and forming part of an on-going agricultural enterprise shall be considered important agricultural land.

[2] For the purposes of this map the urban areas which are to be excluded are all cities, the counties of Nassau, Westchester, Rockland, Putnam and Erie, and any built up area (this applies to c. also).

b. Unique farmland is defined by USDASCS in CRF #7 Agriculture Part 657.5(b). In the coastal area of New York all fruit and vegetable farming meets the terms of the definition.

c. Farmland of Statewide importance is defined by USDASCS in CRF #7 Agriculture Part 656.5(c). Lists of soil associations which constitute farmland of Statewide importance have been prepared for each coastal county.

2. Active farmland within Agricultural Districts. The maps of each Agricultural District shows land committed by farmers. This is the land that will be mapped as active farmland. The district boundary will also be shown.

3. Areas identified as having high economic viability for farming. Any farm not identified under 1 and/or 2 above and which is located in an area identified as having "high viability" on the map entitled "Economic Viability of Farm Areas" prepared by the Office of Planning Coordination in May, 1969. This would be the basis for initial identification of areas having high economic viability for farming. Areas will be added and/or deleted based on comments from the agricultural community.

4. Areas adjacent to land identified under 1 above if these areas are being farmed and are part of a farm with identified important agricultural lands.

5. Prime farmland, unique farmland, and farmland of Statewide significance will not be identified as important agricultural land whenever it occurs as parcels of land less than 25 acres in size and these small parcels are not within a mile of areas of active farming.

Given the Program's application to a narrow strip of land, implementing a policy of promoting agricultural use of land must, to be practical, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use as the result of some public action. The many other factors such as markets, taxes, and regulations, which influence the viability of agriculture in a given area, can only be addressed on a Statewide or national basis.

The Program policy requires a concern for the loss of any important agricultural land. However, the primary concern must be with the loss of agricultural land when that loss would have a significant effect on an agricultural area's ability to continue to exist, to prosper, and even to expand. A series of determinations are necessary to establish whether a public action is consistent with the conservation and protection of agricultural lands or whether it is likely to be harmful to the health of an agricultural area. In brief these determinations are as follows: First, it must be determined whether a proposed public action would result in the loss of important agricultural lands as mapped on the Coastal Inventory. If it would not result, either directly or indirectly, in the loss of identified important agricultural lands, then the action is consistent with the policy on agriculture. If it is determined that the action would result in a loss of identified important agricultural lands but that loss would not have an adverse effect on the viability of agriculture in the surrounding area, then the action may also be consistent with the agriculture policy. However, in that case the action must be undertaken in a manner that would minimize the loss of important farmland. If the action is determined to result in a significant loss of important agricultural land, that is if the loss is to a degree sufficient to adversely affect surrounding agriculture's viability, - its ability to continue to exist, to prosper, and even to expand - then the action is not consistent with this agriculture policy.

The following guidelines define more fully what must be considered in making the above determinations:

A. A public action would be likely to significantly impair the viability of an agricultural area in which identified important agricultural lands are located if:

1. the action would occur on identified important agricultural lands and would:

   a. consume more than 10% of the land of an active farm[3] containing such identified important agricultural lands

   b. consume a total of 100 acres or more of identified important agricultural land, or

   c. divide an active farm with identified important agricultural land into two or more parts thus impeding efficient farm operation

2. the action would result in environmental changes which may reduce the productivity or adversely affect the quality of the product of any identified important agricultural lands.

3. the action would create real estate market conditions favorable to the conversion of large areas of identified important agricultural lands to non-agricultural uses. Such conditions may be created by:

   a. public water or sewer facilities to serve non-farm structures

   b. transportation improvements, except for maintenance of, and safety improvements to, existing facilities, that serve non-farm or non-farm related development

   c. major non-agribusiness commercial development adjacent to identified agricultural lands

   d. major public institutions

   e. residential uses other than farm dwellings.

[3]A farm is defined as an area of at least 10 acres devoted to agricultural production as defined in the Agricultural District Law and from which agricultural products have yielded gross receipts of $10,000 in the past year.

e. any change in land use regulations applying to agricultural land which would encourage or allow uses incompatible with the agricultural use of the land

B. The following types of facilities and activities should not be construed as having adverse effects on the preservation of agricultural land:

1. Farm dwellings, barns, silos, and other accessory uses and structures incidental to agricultural production or necessary for farm family supplemental income

2. Agribusiness development which includes the entire structure of local support services and commercial enterprises necessary to maintain an agricultural operation, e.g., milk hauler, grain dealer, farm machinery dealer, veterinarian, food processing plants

C. In determining whether an action that would result in the loss of farmland is of overriding regional or Statewide benefit, the following factors should be considered:

1. For an action to be considered overriding it must be shown to provide significantly greater benefits to the region or State than are provided by the affected agricultural area (not merely the land directly affected by the action). In determining the benefits of the affected agriculture to the region or State, consideration must be given to its social and cultural value, its economic viability, its environmental benefits, its existing and potential contribution to food or fiber production in the State and any State food policy, as well as its direct economic benefits.

a. An agricultural area is an area predominantly in farming and in which the farms produce similar products and/or rely on the same agribusiness support services and are to a significant degree economically inter-dependent. At a minimum this area should consist of at least 500 acres of identified important agriculture land. For the purpose of analyzing impacts of any action on agriculture, the boundary of such area need not be restricted to land within the coastal boundary. If the affected

agricultural lands lie within an agricultural district then, at a minimum, the agricultural area should include the entire agricultural district.

b. In determining the benefits of an agricultural area, its relationship to agricultural lands outside the area should also be considered.

c. The estimate of the economic viability of the affected agricultural area should be based on an assessment of

   i. soil resources, topography, conditions of climate and water resources

   ii. availability of agribusiness and other support services, and the level and condition of investments in farm real estate, livestock and equipment

   iii. the level of farming skills as evidenced by income obtained, yield estimates for crops, and costs being experienced with the present types and conditions of buildings, equipment, and cropland

   iv. use of new technology and the rates at which new technology is adopted

   v. competition from substitute products and other farming regions and trends in total demand for given products

   vi. patterns of farm ownership for their effect on farm efficiency and the likelihood that farms will remain in use

d. The estimate of the social and cultural value of farming in the area should be based on an analysis of:

   i. the history of farming in the area

   ii. the length of time farms have remained in one family

iii. the degree to which farmers in the area share a cultural or ethnic heritage

iv. the extent to which products are sold and consumed locally

v. the degree to which a specific crop(s) has become identified with a community

e. An estimate of the environmental benefits of the affected agriculture should be based on analysis of:

i. the extent to which the affected agriculture as currently practiced provides a habitat or food for wildlife

ii. the extent to which a farm landscape adds to the visual quality of an area

iii. any regional or local open space plans, and degree to which the open space contributes to air quality

iv. the degree to which the affected agriculture does, or could, contribute to the establishment of a clear edge between rural and urban development

D. Whenever a proposed action is determined to have an insignificant adverse effect on identified important agricultural land or whenever it is permitted to substantially hinder the acheivement of the policy according to DOS regulations, Part 600, or as a result of the findings of an EIS, then the required minimization should be undertaken in the following manner:

1. The proposed action shall, to the extent practicable, be sited on any land not identified as important agricultural, or, if it must be sited on identified important agricultural land, sited to avoid classes of agricultural land according to the following priority:

a. prime farmland in orchards or vineyards

b. unique farmland in orchard or vineyards

c. other prime farmland in active farming

d. other unique farmland

e. farmland of statwide importance in active farming

f. active farmland identified as having high economic viability

g. prime farmland not being farmed

h. farmland of statewide importance not being farmed

2. To the extent practicable, agricultural use of identified important agricultural land not directly necessary for the operation of the proposed non-agricultural action should be provided for through such means as lease arrangements with farmers, direct undertaking of agriculture, or sale of surplus land to farmers. Agricultural use of such land shall have priority over any other proposed multiple use of the land.

B. <u>State Means for Implementing the Policy</u>

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for the conservation and protection of agricultural lands. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies one of which is: To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss or impair the productivity of important agricultural land, as identified on the coastal area map,

if that loss or impairment would adversely affect the valuability of agriculture in an agricultural district or, in the area surrounding such lands, if there is no agriculture district. Secretary of State may review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources such as agricultural lands.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development, and land resources; hence farming and important agricultural lands are viewed as an environmental resource. The SEQR regulation (6 NYCRR Part 617) set a very low threshold for triggering an environmental assessment for actions within agricultural districts. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law SEQR regulations are amended to require that for actions by a state agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss or impair the the productivity of important agricultural land, as identified on the coastal area map, if that loss or impairment would adversely affect the valuability of agriculture in an agricultural district or, in the area surrounding such lands, if there is no agriculture district.

3. Agricultural District Program, Agriculture and Markets Law (Article 25AA)

The Agricultural District Law provides the primary means for the State to directly pursue a policy of conserving important agricultural lands. Most of the important coastal agricultural land is already included in agricultural districts. The provisions of the act which lead to the conservation of farmland include 1) farm value assessments, (recent amendments improve this provision); 2) limitations on the exercise of eminent domain; 3) a requirement that State agencies' regulations encourage maintenance of farming; 4) limitations on local ordinances that adversely affect farming and 5) limitations on the power of public service districts to impose taxes. These provisions, plus the power given the State to create such districts where it would further state environmental plans, policies or objectives, constitute the basic state program for conserving all important farmland.

4. Transportation Law (§14-a)

This law requires that the Commissioner of Transportation cooperate with the Commissioner of Agriculture and Markets to assure that measures to preserve farmland and the natural characteristics of the land traversed by transportation facilities are included in all stages of such projects.

POLICY 27 Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

A. Explanation of Policy

Demand for energy in New York will increase, although at a rate slower than previously predicted. The State expects to meet these energy demands through a combination of conservation measures; traditional and alternative technologies; and use of various fuels including coal in greater proportion.

A determination of public need for energy is the first step in the process for siting any new facilities. The directives for determining this need are contained primarily in Article 5 of the New York State Energy Law. That Article requires the preparation of a State Energy Master Plan. With respect to transmission lines and steam electric generating facilities, Articles VII and VIII of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for a shorefront location. The policies derived from the siting regulations under these Articles are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization and Coastal Resources Act. That Act is used for the purposes of ensuring consistency with the Coastal Management Program.

The Department of State will comment on the State Energy Master Plan; present testimony for the record during relevant certification proceedings under Articles VII and VIII of the PSL; and use the State SEQR and DOS regulations to ensure that decisions on other proposed energy facilities (other than transmission facilities and steam electric generating plants) which would impact the coastal area are made consistent with coastal policies.

B. State Means for Implementing the Policy

1. Energy Law (Article 5)

Under this law an Energy Planning Board was established. As required, the Board prepared and adopted the first State Energy Master Plan which is currently in effect. The Board is now considering an updated plan. See Section 7 of this document for a more detailed discussion of this plan.

2. Public Service Law (Article VIII) - Siting of Major Steam Electric Generating Facilities

Before preparation of a site or the construction of a major steam electric generating facility can commence, a Certificate of Environmental Compatibility and Public Need must be issued by the New York State Board on Electric Generation Siting and the Environment. This process is described in detail in Section 7. In granting this certificate, the Board must determine that the facility:

- Represents the minimum adverse environmental impact, considering the state of available technology; the nature and economics of the various alternatives; and the interests of the state with respect to aesthetics, preservation of historic sites, forests and parks, fish and wildlife, and viable agricultural lands;

- Complies with applicable State laws concerning, among other matters, the environment and public health and safety;

- Serves the public interest, convenience and necessity.

The regulations which implement Article VIII and govern the Board's decision (see Appendix A, #7) assure that this decision will be compatible with the policies articulated in this document, both those relating to environmental protection and to economic development.

To further ensure compatibility, the Department of State will review applications and may present testimony during proceedings

involving facilities proposed to be sited in coastal areas. When reviewing applications, the Department will examine the required description of reasonable alternate locations as well as the rationale for the preferred site, particularly with respect to potential land uses on or near the proposed site, and the justification for the amount of shorefront land to be used. Proposed uses which are likely to be regarded by the Department as requiring a shorefront location include:

- Uses involved in sea/land transfer of goods (docks, pipelines, short term storage facilities);
- Uses requiring large quantities of water (hydroelectric power plants, pumped storage power plants); and,
- Uses that rely heavily on waterborne transportation of raw materials or products which are difficult to transport on land.

3. Public Service Law (Article VII) - Siting of Major Utility Transmission Facilities

Prior to the construction of a major electric or fuel gas transmission facility, a Certificate of Environmental Compatibility and Public Need must be granted by the Public Service Commission. See Section 7 of this document for a detailed description of this process. In issuing a certificate, the Commission must determine that the facility:

- Represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- Conforms with applicable State laws;
- Serves the public interest, convenience and necessity.

As with steam electric generating plants, the Department of State will review applications and may present testimony during proceedings involving transmission facilities proposed to be sited in the coastal area. The Department will examine the same matters as under Article VIII. It will also use the same

criteria to determine the need for a shorefront location and the consistency of the proposal with coastal policies.

Interstate transmission facilities, such as gas and petroleum pipelines, coal slurry pipelines and electric transmission lines associated with hydroelectric facilities, are regulated by Federal agencies. Through Federal consistency provisions, such facilities will be sited in a manner that is consistent with the Program's policies.

4. Environmental Conservation Law (Article 23, Title 17) - Liquefied Natural and Petroleum Gas

All liquefied natural gas (LNG) and liquefied petroleum gas (LPG) facilities, must obtain an environmental safety permit before construction and operation. For a permit to be granted, it must be shown that such facilities would not endanger residential areas and contiguous populations and would otherwise conform to siting criteria established by the Department of Environmental Conservation. During the review of proposed projects, consideration is given to: the location of the proposed facility; the design and capacity of the facility; expected sources of the gas; methods of transporting gas to and from the facility and transportation routes; the public need for the facility; its environmental impacts; and, descriptions of reasonable alternate locations for the facility.

5. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies' actions, including direct energy development activities such as those undertaken by the Power Authority of the State of New York, must be consistent with the environmental protection and development policies of this act. This provision of law is implemented by amendments to SEQR (below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, 2) that the Secretary of State shall review actions

of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

6. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. This requirement applies to large scale energy facilities other than transmission lines and steam electric generating plants as described above. The environment is broadly defined to include existing patterns of development and land resources. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies.

7. Water Resources Law, Environmental Conservation Law (Article 15)

Proposals, including those to construct all pipelines, which would excavate or deposit fill in any navigable waters and adjacent marshes and estuaries of the State require permits issued by the Department of Environmental Conservation.

8. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The Tidal Wetlands Act requires that a permit be issued for uses, including oil piplines, in identified tidal wetlands. It must be demonstrated that proposed facilities will

not adversely affect water quality, flood and storm control, marine food production, wildlife habitats, open space, and aesthetically significant areas.

9. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   The Freshwater Wetlands Act requires that a permit be issued for uses, including oil pipelines, in identified freshwater wetlands. It must be demonstrated that proposed facilities will not adversely affect water quality, flood and storm control, erosion control, subsurface water resources, wildlife habitats, freshwater fish sanctuaries, open space, and aesthetically significant areas.

10. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, Section 170 et. seq.)

    This Article provides for the protection of the State's environment and economy by preventing unregulated discharge of petroleum from major facilities; by authorizing the Departments of Environmental Conservation and Transportation to respond quickly to remove any discharges; and by establishing liability for any damages sustained within the State as a result of such discharges.

    The Article also creates a fund for clean-up, restoration and compensation for damages caused by oil spills. Before a license to construct a major oil facility can be issued by the Department of Transportation, an applicant must pay the required fee to help maintain the fund and must show that the necessary equipment to prevent, contain and remove petroleum discharges will be provided. The Department will issue licenses for major onshore facilities only after the Department of Environmental Conservation has certified that the applicant has the necessary equipment to control oil discharges.

11. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 27)

    This Article requires permits for construction of new outlets or new disposal systems to discharge industrial and other wastes into State waters, including wastes from nuclear power plants, other steam electric generating

plants, and petroleum facilities. This permit procedure ensures that established water quality standards are met.

12. Air Pollution Control, Environmental Conservation Law (Article 19, Title 3)

    This Article gives the Department of Environmental Conservation the authority to promulgate and enforce regulations controlling air emissions, including those released by energy facilities. These regulations appear in the State Implementation Plan which details State strategies for meeting Federal air quality standards under the Clean Air Act.

POLICY 28 Ice management practices shall not interfere with the production of hydroelectric power, damage significant fish and wildlife and their habitats, or increase shoreline erosion or flooding.

A. Explanation of Policy

Prior to undertaking actions required for ice management, an assessment must be made of the potential effects of such actions upon the production of hydroelectric power, fish and wildlife and their habitats as will be identified in the Coastal Area Maps, flood levels and damage, rates of shoreline erosion damage, and upon natural protective features.

Following such an examination, adequate methods of avoidance or mitigation of such potential effects must be utilized if the proposed action is to be implemented.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act, which, among others, call for preventing the loss of fish and wildlife resources, minimizing damage to natural resources and property from flooding and erosion, and achieving the beneficial use of coastal resources. Those provisions of law are implemented by amendments to SEQR and by the Department of State regulations. In addition, the Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Ice management practices shall not interfere with the production of hydro-electric power, damage significant fish and wildlife and their habitats, nor increase shoreline erosion or flooding." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of this policy.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Ice management practices shall not interfere with the production of hydro-electric power, damage significant fish and wildlife and their habitats, nor increase shoreline erosion or flooding."

3. Energy Law (Article 5)

   See description under Policy 27.

4. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   See description under Policy 27.

5. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   See description under Policy 27.

6. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, §170 et. seq.)

   See description under Policy 27.

7. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   See description under Policy 27.

POLICY 29 Encourage the development of energy resources on the Outer Continental Shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities.

A. Explanation of Policy

The State recognizes the need to develop new indigenous energy sources. It also recognizes that such development may endanger the environment. Among the various energy sources being examined are those which may be found on the Outer Continental Shelf (OCS) or in Lake Erie. The State has been encouraging the wise development of both.

Matters pertaining to the OCS are the responsibility of the Department of Environmental Conservation. In 1977, the Department, in cooperation with regional and local agencies, completed a study which identified potential sites along the marine coast for on-shore OCS facilities. To date, these sites have not been developed for this purpose. The Department, also, actively participates in the OCS planning process by reviewing and voicing the State's concerns about federal OCS oil and gas lease sales and plans. In its review of these proposed sales and plans, the Department considers a number of factors such as the effects upon navigational safety in the established traffic lanes leading into and from New York Harbor; the impacts upon important finfish, shellfish and wildlife populations and their spawning areas; economic and other effects upon commercial and recreational fishing activities; impacts upon public recreational resources and opportunities along the marine coast; the potential for geohazards; impacts upon biological communities; and water quality.

The Department of Environmental Conservation has also examined the potential impacts of Lake Erie gas drilling and is instituting reasonable guidelines so that activities can proceed without damage to public water supplies and other valuable coastal resources. State law prohibits development of wells nearer than one-half mile from the shoreline, two miles from public water supply intakes, and one thousand feet from any other structure or installation in or on Lake Erie. Further, State law prohibits production of liquid hydrocarbons in Lake Erie, either alone or in association with natural gas. The Department has not, however, reached a decision as to whether or not the lands under Lake Erie will be leased for gas exploration purposes.

B. State Means for Implementing the Policy

1. Environmental Conservation Law (Section 23-1101)

The Department of Environmental Conservation may lease the lands beneath Lake Erie according to specific siting, operation, and liability requirements. Thus the State's environmental agency will retain control over the process and ensure appropriate environmental safeguards. The production of liquid hydrocarbons is, however, prohibited by this Article.

2. Environmental Conservation Law (Section 23-0305)

This law provides that the Department of Environmental Conservation will retain jurisdiction over any active or abandoned wells and wellheads and may limit production. The Department may act to terminate hazardous discharges which threaten natural resources. Under this law, producers and handlers must maintain accurate records of quantities of gas handled.

3. Siting of Major Utility Transmission Facilities, Public Service Law (Article VII)

This law establishes procedures to be followed by developers of natural gas in the construction of any gathering pipelines from wellheads and any master collecting pipelines in accordance with the environmental considerations of this Article as discussed under the previous policy.

4. Public Service Law (Article 4, Section 66)

Under this law, the Public Service Commission regulates the safe construction and operation of natural gas pipelines from the wellhead to any onshore connection.

5. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

See description under Policy 27.

6. State Environmental Quality Review Act, Environmental Conservation Law (Section 8-0113)

See description under Policy 27.

7. Water Resources Law, Environmental Conservation Law (Article 15)

   See description under Policy 27.

8. Freshwater Wetlands Act, Environmental Conservation Act (Article 24)

   See description under Policy 27.

9. Freshwater Wetlands Act, Environmental Conservation Act (Article 24)

   See description under Policy 27.

POLICY 30 Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to State and National water quality standards.

A. Explanation of Policy

Municipal, industrial and commercial discharges include not only "end-of-the pipe" discharges into surface and groundwater but also plant site run-off, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving coastal waters and those which pass through municipal treatment systems before reaching the State's waterways.

B. State Means for Implementing the Policy

1. State Pollutant Discharge Eliminatión System, Environmental Conservation Law (Article 17, Title 8)

2. Industrial Hazardous Waste Management, Environmental Conservation Law (Article 27, Title 9)

3. Substances Hazardous to the Environment, Environmental Conservation Law (Article 37)

4. State Certification of Public Sewage Treatment Plant Operators, Environmental Conservation Law, (Article 3-0301), Public Health Law (Section 225)

POLICY 31 State coastal area policies and management objectives of approved local Waterfront Revitalization Programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over-burdened with contaminants will be recognized as being a development constraint.

A. Explanation of Policy

Pursuant to the Federal Clean Water Act of 1977 (PL 95-217) the State has classified its coastal and other waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. Local Waterfront Revitalization Programs and State coastal management policies shall be factored into the review process for coastal waters. However, such consideration shall not affect any water pollution control requirement established by the State pursuant to the Federal Clean Water Act.

The State has identified certain stream segments as being either "water quality limiting" or "effluent limiting." Waters not meeting State standards and which would not be expected to meet these standards even after applying "best practicable treatment" to effluent discharges are classified as "water quality limiting." Those segments meeting standards or those expected to meet them after application of "best practicable treatment" are classified as "effluent limiting," and all new waste discharges must receive "best practicable treatment." However, along stream segments classified as "water quality limiting," waste treatment beyond "best practicable treatment" would be required, and costs of applying such additional treatment may be prohibitive for new development.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law, (Article 42)

2. Classification of Waters and Adoption of Standards, Environmental Conservation Law (Article 17, Title 3)

POLICY 32 Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high, given the size of the existing tax base of these communities.

A. Explanation of Policy

Alternative systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost effective in smaller less densely populated communities and for which conventional facilities are too expensive.

B. State Means for Implementing the Policy

1. Construction and Operation Grants, Environmental Conservation Law (Article 17, Title 9)

2. Appalachian Regional Commission, Executive Law (Article 60)

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

   Approval of local waterfront revitalization programs authorized under Section 915 of this law would be contingent in part on the community's demonstrated effort to provide necessary treatment of any sanitary wastes being generated at waterfront properties. When hookup to the municipal sewage collection and treatment facilities is neither economically or technically feasible, installation of alternative treatment systems will be required as needed and practical.

POLICY 33 Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

A. Explanation of Policy

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of storm water runoff and combined sewer overflows. At present, structural approaches to controlling stormwater runoff (e.g., construction of retention basins) and combined sewer overflows (e.g., replacement of combined system with separate sanitary and stormwater collection systems) are not economically feasible. Proposed amendments to the Clean Water Act, however, will authorize funding to address combined sewer overflows in areas where they create severe water quality impacts. Until funding for such projects becomes available, non-structural approaches (e.g., improved street cleaning, reduced use of road salt) will be encouraged.

B. State Means for Implementing the Policy

1. Agreement of a Five Year Water Quality Management Program.

2. State "208" Water Quality Management Progam

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

POLICY 34 Discharge of waste materials into coastal waters from vessels subject to State jurisdiction into coastal waters will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

A. Explanation of Policy

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the State's waters is regulated. Priority will be given to the enforcement of this Law in areas such as shellfish beds and other significant habitats, beaches, and public water supply intakes, which need protection from contamination by vessel wastes. Also, specific effluent standards for marine toilets have been promulgated by the Department of Environmental Conservation (6 NYCRR, Part 657).

B. State Means for Implementing the Policy

1. Disposal of Sewage and Litter in Waterways, Navigation Law (Section 33-c)

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

POLICY 35 Dredging and dredge spoil disposal in coastal waters will be undertaken in a manner that meets existing State dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands.

A. Explanation of Policy

Dredging often proves to be essential for waterfront revitalization and development, maintaining navigation channels at sufficient depths, pollutant removal and meeting other coastal management needs. Such dredging projects, however, may adversely affect water quality, fish and wildlife habitats, wetlands and other important coastal resources. Often these adverse effects can be minimized through careful design and timing of the dredging operation and proper siting of the dredge spoil disposal site. Dredging permits will be granted if it has been satisfactorily demonstrated that these anticipated adverse effects have been reduced to levels which satisfy State dredging permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15, 24, 25 and 34), and are consistent with policies pertaining to the protection of coastal resources (State Coastal Management policies 7, 24, 15, 26 and 44).

State Means for Implementing the Policy

B.

1. Protection of Waters, Environmental Conservation Law (Article 15, Title 5): Summarized in Vol. 2, page 214

2. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25): Article 24 is in Vol. 2, page 53; Regulations are in Vol 2, page 83; Article 25 is in Vol. 2, page 47; Regulations are in Vol. 2, page 66

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 8): Article 8 is in Vol. 2, page 7; Regulations are in Vol. 2, Page 35

4. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42); Article 42 is in Vol. 2, page 3, Regulations are in Vol. 1

POLICY 36 Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

A. Explanation of Policy

See Policy 39 for definition of hazardous materials.

B. State Means for Implementing the Policy

1. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12)

2. Penalties and Liabilities for Spills of Bulk Liquids, Environmental Conservation Law (Article 71-1941)

3. Transportation Law (Article 2, Section 14-F)

POLICY 37 Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.

A. Explanation of Policy

Best management practices used to reduce these sources of pollution could include but are not limited to, encouraging organic farming and pest management principles, soil erosion control practices, and surface drainage control techniques.

B. State Means for Implementing the Policy

1. Phosphate Limits, Environmental Conservation Law (Article 35)

2. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)

3. Realty Subdivision Approval, Environmental Conservation Law (Article 17, Title 15)

4. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

5. Public Health Law (Section 228)

6. State Water Quality Management (108) Program

7. Soil and Water Conservation District Law (Section 9)

POLICY 38 The quality and quantity of surface water and groundwater supplies, will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

A. Explanation of Policy

Surface and groundwater are the principle sources of drinking water in the State, and therefore must be protected. Since Long Island's groundwater supply has been designated a "primary source aquifer," all actions must be reviewed relative to their impacts on Long Island's groundwater aquifers.

B. State Means for Implementing the Policy

1. Well Drilling Regulation in Long Island, Environmental Conservation Law (151525 and 15-1527)

2. Realty Subdivision Approval, Environmental Conservation Law (Article 17, Title 15)

3. Solid Waste Management Act, Environmental Conservation Law, (Article 27)

4. Industrial Hazardous Wastes Management Act, Environmental Conservation Law (Article 27, Title 9)

5. Water Supply Approval, Environmental Conservation Law (Article 15)

6. Public Health Law (Article 11)

7. Phosphate Limits, Environmental Conservation Law (Article 35)

8. Public Health Law (Article 228)

9. Waterfront Revitalization and Coastal Resource Act, Executive Law (Article 42)

POLICY 39 The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural lands and scenic resources.

A. Explanation of Policy

The definitions of terms "solid wastes" and "solid wastes management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludges from air or water pollution control facilities, demolition and construction debris and industrial and commercial wastes.

Hazardous wastes are unwanted by-products of manufacturing processes generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, waste is defined in Environmental Conservation Law (Section 27-0901 (3)) as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment which improperly treated, stored, transported or otherwise managed." A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include: filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

B. State Means for Implementing the Policy

1. Solid Waste Management Act, Environmental Conservation Law (Article 27)

2. Registration of Septic Tank Cleaners, Environmental Conservation Law (Article 27, Title 3)

3. Industrial Hazardous Waste Management Act of 1978, Environmental Conservation Law (Article 17, Title 9)

4. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

5. Protection of Waters Law, Environmental Conservation Law (Article 15, Title 5)

6. Coastal Erosion Hazard Areas, Environmental Conservation Law (Article 34)

7. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

POLICY 40 Effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to State water quality standards.

A. Explanation of Policy

The State Board on Electric Generation Siting and the Environment must consider a number of factors when reviewing a proposed site for facility construction. One of these factors is that the facility "not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the State, the public health, and public enjoyment of the receiving waters." The effects of thermal discharges on water quality and aquatic organisms will be considered by the siting board when evaluating an applicant's request to construct a new steam electric generating facility.

B. State Means for Implementing the Policy

1. Siting of Major Steam Electric Generation Facilities, Public Service Law (Article VIII)

2. Thermal Discharge Regulation, Environmental Conservation Law (Article 17, Title 3, 6 NYCRR, Part 704)

POLICY 41 Land use or development in the coastal area will not cause National or State air quality standards to be violated.

A. Explanation of Policy

New York's Coastal Management Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation pursuant to the Clean Air Act and State Laws on air quality. The requirements of the Clean Air Act are the minimum air quality control requirements applicable within the coastal area.

To the extent possible, the State Implementation Plan will be consistent with coastal lands and water use policies. Conversely, coastal management guidelines and program decisions with regard to land and water use and any recommendations with regard to specific sites for major new or expanded industrial, energy, transportation, or commercial facilities will reflect an assessment of their compliance with the air quality requirements of the State Implementation Plan.

The Department of Environmental Conservation will allocate substantial resources to develop a regulatory and management program to identify and eliminate toxic discharges into the atmosphere. The State's Coastal Management Program will assist in coordinating major toxic control programming efforts in the coastal regions and in supporting research on the multi-media nature of toxics and their economic and environmental effects on coastal resources.

B. State Means for Implementing the Policy

1. Air Pollution Control Act, Environmental Conservation Law (Article 19), Environmental Quality Bond Act, Environmental Conservation Law (Article 15, Title 5) and Hazardous Substance Act, Environmental Conservation Law (Article 37).

POLICY 42 Coastal Management policies will be considered if the State reclassifies land areas pursuant to the prevention of significant deterioration regulations of the Federal Clean Air Act.

A. Explanation of Policy

The policies of the State and local coastal management programs concerning proposed land and water uses and the protection and preservation of special management areas will be taken into account prior to any action to change prevention of significant deterioration land classifications in coastal regions or adjacent areas. In addition, the Department of State will provide the Department of Environmental Conservation with recommendations for proposed prevention of significant deterioration land classification designations based upon State and local coastal management programs.

B. State Means for Implementing the Policy

1. Air Pollution Control Act, Environmental Conservation Law (Article 19)

This law provides the Department of Environmental Conservation with the authority to designate areas of the State based upon degree of pollution that may be permitted. It allows the Department to consider that what may be proper for a residential area, for example, may not be proper for a highly developed industrial area.

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration and impacts on the use and conservation of coastal resources.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

POLICY 43 Land use or development in the coastal area must not cause the generation of significant amounts of the acid rain precursors: nitrates and sulfates.

A. Explanation of Policy

The New York Coastal Management Program incorporates the State's policies on acid rain. As such, the Coastal Management Program will assist in the State's efforts to control acid rain. These efforts to control acid rain will enhance the continued viability of coastal fisheries, wildlife, agricultural, scenic and water resources.

B. State Means for Implementing the Policy

1. Air Pollution Control Act, Environmental Conservation Law (Article 19).

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42).

   Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of impacts on the use and conservation of coastal resources.

   Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

POLICY 44 Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

A. Explanation of Policy

Tidal wetlands include the following ecological zones: coastal fresh marsh; intertidal marsh; coastal shoals, bars and flats; littoral zone; high marsh or salt meadow; and formerly connected tidal wetlands. These tidal wetland areas are officially delineated on the Department of Environmental Conservation's Tidal Wetlands Inventory Map.

Freshwater wetlands include marshes, swamps, bogs, and flats supporting aquatic and semi-aquatic vegetation and other wetlands so defined in the N.Y.S. Freshwater Wetlands Act and the N.Y.S. Protection of Waters Act.

The benefits derived from the preservation of tidal and freshwater wetlands include but are not limited to:

-- habitat for wildlife and fish, including a substantial portion of the State's commercial fin and shellfish varieties; and contribution to associated aquatic food chains;

-- erosion, flood and storm control;

-- natural pollution treatment;

-- groundwater protection;

-- recreational opportunities;

-- educational and scientific opportunities; and

-- aesthetic open space in many otherwise densely developed areas.

B. State Means for Implementing the Policy

1. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

This act is designed to "preserve and protect tidal wetlands, and to prevent their despoilation and destruction, giving due consideration to the reasonable economic and social development of the State". The regulatory program associated with the act is contained in the NYCRR, Title 6, Parts 660 and 661. Part 660 describes a moratorium regulatory program, while Part 661 details a permanent regulatory program.

The moratorium program provided interim protection to wetlands while the tidal wetlands inventory was being completed. Once maps were filed with the appropriate local governments, the moratorium on development in the majority of wetlands was lifted and permanent land use regulations went into effect.

For the purposes of the Tidal Wetlands Act, the permanent regulations apply to the six tidal wetland types and divide land uses into four categories: uses not requiring a permit; generally compatible uses; presumptively incompatible uses; and incompatible uses. All but the first category are subject to permit restrictions. More specifically, regulated uses include draining, dredging, excavation, filling, construction of facilities, pollution, and land subdivision.

Each application for a permit is subject to a hearing. A notice of public hearing is sent to affected parties. If no objections are received, the hearing may be cancelled. The application is then reviewed and denied or granted with conditions to minimize impact. Permits may be suspended or revoked upon grounds stated in the regulations.

2. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This act authorizes the regulation of the use and development of the State's freshwater wetlands of 12.4 or more acres or of unusual local significance as determined by the Commissioner of DEC. The regulatory program is divided into two phases: the interim permit program and the permanent permit programs.

The interim permit program is described in the NYCRR, Title 6, Part 662. It is in effect in each locality until final county wetlands maps have been filed with the clerk of each local government and prior to implementation of a local freshwater wetlands protection law or ordinance.

Application for an interim permit must be made for certain alterations of regulated freshwater wetlands and adjacent areas within 100 feet of the wetland. Draining, dredging, filling, erecting structures and discharging pollutants are some of the activities which may substantially alter and impair the functions of a wetland. A public hearing may or may not be deemed necessary depending on the number of objections filed or the

nature of the alteration. DEC will finally decide to issue, deny or condition an interim permit depending on the effect a proposed activity would produce on the benefits of a wetland.

The permanent program is fully described in NYCRR, Title 6, Parts 663 and 664. The permanent program takes effect in a particular county after DEC files its official regulatory maps with all of the local governments in that county. These maps depict freshwater wetlands of 12.4 acres or more plus certain smaller freshwater wetlands of special local concerns. These maps are filed after public hearings are held. At this writing only certain counties (and their constituent municipalities) have received these maps. Once these maps are completed, reviewed, and filed wetland laws adopted by communities become operative. These laws must be at least as restrictive as DEC's regulations. If a city, town or village fails to adopt and implement a local law, the county may take responsibility. If the county fails to participate, DEC will regulate the wetlands. Any city, town or village which defaults or transfers its authority may recover it at any time.

Regulations for the permanent program contain standards for issuing permits to undertake specified activities. The standards are applied for four classes of wetlands granted according to their abilities to perform wetland functions and provide wetland benefits. DEC retains authority over Class I (highest quality) wetlands and certain other wetlands for reasons of size or other special characteristics. Where a local government has authority over a wetland associated with a major international or interstate river or lake (i.e., the Hudson, Niagara and St. Lawrence Rivers, and Lakes Erie and Ontario), it must consult with DEC before taking any regulatory action concerning that wetland.

3. Protection of Water Laws Act, Environmental Conservation Law (Article 15, Title 5)

This law effectively affords State regulatory protection to any remaining wetland areas not being protected under the Freshwater Wetlands Act. This law require that a permit be obtained from the Department of Environmental Conservation for any activities which require excavation or filling of all wetlands that are adjacent to and contiguous with navigable waters of the State, and that are inundated at mean high water level. Furthermore, wetlands associated with protected waters (streams and rivers classified C(t) or higher) tributary to navigable waters are also protected by this law.

SECTION 7

PLANNING PROCESSES

Introduction

Three planning processes are incorporated into the State Coastal Management Program. They are: the Energy Facility Planning Process, the Shorefront Erosion/Mitigation Planning Process, and the Shorefront Access and Protection Process. These processes, which are described below, comply with federal regulations for the Coastal Zone Management Program.

Energy Facility Planning Process

Section 305 (b) (8) of the Coastal Zone Management Act of 1972, as amended, requires the management program of each State to include "a planning process for energy facilities likely to be located in, or which may significantly affect the coastal zone, including but not limited to, a process anticipating and managing the impacts from such facilities".

I. Identification of Energy Facilities Likely to Locate In, or Significantly Affect a State's Coastal Area

Energy facilities likely to locate in, or significantly affect New York's coastal area include electric generating facilities (oil, coal, nuclear, hydropowered); electric and gas transmission facilities; oil and gas exploration, development, transfer and storage facilities (including LNG facilities); and alternative energy facilities (e.g. wind).

II. Procedures for Assessing the Suitability of Sites for Such Facilities

1. General Planning

For all such facilities, the planning process begins with the preparation of the State Energy Master Plan, as required by Article 5 of the Energy Law; determines State energy needs; and identifies proposed new, expanding or converting facilities and their locations. It contains:

a. A forecast of the State's energy requirements for periods of five, ten and fifteen years, together with the bases for such forecasts;

b. A summary of the plans of the State's major energy suppliers for meeting forecasted energy requirements, including descriptions of new energy sources;

c. An identification and analysis of emerging trends related to energy supply, price and demand;

d. A statement and justification for specific energy policies, as well as recommendations for administrative and legislative actions that the State Energy Office has determined are desirable to implement the State's energy policy; and

e. Such additional information as the State Energy Office deems appropriate.

2. Activity Specific Processes

More specific procedures for siting individual facilities depend on the facility involved.

a. Steam Electric Generating Facilities and Electric and Gas Transmission Facilities

i) Additional Planning Requirements

Prior to any amendment of the State Energy Master Plan, members of the New York Power Pool and New York Gas Group must submit comprehensive long-range plans for future operations (including energy demands for the next five, ten and fifteen year period) to the State Energy Office and other State agencies. Public hearings must be held before the Board's adoption of a revision to the Master Plan. Once adopted, specific findings of projected electric and gas "requirements" for the forecast periods are binding, with respect to any determination of need for a facility, on those agencies having powers to issue certificates under Article VII and VIII of the Public Service Law.

The Coastal Management Program will review the Master Plan and present its comments to the Energy Planning Board if any inconsistencies with the Coastal Management policies are found.

ii) Permitting Processes

The State's review process for individual facilities is set forth in Articles VII and VIII of the Public Service Law and regulations promulgated thereunder (see Appendix F). The procedure involves the following steps:

1) Application to the Public Service Commission for electric and gas transmission facilities, or to the New York State Board on Electric Generation Siting and the Environment for steam electric generating facilties.

2) Review for completeness

3) Establishment of dates for hearing -- within 60 days for an electric generating facility, 60-90 days for an electric transmission line, 20-60 days for a gas line

4) Pre-hearing (Electric generating)

5) Hearing (can be joint)

6) Examiner's decision (Electric generating)

7) Decision

8) Re-hearing procedures -- up to 3 months (Electric generating only)

In making its application for a proposed electric generation facility, the "applicant in its direct testimony and as part of the exhibit information required to be submitted by Parts 72 through 80 of NYCRR, Title 16, shall explain the extent to which the location, design, construction, operation and maintenance of a proposed electric generation facility at a proposed site is designed to comply with each Federal and State law, rule, regulation or standard, interstate compact, and international requirement relevant and material to a determination of the application". If a proposed facility will not be in full compliance with the above, the applicant must describe any limitation or procedure it proposes to assure compliance or justify nonconforming aspects. (see Appendix F of this document, NYCRR, Title 16, Subchapter E, Section 71.9.)

In making its application, the applicant must provide an analysis of the need for the facility. It must also provide information about the existing condition of and potential impacts on air quality, aquatic ecology, environmental noise, regional and site geology, land use and aesthetic characteristics, terrestrial ecology, and water quality and quantity, in addition to the waste characteristics of the proposed facility (see Appendix F of this document, NYCRR, Title 16, Subchapter E, Sections 72-80.)

The Board, in granting a certificate for construction, must find and determine:

(a) the public need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, is compatible with public health and safety, and will not discharge any effluent that will be in contravention of the standards adopted by the department of environmental conservation;

(d) that the facility is designed to operate in compliance with applicable state and local laws and regulations;

(e) that the facility is consistent with long-range planning objectives for electric power supply in the state;

(f) that the facility is in the public interest, concerning the environmental impact, the total cost to society, the possible available sites or alternative available sources of energy. (See Appendix F of this document, Article VIII of the Public Service Law, Section 146.)

In making its application for a major electric or gas utility transmission facility, "the applicant shall state whether it has pending or knows of others who have pending, with this commission or with any other governmental department or agency (State or Federal), an application or filing which concerns the subject matter of the proceeding before the commission. If one or more such applications or filings is pending, the applicant shall state, for each application or filing pending, whether the granting of any such other application or filing will have any effect on the grant or denial of a certificate, and whether the granting of a certificate will have any effect upon the grant or denial of any such other application or filing." (See Appendix F of this document, NYCRR, Title 16, Subchapter G, Part 86.9.)

In making its application, the applicant must submit a statement describing any study which has been made of the impact of the proposed facility on the environment. The applicant must also state what changes, if any, the construction and operation of the proposed facility might induce in the physical or biological processes of plant life or wildlife through any permanent or significant temporary change in the hydrology, topography, or soil of the area.

The Board, in granting a certificate for construction, must find and determine:

(a) the public need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, is compatible with public health and safety, and will not discharge any effluent that will be in contravention of the standards adopted by the department of environmental conservation;

(d) that the facility is designed to operate in compliance with applicable state and local laws and regulations;

(e) that the facility is consistent with long-range planning objectives for electric power supply in the state;

(f) that the facility is in the public interest, concerning the environmental impact, the total cost to society, the possible available sites or alternative available sources of energy. (See Appendix F of this document, Article VIII of the Public Service Law, Section 146.)

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In making its application, the applicant must submit a statement describing any study which has been made of the impact of the proposed facility on the environment. The applicant must also state what changes, if any, the construction and operation of the proposed facility might induce in the physical or biological processes of plant life or wildlife through any permanent or significant temporary change in the hydrology, topography, or soil of the area.

The applicant must also state what efforts have been made to assure that the transmission line right-of-way avoids scenic, recreational and historic areas; minimizes visibility from public areas; avoids heavily timbered, high points, ridge lines and steep slopes; preserves the natural landscape and minimizes conflict with any present or future planned land use. In addition, the applicant must indicate plans to protect natural vegetation, topsoil, wildlife habitat, and aquatic life. (See Appendix F of this document, NYCRR, Title 16, Subchapter G, Part 86.4.)

The Commission in granting the certificate for construction or operation of the major transmission facility must find and determine:

(a) the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact;

(d) in the case of an electric transmission line, (1) what part, if any, of the line shall be located underground; (2) that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability;

(e) in the case of a gas transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder;

(g) that the facility will serve the public interest, convenience and necessity. (See Appendix F of this document, Article VII of the Public Service Law, Section 126.)

b. Offshore Gas and Oil Facilities and Activities

Drilling rigs, pipelines, refineries, storage and other gas and oil facilities which are located in the State's coastal waters and adjacent shorelands are subject to several different laws and regulations that assess, among other things, the siting of such facilities. In addition, offshore gas and oil exploration, development and production activities must meet State requirements.

The location of fuel gas transmission lines are subject to Article VII of the Public Service Law. The Public Service Commission, before issuing a certificate for the construction and operation of a major gas pipeline, must find that there is a public need for the facility and that it is compatible with the environment (See the discussion under Steam Electric Generating Facilities and Electric and Gas Transmission Lines and Appendix F for further information on this comprehensive siting review procedure). The Department of State will review applications for gas transmission lines which are submitted to the Commission and may present testimony during the review proceedings regarding the siting of such facilities.

Oil transmission lines in coastal waters are subject to several laws and their implementing regulations which focus upon the effects of such facilities upon valuable coastal resources. Any pipeline which would require excavation or fill activities is subject to the provisions of Article 15 (Water Resources) of the Environmental Conservation Law. In addition, the construction of such facilities would be regulated by the Tidal and Freshwater Wetlands laws (Article 25 and 24 of the Environmental Conservation Law, respectively). Such pipelines are evaluated as to their effects upon navigation, fish, aquatic and water resources, functions of wetlands and the public health, safety and welfare. Oil transmission lines subject to the above cited laws are subject to the review procedures established by Article 70 (Uniform Procedures) of the Environmental Conservation Law. These procedures call for: the submission of a complete application to the Department of Environmental Conservation; the publication of a notice of application including the date of any public hearing, if necessary, and time period for public comment; and, the approval or disapproval of the permit application within sixty days after the close of the public hearing record, or, if no hearing was held, ninety days after the submission of a complete application.

If the Department determines that a proposed oil pipeline would have a significant effect upon the environment, the preparation of an Environmental Impact Statement (EIS) will be necessary as required by Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law (See Appendix E for further information on this review procedure). When an EIS is prepared, the proposed action must be evaluated for its consistency with the coastal policies contained in the Department of State's Part 600 regulations.

Oil and gas exploration, development and production activities in New York's coastal waters are subject to the provisions of Article 23 (Mineral Resources) of the Environmental Conservation Law. This law regulates the drilling, casing, operation and the spacing and plugging of wells. It also provides for the leasing of State-owned underwater lands for the purposes of gas and oil development and production. An applicant seeking approval from the Department of Environmental Conservation for a proposed oil or gas exploration, development and production activity must submit a complete application. The Department will then provide public notice of the proposed activity and hold a public hearing. Within sixty days after the conclusion of the hearing, the Department must either approve or disapprove the application.

The Department would also be required by Article 8 of the Environmental Conservation Law to determine the environmental significance of the proposed activity. If it is determined that the activity would have a significant effect upon the environment, the preparation of an environmental impact statement would be necessary. In such instances, the Department must also determine the consistency of the activity with the coastal policies contained in the Department of State's Part 600 regulations.

Onshore oil and gas facilities (except for LNG and LPG storage and gas transmission facilities) must comply with established State air and water quality standards and tidal and freshwater wetlands requirements, where applicable. The discharge of pollutants into the air and water and the construction of facilities in or adjacent to designated wetlands are regulated by Articles 17 (Water Pollution Control), 19 (Air Pollution), 24 (Freshwater Wetlands) and 25 (Tidal Wetlands) of the Environmental Conservation Law. The review of such facilities under the above cited laws is subject to the procedures established in Article 70 (Uniform Procedures) of the Environmental Conservation Law. The review procedure established by this law is presented in the discussion under oil transmission lines.

In addition, onshore oil and gas facilities may be subject to the provisions of Article 8 of the Environmental Conservation Law which requires the preparation of an EIS, if it is determined that such facilities may have a significant effect upon the environment. When this occurs the Department of Environmental Conservation will have to determine the consistency of such facilities with the coastal policies contained in the Department of State's Part 600 regulations. One of the policies calls for facilitating the siting of water dependent uses which include energy-related uses and facilities.

c. LNG Facilities

Article 23 of the Environmental Conservation Law (Liquified Natural and Petroleum Gas) requires a certificate of environmental safety prior to construction, reconstruction, enlargement, or initiation of operation of LNG and LPG facilities. Procedures allow for complete consideration of the facility, the proposed site and alternate locations prior to the decision on granting a certificate. The procedures involve the following:

1) Application for certificate to the Department of Environmental Conservation

2) Public hearings

3) Department decision

4) Renewals, modifications

5) Suspensions, revocations

d. Other Energy Facilities

The procedures for assessing the suitability of a site for other facilities likely to locate in the coastal zone are essentially the same as for assessing the suitability of any other type of project in the coastal zone.

If a direct State action is involved, the Waterfront Revitalization and Coastal Resources Act requires consistency with the coastal policies. If no such direct or funding action is involved, suitability of significant facilities will be assessed in the context of State permitting actions subject to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act) which requires an environmental impact statement to be prepared for all actions (except actions subject to Article VII and VIII of the Public Service Law) which may have a significant effect upon the environment.

As amended, the SEQR regulations require that, a state agency's action be consistent with the coastal policies. Such a determination is made in addition to any requirements under one or more permitting programs. (See permitting programs described under Policy 27 in Part II, Section 6 of this document.)

III. Articulation and Identification of Enforceable State Policies, Authorities and Techniques for Managing Energy Facilities and Their Impacts

State energy policies are contained in the Energy Law and State Energy Master Plan (see Appendix F for the Energy Law). In general, the policies deal with maintaining a dependable, economic supply of energy, promoting economic development and protecting the environment. State energy policies are as follows:

1. The State's consumption of petroleum products must be reduced. The economic cost and vulnerability to disruption resulting from the State's continued disproportionate reliance on oil strongly support actions to shift to less costly and/or more secure energy sources.

2. Conservation and renewable resources must make a greater contribution to energy supply and will require substantial additional government support to do so, at least in the near-term. In many applications, conservation and renewables appear to be the least costly, most economically productive and environmentally benign means to satisfy a significant portion of the State's current and anticipated energy requirements. Government action must enhance the respective contributions to be made by conservation and renewables in meeting those requirements.

3. The State of New York and its agencies should encourage the efficient use of natural gas and stimulate efforts to secure additional supplies of natural gas from sources that are economic and compatible with environmental, public health, and safety standards in order to reduce New York's dependence on oil. Natural gas is and will likely remain an economic and environmentally compatible alternative to oil. This policy will help insure that supply and demand remain balanced throughout the planning period.

4. The increased use of coal must be promoted where economically feasible and consistent with applicable environmental standards. Compared to continued use of oil, particularly in the utility sector, use of coal will result in economic advantages, given current and forecast cost differentials between coal and oil, and significant improvement in certainty of supply over the forecast period. Increased utilization of eastern coal is likely to stabilize regional energy costs and will stimulate regional economic development.

5. Regional cooperation, coordination, and action must be promoted to enhance the region's energy supply prospects. Interconnection of New York's electric and natural gas supply systems with Canada should be pursued as a vehicle for reducing costs and oil dependence to the extent economic and feasible. Interconnection may also lessen the adverse impacts on the State's environment from construction and operation of energy supply facilities.

6. Because of the need to develop a fully adequate national nuclear waste disposal program, and a need to clarify substantial uncertainties associated with economic, safety and regulatory issues related to the nuclear option, new nuclear power plants should not be included in the State's electricity supply plan at this time.

7. All consuming sectors must be given increased choice among competing energy forms, including conventional fuels, conservation, and renewable resources. Increased choice will benefit consumers by increasing price competition among energy forms, and will benefit the State by stimulating innovation and efficiency improvements.

8. Government must act to remove any existing legislative and administrative barriers inhibiting the development of energy sources, competition among fuel forms and energy conservation, except where such action would clearly compromise public health, safety or environmental quality. Justification for any such institutional barriers must be reexamined in light of compelling State energy needs.

9. The State's electric and gas utilities, as well as PASNY, should encourage and stimulate conservation and efficient use of energy by their customers. Electric and gas utilities should become more active purveyors of conservation and renewable resource technologies.

10. No person should be without adequate heat or should be forced to forego conservation improvements by reason of inability to pay. A commitment to protect public health and safety requires no less.

11. The energy research, development and demonstration programs being pursued in New York must be expanded and must emphasize those technologies that will, over the mid- to long-term, mitigate energy cost increases and energy supply interruption. Formal and informal coordination of the numerous energy RD&D programs throughout the State is essential to assure that these activities support and complement State energy policy.

12. In view of the extensive reliance on oil in the transportation sector, the State should continue to take action to maximize the efficient use of energy in this sector. Moreover, the relatively energy efficient mass transit and railroad systems throughout the State must be maintained to prevent shifts of mass transit and railroad riders to less efficient automobiles.

13. Comprehensive energy emergency preparedness activities, directed at mitigating the adverse economic and social impacts of an interruption in petroleum supplies, must be continued and increased in order to protect public health and safety.

In addition to the above cited policies, the State of New York has enacted laws and adopted regulations which govern the siting of certain energy uses and facilities. The basic policies contained in these laws and regulations are:

1. The siting of major steam electric generating and gas and electric transmission facilities shall be based upon public need and compatability with the environment (Articles VII and VIII, PSL)

2. The siting of liquified natural and petroleum gas facilities shall be based upon public safety and compatability with the environment (Article 23 ECL)

3. Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters (DOS Part 600 regulations)

IV. Identification of How Interested and Affected Public and Private Parties May Be Involved in the Planning Process

The Department of State, as the agency responsible for the Coastal Management Program, will ensure that coastal concerns are part of energy facility deliberations by continuing to review the State Energy Plan and any amendments thereto. It also by law receives proposals for review under Articles VII and VIII of the Public Service Law and will particpate in hearings under Article VII (as an automatic party) and Article VIII (as a party upon request).

In addition, pursuant to the Waterfront Revitalization and Coastal Resources Act, Department of State regulations and amendments to SEQRA regulations provide the procedural opportunities for the Department of State to undertake its requried review of all actions, including energy faciltiies, which may affect the achievement of the coastal policies.

Before the State Energy Master Plan is amended, major private sector energy suppliers (NY Power Pool and NY Gas Group) are required to submit comprehensive long-range plans for future operations to the State Energy Office and other State agencies. These plans are reviewed and approved by the Energy Board.

Local governments and the general public are provided the opportunity to participate as parties in Article VII and VIII proceedings and other hearings conducted pursuant to the various permitting and environmental review procedures cited above. The Department of State will also encourage local governments which develop waterfront revitalization programs to consider future energy development activities, to identify appropriate sites, and to prepare local laws or other mechanisms for dealing with new or expanding energy development.

The national interest in the planning for and siting of energy facilities was determined from the National Energy Plan and through direct communication with appropriate Federal agencies. For a more complete discussion of the national interest in energy production and transmission facilities, see Part II, Section 9, Special Program Requirements, of this document.

Shoreline Erosion/Mitigation Planning

Section 305 (b) (9) of the Coastal Zone Management Act of 1972, as amended, requires that state coastal management programs must include a shoreline erosion/mitigation planning process, the regulations for which are presented in 15 CFR 923.25:

> "(1) The management program must include a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion."
>
> "(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the State's planning process indicates is necessary."

As evidenced in the Flood and Erosion Hazards issue discussion (Part II, Section 5), which is incorporated by reference as part of this response, the effects of shoreline erosion and the techniques for dealing with it are of major concern to New York State. However, the State lacked a systematic basis for dealing with that concern until 1981 when the Coastal Erosion Hazard Areas legislation was enacted. The law (Environmental Conservation Law, Article 34) recognizes: the extensive damage caused by erosion in the State's coastal area; man's contribution to the problem by activities which exacerbate the erosion process or by placing property where it is exposed to damage; and, that many measures taken to control erosion are costly, often ineffective, and may be harmful to other lands. The law has three principal components: delineation of the hazard areas; promulgation of regulations; and implementation.

Procedures established by the law require the Department of Environmental Conservation, in full cooperation with affected local governments, to complete a preliminary identification of erosion hazard areas of the State's coastline. Coastal erosion hazard areas are defined by Article 34 in two ways. In the first, a requisite period of protection of structures is set at 40 years. That number is then multiplied by the annual land recession rate on lands where it is at least one foot, to define the inland extent of the hazard area. The recession rate will be measured using comparable maps and aerial photography, including 1979 photographs of the State's Great Lakes coast which were

flown specifically for this purpose, and funded under the federal Coastal Zone Management Act. The second definition of erosion hazard area encompasses dunes, beaches, shoals and other features which offer natural protection to shorelands. After required public hearings and consultations, final identification of coastal erosion hazard areas will be made. Priority is being given by DEC to identifying first those areas of the coastline which are eroding at a rate of 4 feet or more annually.

Within those identified erosion hazard areas, the regulatory provisions of the legislation will apply. For activities and development in such areas, regulations promulgated under Article 34 are required to establish minimum standards and criteria including: the use of setbacks; prevention of increase in erosion; minimizing of adverse effects on natural protective features; and measures to ensure the effectiveness of control structures. The law also specifies that, when public funds are to be used for activities and developmnet, the public benefits must clearly outweigh the long-range adverse effects. Policies 11, 12, 13, 14, 15, 16, and 17 are based on those regulatory provisions.

Article 34 is designed to give, first, each affected local government the opportunity to implement its provisions with the adoption of a local coastal erosion hazard areas law or ordinance. If a local government fails to exercise its right, the county, or finally, DEC must issue regulations for that community.

In summary, the effects of full implementation of the Coastal Erosion Hazard Areas Act are: all erosion hazard areas of the State's coastline will be identified and mapped; a regulatory framework govern activities and development in those areas; and all government as well as private actions and programs will be constrained by the Act.

Shorefront Access and Protection Planning Process

Several State, regional, and local agencies participating in development of the Coastal Management Program identified specific sites in need of improved access for their functional or geographic areas of concern. Access sites for fishing, boating and other waterfront related activities have been identified by the Department of Environmental Conservation; the Office of Parks, Recreation and Historic Preservation; New York City Planning Commission; the Long Island Regional Planning Board; the Erie and Niagara Counties Regional Planning Board; the St. Lawrence-Eastern Ontario Commission; and individual counties participating in the program.

While most of the access site recommendations may reflect knowledge of the local area or specific functional plans, they are not based on a single coordinated statewide access planning process. The New York City Department of Planning has developed a methodology for identifying shorefront areas appropriate for

improved access. The Department tabulated the nature of the access issues for 33 areas. For three of these, detailed studies were undertaken consisting of: an examination of the study area in terms of current modes of access to the shore; identification of specific shorefront access concerns based on the above investigations; and recommended actions necessary to mitigate these concerns. The remaining identified areas will also be evaluated in this manner in the immediate future.

The Office of Parks, Recreation and Historic Preservation has also inventoried recreational facility capacity and undertaken supply and demand studies which can be applied to determination of access roads.

A single procedure for identifying, on a statewide basis, public shorefront areas appropriate for access has been developed as part of the Coastal Management Program and is outlined below. This procedure utilizes, in part, various methodologies and inventories already developed by State and local agencies and the lists of specific sites needing access improvements. This procedure satisfies the shorefront access and protection planning requirements of the Coastal Zone Management Act. Its application will result in a list of the specific access improvements to which the State will give priority within financial and legal limits. An interagency advisory committee will be established to oversee operation of the procedure.

1. Identify the types of public areas to which new or increased public access is desirable and a single planning process is appropriate for determining needed additional access.

    a. Beaches - definition of beach is as follows: A beach is a zone of unconsolidated material that extends landward from the level of lowest water to the place where there is a marked change in natural or physiographic form (first line of terrestrial vegetation) or to the upper limit reached by the highest storm waves, which is the area subject to alternate erosion and deposition of beach material. The offshore limit of a beach is the mean low water line. A beach consists of both foreshore and backshore zones. Beach elements include dry sand areas, sand dunes, and areas of reasonably graduated slope to the water. Beaches are composed of a variety of materials, including sand, gravel, or pebbles. Areas composed of other materials may function as beaches when they are used for traditional beach activities.

    b. Fishing and hunting areas

    c. Boat launching sites and marinas

    d. Scenic areas of statewide significance - as defined in the scenic quality issue discussion (Part II, Section 5) of this document

e. Waterfront parks

f. The coast at large, to include other non-federal publicly-owned land

2. Inventory existing public areas to which public access is provided and/or desirable.

a. Beaches - inventory and map those areas which meet the definition of beach above, including identification of those in public ownership. Sources are as follows:

(1) Office of Parks, Recreation, and Historic Preservation Inventory of Recreation Sites

(2) Land Use and Natural Resource Inventory (LUNR)

(3) Office of General Services State Land Inventory

(4) New York City Coastal Management Program Report

(5) Nassau-Suffolk Regional Planning Board Coastal Management Program Report

(6) St. Lawrence-Eastern Ontario Commission Coastal Management Program Report

(7) State Coastal Management Program Coastal Atlas (will map all beaches)

b. Fishing areas - an inventory and map of sites to which the public has access for fishing purposes within the coastal area. Sources are as follows:

(1) Office of Parks, Recreation, and Historic Preservation Inventory of Recreation Sites

(2) Department of Environmental Conservation's Fish and Wildlife Management Program

(3) Office of General Services' State Lands Inventory

(4) New York City Coastal Management Program Report

(5) Nassau-Suffolk Regional Planning Board Coastal Management Program Report

(6) St. Lawrence-Eastern Ontario Commission Coastal Management Program Report

(7) Sea Grant

c. Boat launching sites and marinas - an inventory of all marinas and boat launching sites open to the public. Sources include all those listed under "a" above plus the Corps of Engineers, Sea Grant, and the Department of Transportation.

d. Scenic areas of statewide significance - an inventory and map. Principal source is the Coastal Management Program Coastal Atlas, plus information from the Department of Environmental Conservation and the Office of Parks, Recreation, and Historic Preservation.

e. Waterfront parks - an inventory and map. Sources are as follows:

(1) Office of Parks, Recreation, and Historic Preservation's Inventory of Recreation Sites

(2) Coastal Management Program Coastal Atlas

f. Coast at large - a map and inventory of areas with general access to the shore. Sources include:

(1) Office of General Services Inventory of State Lands

(2) County tax maps

3. Describe the level and type of existing access at each site identified in terms of mode, capacity, and condition. Major source is the Office of Parks, Recreation, and Historic Preservation's Inventory of Recreation Sites.

4. Assess the appropriateness of the above access relative to the capacity (physical and environmental) of the site to accommodate increased access and the present and future demand for use of the site.

5. Where increased access is appropriate, indicate the appropriate means for improving access and the agency's responsibility.

6. Establish a priority system for areas where increased access is appropriate.

SECTION 9

SPECIAL FEDERAL PROGRAM REQUIREMENTS

Introduction

Several Federal program requirements warrant special discussion due to their particular subject matter and role in a State's coastal management program. They are the requirements pertaining to national interest, uses of regional benefit, Federal consistency and public participation

A State must demonstrate that in the development of its program, adequate consideration was given to various types of facilities which may locate in coastal areas and are of interstate or national concern. In addition, the State's management program must ensure that consideration of such facilities will be continued throughout its implementation phases (15 CFR 923.52).

There are some types of land and water uses and facilities which are of benefit to several coastal communities, or for that matter, an entire region. Some of these uses may be subject to governmental regulations which could prevent their siting at coastal locations. A State's management program must identify uses and facilities of regional benefit and demonstrate how they would not be unreasonably restricted or excluded (15 CFR 923.12). It should be noted that these uses and facilities may be considered of national interest.

A State's coastal management program must contain the procedures that will be followed by the State and Federal agencies in order to implement the Federal consistency requirement contained in the Coastal Zone Management Act of 1972, as amended. These procedures are intended to help a State achieve its coastal policies (15 CFR 923.53).

Finally, a coastal State must ensure that State agencies, local governments, various interest groups and the general public are afforded full opportunity to participate in the development of its management program (15 CFR 923.55). The preparation and distribution of program information and public meetings and workshops are the common means for addressing this requirement.

The projects which meet one of the following two criteria have been determined to be projects for which a substantial amount of time, money and effort have been expended, and will not be subject to New York State's Coastal Management Program and therefore will not be subject to review pursuant to the Federal consistency procedures of the Federal Coastal Zone Management Act of 1972, as amended: (1) those projects identified as grandfathered pursuant to State Environmental Quality Review Act at the time of its enactment in 1976; and (2) those projects for which a final Environmental Impact Statement has been prepared prior to the effective date of the Department of State Part 600 regulations [see Appendix A, DOS Consistency Regulations, NYCRR Title 19, Part 600, §600.3(4)]. If an applicant needs assistance to determine if its proposed action meets one of these two criteria, the applicant should contact the Department of State.

National Interest

The Federal Act requires State programs, to provide "adequate consideration of the national interest involved in planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature" (Section 306 (c) (8)). In giving adequate consideration to such facilities, State programs must also assure that "natural resource considerations of a national nature enter into the assessment of the demand for the locational needs of particular types of facilities" (see 15 CFR 923.52 (c) (4)).

New York State's coast possesses natural resource, historic, scenic, recreation, defense and broad-ranging economic values which are of importance not only to the State, but to the Nation. Certain development actions which could affect these coastal values were examined during the preparation of the Coastal Management Program to ensure that sufficient attention was given to various national interests.

New York's Coastal Management Program assures continued protection of natural resources of more than State significance through existing legislation, program policies and procedures, and special management areas. The State's Program includes detailed consideration of coastal resources, including water, wetlands and adjacent areas, fish and wildlife habitats, erosion hazard areas (including barrier islands and beaches), agricultural lands, historic and cultural resources, and scenic areas. At the same time, the Program also recognizes the critical need for development of certain facilities which depend upon and affect the various coastal resources.

For the purposes of this Program, national defense, energy production and transmission, recreation, and transportation facilities are considered to be of national interest. For each type of facility, the following information is provided: (1) sources relied upon for description of national interest; (2) descriptions of national interest in above facilities; (3) description of how the CMP considers the national interest in such facilities; and (4) the process for continued consideration of the national interest.

National Defense Facilities

Through direct communications with the various branches of the U.S. Department of Defense and analyses of the policy papers issued by its agencies, it was determined that areas of national defense interest include: (1) the accurate identification of all lands owned or leased by the military; (2) the maintenance of transportation facilities within coastal areas at levels that would ensure optimum military mobility; and (3) the need to provide new or expand existing military facilities.

Military facilities in New York's Coastal Area are not substantial in size or number. Department of Defense (DOD) lands and facilities are listed in Appendix D. While the State's Coastal Management Program does not apply to Federally-owned lands, including those under the jurisdiction of DOD, it still recognizes the paramount importance of military facilities not only for national defense but also for their contributions to the economic, educational and cultural life of the Nation and State. Therefore, New York's Program contains no policy that contradicts the basic justification for new or expanded military facilities. It is also recognized that any new or expanded national defense facility can be sited at any location under the eminent domain authority of DOD.

In the future, defense needs and other coastal interests could be in conflict if: increased public access to the coast would interfere with the military functions of defense installations; new defense facilities were planned for sensitive ecological areas; or, off-site transportation improvements were necessary for the continued operation of a military facility.

New York State will seek to prevent serious conflicts between national defense interests and Coastal Management Program concerns by using the consistency procedures contained in this Section to comment on proposed military projects which affect the coastal area of the State. Through this process, the Department of State will suggest reasonable mitigation measures and/or alternative sites, if appropriate, so that DOD activities will be conducted in a manner which is consistent to the maximum extent practicable with the State's Program.

Energy Production and Transmission Facilities

The National Energy Plan was the primary source for determining the national interest in energy facilities. Direct communications with the Department of Energy, Federal Energy Administration, Bureau of Land Management, Maritime Administration, Geological Survey, Department of Transportation, Army Corps of Engineers, and Nuclear Regulatory Commission provided additional information.

The National Energy Plan sets forth three overriding objectives for the Nation: (1) reduce dependence on foreign oil and vulnerability to supply interruptions; (2) keep imports sufficiently low to weather the period when oil production approaches its capacity limitation; and, (3) have renewable and essentially inexhaustible sources of energy for sustained economic growth. The salient features of the National Energy Plan are: conservation; national pricing and production policies; reasonable certainty and stability in government policies; substitution of abundant energy resources for those in short supply; and, development of non-conventional technologies for the future.

Many energy facilities are already situated in the State's coastal area, including steam electric generating plants, transmission lines, oil storage tanks and LNG facilities. The Program's policies on energy are in accord with existing State laws and plans which address energy needs and environmental quality in a comprehensive manner.

The State has demonstrated its recognition of the national interest in energy facilities by the number and scope of facilities already located in or planned for New York's coastal area. The total 1981 capacity for New York State utilities was 30,331 megawatts. This was produced by the following types of existing facilities: (1) oil - 100 units, (2) hydro - 17 units, (3) gas - 6 units, (4) coal - 30 units, and (5) nuclear - 5 units. In addition, other facilities are in various stages of planning and development: (1) 2 nuclear - under construction, (2) 1 coal - under construction, (3) 3 coal - licensed to be constructed, and (4) 1 pumped storage - licensed to be constructed. When operating, these new facilities will produce 5,868 megawatts. Finally, 15 plants are proposed to be converted to coal and would produce 3,685 megawatts.

Article 5 of the State's Energy Law is the principal authority under which the national interest in energy is considered. This law requires the preparation and adoption of a statewide energy plan which establishes the State's future energy requirements.

In determining these requirements, consideration must be given to factors which relate to reducing the State's and the Nation's dependence on foreign oil and also to developing renewable sources of energy. Factors include: the extent to which energy conservation measures and new energy technologies may affect the State's energy requirements; the extent to which indigenous energy resources may contribute to meeting the State's requirements. Section 5-110.a (4) of Article 5 requires that one of the factors that shall be taken into consideration in preparation of the Energy Plan is "the impact of the national energy policies on the State's energy needs and on available sources of supplies".

The State Energy Master Plan must be reviewed at least once every two years; at that time the State Energy Office will prepare any amendments necessary to update the plan or issue a determination that no amendments are necessary and the reasons supporting the determination. Any interested person may seek such a review upon written application to the Energy Office for an amendment to the Master Plan. Amendments are to be adopted by the Energy Planning Board in the same manner as the plan itself; thus again the national interest will be considered.

Under Article 5 of the Energy Law, the Energy Office must also formulate and revise a State energy conservation plan to be submitted pursuant to the Federal Energy Policy and Conservation Act of 1975. In addition, any action requiring preparation of an EIS under the State Environmental Quality Review Act must be reviewed as to its effects on the use and conservation of energy.

Article 5 requires the New York Power and Gas Pools to submit to the Energy Office comprehensive long-range plans for future operations. After analysis and review of the plans, the Energy Office will project long-range electric and gas demands and supply requirements for 4, 8, 12 and 16 year forecast periods. These findings are binding under Article VII and VIII of the Public Service Law with respect to any determination of need for an electric generation or transmission facility.

Interstate and international arrangements established by the members of the New York Power Pool also serve the national interest. Interconnections with the Pennsylvania - New Jersey - Maryland power system, the New England power pool, Hydro Quebec and Ontario Hydro provide mutual reserve capability to ensure those systems' reliability. Electricity generated by the Power Authority of the State of New York (PASNY) in its coastal hydro-electric plants is sold to the State of Vermont. Finally, PASNY purchases significant quantities of power from the two Canadian systems.

In accordance with the provisions of Article 42 of the Executive Law, the Secretary of State will review the above described programs and actions for consistency with the coastal area policies. In particular, the Secretary will review the preparation of the State Energy Master Plan for assurance that there is adequate consideration of the national interest in the siting of the energy facilities which are necessary to meet requirements which are other than local in nature consistent with Article V, Section 110. a. (4). The Secretary will take particular note of Policy 27 ("Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facilities' need for a shorefront location") and Policy 29 ("Encourage the development of energy resources on the Outer Continental Shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities") in making these decisions. For a further description of the process of siting energy facilities, see Part II, Section 7.

Recreation Facilities

Various documents, legislation, and Federal agencies were consulted to determine the national interest in recreation facilities including: Nationwide Outdoor Recreation Plan; Gateway National Park Plan; Fire Island National Seashore Park Plan; Land and Water Conservation Fund Act; Historic Preservation Act - P.L. 89-665; Heritage Conservation and Recreation Service; and National Park Service.

National recreation objectives drawn from the above sources are: (1) to consider recreation as an equal among other uses competing for space along coastlines; (2) to provide high quality recreational opportunities to all people while protecting the coastal environment; (3) to increase public recreation possibilities in high density areas; (4) to protect existing recreation areas from the adverse effects of contiguous uses; (5) to improve coordination and management of recreation areas; and, (6) to accelerate the no-cost transfer of surplus Federal property for recreational uses.

New York's coast possesses many fine and varied public recreation areas, including the Fire Island National Seashore and a portion of the Gateway National Park System. The State's Coastal Management Program recognizes the multiple values of these facilities in terms of their contribution to the economy, their role in achieving more desirable land use patterns, and their immeasureable benefit to the health of residents and visitors. In support of these values and the national interest, New York's Program supports increasing the number of recreation facilities in its coastal area while protecting them from excessive use and incompatible adjacent development. For a complete discussion of recreation policies, see Part II, Section 6 of this report.

Conflicts between various national and State interests arise inevitably when activities, such as residential, transportation or energy development, compete with recreational facilities for use of limited waterfront space. Frequently, the other uses prevail because they are considered more profitable and more critical.

A number of State laws, plans and processes ensure that, among other critical concerns, the national interest in recreation will be adequately considered in New York State. First, the State Comprehensive Recreation Plan, administered by the Office of Parks, Recreation and Historic Preservation (OPRHP) contains a priority rating system for allocating funds for recreation purposes. One factor in that system gives positive weight to an activity which will contribute to the achievement of State, regional and national goals for recreation. OPRHP also administers the Urban Cultural Park Program which is intended to improve the physical, economic and recreational environments of the State's historic communities.

Under the State Environmental Quality Review Act, recreational concerns must be considered as part of the environmental assessment process; so too under Article VII and VIII of the Public Service Law which requires environmental impact analysis for proposed energy facilities. Finally, under the Parks, Recreation and Historic Preservation, Environmental Conservation, Transportation, and Highway Laws, the State may acquire land for recreational purposes. Appendices E and F contain additional information on these laws and programs.

Transportation Facilities

In determining the national interest in transportation, the following documents and Federal agencies were consulted: Department of Transportation Act (49 US 1651, et. seq.); Railway Safety Act of 1970 (45 USC 421); Coast Guard, Primary Duties (14 USC 2); Department of Transportation; Maritime Administration; Interstate Commerce Commission; and, U.S. Army Corps of Engineers.

From these sources, it was determined that the national interest in transportation is: (1) to develop a balanced national transportation system including well-integrated surface, air, water, and subsurface modes; and, (2) to provide fast, safe, efficient and convenient transportation via one or more modes for the movement of people, goods and services to, from, and through coastal regions.

The Coastal Management Program considers major ports, navigation channels, interstate highways, railroads, airports and their ancillary facilities to be in the national interest. For these facilities, the Program supports the State's Department of Transportation policies. These policies, as presented in the Department's Transportation Master Plan, are clearly supportive of national transportation concerns.

In the development of its Coastal Management Program, the State has indicated where conflicts exist or could arise between the Program's policies and the national interest in transportation. In the Hudson River Valley and at many locations along the Great Lakes, public access to the shorefront is inhibited by rail lines and interstate highways. Expansion or improvement of existing port facilities could interfere with existing or the provision of new recreational waterfront facilities. Finally, the dredging and deepening of navigation channels may adversely affect significant fish habitat and the quality of coastal waters.

In the face of these conflicts, New York State will continue to give adequate and balanced consideration to all national and State concerns through review of A-95 notifications and environmental impact statements prepared under the State's Environmental Quality Review Act. The Department of State will suggest reasonable mitigation measures and/or alternative sites as appropriate.

Uses of Regional Benefit

As indicated previously, a State's coastal management program must ensure that local regulations applicable to land and water uses within the coastal area do not unreasonably restrict or exclude those uses which are of regional benefit. This requirement addresses the situation where a local government may oppose or place severe limitations on the siting of a needed regional serving facility or in another situation, where a municipality may fail to adequately protect natural resources which are deemed to be of areawide importance.

Identification Criteria

New York's Coastal Management Program must identify uses of regional benefit and then demonstrate how each will not be unduly restricted or excluded. Two Federal guidelines are to be followed in identifying such uses. First, the use or facility must have an effect on more than one unit of local government. Second, the use or facility must have a direct and significant impact on coastal waters.

This Program has used two additional guidelines in the identification of these regional uses. Since the overall objective of the State's Program is to implement its policies, such regional uses or facilities should then assist the State in the achievement of these policies. In particular, the need for a waterfront location should be taken into consideration, for it is the land along the shoreline where local, State and national concern is the greatest. Area-serving uses and facilities which are either publicly owned or regulated by the State is the other guideline that was used in this identification process.

Types of Regional Uses

Based upon the above Federal and State guidelines, several types of land and water uses are identified, as well as the means for assuring that such uses will not be unreasonably restricted or excluded by local regulations.

1. Recreational uses of regional benefit shall include:

   -- State parks and other recreational uses

   -- County parks and other recreational uses

   All of the above uses satisfy the identification criteria. First, they provide recreational opportunities to people who reside both within andoutside the municipality where such uses are located. Second, these uses have direct effects on coastal waters, for the recreational activities conducted on waters and the adjacent lands may impair the quality of such waters. Third, all of the uses are cited in coastal policies as possible means for increasing water-oriented recreational oportunities. Finally, these uses are in public ownership and serve many communities.

The above recreational uses are not unreasonably restricted by local laws and ordinances. The acquisition and subsequent development of land with the Coastal Area for State and county recreational purposes are not subject to local regulations. Case law, rather than statutory provision, is the basis for this determination. Several judicial decisions have declared that State and county governmental functions are not subject to local land use regulation.[1] Therefore, the siting of such recreational uses within the Coastal Area of the State cannot be unreasonably restricted or prohibited by a local government.

2. Transportation uses of regional benefit shall include:

   -- State and county highways, including necessary bridges and tunnels

   -- Intercity and commuter rail service facilities, including necessary bridges and tunnels

   -- Major cargo handling ports

   -- Navigation channels serving major ports

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[1] For general discussion on this subject, see Anderson, New York Zoning Law and Practice, Section 9.04, (2nd Edition. 1973).

Specific judicial decisions on this topic are as follows:

-- City of Rochester v. Town of Rush, 336 NYS 2d 160, 71 Misc. 2d 451 (1972)

-- Nehrbas v. Incorporated Village of Lloyd's Harbor, 2NY 2d 190, 159 NYS 2d 145 (1957)

-- Village of Larchmont v. Town of Mamaroneck, 239 NY 551 (1924)

These transportation and related uses satisfy the two Federally required identification criteria and partially fulfill the State's Coastal Management Program guidelines. With respect to the required criteria, the above uses and facilities are of benefit to the residents in the locality as well as the people and businesses in the general area where such uses are located. Because of their nature, these uses may have direct and significant impacts upon coastal waters. In terms of the State's criteria, the Program's policies address either singularly or collectively the above transportation uses, for they are essential to economic activity within the coastal area and the State as a whole. Ports do require waterfront sites and navigation channels are, of course, situated in coastal waters. The other two transportation uses do not require a location in or near coastal waters, except in situations where a water body must be traversed to provide for uninterrupted service. Finally, most of the State and county highways are provided and maintained by their respective governments. There are situations, however, where this is not true for parts of New York's coastal area. For example, public authorities have been established, such as the Triborough Bridge and Tunnel Authority in New York City[2] for the purposes of constructing, operating and maintaining necessary bridges, tunnels and roadways leading to such facilities. All of the State's major port facilities and most of its rail service facilities are also constructed, operated and maintained by public authorities established under New York's Public Authority Law. Some railroad lines in New York's coastal area are still under private ownership, such as the Delaware and Hudson. As for navigation channels serving major ports, these are situated on underwater lands owned and, thus, controlled by the State of New York.

State and county highways are not subject to local regulation for the reasons discussed previously. The major ports and most of the rail facilities are not subject to local siting restrictions because of the

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[2] N.Y.S. Public Authority Law, Article 3, Title 3.

powers generally granted to public entities. The siting of such facilities are regulated by the State's Department of Transportation.[3] The U.S. Corps of Engineers, in cooperation with the State's Department of Environmental Conservation, is responsible for maintaining the navigation channels serving the State's major ports.

3. Energy uses shall include:

   -- Electric generation facilities

   -- Electric and gas transmission facilities

   These uses and facilities fulfill several of the previously described identification guidelines. First, major electric and gas facilities are beneficial, for they supply the energy necessary for the operation of industries, transportation vehicles and services, and home heating. Second, these uses can have substantial impacts upon coastal waters. Third, if these facilities are properly sited and operated, several Coastal Management Program policies will be achieved and statewide concerns over their effects on water quality, fish and wildlife, air quality and aesthetics will be minimized. Also, some of these facilities do require locations along the waterfront or access to coastal waters in order to properly function. Finally, some major electric generation and transmission facilities are provided by the Power Authority of the State of New York (PASNY).

   Steam electric generation and electric and gas transmission facilities are subject to the single comprehensive siting and permit procedures established under Article VII and VIII of the Public Service Law. These processes ensure that such facilities will not be unreasonably restricted by local regulations. Hydroelectric and nuclear-fueled generation facilities are subject to Federal review and approval.

   Federal Consistency

   Federal agencies are responsible for numerous programs which can further the policies and purposes of the State's Coastal Management Program. The Coastal Zone

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[3] N.Y.S. Transportation Law, Article 5.

Management Act of 1972, as amended, requires that actions of Federal agencies which impact the coastal zone must be undertaken consistently with approved State management programs. These Federal actions are:

-- Federally conducted or supported activities, including development projects;

-- Federal licenses or permits;

-- Federal financial assistance; and

-- Outer Continental Shelf (OCS) plans.

The Department of State will coordinate and review Federal actions affecting New York's Coastal Area for consistency with the State's Coastal Management Program. In carrying out this responsibility, the Department will consult with other State agencies and local governments before providing its official comment on all Federal actions. If an action, other than a Federally conducted or supported activity is determined to be inconsistent with the management program, the Federal agency proposing to permit, authorize or finance the activity may not proceed, unless the Secretary of Commerce finds that such action is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security.

The basis for all consistency reviews are the enforceable policies in Part II, Section 6 of this document, all the guidelines developed to assist in this review, and all approved management programs for Special Management Areas, particulary local waterfront revitalization programs which have been formally incorporated into the State's Coastal Management Program.

The Department of State intends to meet the Federal consistency provisions without causing burdensome responsibilities on applicants and Federal agencies. This will be accomplished by first seeking an early consultation between pertinent State and Federal officials and involved private parties. Federal agencies and applicants proposing an action for which a consistency review is or may be required should consult the Department of State as early as possible in the planning of the action. This will allow the Department to advise the agency or applicant of the relevant coastal policies and provisions of the State's Coastal Management Program and will help to eliminate potential conflicts before extensive work on a particular proposal has been completed. Implementing this principle will establish more efficient coordination between State and Federal actions.

Second, whenever possible, the Department of State will base its consistency determination on documents normally required for compliance with Federal regulations or approval. Generally, these will include environmental impact statements and assessments, applications for Federal permits and licenses, Federal grant applications, and supporting information.

Third, if additional information should be needed to make a consistency determination, the Department of State will promptly notify the Federal agency or applicant of this need, specify in detail the nature of the required information, and indicate the reasons for the additional data.

Fourth, whenever both Federal and State consistency determinations are required for proposed action, the review of this action will, whenever possible, occur at the same time.

Fifth, the State, when appropriate, may enter into agreements with Federal agencies that would further define the scope, procedures to be used, and the notification process for reporting the results of that review. The primary objectives of such agreements will be to ease the burden of consistency review on applicants and Federal agencies, and to synchronize and simplify existing and new review and/or regulatory procedures and programs at both the Federal and State level.

Consistency Procedures for Federally Conducted or Supported Activities

Consistency reviews, including the necessary information outlined in the National Oceanic and Atmospheric Administration (NOAA) Federal consistency regulations will be submitted to the Department of State.

Activities, which are determined by the appropriate Federal agencies as directly affecting the coastal zone and are listed in Part I of Table 2, require a consistency determination. Activities not listed in this Table will be monitored through the A-95 review process and other relevant processess. If a consistency determination and review is needed for any unlisted activity, the Department of State will notify the Federal agency.

Federal agencies must provide the Department of State with a consistency determination at the earliest practicable time in the planning of the activity, preferably when the analysis of alternatives is still ongoing. Federal agencies will notify the Department by procedures established by any future agreement that may be sought between a Federal agency and the Department, or by any recognized means of notification.

For the present, Federal agencies are encouraged to use existing mechanisms such as OMB Circular A-95 and NEPA environmental impact statements to provide the notification. In any case, the consistency determination must be provided no later than 90 days before final approval of the activity.

Upon receipt of a consistency determination from a Federal agency, the Department of State will review the determination and inform the Federal agency of its agreement or disagreement with the consistency determination within 45 days. If needed, the Department may request an extension of 15 days. The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification.

In the event the Department of State is in disagreement with a Federal agency's consistency determination, the agency will be informed of the reasons for disagreement, accompanied by supporting information and alternatives, if any, which would make the activity consistent.

Consistency Procedures for Activities Requiring Federal Licenses or Permits

Applicants, requiring Federal licenses or permits for activities affecting the State's Coastal Area or for certain renewals or amendments to such licenses or permits, shall provide the Department of State with the application and a certification, with required supporting information, demonstrating that the proposed activities are consistent with the State's Coastal Management Program.

Federal agencies may not issue a license or permit unless: the State concurs with the applicant's consistency certification; it is conclusively presumed to concur; or the U.S. Secretary of Commerce finds that a proposal is consistent with the purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security. Licenses and permits subject to consistency review are listed in Part II of Table 2. In addition, the Department of State will continue to monitor other activities requiring a Federal license or permit, and, if necessary, will notify the Federal agency, the applicant, and the Assistant Administrator of Coastal Zone Management (within 30 days of receiving the notice for the license or permit) that an unlisted license or permit will be subject to a consistency review.

At the same time an application for a license or permit is submitted to a Federal agency, the applicant shall transmit a copy of the application, together with the necessary data and information, and the consistency certification to the Department of State. The Department of State shall make the consistency determination based on the State's coastal policies, regulations and procedures and will make a decision or notify the applicant within 3 months, as provided in NOAA regulations. In no case can the consistency review take more than 6 months.

With respect to Federal licenses and permits associated with those energy facilities subject to Articles VII and VIII of the Public Service Law (utility transmission facilities and steam electric generating plants, respectively), the information needed to assess their consistency will be developed during the lengthy statutory review period, particularly the required formal hearings. Consequently, the State will not consider an application of any such license or permit to be supported by the necessary information and data under 15 CFR 930.56 (b) and 930.58 (a)(2) until the hearings have been completed. Concurrence or objection will be based upon the Certification of Environmental Compatibility and Public Need which will be issued within six months from the completion of the hearings.

Public notice will be given for any license or permit being reviewed for consistency in the Environmental Notice Bulletin, and in a newspaper having general circulation within the community where the license or permit activity is proposed. For activities which are subject to a State permit, the Department of State will use the applicable agency's notification process. Should this or other reasonable forms of public notification not be available or if the nature of the permit being applied for is of sufficient interest, the Department of State will carry out the public notice.

When the Department of State objects to a consistency certification, it will notify, in writing, the applicant, the Federal agency and the Assistant Administrator of NOAA. The notification will describe how the proposed activity is inconsistent and alternatives, if any, which would make the activity consistent.

Consistency Procedures for Federal Financial Assistance

Federal assistance for projects or programs affecting the State's Coastal Area will be monitored by the Department of State. Those proposed projects or programs which are inconsistent with the Coastal Management Program may not be funded by Federal

agencies unless the U.S. Secretary of Commerce finds that such proposals are consistent with the Federal Act or are necessary for national security purposes.

The Department of State will use the A-95 Project Notification and Review Process to monitor proposed Federal assistance projects in the Coastal Area. All applications for Federal assistance which are applicable to the planning, design, construction, alteration or expansion of physical development projects or other activities which could affect the State's Coastal Area will be subject to a consistency review. The applicant must certify consistency with the policies of the Program. This certification should be contained in the A-95 Review Notification, or if not applicable, Federal agencies will notify the Department by procedures established by any future agreement which may be sought between the Federal agency and the Department, or by any recognized means of notification. The Division of the Budget, the State agency designated to administer the A-95 process, shall notify the Department of State of proposed Federal assistance projects in the Coastal Area.

Within the time limits provided for review, the Department of State will notify the appropriate Federal agencies and applicants of any objections to proposed projects. The objection will describe how the proposed project is inconsistent with specific policies and shall recommend alternative measures, if any, which would make the project consistent. Applicants will also be notified of appeal procedures under NOAA regulations.

If the Department of State identifies an application for Federal assistance to conduct an activity which affects but is not within the Coastal Area, the Department shall provide notice to that effect to the Federal agency, the applicant, the A-95 Clearinghouse and the Assistant Administrator of NOAA within the designated comment period.

The Federal financial assistance projects and programs subject to consistency review, are listed in Part III of Table 2.

Consistency Procedures for Activities in Outer Continental Shelf Plans

The activities described in detail in plans for the exploration, development and production of Outer Continental Shelf (OCS) resources and affecting the Coastal Area must be certified by the person submitting the plan that the activity complies with the program and will be carried out in a manner consistent with the

program. The activities described in the plans will be evaluated for consistency with the State's Coastal Management Program in accordance with the NOAA Federal consistency regulations. The Department of State will coordinate and provide the public notification necessary for the review of OCS plans. During this review, the Department will consult with the Department of Environmental Conservation as to the consistency of the OCS plans with the State's Coastal Management Program. The review will be based on the enforceable policies, standards, laws, and regulations of the State's coastal program.

All OCS plans will be processed as soon as reasonably possible. The maximum review period as established by Federal regulations is three months following commencement of State review, with an additional three month period available to the State upon notification to the appropriate parties of the status of the review and the basis for the additional time. Total review period cannot exceed six months. Based on the review, should the Department of State object to a consistency certification for an OCS activity, the Federal agency may not approve the plan or issue any license or permit for activities described in detail in the plan unless the U.S. Secretary of Commerce finds that the proposal meets the purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security.

TABLE 2

FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS
LIKELY TO DIRECTLY AFFECT NEW YORK STATE'S COASTAL AREA

I. Direct Federal Activities and Development Projects

Department of Commerce, National Marine Fisheries Service:

-- Fisheries Management Plans

Department of Defense, Army Corps of Engineers:

-- Proposed authorizations for dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities, and other projects with the potential to impact coastal lands and waters.

-- Land acquisition for spoil disposal or other purposes.

-- Selection of open water disposal sites.

Department of Defense, Air Force, Army and Navy:

-- Location, design, and acquisition of new or expanded defense installations (active or reserve status, including associated housing, transportation or other facilities).

-- Plans, procedures and facilities for handling or storage use zones.

-- Establishment of impact, compatability or restricted use zones.

Department of Energy:

-- Prohibition orders.

General Services Administration:

-- Acquisition, location and design of proposed Federal government property or buildings, whether leased or owned by the Federal government.

-- Disposition of Federal surplus lands and structures.

Department of Interior, Fish and Wildlife Service:

-- Management of National Wildlife refuges and proposed acquisitions.

Department of Interior, National Park Service:

-- National Park and Seashore management and proposed acquisitions.

Department of Interior, Minerals Management Service:

-- OCS lease sale activities including tract selection, lease sale stipulations, etc.

Department of Transportation, Coast Guard:

-- Location and design, construction or enlargement of Coast Guard stations, bases, and lighthouses.

-- Location, placement or removal of navigation devices which are not part of the routine operations under the Aids to Navigation Program (ATON).

-- Expansion, abandonment, designation or anchorages, lightering areas or shipping lanes and ice management practices and activities.

Department of Transportation, Federal Aviation Administration:

-- Location and design, construction, maintenance, and demolition of Federal aids to air navigation.

Department of Transportation, Amtrak, Conrail:

-- Expansions, curtailments, new construction, upgradings or abandonments of railroad facilities or services, in or affecting the State's coastal area.

Department of Transportation, St. Lawrence Seaway Development Corporation:

-- Acquisition, location, design, improvement and construction of new and existing facilities for the operation of the Seaway, including traffic safety, traffic control and length of navigation season.

Department of Transportation, Federal Highway Administration:

-- Highway construction

II. Federal Licenses and Permits

Department of Defense, Army Corps of Engineers:

-- Construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

-- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).

-- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

-- Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).

-- Disposal of dredged spoils into the waters of the U.S., pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).

-- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972(33 U.S.C. 1413).

-- Construction of artifical islands and fixed structures in Long Island Sound pursuant to Section 4 (f) of the River and Harbors Act of 1912 (33 U.S.C.).

Department of Energy, Federal Energy Regulatory Commission:

-- Licenses for non-Federal hydroelectric projects and primary transmission lines under Sections 3 (11), 4 (e) and 15 of the Federal Power Act (16 U.S.C. 796 (11), 797 (11) and 808).

-- Orders for interconnection of electric transmission facilities under Section 202 (b) of the Federal Power Act (15 U.S.C. 824 a (b)).

-- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7 (c) of the Natural Gas Act (15 U.S.C 717 f (c)).

-- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717 f (b)).

Department of Energy, Economic Regulatory Commission:

-- Regulation of gas pipelines, and licensing of import or export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.

-- Exemptions from prohibition orders.

Environmental Protection Agency:

-- NPDES permits and other permits for Federal installations, discharges in contiguous zones and ocean waters, sludge runoff and aquaculture permits pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

-- Permits pursuant to the Resources Recovery and Conservation Act of 1976.

-- Permits pursuant to the underground injection Control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).

-- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

Department of Interior, Fish and Wildlife Services:

-- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

Department of Interior, Mineral Management Service:

-- Permits to drill, rights of use and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures pursuant to 43 U.S.C. 1334, exploration and development plans, and any other permits or authorizations granted for activities described in detail in OCS exploration, development, and production plans.

-- Permits required for pipelines crossing federal lands, including OCS lands, and associated activities pursuant to the OCS Lands Act (43 U.S.C. 1334) and 43 U.S.C. 931 (c) and 20 U.S.C. 185.

Interstate Commerce Commission:

-- Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines.

Nuclear Regulatory Commission:

-- Licensing and certification of the siting, construction and operation of nuclear power plants pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

Department of Transportation, Coast Guard:

-- Construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455.

-- Permits for Deepwater Ports pursuant to the Deepwater Ports Act of 1974 (33 U.S.C. 1501).

Department of Transportation, Federal Aviation Administration:

-- Permits and licenses for construction, operation or alteration of airports.

III. Federal Assistance

Department of Agriculture

10.068	Rural Clean Water Program
10.409	Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410	Low to Moderate Income Housing Loans
10.411	Rural Housing Site Loans
10.413	Recreation Facility Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.422	Business and Industrial Loans
10.423	Community Facilities Loans
10.424	Industrial Development Grants
10.426	Area Development Assistance Planning Grants
10.429	Above Moderate Income Housing Loans
10.430	Energy Impacted Area Development Assistance Program
10.901	Resource Conservation and Development
10.902	Soil and Water Conservation
10.904	Watershed Protection and Flood Prevention
10.906	River Basin Surveys and Investigations

Department of Commerce

11.300	Economic Development - Grants and Loans for Public Works and Development Facilities
11.301	Economic Development - Business Development Assistance
11.302	Economic Development - Support for Planning Organizations
11.304	Economic Development - State and Local Economic Development Planning
11.305	Economic Development - State and Local Economic Development Planning

11.307	Special Economic Development and Adjustment Assistance Program - Long Term Economic Deterioration
11.308	Grants to States for Supplemental and Basic Funding of Titles I, II,III, IV, and V Activities
11.405	Anadromous and Great Lakes Fisheries Conservation
11.407	Commerical Fisheries Research and Development
11.417	Sea Grant Support
11.427	Fisheries Development and Utilization - Research and Demonstration Grants and Cooperative Agreements Program
11.501	Development and Promotion of Ports and Intermodal Transportation
11.509	Development and Promotion of Domestic Waterborne Transport Systems

Department of Housing and Urban Development

14.112	Mortgage Insurance - Construction or Substantial Rehabilitation of Condominium Projects
14.115	Mortgage Insurance - Development of Sales Type Cooperative Projects
14.117	Mortgage Insurance - Homes
14.124	Mortgage Insurance - Investor Sponsored Cooperative Housing
14.125	Mortgage Insurance - Land Development and New Communities
14.126	Mortgage Insurance - Management Type Cooperative Projects
14.127	Mortgage Insurance - Mobile Home Parks
14.218	Community Development Block Grants/Entitlement Grants
14.219	Community Development Block Grants/Small Cities Program
14.221	Urban Development Action Grants
14.223	Indian Community Development Block Grant Program

Department of the Interior

15.400	Outdoor Recreation - Acquisition, Development and Planning
15.402	Outdoor Recreation - Technical Assistance
15.403	Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments
14.411	Historic Preservation Grants-In-Aid
15.417	Urban Park and Recreation Recovery Program
15.600	Anadromous Fish Conservation
15.605	Fish Restoration
15.611	Wildlife Restoration
15.613	Marine Mammal Grant Program
15.802	Minerals Discovery Loan Program

15.950	National Water Research and Development Program
15.951	Water Resources Research and Technology - Assistance to State Institutes
15.592	Water Research and Technology-Matching Funds to State Institutes

Department of Transportation

20.102	Airport Development Aid Program
20.103	Airport Planning Grant Program
20.205	Highway Research, Planning, and Construction
20.309	Railroad Rehabilitation and Improvement - Guarantee of Obligations
20.310	Railroad Rehabilitation and Improvement - Redeemable Preference Shares
20.506	Urban Mass Transportation Demonstration Grants
20.509	Public Transportation for Rural and Small Urban Areas

General Services Administration

39.002	Disposal of Federal Surplus Real Property

Community Services Administration

49.002	Community Action
49.011	Community Economic Development
49.013	State Economic Opportunity Offices
49.017	Rural Development Loan Fund
49.018	Housing and Community Development (Rural Housing)

Small Business Administration

59.012	Small Business Loans
59.013	State and Local Development Company Loans
59.024	Water Pollution Control Loans
59.025	Air Pollution Control Loans
59.031	Small Business Pollution Control Financing Guarantee

Environmental Protection Agency

66.001	Air Pollution Control Program Grants
66.418	Construction Grants for Wastewater Treatment Works
66.426	Water Pollution Control - State and Areawide Water Quality Management Planning Agency

66.451	Solid and Hazardous Waste Management Program Support Grants
66.452	Solid Waste Management Demonstration Grants
66.600	Environmental Protection Consolidated Grants Program Support Comprehensive Environmental Response, Compensation and Liability (Super fund)

Note: Numbers refer to the Catalog of Federal Domestic Assistance Programs, 1980 and its two subsequent updates.

Public Participation

As indicated previously, governmental entities, interested parties and the general public must have the opportunity to participate in the development of a state's coastal management program. From the outset of developing New York's Program, the Department of State actively sought to inform and involve private citizens, local, regional and statewide interest groups, local governments, and regional and State agencies. The Department prepared a Coastal Management Handbook outlining the issues and explaining the purposes of the Federal program. A display and slide show were also prepared and taken to meetings to increase public awareness of coastal resources and issues.

In the first years of program development, local and regional agencies were under contract with the Department to inventory coastal resources and to make recommendations on preliminary boundaries and areas warranting special management attention. During this period, Department staff met on a one-to-one basis with local officials and conducted small workshop sessions with officials, interest groups and coastal residents. These meetings proved to be a most productive public involvement technique.

Citizens Avisory Committee

The core of the State's public involvement effort is the Coastal Management Citizens' Advisory Committee. The committee is made up of representatives from the five coastal regions of the State. It met regularly during the development of the program to review technical reports, make recommendations on the State's program and legislation, and assist in public participation activities.

Public Meetings

During June and July of 1978, the Department held a series of 16 public meetings in the coastal regions of the State from Lake Erie to Long Island. The purpose of these meetings was to receive public reaction on the general approach for developing the coastal program. In advance of these meetings, the Department widely distributed a newsletter identifying certain coastal issues and suggesting possible alternatives for program administration. The newsletter asked whether local governments should be required to participate in a coastal management program or whether State agencies alone should operate this type of program. It also asked what State agency should be responsible for the program. Maps showing the proposed boundaries of New York's Coastal Area were displayed at these meetings.

The meetings drew comments from coastal residents, community groups, universities, regional organizations, local governments and others. These participants raised excellent questions about boundaries, areas and problems of particular concern, funding potentials, adequacy of existing authorities, private property rights, regional coordination, rationale for the various local/State administrative options, approval and monitoring of local programs and more. Following these meetings a draft Coastal Management Program document was prepared which incorporated recommendations submitted earlier by regional and local agencies and also included ideas expressed at the public meeting.

Public Hearings

In April, 1979, the Department of State held 9 public hearings in the coastal regions of the State. The purpose of these hearings was to receive comments from all parties interested in implementing legislation. The Department broadly disseminated these documents prior to the hearings. A summary describing coastal policies and showing the proposed Coastal Area was also distributed.

Comments

The hearings again drew comments from a wide variety of individuals and organizations. Participants expressed major concerns about the following:

-- The proliferation of State bureaucratic structures which would be ineffective and which would infringe upon the authority of local governments.

-- The need for expanded representation on the Coastal Management Board to include members from particular fields of expertise and from various geographic regions.

-- The need to use existing review procedures to implement the coastal program.

-- The definition of coastal erosion hazard areas and the procedures for identifying these areas.

Responses

In response to the above concerns, the following actions were taken:

-- Program legislation was revised to provide that an existing agency - the Department of State - serve as the State's Coastal Management Agency. Certain additional responsibilities were given to the Secretary of State relative to determing consistency of Federal actions with the State's Program, and receipt and administration of Federal grants.

-- The concept of a Board was dropped, but an advisory committee was structured to provide specific representation from ten particular areas of expertise and eight specific geographic areas. In addition to these 18 members, the advisory committee would be comprised of six ex-officio members representing the State agencies with major responsibilities for carrying out aspects of the Coastal Management Program. The advisory committee would provide advice to the Secretary on the conduct of the Program.

-- The legislation was revised to provide for the use of the State Environmental Quality Review Act as the mechanism by which State agencies would determine the consistency of their proposed actions with the Coastal Management Program. Where two or more State agencies had jurisdiction over a particular project, and these agencies had irreconcilable differences as to the consistency of an action, the legislation was revised so that a project applicant or either agency could request the Secretary of State to resolve differences. The Secretary could consult with the advisory committee in any dispute resolution.

-- The definition of the coastal erosion hazard areas was expanded to permit identification of dunes, beaches and other natural areas providing protection against erosion to other land. In addition, this legislation was revised to provide for identification of erosion hazard areas after the Department of Environmental Conservation (DEC) had adopted program regulations. A new requirement also called for the DEC to promulgate standards and criteria for the design and construction of erosion protective structures so that they have a reasonable probability of controlling erosion for at least 30 years.

Legislative Hearings

Late in 1979, the New York State Senate and Assembly jointly sponsored hearings to solicit public views on the proposed coastal management and coastal erosion hazards areas bills. Participants were asked to address a number of concerns including: the adequacy of the bills to address environmental, economic and social impacts on New York's coastline; the appropriate role of government agencies in implementing a State coastal program; the economic benefits of State and local participation in the Federal program as well as the costs to the private sector; and modifications which should be made in the two bills.

Testimony at these hearings concerning the future of the Coastal Management Program was overwhelmingly in favor of the legislative passage of these two bills (38 statements in favor; 13 opposed). Even some of the testimony opposed to the proposed legislation was in support of the idea of coastal management and merely called for a restructuring of the management process.

Comments

The basic thrust of the supportive arguments was that: (1) a statewide management program was necessary to provide for the coordination of land use, and natural resource protection policies in the coastal regions; (2) erosion hazards areas legislation was needed since erosion has a major impact on people living along the shores of Lake Ontario and Long Island; (3) a statewide program, working in concert with local authorities, was necessary to ensure New York State's consistency with Federal guidelines and regulations concerning Coastal Zone Management; (4) a State-administered Coastal Management Program approved by the Federal government is a prerequisite for the allocation of Coastal Energy Impact Program (CEIP) funds to New York and that the State should not lose this opportunity for Federal monies.

The arguments opposed to a State Coastal Management Program basically maintained that: (1) existing legislation, if properly implemented, was good enough to protect vital coastal resources and that additional legislation would duplicate existing regulation and cause confusion over authority leading to bureaucratic entanglement; (2) the Federal government's CEIP funds were being offered to New York "like a carrot on a stick" and that in the rush to receive a Federal grant, the legislation was not being properly considered; (3) bills did not offer enough protection to the coastal environment and were too permissive and vague in allowing commercial and industrial development along

ecologically sensitive waterfronts; and, (4) the proposed legislation would infringe upon economic or recreational activities of farmers and sportsmen, respectively, through the increased governmental control of land uses.

Responses

In 1980, the legislation was again modified to reflect the comments received at the legislative hearings:

-- Water dependent activities were redefined to include other than economic activities, and specific recognition was given to the attraction of coastal areas for residential purposes.

-- Membership of the advisory committee was expanded to include expert representatives from the areas of residential construction and tourism.

-- Legislative provisions on Geographic Areas of Particular Concern were simplified and substantially revised to include certain aesthetic areas, agricultural lands, fish and wildlife habitats and water dependent use areas.

-- Coastal policies were simplified and the way in which they apply was clarified.

-- Improvements were made to better integrate the consistency review process with State Environmental Quality Review Act procedures.

-- A specific procedure was added for voluntary withdrawal of local governments from participation in the State program.

In June, 1980, the New York State Assembly passed both the program and erosion bills, but the Senate did not. In 1981, a new bill entitled the Waterfront Revitalization and Coastal Resources Act was introduced in the Legislature. This bill included a balanced approach to coastal resource protection and development; use and coordination of existing State environmental management and economic development programs; streamlining of procedures; and voluntary local programs. The bill was, however, shortened and simplified with an emphasis on local revitalization efforts. This was in response to criticism about potential negative economic impacts of a coastal program. In July, the Senate and Assembly passed the waterfront revitalization and erosion bills and the Governor signed them into law.

Year of the Coast

In 1980, Governor Carey joined in proclaiming the Year of the Coast. The Department of State then organized or participated in organizing a number of events to hightlight the importance of the State's coast. The Department brought together local government representatives from coastal areas to a workshop where they shared their experiences on a variety of local projects. In the summer, the Department worked with the Mid-Hudson League of Women Voters to organize a "See-shore Sail"; and in September, the Department held a Year of the Coast boatride in New York City to view potential revitalization sites. Finally, the Department co-sponsored a conference with the New York-New Jersey Port Authority on revitalization of the port. A number of brochures, updates and maps were prepared for distribution at these events.

SECTION 10

DESCRIPTION OF WORK PROGRAM

Introduction

Throughout this document, a number of activities and items have been identified and discussed that are essential to the effective administration and implementation of New York State's Coastal Management Program. The discussion on these activities have provided the Department of State with the basis for developing a work program which would be carried out under New York's initial 306 grant. The purpose of this section is to briefly describe the types of activities that will be undertaken by the Department, other State agencies and local governments during the grant period.

Program Objective

The principal aim of New York State's first grant under Section 306 of the Coastal Zone Management Act, as amended, is to put into effect the essential components of the State's Coastal Management Program. These programmatic elements will initiate new and advance ongoing State activities that are in support of the national policies expressed in Section 303 of the Act, specifically: (1) the protection of natural resources; (2) reduction of life and property losses in flood and erosion prone areas; (3) proper siting of major facilities and other forms of development, including priority consideration of coastal dependent uses; (4) provision for better public access to the coast; (5) assistance for revitalizing waterfronts and ports and for preserving coastal features; (6) simplification of governmental procedures; (7) coordination and consultation with federal agencies; (8) public and local government participation in coastal management decision-making; and (9) assistance for the planning, conservation and management of living marine resources.

All of the above policies, as well as the policies contained in the State's Coastal Management Program, are addressed by work tasks which are grouped into seven major categories:

1. Program administration
2. Consistency review
3. Coastal resources protection
4. Coastal resources development
5. Major activities affecting coastal resources
6. Public information
7. Local waterfront revitalization programs

Program Administration

The primary objective of this category is to establish and undertake administrative activities that will support or lead to the effective implementation of the State's Coastal Management Program. As the designated "lead agency", the Department of State will perform various programmatic, fiscal management and legal activities which are essential to the overall administration of the State's Program and 306 grant. In addition, the Department must fulfill administrative and review responsibilities required by the State's Waterfront Revitalization and Coastal Resources Act. Some of the tasks that will be performed under this category including the review and approval of local waterfront revitalization programs, evaluation of federal and state legislative proposals for their potential impacts upon the State's coastal program, and the revision of the Coastal Area maps to incorporate information on the location of significant habitats and scenic resources, important farm lands and areas with approved local waterfront revitalization programs.

Consistency Review Activities

The sole objective of this category is to ensure that the actions of Federal and State agencies are consistent with the policies of New York State's Coastal Management Program. The tasks under this category provide for two separate review processes which take into account the different roles to be performed by the Department of State. These processes are crucial to the implementation of New York's coastal program. Therefore, the Department will consult with Federal and State agencies in order to familiarize the agencies' staffs with content and intent of New York's coastal program policies and procedures. This effort should minimize any conflicts or differences that may arise during these review processes.

As the State's 306 agency, the Department of State will coordinate the consistency review procedure applicable to activities undertaken or approved by federal agencies. This will involve providing public notice and holding public hearings, when necessary, and reviewing consistency determinations and certifications. The Department will also review the proposed actions of state agencies and provide recommendations to the agencies on the consistency of their actions.

Coastal Resources Protection

The protection of significant natural coastal resources is a goal of New York State's Coastal Management Program and the Federal Coastal Zone Management Act of 1972, as amended. The objective of this work program category is not a broad sweeping one, but instead is directed at implementation activities which will provide further protection to significant fish and wildlife habitats, important agricultural lands and scenic resources of statewide significance as well as beaches, dunes, barrier islands and bluffs in erosion prone areas.

Specifically, the rating and identification of significant fish and wildlife habitats was started in 1980. The identification of important agricultural lands and scenic areas of statewide significance will begin being mapped in October 1982. During the early Spring of 1983, there will be opportunity for Federal, State and local agencies as well as the general public to comment on the maps and accompanying narrative, if any. After consideration of comments received the information will be transferred to the Coastal Area Map and formally incorporated into the program by the end of the grant period.

The mapping of erosion hazard areas has been underway since 1980. In January 1983, maps of areas with high rates of erosion (four feet or more per year) will be available for review by the affected local governments. After holding public hearings and considering all the comments on the identified areas, the Commissioner of the Department of Environmental Conservation will formally designate the areas with high rates of erosion by May, 1983. Following such designations, affected local governments have six months to develop and adopt regulations for the erosion hazard areas (See Article 34, ECL for further details).

The identification of the remaining erosion hazard areas will begin by Spring 1983 and will be completed not later than January, 1984 as required by Article 34. Funding under Section 306 of the OCZM Act will be provided to DEC to assist its efforts to complete this mapping before January, 1984.

Coastal Resources Development

The wise use and proper development of New York's coastal resources is of vital importance to the State and its waterfront communities. The overall objective of this category is to improve upon the current economic and social utilization of the State's waterfront while ensuring the protection of significant resources. In response to this objective, the work program includes several different activities which focus upon the use of coastal resources. Three of the tasks to be performed center around the development of coordinated policies and strategies for commercial fishing and port operations. Access to existing recreational facilities and publicly owned lands will be identified as well as the opportunities to increase access to such facilities and lands. Efforts will be started to determine ways for simplifying existing Federal, State and local procedures which affect waterfront development activities. Also alternative methods for financing such development activities will be investigated, and the information distributed to waterfront communities.

Major Activities Affecting Coastal Resources

There are a number of ongoing and potential activities within and outside New York State which could affect the management of coastal resources. It is important to the success of New York's Coastal Program that the Department of State participate in these activities to reflect programmatic concerns as well as receive valuable advice. Thus, the objective of this category is to coordinate the State's Coastal Management Program with other state, interstate, national and international efforts that may impact the use and protection of New York's coastal resources.

Tasks in the work program which respond to this objective include: the creation and operation of a statewide advisory committee on waterfront revitalization and coastal management; participation on regional, interstate and international committees or organizations which have general and specific coastal interests; and participation on the State's Hudson River Estuarine Sanctuary Steering Committee.

Public Information

Public awareness is essential to a successful and sustained coastal management program. The objective of this category, therefore, is to ensure that the general public, State and local officials understand the importance of coastal resources, the thrust of the State's Program and the means for properly managing the resources. The publication and distribution of documents is one means of meeting this objective; however, other techniques will be employed. For instance, the Department of State will sponsor a waterfront revitalization conference and design competition to generate interest and innovative approaches to waterfront related problems. Also, a popular brochure will be produced to assist AMTRAK riders in identifying important scenic, historic and other points of interest along the Hudson River.

Local Waterfront Revitalization Programs

The State's Coastal Management Program and the Waterfront Revitalization and Coastal Resources Act recognize that the development of detailed local programs based on the State's coastal policies will augment the State's means for implementing those policies. The objective of this category is to initiate a concerted effort to have local governments develop and implement waterfront revitalization programs. This effort will consist of three components: (1) aid for the preparation of appropriate approval documentation; (2) assistance for the development of local programs; and (3) support of activities which will implement approved local programs. All

such local programs must address all relevant coastal policies. Each community's program will focus on major concerns which reflect community, State and Federal priorities. For example, LWRPs would include implementation provisions for increased: resource protection; water dependent uses; access; waterfront revitalization; dredging; permit simplification; and other issues of concern, commensurate with the particular circumstances of that community.

PART III - ALTERNATIVES TO THE PROPOSED ACTION

PART III

FEDERAL ALTERNATIVES TO THE PROPOSED ACTION

All alternatives to the proposed action, approving the New York Coastal Management Program, involve a decision to delay or deny approval. Delay or denial of approval could be based on failure of the New York Coastal Management Program to meet any one of the requirements of the Coastal Zone Management Act. In approving a Coastal Management Program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on more than twenty requirements.

Development of the New York Coastal Management Program has involved eight years of work. Alternative approaches including different forms of legislation have been introduced. Of particular concern throughout program development was the method of obtaining consistency of State agency actions with the coastal program. Another major concern has been the adequate protection of beaches and dunes. The first issue is addressed in section 919 of the Waterfront Revitalization and Coastal Resources Act. The second issue was addressed in passage of the Shoreowners Protection Act.

The Assistant Administrator for Coastal Zone Management has made a preliminary determination that New York State has met the requirements for program approval under Section 306 of the Coastal Zone Management Act.

However, in order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, this section identifies issue areas where there may be possible need for revisions and considers the alternatives of delaying or denying approval based upon each issue area.

1. <u>Loss of Federal Funds to Administer the Program</u>

   Under Section 306, New York would receive approximately $3 million to administer its coastal management program; if such funds are made available pursuant to Congressional action. The loss of any available Federal Section 306 funds would result in the inability of the State to provide adequate staffing and administrative support to coordinate and evaluate coastal actions, implement a state coastal program, address priority issues, and assure that government agencies coordinate and operate consistently with coastal policies. State technical assistance to local governments, essential for the development of local waterfront revitalization programs, would also be curtailed due to limited funds. To deny approval of this program would also make it difficult for the State to coordinate and expedite resolution of conflicts, and establish unified state policies for State actions in the coast. Denial of approval would also jeopardize the eligibility of the State to receive Coastal Energy Impact Program (CEIP) funds pursuant to Section 308 of the Coastal Zone Management Act.

2. Loss of Consistency of Federal Actions with the Program

Approval of New York's Coastal Management Program would mean Federal actions in or affecting the coastal area would have to be consistent with the State Coastal Management Program under Section 307 (c) of the Coastal Zone Management Act. Loss of Federal consistency with the State's Coastal Management Program would have significant and adverse effects on the resources of the State's coastal area.

FEDERAL ALTERNATIVES

Alternative 1: The Assistant Administrator could delay or deny approval if the State cannot adequately manage activities having direct and significant impacts on coastal waters.

Section 305 (b) (2) of the Federal Coastal Zone Management Act requires each state seeking approval of its program to manage land uses which have direct and significant impacts on coastal waters. The Assistant Administrator has made a preliminary determination that New York has such management authority not only in special areas such as wetlands and erosion hazard areas but also throughout the coastal area based on its Waterfront Revitalization and Coastal Resources Act (WRCRA) and its State Environmental Quality Review Act (SEQRA).

Section 919 of the WRCRA requires State agencies to act consistently with the coastal area policies. As a result of the amendments to the SEQRA and the Department of State (DOS) regulations as contained in Appendix A, two procedures will be used to assure State agency actions will be undertaken consistent with these policies.

First, all actions subject to a State agency's authority and that may have a significant affect on the environment will be reviewed through the SEQRA process by those State agencies party to the action. The amendments to the SEQRA will ensure that direct State actions including public investments such as highways, major sewer and water lines and wastewater treatment facilities must be consistent with the coastal policies. The SEQRA review process will also tie to the coastal policies the issuance of State permits for all significant public and private projects requiring a State Pollutant Discharge Elimination System permit from the Department of Environmental Conservation (DEC). The SEQRA not only requires full disclosure of the environmental impacts of significant activities, but also has been interpreted as containing the authority for agencies to condition or deny permits to ensure environmental compatibility. Miracle Mile Associates, v. DEC. 430 F. Supp 2nd 440 (July 10, 1980).

Second, pursuant to the DOS regulations, all direct and funding actions, other than permitting actions, undertaken by a State agency that do not have a significant affect on the environment will be reviewed by the State agency for consistency with the coastal policies. At the time that the agency makes a decision on an action, a certification of consistency must be forwarded to the Department of State.

Alternative 2: The Assistant Administrator could delay or deny approval if the policies of the program are not specific enough to meet the requirements of the Federal Coastal Zone Management Act.

CZMA regulations 923.11 (b) (2) and 923.(b) (4) require that coastal policies must provide a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program. Specificity is particularly important when such policies will be administered in part by local governments, as will be provided in local waterfront revitalization programs. It is also important to assure that State administered policies are not subject to an excessively broad range of interpretations.

The Assistant Administrator has made the preliminary decision that the new policies and standards contained in the Waterfront Revitalization and Coastal Resources Act and regulations together with those existing policies, standards and regulations incorporated into the program from other State legislation, provide sufficient specificity for program approval. This decision is based in part on the draft guidelines contained in Appendix B, which give local governments much further assistance in preparing more specific policies for their voluntary local waterfront revitalization programs.

Alternative 3: The Assistant Administrator could delay or deny approval if the boundary is not adequate to meet the requirements of Section 304 (1) - definition of the coastal zone and 923.31 (a) of the CZM regulations - inland boundaries.

Section 304 (1) of the Coastal Zone Management Act states that the coastal zone shall extend inland from the shoreland only to the extent necessary to control shoreland uses which have a direct and significant impact on coastal waters. The State has established a boundary that is approximately 1,000 feet inland from the shorelines. However, in urbanized locations it is about 500 feet inland and in a few areas where a major roadway or railroad line runs parallel to the shoreline

it is less than 500 feet. Detailed maps of the exact boundary at a scale of 1:48,000 have been filed with clerks of coastal counties, cities, towns and villages and with state agencies.

The issue can be raised of the adequacy of regulating in urban areas less than 500 feet from the shoreline. Federal CZMA regulations 923.31 (c) (general comments), however, clearly allow for a narrower boundary in urban areas by stating that "in many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not impossible, to define in terms of direct and significant impact". Because of the nature of the New York coastline in the urban areas - its extensive bulkheading, high density, existence of infrastructure, and generally builtup character - the Assistant Administrator has preliminarily determined that the State will be regulating in an area adequate to cover all uses that have a direct and significant impact on coastal waters. The criteria which were employed for delineation of the final boundary are outlined in further detail in Part II, Section 3 of this document. Reviewers of this DEIS were especially encouraged to comment on any land use which could occur inland of this boundary which may have a direct and significant impact on coastal waters.

STATE ALTERNATIVES TO THE PROPOSED ACTION

Introduction

During development of New York's Coastal Management Program, a number of substantive and organizational alternatives were considered at length. The Legislature, in passing the Waterfront Revitalization and Coastal Resources Act, made a choice about the particular combination of these alternatives which were to operate in the State. Thus, the number of alternatives left to be examined in this environmental impact statement has been greatly reduced. Before discussion of the current alternatives, a history of the major alternatives considered during program development is presented below.

A. History of Major Alternatives

The discussion of options focused on various possibilities for legal program authority. A coastal management program could have been based on State legal authorities at either the State level or delegated to the local level, or a combination of both. In New York, State agencies have strong management authorities for matters of statewide or regional concern, while local governments have strong powers to manage issues of local concern. On a number of matters, a close interrelationship exists between the exercise of authority at State and local levels. State and local authority alternatives were considered separately as follows.

1. State Authority Alternatives

a. Status Quo

The status quo alternative would continue all existing State programs with no new additions. A specific coastal management program would not be established. This alternative would rely on the State policy, as expressed in Article XIV, Section 4 of the Constitution, to conserve and protect the State's natural resources and scenic beauty and encourage the development and improvement of its agricultural lands. The Legislature, in implementing this policy, has enacted numerous programs that already provide for management of most resources of statewide or regional concern in the coastal area. Important programs administered by the Department

of Environmental Conservation deal with air quality, water quality and supply, tidal and freshwater wetlands, flood plains, and streams as well as mining, dredging and energy development activities. Other State agencies, such as the Office of Parks, Recreation and Historic Preservation, the Department of Transportation, and the Office of General Services, also administer a wide range of programs to manage, use, and regulate resources in the coastal area.

While a wide variety of issues affecting New York's coastal area have already been given special attention, this alternative would create no mechanism to coordinate separate State and local activities that affect the coastal area. Thus, coastal resources would not be managed as effectively as possible. Further, this alternative would add no new authorities to deal with the specific problems of severe coastal erosion and siting of water dependent uses. As a result of these inadequacies, the status quo alternative would not fulfill the requirements of the federal Coastal Zone Management Act.

b. Coordinate existing State program authorities

Under this alternative, a State coastal management program would incorporate the many existing State management programs and add new authority to coordinate or "network" these programs. This would provide for integrated management of coastal resources and lead to achievement of identified State coastal management policies.

Coordination of the State authorities could be accomplished through interagency memoranda of understanding, through an Executive Order from the Governor, or through specific State authorizing legislation. Also, a single State agency would be designated to administer the program, although that specific agency need not itself have the power to enforce the coordination of programs.

This alternative would ensure the coordinated management of coastal resources in matters of statewide or regional concern, but would leave gaps in existing authorities (in particular, management of erosion hazard areas) and would fail to qualify the State for Federal approval of a coastal management program.

c. Coordinate existing State program authorities plus additional program authorities to fill gaps (essentially the alternative chosen)

This alternative would be the same as the coordination alternative but would add several specific new program authorities to fill identified gaps in existing programs. These additions would include authority to regulate development in erosion hazard areas and provide for designation of water-dependent uses.

This alternative would qualify New York State for Federal coastal management program approval.

d. Comprehensive coastal management program authority

This alternative would also keep all existing State program authorities, but would add new legislative authority to institute a comprehensive State coastal management program for directly controlling development throughout the coastal area. A variety of sub-options exist for this alternative in terms of the extent to which development would be controlled. These options range from a program that would directly control all development any where in the coastal area to one that would directly control only a few key types of development with a specified minimum size in specific designated locations. This alternative would establish priorities for permissible uses in specific locations within the coastal boundary, both in terms of areas appropriate for development and areas where development would be inappropriate.

This alternative would establish a new level of authority for the State's coastal resources. It would provide uniform statewide implementation of policies for coastal resources and would increase predictability regarding the use of coastal resources. The alternative would qualify the State for approval of its coastal management program, making Federal financial assistance available to the State. However, it could create problems associated with possible preemption of existing authorities, both State and local. Also, the establishment of a new level of government administration could either expedite or delay the development process in coastal areas, depending on the effectiveness of the administration.

2. Local Authority Alternatives

a. Status Quo

This status quo alternative would simply continue unchanged the existing powers and responsibilities of local governments. Under authority of Article IX of the New York State Constitution (the "Bill of Rights for Local Governments"), the Statute for Local Governments, the Municipal Home Rule, and various other statutes, local governments in New York State are authorized to exercise a broad range of powers, including the enactment of strong land use control programs if they so choose, as long as these powers are not specifically preempted by State and federal law. Local land use control programs are exercised primarily through local zoning and subdivision controls, which can be used to manage land and water resources of a community. In addition, under the State Environmental Quality Review Act (SEQR), local governments are required to consider environmental factors in reaching decisions on proposed actions and to prepare impact statements on actions which are likely to have significant effects upon the environment.

The status quo alternative would be consistent with New York State's "home rule" tradition and would be responsive to many local attitudes about desirable levels of local involvement in land use regulations. However, because the use of local authority is optional, local land use control programs in coastal areas range from very strong to non-existent. Furthermore, not all local land use programs in coastal areas fully consider the environmental and economic importance of coastal resources. Thus, significant gaps in the management of coastal resources by local governments would remain, as would the problems and cumulative impacts of independent local decisions.

Although the State's Coastal Management Program could provide the basic level of management required for Federal program approval, the status quo local alternative would result in inconsistencies between State and local policies, where these exist, leading to conflicts in the protection and management of coastal resources and to possible losses of those resources not explicitly protected by State programs. Also, although the State would maintain its jurisdiction over the siting of facilities which serve a region, opposition of local governments could limit the ability of the State to promote actions such as economic development in desirable locations.

b. <u>Voluntary local coastal management programs complying with State Coastal Management Program (essentially the alternative chosen)</u>

Under this alternative, specific provisions would be made in new State legislation for local governments to adopt local coastal management programs that would comply with the State's Coastal Management Program. This alternative would differ from the status quo alternative in that approvable local programs would be required to meet State's established criteria. Participating local governments would be eligible for financial and technical assistance in preparing local management

programs and in managing coastal resources. Also, the actions of State and Federal agencies would be consistent with such local coastal management programs.

Although this alternative would result in greater local participation in coastal management than under the status quo alternative and would thus provide additional management attention to coastal resources, the voluntary nature of local participation would result in similar problems of inconsistency and conflicts, particularly between those localities that do and do not participate in the program. The actual amount of local participation would depend to a significant extent on the specific approval criteria used by the State coastal management agency and the amount of Federal financial assistance available for implementation of local coastal management programs. Whatever the level of local involvement, the regulatory process in coastal areas could become more complex. There would, thus, be a need for measures to coordinate and streamline review and permitting processes.

c. Mandatory local coastal management programs complying with State Coastal Management Program

This alternative would establish, through new State legislation, a requirement that local governments in coastal areas adopt local coastal management programs consistent with the State Coastal Management Program. Counties would be authorized to prepare and implement coastal management programs if a locality failed to act; in the event the county failed to act, the State's coastal management agency would implement a program in the locality. Local governments would be eligible to receive financial and technical assistance for preparing and implementing local coastal management programs.

This alternative would eliminate the problems of potential State-local conflicts in the protection and management of coastal resources that would be present in the status quo and

voluntary local program alternatives. Depending on the specific State requirements for local coastal management programs, this alternative could help to assure statewide coverage and consistency with the Coastal Management Program, increase enforceability of coastal policies as a result of the universality of local management programs, and result in better management and protection of coastal resources by including decisions of sub-regional significance in the overall Coastal Management Program. It would, however, affect local autonomy by requiring that local governments use their present authority to develop and implement coastal management programs, in accord with State guidelines. This could be seen either as a loss of local "home rule" power or as a strengthening of these prerogatives through the partnership of local governments with other levels of government.

d. Preemption of local government coastal management authority

Under this alternative, any local controls in the coastal area which are not consistent with a comprehensive State coastal management program would be superceded by legislation declaring the management of coastal resources to be a matter of State concern. In effect, such controls as zoning would be exercised by the State coastal management agency for areas within the management boundary.

This alternative would prevent problems of inconsistency between local actions and the State management program and would ensure a uniform management program throughout the coastal area. Coastal resources would be better managed and the development process in coastal areas would be more predictable. However, the alternative would significantly limit local "home rule" powers in coastal areas and would move many land-use and resource decisions from the local to State level.

3. Additional Alternatives

a. Boundaries

In order to have an effective coastal management program, the boundaries of the coastal area must be clearly defined. The Federal Coastal Zone Management Act requires the boundaries to extend inland" only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters". Within this requirement, the boundaries could be drawn broadly or narrowly.

An expansive boundary, such as one that included all of the watersheds draining into the State's coastal areas, could include virtually all uses affecting coastal waters, but would do so at the expense of having to control many uses which have little or no effect on coastal waters.

An expansive boundary would thus be an inefficient means of providing management of coastal resources and could require substantial administrative support. A limited boundary, such as one that extended only a short distance from the shoreline (e.g., 500 feet) would substantially limit the area subject to the Coastal Management Program, but might not provide for all uses that could affect coastal waters. A compromise between these two alternatives, based on consideration of specific local and statewide interests in each segment of the coast, is a third alternative.

There are two other options regarding the application of a coastal management program within designated boundaries. One involves a multiple-tier boundary which divides the coastal area into two or more sub-areas that are subject to different levels of management. This would complicate the administration of a coastal management program which by its nature is complex. The other involves a single-tier boundary within which a coastal management program would apply equally.

Funding

The State could decide not to seek approval of a coastal management program under the Federal Coastal Zone Management Act, but there are significant advantages to a Federally approved program, including financial assistance. Section 306 of the Act authorizes such funding, but other sections of the law authorize financial assistance for specific aspects of coastal management, such as coastal energy impacts. There are a number of major categories to which such funding, if appropriated by the Congress, could be allocated, including the following:

-- Administration of the Coastal Management Program. This would include such administrative functions as applying for, accepting and distributing assistance, as well as monitoring and evaluating performance and compliance with the program by other agencies. Administration funds would be used by the "306" Agency.

-- Improving management of existing State programs incorporated in the Coastal Management Program. This could include providing additional regulatory staff for specific programs that are key to the coastal management effort, such as erosion hazard areas, in order to provide improved protection and management and speed the processing of permit applications.

-- Preparing and adopting local coastal management programs. Funding could be provided directly to local governments to prepare and adopt local programs for managing coastal resources. In addition, funding could be used to support technical assistance to local governments by the "306" Agency or other State agencies.

-- Implementing adopted local coastal management programs. Assistance could be provided to local agencies to administer local management programs and to provide additional support for local management efforts.

B. Current Alternatives

1. Alternative Choices Concerning State Participation in Federal Coastal Management Program

a. Participate in the Federal Coastal Management Program - Proposed Action

Since states participate voluntarily in the Federal Coastal Management Program, New York State could determine that it is necessary and desirable for the implementation of its State-mandated coastal program to participate and seek Federal approval of the State program.

With an approved program, and subject to Congressional appropriations, New York would be eligible to receive Federal Coastal Management Program ("306") and Coastal Energy Impact Program (CEIP) funds which could in turn be used to leverage additional assistance from other sources. The "306" and CEIP funds would help to support State administration of its coastal program and could be vital to effective implementation of waterfront revitalization and resource protection aspects of the State program. Moreover, financial assistance could be particularly important as an incentive to local governments in need of aid not otherwise available for project planning to revitalize deteriorated and underutilized coastal areas.

In addition, by participating in the Federal program, New York would benefit from the consistency requirements of the Federal Coastal Zone Management Act. These requirements would create a continuing dialogue between the State and Federal agencies engaged in activities in New York's coastal area. Thus, Federal agencies would be better informed about the State's coastal concerns and would be able to make decisions more sensitively and more efficiently. Also, those potentially affected by Federal actions would be better able to predict the outcome of the decision-making process.

Finally, New York's participation in the "306" phase of the Federal Coastal Management Program would be an appropriate conclusion to years of State and Federal efforts under the "305" phase to develop a well-balanced State Coastal Management Program. An approved State program would also be important for the achievement of national coastal objectives.

The alternative to participate in the Federal Coastal Management Program could, however, have certain disadvantages. During the "306" phase, State compliance with Federal program regulations could increase administrative duties for State agencies, thus increasing costs and delaying implementation activities mandated by the State Waterfront Revitalization and Coastal Resources Act. The State could rely on "306" funding to cover some costs incurred by participation in the Federal program, but reductions in Federal funding levels seriously jeopardize implementation of the State program.

In addition, by participating in the Federal program, New York could find itself in conflict with the Federal government over respective priorities for resources to be protected and activities to be encouraged. Further, national priorities could change, making it difficult for the State to operate a consistent program. Ultimately, Federal involvement in State decision-making might be viewed as excessive and encroaching upon State prerogatives.

b. <u>Not to participate in the Federal Coastal Management Program</u> - No Action Alternative

Since State participation in the Federal program is voluntary, New York could choose not to participate. Whether the State chooses to participate or not, it must, nonetheless, implement the recently enacted Waterfront Revitalization and Coastal Resources Act. The "no participation" alternative could be

reasonable, if Federal program regulations were to hinder the State from taking immediate and necessary steps to implement the Act and if "306" funds were suddenly reduced or terminated. Further, this alternative could allow the State to avoid conflicts with the Federal government over respective priorities for managing New York's coastal resources, and would prevent further intervention of the Federal government in the management of its coast. (See also discussion of disadvantages under Proposed Action alternative.)

On the other hand, the "no participation" alternatives would have disadvantages. A decision not to participate could, regardless of current efforts at the national level to reduce domestic program expenditures, result in the loss of funds which could be vital to the implementation of State and local aspects of New York's coastal program. Further, Federal consistency provisions would not be applicable to New York, and the State could not expect Federal agencies to abide by its coastal policies when undertaking actions within New York's coastal area.

Finally, New York and the Federal government have both expended considerable efforts toward instituting a Coastal Management Program in the State. A decision not to participate in the Federal program would not only reduce the State's effectiveness in implementing its program, but would also significantly limit the Federal government's ability to achieve national coastal management objectives since New York has one of the most extensive, varied and valuable coastlines in the Nation.

2. Alternative Administrative Mechanisms for Implementing State Consistency Requirements

a. Implement the State consistency requirements of the Waterfront Revitalization and Coastal Resources Act (Article 42) by amending State Environmental Quality Review Act and Department of State regulations to require that proposed actions be consistent with the coastal area polices of the Act - Proposed Alternative

This alternative would satisfy the intent of the Act in two ways. First, for all actions requiring preparation of an environmental impact statement under the State Environmental Quality Review Act (SEQR), it would incorporate the need to achieve consistency with the coastal policies contained in Article 42. Thus, the decisions on all actions which may have a significant impact on the environment must be consistent with the coastal policies. Second, for direct actions which do not have a significant effect on the environment, Department of State regulations require State agencies to certify that the actions are consistent with the coastal policies of Article 42.

This alternative would for the most part eliminate the need for the Department of State to consult at length with more than fifty State agencies, since they will simply use the existing SEQR process to determine the consistency of significant actions. Also, with this alternative, SEQR procedures would remain substantially unaltered except for the need that the findings be in accord with coastal policies.

The consistency review requirements under SEQR and Department of State regulations will allow the Department to monitor activities in the coastal area. With this information, the Department of State will be able to advance recommendations to the Governor and the Legislature for more effectively implementing the Waterfront Revitalization and Coastal Resources Act.

b. Implement State consistency requirements of the Waterfront Revitalization and Coastal Resources Act by formal agreements (memoranda of understanding) between the Department of State and other State agencies

This alternative would satisfy the intent of the Act, but the Department of State would have to consult with more than fifty State agencies in developing these agreements. This effort would be time-consuming and costly. In addition, certain small but significant programs might be overlooked with so many programs being considered. Also, the different regulatory procedures of each agency would make this alternative very complex, and there would be no mechanism for efficient monitoring of agency decisions. Thus, the Department of State could not assess the effectiveness of coastal policies in order to improve their implementation. Still, formal agreements with other State agencies would provide assurances that their decision-making procedures had at least incorporated coastal policies so that all agencies regarded coastal revitalization and protection goals similarly.

c. Implement State consistency requirements of the Waterfront Revitalization and Coastal Resources Act by informal agreements between the Department of State and other State agencies

This alternative might satisfy the letter of the law; however, it would probably not satisfy its intent to coordinate State agencies actions and programs so as to ensure consistency with coastal policies. Again, the Department of State would have to consult with numerous agencies; the results would be the same as under the "formal agreement" alternative. In addition, informal agreements with other State agencies would provide no real assurances that their interpretations of coastal policies were acceptable or that various decision-making procedures had in fact incorporated coastal policies. As a consequence, implementation of coastal policies would be complex and

uneven. As under the previous alternative, informal agreements would provide no mechanism for regular exchange of information on proposed agency actions or final decisions affecting the coastal area. Thus, again, the Department of State could not assess the effectiveness of coastal policies nor take well-founded steps to improve their implementation.

3. Alternatives Concerning the Department of Environmental Conservation and the Coastal Erosion Hazard Areas Act

a. Promulgate regulations which implement the provisions of Article 34 - Proposed Action

Shoreline recession, beach erosion and man's creation of potentially hazardous conditions by destroying protective landforms are problems which have long plagued New York's coastal areas. Hundreds of millions of dollars have been expended attempting to halt coastal erosion by structural means such as construction of seawalls, revetments, groins, bulkheads, and artificial nourishment. Article 34 is based on the rationale that erosion is a naturally occurring phenomenon of tremendous physical proportions. Structural attempts at harnessing nature are always very expensive, occasionally ineffective and usually not cost effective. Erosion protection structures have sometimes created as many problems as they have solved.

Article 34 directs the Department of Environmental Conservation to identify coastal areas subject to serious erosion and establishes State policies regarding the regulation of certain activities and development in such erosion hazard areas. State policies also require that certain activities and development in areas containing protective landforms should be regulated so as to maintain their capability to withstand the forces of erosion and high water.

Section 34-0108 directs the Commissioner of Environmental Conservation to promulgate rules and regulations which will implement the provisions of Article 34. These regulations must contain the following:

-- standards and criteria to regulate certain activities and development in erosion hazard areas;

-- standards and criteria govering the location and construction of erosion protection structures;

-- a procedure pursuant to which any owner of land in an identified erosion hazard area may appeal such designation; and

-- a procedure by which the strict application of standards and criteria may be varied where practical difficulty or unnecessary hardship can be demonstrated.

6NYCRR Part 505 are the regulations which the Department of Environmental Conservation has developed to meet the statutory mandates of Article 34. These regulations are contained in Appendix A of this document.

b. Do not promulgate regulations to implement Article 34 - No Action Alternative

The no action alternative would ignore the legislative mandate of Article 34 and result in continuance of the status quo regarding the regulation of land use and development in coastal erosion hazard areas. Since many local governments in the coastal areas of New York State do not have adequate, if any, local laws or other management programs to address erosion problems, unwise development and inappropriate activities would continue. This would result in continued unnecessary environmental damage and economic and social costs to not only coastal residents, but to the general population as well. Unwise development in coastal hazard areas ultimately places a financial burden on

all taxpayers through payment of disaster aid. Likewise, coastal environmental degradation is a cost borne by everyone whether it is higher costs for seafood, degradation of aesthetic quality, reduced opportunities for recreation of diminished potential for harvesting or viewing fish and wildlife resources.

The no action alternative is obviously not viable. First of all, the Department of Environmental Conservation would have to blatantly ignore a statutory mandate of the New York State Legislature. Secondly, the Coastal Erosion Hazard Areas Act had the solid support of State agencies, such as the Department of State and Environmental Conservation, many organizations with an interest in proper coastal management as well as many coastal local governments.

c. Do not promulgate regulations to implement Article 34 - Education/Information Program

This third alternative would be for the Department of Environmental Conservation to ignore the regulatory mandate of Article 34 and develop a public education/information program with no regulatory aspects. The Department of Environmental Conservation would identify and quantify areas of coastal erosion and provide this information to interested parties. The Department could also develop model local ordinances to be used by local governments interested in taking a more affirmative step in reducing erosion and high water damage problems. As a third step the Department could develop handbooks or other instructive material which provide information on coastal erosion processes and the importance of preserving coastal landforms which protect against flooding and erosion. Such information could provide advice on the limitations of coastal natural systems to development.

However, such a course of action would necessitate ignoring a clear legislative mandate. Furthermore, an education/ information program probably would not be effective because most coastal land-owners are not interested in erosion issues until they are directly affected. Coastal erosion management is most beneficial and cost effective, if it can be implemented before erosion or high water problems exist. Furthermore, by eliminating the regulatory, i.e. permit, aspects of an erosion management program, State and local governments lose the potential for such programs to be financially self-sufficient through collection of permit fees.

PART IV - AFFECTED ENVIRONMENT

PART IV

AFFECTED ENVIRONMENT

General Description

For further description of the affected environment, refer to Part II, Section 2 Coastal Regions, Resources and Problems of New York.

The coastal area of New York State is comprised of all coastal waters within the State's territorial jurisdiction and the shorelands adjacent to these waters. Article 42 of the State's Executive Law describes coastal waters as: lakes Erie and Ontario; St. Lawrence, Niagara, East and Harlem rivers; Hudson river south of the Federal dam at Troy; Kill von Kull and Arthur Kill; Long Island sound; Atlantic ocean; and, their connecting water bodies, bays, harbors, shallows and marshes. The latter include, but are not limited to, the following:

1. Block Island sound;

2. Great South, Shinnecock, Great Peconic, Little Peconic, Gardiners, Napeague, Moriches, Smithtown, Northport, Huntington, Manhasset, Little Neck, Flushing, Jamaica, Upper New York, Lower New York, Eastchester, Raritan, Irondequoit, Sodus, Little Sodus, Henderson, Black River and Chaumont bays;

3. Hempstead, Cold Spring, Port Jefferson, Oyster Bay and Huntington harbors; and,

4. Extensive segments of the Peconic, Connetquot, Nissequoque, Carmans, Bronx, Hutchinson, Croton, Buffalo, Genesee, Oswego, Black, Chaumont, Grass and Raquette rivers.

Entire lengths or substantial segments of numerous creeks, many small bays, harbors and ponds, and extensive saltwater and freshwater marshlands are included within the State's coastal waters.

The onshore portion of New York State's coastal area is limited, by Article 42 of the Executive Law, to adjacent shorelands containing uses which have a direct and significant impact upon coastal waters. These shorelands include, but are not limited to, islands, wetlands, beaches, dunes, barrier islands, bluffs, intertidal estuaries and erosion prone areas. In addition to the above, onshore physical and man-made conditions were taken into consideration. As a result of this process, the onshore portion of the State's coastal area varies from region to region. Generally, the following conditions prevail:

1. The inland boundary is approximately 1000 feet from the mainland's shoreline;

2. In developed or urbanized locations along the coast, the inland boundary is about 500 feet from the shoreline or less in areas where a major roadway or railroad line runs parallel to the shoreline; and,

3. Where major State-owned facilities and lands and electric power generation facilities abut the shoreline, the boundary is extended inland to include such lands and facilities.

On Long Island, the State's coastal area includes all barrier and other islands located in the coastal waters of this region. On the mainland, the inland boundary is generally 1000 feet from the shoreline, however, at major tributaries and headlands it extends several thousand feet inland.

In New York City, the coastal area boundary extends inland 500 to 1000 feet, generally. On Staten Island and at major tributaries (e.g., Bronx River, Newtown Creek, Flushing Creek) the boundary is several thousand feet in from the shoreline.

The coastal area boundary extends 1000 to 8000 feet inland along the Long Island Sound coast of Westchester County.

In the Hudson River Valley, the coastal area boundary is generally 1000, but at some locations over 10,000, feet inland. The latter occurs at places which are exceptionally scenic (e.g., Hudson Highlands) or have significant agricultural and recreational lands.

Finally, the coastal area in the Great Lakes region of the State extends over 1000 feet inland from the shoreline. However, in the urbanized and built-up areas of the coast (e.g., Buffalo, Rochester, Oswego, Alexandria Bay, Ogdensburg) and at several locations where major roadways and rail lines parallel the shoreline, the boundary may extend 500 feet or less inland.

TABLE 3
Local Governments With Jurisdiction
Over Land and/or Waters Within
New York State's Coastal Area

SUFFOLK COUNTY

Babylon (T)
- Amityville
- Babylon
- Lindenhurst

Brookhaven (T)
- Bellport
- Belle Terre
- Old Field
- Patchoque
- Poquott
- Port Jefferson
- Shoreham

East Hampton (T)
- East Hampton

Huntington (T)
- Asharoken
- Huntington Bay
- Lloyd Harbor
- Northport

Islip (T)
- Brightwaters
- Ocean Beach
- Saltaire

Riverhead (T)

Shelter Island (T)
- Dering Harbor

Smithtown (T)
- Head of the Harbor
- Nissequoque

Southampton (T)
- North Haven
- Quoque
- Sag Harbor[1]
- Southampton
- Westhampton Beach

Southold (T)
- Greenport

NASSAU COUNTY

Glen Cove (C)

Long Beach (C)

Hempstead (T)
- Atlantic Beach
- Cedarhurst
- East Rockaway
- Freeport
- Hewlett Bay Park
- Hewlett Harbor
- Hewlett Neck
- Island Park
- Lawrence
- Rockville Center
- Valley Stream
- Woodsburg

North Hempstead (T)
- Baxter Estates
- Flower Hill
- Great Neck
- Great Neck Estates
- Kensington
- Kings Point
- Manorhaven
- Plandome
- Plandome Heights
- Plandome Manor
- Port Washington
- Roslyn
- Roslyn Harbor
- Saddle Rock
- Sands Point
- Thomaston

Oyster Bay (T)
- Bayville
- Centre Island
- Cove Neck
- Lattingtown
- Laurel Hollow
- Massapequa Park
- Mill Neck
- Oyster Bay Cove
- Sea Cliff

BRONX, KINGS, NEW YORK, QUEENS & RICHMOND COUNTIES

New York City (C)

WESTCHESTER COUNTY

Mount Vernon (C)

New Rochelle (C)

Peekskill (C)

Rye (C)

Cities are noted by (C); towns by (T); other listed local governments are villages

[1]Also partly within the T. of East Hampton

Yonkers (C)
Cortlandt (T)
  Buchanan
  Croton-on-Hudson
Greenburg (T)
  Dobbs Ferry
  Hastings-on-Hudson
  Irvington
  Tarrytown
Mamaroneck (T)
  Larchmont
  Mamaroneck[2]
Mount Pleasant (T)
  North Tarrytown
Ossining (T)
  Briarcliff Manor
  Ossining
Pelham (T)
  Pelham Manor
Rye (T)
  Port Chester

ROCKLAND COUNTY

Clarkstown (T)
  Upper Nyack
Haverstraw (T)
  Haverstraw
  West Haverstraw
Orangetown (T)
  Grand View-on-Hudson
  Nyack[3]
  Piermont
  South Nyack
Stony Point (T)

PUTNAM COUNTY

Philipstown (T)
  Cold Spring

ORANGE COUNTY

Newburgh (C)
Cornwall (T)
  Cornwall-on-Hudson
Highlands (T)
  Highlands Falls
Newburgh (T)
New Windsor (T)

DUTCHESS COUNTY

Beacon (C)
Poughkeepsie (C)
Fishkill (T)
Hyde Park (T)
Poughkeepsie (T)
Red Hook (T)
  Tivoli
Rhinebeck (T)
Wappinger (T)
  Wappinger Falls

ULSTER COUNTY

Kingston (C)
Esopus (T)
Lloyd (T)
Marlborough (T)
Saugerties (T)
  Saugerties
Ulster (T)

COLUMBIA COUNTY

Hudson (C)
Cleremont (T)
Greenport (T)
Germantown (T)
Livingston (T)
Stockport (T)
Stuyvesant (T)

GREENE COUNTY

Athens (T)
  Athens
Catskill (T)
  Catskill
Coxsackie (T)
  Coxsackie
New Baltimore(T)

RENSSELAER COUNTY

Rensselaer (C)
Troy (C)
East Greenbush (T)
North Greenbush (T)
Schodack (T)
  Castle-on-Hudson

ALBANY COUNTY

Albany (C)
Watervliet (C)

[2]Also partly within T. of Rye

[3]Also partly within T. of Clarkstown

Bethlehem (T)
Coeymans (T)
Colonie (T)
  Menands
Green Island (T)
  Green Island

CHAUTAUQUA COUNTY

Dunkirk (C)
Dunkirk (T)
Hanover (T)
  Silver Creek
Pomfret (T)
Portland (T)
Ripley (T)
Sheridan (T)
Westfield (T)

ERIE COUNTY

Buffalo (C)
Lackawanna (C)
Tonawanda (C)
Brant (T)
Evans (T)
Grand Island (T)
Hamburg (T)
Tonawanda (T)

NIAGARA COUNTY

Niagara Falls (C)
North Tonawanda (C)
Lewiston (T)
  Lewiston
Newfane (T)
Porter (T)
Somerset (T)
Wheatfield (T)
Wilson (T)
  Wilson
Youngstown (T)

ORLEANS COUNTY

Carlton (T)
Kendall (T)
Yates (T)

MONROE COUNTY

Rochester (C)
Greece (T)
Hamlin (T)
Irondequoit (T)
Parma (T)
Penfield (T)
Webster (T)

WAYNE COUNTY

Huron (T)
Ontario (T)
Sodus (T)
  Sodus Point
Williamson (T)
Wolcott (T)

CAYUGA COUNTY

Sterling (T)
  Fair Haven

OSWEGO COUNTY

Oswego (C)
Mexico (T)
New Haven (T)
Oswego (T)
Richland (T)
Sandy Creek (T)
Scriba (T)

JEFFERSON COUNTY

Alexandria (T)
  Alexandria Bay
Brownville (T)
  Dexter
Cape Vincent (T)
  Cape Vincent
Clayton (T)
  Clayton
Ellisburg (T)
Henderson (T)
Hounsfield (T)
  Sackets Harbor
Lyme (T)
  Chaumont
Orleans (T)

ST. LAWRENCE COUNTY

Ogdensburg (C)
Hammond (T)
Lisbon (T)
Louisville (T)
Massena (T)

Morristown (T)
  Morristown
Oswegatchie (T)
Waddington (T)
  Waddington

PART V - ENVIRONMENTAL CONSEQUENCES

PART V

ENVIRONMENTAL CONSEQUENCES

A. Environmental

New York State proposes to implement a Coastal Management Program that is consistent with the Federal Coastal Zone Management Act of 1972, as amended. New York's Program will further the goals of the Federal act, i.e., to protect, preserve, develop and restore our coast's land, water, and air resources so they may continue to fulfill man's present and future needs. The State's Program is designed to achieve a balance between resource development and preservation activities in the coastal area by encouraging the most environmentally appropriate uses of coastal resources and by minimizing or avoiding many of the adverse environmental consequences of coastal development.

To implement the Coastal Management Program, the State will rely upon various existing State programs (See Appendices E and F for a description of these State programs) plus the recently enacted Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) and the Coastal Erosion Hazard Areas Act (Environmental Conservation Law, Article 34). While Coastal Management Program implementation will not significantly alter the environmental effects of any single, existing State program, the integration and coordination of these programs as required by the waterfront law will create net environmental benefits for the State's coastal area.

The Waterfront Revitalization and Coastal Resources Act (WRCRA) provides for a balanced statewide approach for encouraging development in coastal areas while protecting natural resources. The WRCRA establishes the boundaries of New York State's coastal area by formally adopting a map which the Department of State, with considerable local government input, has prepared. This map is on file in the Secretary of State's office as well as in the offices of affected local governments, counties, and State agencies. This legislation also calls upon local governments to prepare waterfront revitalization programs. The 240 local governments eligible to participate in this waterfront revitalization program are listed in Table 3 in Part IV of this document. Participation in this program is at the option of the municipalities. As of this writing, there are approximately 50 communities eager to develop local waterfront revitalization programs. Because of previous work and cooperation with the Department of State, as many as 15 communities are likely to have an approved program early in the first year. Should they

elect to prepare such waterfront programs, the Department of State will provide technical and financial assistance under specific guidelines set forth in the WRCRA. The local waterfront revitalization programs will be prepared in conjunction with the policies set forth in the legislation. These policies apply in the mapped coastal area and have been developed to "insure the proper balance between natural resources and the need to accommodate the needs of population growth and economic development." They deal with the need for coastal development, better utilization of New York State's waterfront areas, and protection of significant coastal resources. Furthermore, the WRCRA gives the Secretary of State a broad advisory role in reviewing and evaluating State activities and programs in the coastal area. The Secretary must, within six months of the effective date of the legislation, identify each State agency that has programs and powers affecting coastal resources, and six months thereafter must report to the Governor and Legislature on the present level of consistency of State programs. Finally, the Secretary must identify State agency programs which will likely affect the achievement of any approved local waterfront revitalization program.

The Coastal Erosion Hazard Areas Act requires the New York State Department of Environmental Conservation, in full cooperation with affected local governments, to complete a preliminary identification of erosion hazard areas throughout New York State's coastline. Erosion hazard areas will be identified by determining annual land recession rates along the coast. Erosion hazard areas will also include natural protective features such as dunes, beaches, and shoals. The Act requires that consultations and public hearings must take place before final identification is made. Once final identification is made of the erosion hazard areas, regulatory provisions of the legislation will apply. Any activities or development proposed for such areas will only be approved if they meet certain minimum standards and criteria related to the: use of setbacks; prevention of an increase in erosion; minimization of adverse effects on natural protective features; and measures to ensure the effectiveness of control structures. The legislation also specifies that, when public funds are to be used for activities and development, the public benefits must clearly outweigh any long-range adverse effects. The legislation also offers each affected local government the opportunity to deal with erosion hazard areas identified within its boundaries through the community's own laws or ordinances. Should the affected local

government not exercise its right to regulate such areas, the county, or finally, the State Department of Environmental Conservation would promulgate regulations for that community.

The New York State Coastal Management Program has been designed to improve the management of the State's coastal resources. To achieve this end, the Program includes a set of coastal policies applicable to State agency actions in the coastal area which (1) steer development away from environmentally sensitive areas such as fish and wildlife habitats, wetlands, and scenic areas; (2) channel waterfront development and revitalization activities towards areas which are either without ecological and physical development constraints or areas which had once been developed but need rehabilitation; (3) promote the proper use, development or preservation of coastal erosion hazard areas such as beaches, bluffs, dunes, and barrier islands; and (4) encourage wise utilization of coastal resources which are renewable (e.g., commercial fisheries) and non-renewable (e.g., underwater sand and gravel deposits). These coastal policies will provide a comprehensive framework to guide future resource management and land use decisions by State, and where appropriate, Federal and local agencies.

The formal and legal integration of decision-making by Federal, State and local government agencies will achieve better management and utilization of the State's coastal resources. Improved communication and coordination of all three levels of government will be achieved by implementing the consistency provisions of State and Federal legislation and through the development, approval and implementation of local waterfront revitalization programs. Through these inter-governmental coordination procedures, resource use conflicts will either be resolved more quickly and efficiently or avoided altogether. By alleviating resource development pressures, the Program will help prevent over-exploitation of particular renewable coastal resources. Also, the possibility of identifying underutilized resources is increased with improved inter-govermental communication.

Another means by which the State Coastal Management Program will provide for environmentally appropriate uses of coastal resources and minimize many of the otherwise adverse environmental consequences of coastal development is by using the natural and cultural resource inventory, provided for in the Waterfront Revitalization and Coastal Resources Act. This inventory will provide a consolidated source of information which will be valuable to public agencies and private developers in the identification of potential sites for a specific use or development activity.

Considerable effort has already been expended during Program development by State, regional and local agencies to gather and compile land use and natural resource data throughout the State's coastal regions. The Waterfront Revitalization and Coastal Resources Act requires the Department of State to maintain and update this data inventory. It will, therefore, continue to provide an expanded resource information base which will enable the State and participating local governments to make more environmentally sensitive decisions with regard to conservation, allocation and commitment of coastal resources.

The implementation of the Coastal Erosion Hazard Areas Act is expected to result in significant long-term environmental, social and economic benefits to the people of New York. The full impact of the program will not be felt immediately upon implementation. In fact, it may take years before definite results can be identified. Nevertheless, the positive economic, social and environmental impacts should be substantial.

Damage from erosion and storm induced high water to structures placed or constructed in conformance with the erosion program's regulations will be significantly reduced. Problems caused by inappropriate or poorly designed erosion control structures constructed pursuant to the standards and criteria of 6 NYCRR Part 505 should be eliminated. The enforcement of minimum setbacks for new structures in coastal areas experiencing high rates of shoreline recession will ultimately result in less need for costly, and often environmentally undesirable, erosion protection structures. The conservation and preservation of natural protective features will help insure their existence for future generations.

Other benefits include a more natural appearing coastline. As a result of mandatory minimum setbacks for new structures, these structures will not encroach and detract from the scenic qualities of the shoreline. Another benefit is the preservation of coastal landforms such as dunes, bluffs, barrier islands and spits which are, to most people, more aesthetically pleasing than artificial structures such as groins, revetments, or seawalls. The encouragement of nonstructural approaches may also foster a greater understanding of the inherent natural functions and values of coastal features.

1. Unavoidable Adverse Environmental Effects

New York State's Coastal Management Program is not expected to have many unavoidable adverse environmental effects.

The Program will encourage new water-dependent development to locate in areas which are already developed and/or which are environmentally suitable for such development. This new development may increase air and water pollution, but these unavoidable effects are regulated under existing programs so that State air and water quality standards are not violated. New development may also require dredging of channels, but these activities must be conducted according to existing State and Federal regulations so as to reduce adverse impacts on water quality, fish and wildlife habitats, and other natural resources.

Another unavoidable effect may be short-term economic losses that might occur by favoring water dependent uses which at the time may not be the most profitable or desired use of waterfront lands. Although every effort will be made to find ways to offset this economic loss, there probably will be instances where this cannot be done.

2. Irreversible and Irretrievable Commitments of Resources

State adoption and Federal approval of the Coastal Management Program will not in and of itself lead to losses of coastal resources. The implementation of coastal management policies will affect the actions of State agencies and participating local governments in the coastal area, and may thereby result in irreversible and irretrievable commitments of resources. For example, policies to channel growth to already-developed locations along the coast and to give priority to water dependent uses will lead to increased development at these sites and result in irreversible commitments of resources. Development activity necessarily results in the affected site being committed to the new use for an indefinite period of time, and can practically be considered irreversible and irretrievable.

To the extent that the Program supports acquisition of environmental, cultural and recreational resources in coastal areas, the Program will result in commitment of these resources to public use, and the exclusion of these areas from future private use. This is especially true of areas added to the State Nature and Historic Preserve Trust, which are given constitutional protection and cannot be taken out of the preserve except by law enacted by two successive regular sessions of the Legislature.

B. Institutional

Although the State's Coastal Management Program will rely largely on the use of existing State programs, it will also create new institutional arrangements designed to focus attention on, and improve the management of, coastal resources. These new arrangements will not affect present constitutional relationships between State and local government, but should increase coordination and cooperation among State agencies and different levels of government as well as encourage local governments to exercise their powers and responsibilities more fully in coastal areas. The new arrangements should also help local governments resolve problems on a partnership basis with State and other local agencies which they previously had to face alone.

The Program establishes State coastal management policies that will guide State and Federal agency actions, along with those actions taken by participating local governments. The Program will require that all such actions be consistent with the coastal policies. (The policies are described in detail in Part II of this document.)

To assist State agencies in carrying out their responsibilities to be consistent with policies, the Department of State has worked with the Department of Environmental Conservation to develop a consistency review process that is coordinated with the existing State Environmental Quality Review (SEQR) procedures. The interagency effort has resulted in proposed regulations that will facilitate the determination of an action's consistency with the coastal policies and will not complicate SEQR procedures.

The consistency review regulations take two forms:

1. Selected amendments to the existing SEQR regulations;

2. Regulations to be promulgated by the Department of State.

The former address Type I and Unlisted Actions in the coastal area, which require the preparation of an environmental impact statement. The amendments to Section 617.9 require State agency actions to be consistent with the coastal policies. Where appropriate, the agency would also find that its action is consistent to the maximum extent practicable with an approved waterfront revitalization program.

The Department of State's regulations cover Type I and Unlisted Actions in the coastal area which do not have a significant effect upon the environment. Specifically, the filing of a certification of consistency with the Secretary of State will be required for direct and funding actions. A similar certification will be necessary for all actions where an approved local waterfront revitalization program is in effect.

Section 600.5 of the Department's regulations contains the coastal policies which are to be used in determining the consistency of a proposed action.

The principal advantages of using these procedures to implement the State consistency provisions are described in Part III.

C. Economic

Federal approval of the State's Program may result, subject to Congressional appropriations, in increased Federal financial assistance for program administration and managing coastal resources. Program approval would also mean grants may be available, subject to Congressional appropriations, for responding to anticipated impacts of coastal energy activity under Section 308, the Coastal Energy Impact Program. The Federal act also authorizes grants for marine and estuarine sanctuaries. Available Federal funds may be used to improve the capacity of the State and local governments to manage New York's coastal resources. Also, these Federal dollars, matched by State funds, may provide the impetus for waterfront revitalization projects which will have local and possibly regional economic benefits.

The State's Coastal Management Program is likely to have a dramatic and positive economic impact on the development of complex, natural resource-based industries such as commercial fishing and aquaculture. Growth of the State's commercial fishing industry, for example, has been impeded by the high degree of risk and complexity associated with this particular economic activity. Private investors shy away from this industry because of erratic changes in harvest rates, complex pricing mechanisms and the difficult political context within which fishery resources are managed. Many of these risks and disincentives, however, can be reduced to acceptable levels through the State's Coastal Management Program.

The Program can make a significant contribution in developing these resources by conducting studies to identify the environmental, technical and political constraints which impede further resource development. The results of such studies can then provide the basis for preparing a resource development plan which will provide for more orderly development of the resource. Such plans are absolutely essential to creating truly new economic development opportunities rather than merely displacing existing economic activities from one geographic location to another.

The Coastal Management Program, through its coordinated decision-making process involving Federal, State and local governments will more efficiently channel public sector efforts to assist private industry in development of natural resource based industries. Consensus among government agencies on development objectives can now be more readily achieved. Also, a significant reduction of political constraints and associated regulatory delays will result as the various government agencies come to agreement on development strategies. These reductions in political constraints, coupled with joint Federal and State financial assistance, should create sufficient incentive for attracting private investment in appropriate development of our natural resources.

A net gain in the number of jobs in the State may be anticipated as a result of the Coastal Management Program. First, program policies do not infringe on existing economic activities and, therefore, no existing jobs should be lost. Further, as a consequence of Program support for new coastal-related enterprises, employment levels can be expected to rise. Such enterprises include fishing, agriculture, recreation and tourism industries as well as ports, boat construction and other concerns requiring waterfront space. Finally, by improving the natural and economic environment of coastal areas, the Program should help to improve the entire State's image as a good place in which to develop new enterprises and thus new jobs.

As a result of new water-related development, it may be necessary for localities to make major capital investments for infrastructure and building rehabilitation. Such investments are likely due to the Program's emphasis on channeling growth to developed areas where existing infrastructure can accommodate growth.

Local tax revenues will also be affected as a result of water-related development and natural protection policies of the coastal program. The designation, by local governments, of certain coastal areas for water-dependent development may increase property tax revenues from these areas. This new development may reduce the value of adjacent properties if the new and existing adjacent uses are incompatible; but such a reduction will be minimized by careful selection of sites for industrial and commercial development which would be compatible with the existing adjacent uses.

The identification of some coastal areas for protection and preservation may limit property tax revenues from those areas; however, the natural and aesthetic qualities of protected areas may increase the value of adjacent or nearby property, especially residential and commercial property.

Coastal management policies directed particularly at identifying and managing erosion and flood hazard areas may, in the short term, reduce tax revenues to the extent that more stringent development restrictions on private property will reduce the value of the property, and therefore the property tax revenues. However, in the long term, identification of these areas should have beneficial impacts by preventing unwise development and thus eliminating or reducing the need for government disaster relief as well as expenditures to replace, repair or reconstruct damaged roads, sewers and other infrastructure.

D. Developmental

The Coastal Management Program is committed to encouraging growth in already developed areas or in areas where development can be concentrated and adequately served by public facilities. This policy is based on the belief that concentration of development will not only protect the environment but also strengthen the economy of the State. While the Program intends to accomplish its objectives in part by using certain restrictive measures, such as the State's wetlands and erosion laws, its goals will be achieved primarily by undertaking the more affirmative activities outlined in the Waterfront Revitalization and Coastal Resources Act and the policies section of this document. Such activities include permit expediting, identification of suitable development sites, and State and Federal consistency.

By implementing these activities, the Coastal Management Program will assist in intensifying development in existing population and commercial centers. This will reduce development pressures on ecologically sensitive areas, particularly in non-urban communities, but will not automatically preclude development in these areas, since local governments retain their powers to make land use decisions.

E. Energy

No negative effects on energy use and development are expected as a result of implementing the Coastal Management Program. On the contrary, the Program recognizes the importance of adequate energy supplies for the economic development of the State. It also recognizes the possible national interest in locating energy production facilities in the coastal area. To ensure that such facilities are developed with satisfactory environmental safeguards, the Department of State will participate, as appropriate, in the processes for siting transmission lines and electric power plants under Articles VII and VIII of the Public Service Law, in State Environmental Quality Review Act procedures, and in other review procedures.

The Program encourages, subject to existing State environmental controls, development of additional energy resources in the State and recognizes that development of Outer Continental Shelf (OCS) and Lake Erie resources could be of moderate benefit to New York State in meeting its goal of energy self-sufficiency. This development must, however, be subject to strict environmental controls.

In regard to energy conservation, the Program advocates concentration of new development in appropriate areas, which may help to reduce future energy consumption for transportation. Also, any rejuvenation of port facilities may result in shifts to use of water transportation for some commodities. Because ships and barges are an energy-efficient means of transportation, some conservation of energy may be a consequence of the Program's policy to favor port development.

F. Social

The Program is expected to have a favorable social impact. The Program seeks to create a heightened awareness of the relationship between land and water and between people and their environment. As a result, they will be able to make decisions that will ultimately improve the quality of life along the waterfront. A deteriorated waterfront is an economic and psychological burden; but a vibrant waterfront area can serve as a catalyst for areawide economic rejuvenation and foster a sense of community pride.

A positive social impact will result from the policy of favoring redevelopment of waterfront areas. Revitalized urban coastal areas will draw people back to the urban center. Thus, there will be greater opportunities for positive social interaction.

Another favorable social impact will result from the Program policies to increase public access to the shore. The poor and less mobile people have often been denied the opportunity to enjoy the State's coastlines. Improved public transportation, more public access points and increased amounts of park acreage will contribute to more use of the shore by all segments of the population.

A possible negative social impact of the Program would be perceived infringement on private property rights brought about by governmental efforts to increase public access to the coast. The Program recognizes that some fears are justified; however, it advocates that efforts to increase public access be undertaken judiciously, without limiting property rights and without taxing the carrying capacity of any given resource.

PART VI - AGENCIES CONSULTED

PART VI

AGENCIES CONSULTED

Implementation of the most formal means of consultation with those identified as having an interest in the development of the State's Program was achieved by forwarding to them for review, copies of the March 1979 Draft Coastal Management Program Report. Copies of the Draft New York City Local Coastal Management Program were sent also to certain Federal agencies, to State agencies and to other local and non-governmental groups. In June 1982, the Coastal Management Program and Draft Environmental Impact Statement, as well as the New York City Waterfront Revitalization Program, were sent to Federal, State and local government agencies and to other national, State, and local interested parties.

Federal Agencies Consulted

Council on Environmental Quality

Department of Agriculture

- Soil Conservation Service
- Farmers Home Administration
- Cooperative Extension

Department of Commerce

- Economic Development Administration*
- National Oceanic and Atmospheric Administration
- National Marine Fisheries Service*
- Sea Grant*
- Maritime Administration*
- Marine Mammal Commission*
- Office of Coastal Zone Management*
- Atlantic Marine Center

Department of Defense

- U.S. Air Force*
- Department of the Army*
- Aerospace Development Command
- Corps of Engineers*
- Air National Guard
- Veterans Administration
- Defense Supply Command

Department of Health and Human Services

Department of Housing and Urban Development*

Department of the Interior*

Bureau of Indian Affairs*
Bureau of Land Management*
Bureau of Mines*
Heritage Conservation and Recreation Service* (formerly Bureau of Outdoor Recreation)
Fish and Wildlife Service*
National Parks Service*
U.S. Geological Survey*

Department of Justice

Department of Transportation*

Federal Aviation Administration
Federal Highway Administration
National Highway Traffic Safety Administration
St. Lawrence Seaway Development Corporation
Urban Mass Transportation Administration
U.S. Coast Guard*

Department of Energy

(Formerly Energy Research and Development Administration and Federal Energy Administration*)
Federal Energy Regulatory Commission*
(Formerly Federal Power Commission)

Advisory Council on Historic Preservation
General Services Administration
Environmental Protection Agency*
Federal Emergency Management Agency
Nuclear Regulatory Commission*
Great Lakes Basin Commission
Marine Mammal Commission
New England River Basins Commission

*Those agencies received both the Draft State Coastal Management Program Report and the Draft New York City Local Coastal Management Program.

State Agencies Consulted

Department of Environmental Conservation
St. Lawrence-Eastern Ontario Commission
Office of Parks, Recreation and Historic Preservation
Division of Housing and Community Renewal
Office of General Services
Economic Development Board
Department of Commerce
Department of Agriculture and Markets
Department of Transportation
State Energy Office

Department of Health
Department of Public Service
Department of Education
Power Authority of the State of New York
Division of Military and Naval Affairs
Northeastern Queens Nature and Historical Preserve Commission
Port Authority of New York and New Jersey
Urban Development Corporation
Metropolitan Transportation Authority
Niagara Frontier Transportation Authority
NYS Dormitory Authority
Job Development Authority
Soil and Water Conservation Committee
NYS Council on the Arts
NYS Library
Department of Audit and Control
Office of Mental Health
Facilities Development Corporation
Health Planning Commission
Energy Research and Development Authority
State University Construction Fund
State University of New York
Division of State Police
Department of Social Services
Office of Business Permits
Division of Alcoholism and Alcohol Abuse
Commission of Correction
Department of Correctional Services
Environmental Facilities Corporation
Ogdensburg Bridge and Port Authority
Port of Oswego Authority
Albany Port District Commission

Local Governments Consulted

Draft Program documents and explanatory materials were also sent to the elected and appointed officials, and to appropriate local and regional agencies, in the 27 counties and over 240 municipalities, in the State's coastal area.

Other Interests Consulted

Widespread distribution of the Draft Coastal Management Program Report, and the Draft Environmental Impact Statement, additional brochures and summaries assured the success of the consultative process with non-governnment groups and individuals. As a result, a broad range of interests became involved in the Program's development of which the following are representative: Center for the Hudson Valley; Scenic Hudson, Inc.; Hudson River Sloop Clearwater, Inc; United Mobile Sportsfishermen, Inc; Rochester Gas and Electric Corporation; Upstate Ports Council; Natural Resources Defense Council; League of Women Voters; Udalls Cave Preservation Committee; Long Island Marine Contractions Association; Charlotte Community Association; N.Y.S. Farm Bureau; Sierra Club; N.Y.S. Petroleum Council; N.Y.S. Builders Association; Environmental Planning Lobby; and New York Coastal Coalition.

PART VII - LIST OF AGENCIES AND ORGANIZATIONS RECEIVING COPIES OF THE DEIS

PART VII

LIST OF AGENCIES, OR ORGANIZATIONS, AND

PERSONS RECEIVING THE DEIS DOCUMENT

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Transportation
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
Nuclear Regulatory Commission
Federal Emergency Management Agency

National Interest Groups

American Association of Port Authorities
American Bureau of Shipping
American Fisheries Society
American Gas Association
American Industrial Development Council
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Waterways Operators
Amoco Production Company
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Boating Industry Association
Bureau of Marine Resources
Center for Law and Social Policy
Center for Urban Affairs
Center for Urban and Regional Resources
Chamber of Commerce of the United States
Chevron U.S.A., Inc.
Cities Service Company
Conservation Foundation
Continental Oil Company
Council of State Planning Agencies.
The Cousteau Society
CZM Newsletter
Ecology and Environment, Inc.
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Comapny, U.S.A.
Friends of the Earth
Gulf Oil Company
Gulf Refining Company
Institute for the Human Environment
Interstate Natural Gas Association of America
League of Conservation Voters
League of Women Voters Education Fund
Marathon Oil Company
Marine Manufacturers Association
Marine Technology Society
Mobile Oil Corporation
Mobil Exploration and Producing, Inc.
Murphy Oil Company
National Association of Conservation Districts
National Association of Realtors
National Audubon Society
National Boating Federation
National Coalition For Marine Conservation
National Commission on Marine Policy
National Fisheries Institute
National Forest Products Association
National Ocean Industries Association
National Recreation and Parks Association
National Waterways Conference
National Wildlife Federation
Natural Resources Defense Council
Nature Conservancy
Rice University Center for Community Design and Development
Shell Oil Company
Sierra Club
Soil Conservation Society of America
Sport Fishing Institute
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.

National Interest Groups (Continued)

United Mobile Sport Fishermen
Urban Research and Development Associations, Inc.
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute

Congressional

Members of the New York State Congressional Delegation

State Officials and Legislators

Governor Hugh L. Carey
Office of the Lieutenant Governor
Members of the Senate and Assembly with coastal area districts

State Coastal Management Program Citizens Advisory Committee

State Agencies and Authorities

New York State Urban Development Corporation
Department of Law
St. Lawrence Eastern Ontario Commission
Niagara Frontier Transportation Authority
New York State Power Authority
New York State Dormitory Authority
Northeastern Queens Nature and Historical Preserve Commission
Department of Commerce
Job Development Authority
Soil and Water Conservation Committee
New York State Council of the Arts
Metropolitan Transportation Authority
Department of Education
New York State Library
Department of Audit and Control
Office of Mental Health
Facilities Development Corporation
Health Planning Commission
Energy Research and Development Authority
Department of Transportation
State University Construction Fund
State University of New York
Division of State Police
Department of Social Services
Department of Public Service
Office of Business Permits
Division of Alcoholism and Alcohol Abuse
Office of Parks, Recreation and Historic Preservation
Division of Military and Naval Affairs
Department of Agriculture and Markets
Commission of Correction
Department of Correctional Services
Office of General Services
Department of Health
Environmental Facilities Corporation
State Energy Office
Division of Housing and Community Renewal
Department of Environmental Conservation
Port Authority of New York and New Jersey
Ogdensburg Bridge and Port Authority
Port of Oswego Authority
Albany Port District Commission

Municipalities and Counties

(245 municipalities and 26 counties)

See Part IV, Table 3 for listing.

Regional Agencies

Long Island Regional Planning Board
Southern Tier West Regional Planning and Development Board
Black River-St. Lawrence Regional Planning Board
Capital District Regional Planning Commission
Central New York Regional Planning and Development Board
Erie-Niagara Counties Regional Planning Board
Bi-State Regional Planning Commission

Environmental Management Councils

Local Government Associations

Conference of Mayors
Association of Towns
County Officers Association
New York Planning Federation

Indian Nations

St. Regis Mohawk Tribe
Seneca Nation (Cattaraugus)

Other Governmental

Coastal States Organization
Great Lakes Commission
Mid-Atlantic Governors Conference
Mid-Atlantic Regional Fishery Management Council
New England Governors Conference
Northeast-Midwest Congressional Coalition
New York Sea Grant

International Agencies

Great Lakes Fishery Commission
International Joint Commission

Distribution for New York City

Mayor
Deputy Mayor
Board of Estimate
Community Boards
Borough Presidents
Citizens Advisory Committee

Interest Groups

Center for the Hudson River Valley
Environmental Planning Lobby
League of Women Voters
Charlotte Community Association
Save The River
American Planning Association
American Littoral Society
Izaak Walton League, N.Y. Division
Clearwater
Wave Hill Center for Environmental Studies
The Group for America's South Fork
Sierra Club, Atlantic Chapter
Center for Environmental Information (Rochester)
Citizens Union
Coastal Coalition
Marine Environmental Council of Long Island

Private Sector

N.Y.S. Petroleum Council
New York Power Pool
Business Council of N.Y.S., Inc.
New York Farm Bureau
N.Y.S. Builders Association
Bethlehem Steel Corporation

Private Sector (Con't)

Republic Steel Corporation
Maritime Association of the Port of New York
Eastman Kodak Co.
Long Island Association of Commerce and Industry
Empire State Marine Trades Association
Long Island Marine Trades Association

Other

Canada
Province of Ontario
Environment Canada

PART VIII - DOCUMENT PREPARERS

PART VIII

LIST OF DOCUMENT PREPARERS

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Arthur E. Jeffers,	North Atlantic Assistant Regional Manager, Office of Coastal Zone Management
Degrees:	B.S. - Michigan State University, 1978 Natural Resource Management B.S. - Michigan State University, 1978 Secondary Education Science and Environmental Studies
Experience:	3 years, Office of Coastal Zone Management 1 year, management analysis and secondary education
John Milholland,	General Counsel, Office of Coastal Zone Management
Degrees:	B.A. - Williams College, 1963 L.L.B. - Columbia Law School, 1966 L.L.M. - University of Washington, 1974 Law and Marine Affairs
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Experience: 6 years, NYS Department of State, Coastal Management Program

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12 years, other professional planning experiences, New York State and City of Boston

William F. Barton, Coastal Resources Specialist, NYS Department of State

Degrees: B.A. - Rutgers University, 1961, Economics

M.S. - Columbia University, 1965, City Planning

Experience: 5 years, NYS Department of State, Coastal Management Program

14 years, project, local, regional and state planning with public planning agencies and private consulting firm

David E. Buerle, Coastal Resources Specialist, NYS Department of State

Degrees: Ph.D. - Clark University, 1965, Geography

M.S. - Columbia University, 1959, Economic Geography

Bachelor of Management Engineering, Rensselaer Polytechnic Institute, 1955 (Minor - Civil Engineering)

Experience: 6 years, NYS Department of State, Coastal Management Program

10 years, professional experience in engineering, geography, and planning with public planning agencies, universities, and as private consultant

A. Kevin Crawford, Senior Attorney, NYS Department of State

Degrees: B.S. - Union College, Schenectady, 1975, Civil Engineering

J.D. - New England School of Law, Boston, 1978

Experience: 3 years, NYS Department of State, Division of Legal Services

James A. Coon, Principal Attorney, NYS Department of State

Degrees: B.A. - Cornell University, 1965, Economics

LLB - Syracuse University College of Law, 1968

Experience: 12 years, New York State planning agencies (Office of Planning Coordination, Office of Planning Services, Department of State), extensive experience in land use regulations

Diane Hamilton, Coastal Public Participation Specialist, NYS Department of State

Degrees: B.L.A. - State University of New York, 1976, Landscape Architecture

B.S. - State University of New York, 1975, Environmental Science

B.A. - Boston University, 1968, French

Experience: 3 years, NYS Department of State, Coastal Management Program

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PART IX - RESPONSES TO COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

PART IX

RESPONSES TO COMMENTS ON THE

DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

This part contains responses to all comments on the Draft Environmental Impact Statement (DEIS) received either in writing or at the federal public hearings during the official review period (June 11, 1982 through July 26, 1982). The State and Federal responses to these comments have been coordinated between the New York State Coastal Management Program and the Federal Office of Coastal Zone Management.

No attempt has been made to distinguish between comments made on the DEIS and those made on the Coastal Program, primarily because of the combined format of the document and the interrelated nature of most comments received.

Some comments have resulted in specific changes to the text of the DEIS. Those changes have been made to the appropriate pages of the DEIS. Likewise, the revisions have been noted in response to the various comments and are reflected in the Final Environmental Impact Statement.

Written comments were received from thirty government agencies and individuals. In addition, seventeen individuals or agency representatives testified at three public hearings on the DEIS.

This section is divided into three sections:

I. Responses to Federal Agency Comments on the DEIS

II. Responses to State and Local Written Comments on the DEIS

III. Responses to Testimony Received at Joint Federal and State Public Hearings on the DEIS

Page references in all comments are to the DEIS. Page references in all the responses are to the FEIS, unless otherwise noted.

Within the sections, individual commentators are indicated by capital letters. An index of commentators is provided on the following page.

INDEX OF DEIS COMMENTATORS

SECTION I: Responses to Federal Agency Comments on the DEIS

A. U.S. Department of Agriculture, Soil Conservation Service
B. U.S. Department of Defense, Army Corps of Engineers
C. U.S. Environmental Protection Agency, Region II
D. Federal Energy Regulatory Commission
E. U.S. Department of Housing and Urban Development
F. U.S. Department of Interior
G. Nuclear Regulatory Commission, State Relations Section
H. U.S. Department of Transportation, Office of Economics, U.S. Coast Guard
I. U.S. Department of Transportation, Federal Aviation Administration

SECTION II: Responses to State and Federal Written Comments on the DEIS

A. William C. Hennessy, Commissioner, N.Y.S. Department of Transportation
B. Mary P. Bass, N.Y.S. Metropolitan Transportation Authority
C. Anthony Tozzoli, Director, Port Department, The Port Authority of New York and New Jersey
D. Robert D. Vessels, Director, Office of Environmental Planning, N.Y.S. Department of Public Service
E. Louis M. Concra, Jr., Director, Division of Regulatory Affairs, N.Y.S. Department of Environmental Conservation
F. Joseph P. Fraioli, Village Manager, Mamaroneck
G. Edith A. Mesick, Planning Director, Columbia County Planning Department
H. Frances F. Dunwell, Scenic Hudson, Inc.
I. Samuel H. Sage, Executive Director, Sierra Club - Atlantic Chapter
J. Sarah L. Johnston, Hudson River Sloop Clearwater, Inc.
K. Bryan Luftglass, Sierra Club, Westchester-Putnam Group
L. William E. Miller, United Mobile Sportsfishermen, Inc.
M. Bernard J. Blum, Friends of Rockaway, Inc.
N. Frank R. Seddio, District Manager, Community Board No. 18, Brooklyn, New York
O. Nancy Nagel Kelly, Planner, Group for the South Fork, Inc.
P. Howard Golden, President of the Borough of Brooklyn, New York
Q. Hilda Regier, Rose Mary Lynch, Community Board No. 4, New York, New York
R. John W. Meunzeinger, Westchester County Department of Planning
S. Thomas La Manna, Community Board No. 1., Staten Island, New York
T. Daniel J. Palm, Executive Director, St. Lawrence-Eastern Ontario Commission
U. Bonnie June Mellon

SECTION III: Responses to Testimony Received at Joint Federal and State Public Hearings on DEIS

*A. Charlene Caile, representing County Executive Edward J. Rutkowski, Erie County
*B. David Stebbins, Division of Planning, Buffalo
*C. Frances F. Dunwell, New York Coastal Coalition
D. Bernard Melewski, N.Y.S. Environmental Planning Lobby
E. Frances Hodson, Long Beach
*F. Aurora Gareiss, Udalls Cove Preservation Committee, Citizens Advisory Committee, Governing Board on Water Resources
*G. Mark Wainstock, Neighborhood Organizations and Citizens Outraged Against Lignite (NO COAL)
*H. Sister Frances Gerard Kress, CSJ, Environmental Protection Committee of Community Board No. 1, Brooklyn, and Greenport Civic Council
*I. Virginia M. Dent, N.Y.S. Northeastern Queens Nature and Historical Preserve Commission
J. Bea Green, New York, New York
*K. Sarah Chasis, Natural Resources Defense Council
*L. Joseph Landau, representing Howard Golden, Brooklyn Borough President
*M. Marilyn Vogel, N.Y.C. Advisory Committee on Water Resources
*N. Thornton Willett, Kane Street Block Association
O. Agnes Hentschel, Woodside, New York
P. Robert Alpern, N.Y.C. Citizens Advisory Committee on Water Resources
*Q. Maurice Hinchey, Member of New York State Assembly, Chairman of Assembly Environmental Conservation Committee

* Written comments received

SECTION 1

RESPONSES TO FEDERAL AGENCY COMMENTS ON DEIS

A. Department of Agriculture
Peter Myers
Soil Conservation Service

1. COMMENT: We are pleased to note the attention given to the protection of agriculture. Your policy is consistent with USDA land use policy and with the Farmland Protection Policy Act, PL 97-98. USDA will provide all possible assistance in administering the NY CZMP.

   RESPONSE: Thank you.

2. COMMENT: On page 248 change "one or more parts" to "two or more parts".

   RESPONSE: See correction.

3. COMMENT: On page 248 the listing a through c would be strengthened by adding "residential uses other than farm dwellings".

   RESPONSE: The guidelines have been revised to include the above.

B. Department of Defense
Colonel Robert K. Turner
Army Corps of Engineers

1. COMMENT: On page 75, under "Coastal Issues", the statement that "...adequate economic and environmental information exists to demonstrate the unjustifiability of any season extension..." is not supported by the facts. The statement is apparently the opinion of some of the State of New York officials. A complete discussion of the winter navigation/season extension proposals, including the findings and recommendations of the Corps of Engineers, should be presented.

   RESPONSE: The State has changed its wording to indicate there is inadequate information at this time to demonstrate the justification of any season extension. No projects are specifically prohibited in this coastal program, all proposals will be evaluated for consistency with the 44 policies. The State will consider information by the Corps in making their decisions.

2. COMMENT: On page 131, Policy 3.A.2 implies that development of the major ports will be limited to improving "established" alignments and "existing" channels. There may be a need in the future to establish new alignments and new channels to improve the major ports. This future need should be recognized, and the document revised accordingly.

   RESPONSE: See revision.

3. COMMENT: On page 149, Policy 7 provides that the New York State Fish and Wildlife Habitat Rating Guide dated January 1981 will be the standard for determining habitat significance. a) The procedures for identifying significant habitats should be clearly defined. The proposed designation of significant habitats should be coordinated by the State with the Federal public agencies, such as the U.S. Army Corps of Engineers, the St. Lawrence Seaway Development Corporation, and others. b) Key information from the 1981 habitat rating guide should be included in the Coastal Management Program to enable Federal agencies to review the impact of the application of the rating guide on their own activities. Pertinent information that should be included in the program document should focus on how procedures were established for rating, how significance is determined for each of the five parameters used, a definition of "significance", and those Federal and public agencies with which the rating system report was coordinated before finalizing.

RESPONSE: Additional information more clearly defining the procedures used for identifying significant fish and wild life habitats has been added to Explanation of Policy #7. See revisions.

The process of applying the rating system and formally designating significant habitats will occur during the first year of program implementation. Prior to formal designation, maps, a copy of the habitat rating form and narratives, if any, will be provided to Federal and State agencies and the public for review and comment.

4. COMMENT: On pages 337 and 338, the paragraph on Consistency Procedures for Federally Conducted or Supported Activities should be revised to consider the requirement "If a Federal agency determines that a Federally conducted or supported activity does not directly affect the State coastal area, and thus a consistency determination is not needed, the agency should notify the Department of State at least 90 days before final approval of the activity, setting forth the reasons for its negative determinations" is a duplication and should be deleted. As provided elsewhere in the paragraph, for activities listed in Table 2, the Federal agencies will make a consistency determination and report findings through existing mechanisms, such as OMB Circular A-95 and NEPA documents. If it is determined that the activity does not directly affect the State's coastal area, it will be supported in these documents. Also, subparagraph 2 on page 337 provides that activities not listed in Table 2 will be monitored through the A-95 review process and other relevant processes by the State, and that the Department of State will notify the Federal agencies if a consistency determination and review is needed.

RESPONSE: Agreed. The paragraph is deleted.

5. COMMENT: The following provision should be added at the end of the next to last subparagraph on page 338 : "The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification."

   RESPONSE: Agreed. See revision.

6. COMMENT: On Page 347, it is incorrect to list the Corps of Engineers programs in Part III of Table 2 under the "Federal Assistance" program; the Corps is not a granting agency. The Corps programs are appropriately listed in Part I of Table 2 as "Direct Federal Activities and Development Projects".

   RESPONSE: See revision.

C. Environmental Protection Agency
Anne Norton Miller
Region II, New York, New York

1. COMMENT: It is important that the State Environmental Quality Review Act (SEQRA) process be amended prior to issuing the final CMP EIS to ensure that local and private actions are consistent with the New York State Department of State (NYSDOS) coastal policies through the SEQRA process.

   RESPONSE: Proposed amendments to the SEQRA regulations were contained in Appendix A of the DEIS. These amendments, as well as proposed DOS regulations to implement the Waterfront Revitalization and Coastal Resources Act (WRCRA) must be adopted prior to Federal approval of the NYCMP. A statement to this effect was included on page 54 of the DEIS and is in the FEIS, page II-4-12.

2. COMMENT: ...we recommend that a mechanism be established (a) to resolve possible conflicts between agencies, (b) to ensure compliance with the intent of CMP, (c) to coordinate existing programs and (d) to advocate specific desired activities.

   RESPONSE: Section 919.1 of the WRCRA requires actions directly undertaken within the coastal area by State agencies to be consistent with the coastal policies. The NYCMP will rely on third party enforcement of Section 919.1 of the WRCRA. A third party may seek judicial review of a State agency's determination of consistency pursuant to Article 78 of the NY Civil Practice Law. This technique meets the requirement established by 15 CFR Section 923.43 which states, in part, "It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government or a citizen."

   Section 913.4 of the WRCRA provides the Secretary of the NYSDOS the authority "To review, evaluate and issue recommendations and opinions concerning programs and actions of State agencies which may have the potential to effect the policies and purposes of this article, including but not limited to, programs within the jurisdiction of the Departments of State, Agriculture and Markets, Environmental Conservation, Public Service, Commerce and Transportation, the Offices of Energy and Parks and Recreation and the Office of General Services." The Secretary shall exercise this authority to coordinate State agency programs with an affect on the coastal area.

   In addition to the implementation of voluntary LWRPs, the NYSDOS and other State agencies will advocate a number of activities central to the NYCMP. The Secretary of the NYSDOS is also instructed, under the WRCRA, to encourage public and private institutions to preserve, protect, enhance, develop and use coastal resources in a manner consistent with the purposes and policies of the WRCRA.

3. COMMENT: ...we suggest that local government be encouraged and given incentive to develop local comprehensive plans and zoning ordinances in accordance with the CMP coastal policies.

RESPONSE: The WRCRA provides the authority and incentive for municipalities to prepare programs for their coastal areas. By participating, local governments will be eligible to receive financial and technical assistance for the preparation and implementation of their waterfront revitalization programs. In addition, a major incentive of an approved LWRP is the requirement that State and Federal actions must be conducted consistent with the specific policies of the LWRP. Proposed local waterfront revitalization programs must be found consistent with the coastal policies prior to State approval (see Section 601.3(2) of the proposed DOS regulations). Comprehensive planning and zoning ordinances are two means for implementation of a local program.

The WR & CRA and DOS regulations (Part 601) and DOS guidelines for local waterfront revitalization programs require that these programs must be comprehensive, that is (1) they must include the entire coastal area of the locality, (2) they must be consistent with and further all applicable coastal policies (28 of the 44 policies are referenced in Part 601 of DOS regulations and 16 are found in other State laws to which localities must adhere or which do not relate to local government activity), and (3) the locality must have adequate legal authority, including appropriate land use controls, to implement the program. The guidelines for local waterfront revitalization programs (Appendix B) contain the most complete description of what a LWRP must be.

With regard to coordination of activities in areas where some communities have local programs and others do not, and the voluntary nature of such programs, the NYS CMP is a State program with adequate authority to implement all policies. Where a community wishes to participate by adopting and further detailing State policies, it is encouraged to do so. Where a community does not participate, all State coastal policies apply. Where a Federal action subject to consistency occurs in an area covered by both a participating and non-participating community, the more detailed policies of the participating community apply if that community's LWRP has been added to the NYS CMP either through routine program implementation or a program amendment. Local governments may participate in the program only if they prepare a comprehensive program, they can receive project funding assistance only for priority projects specifically identified in an approved LWRP. This is described in the WR & CRA, DOS regulations, and DOS guidelines.

4. COMMENT: This concept should be carried through and mentioned in the "Content of Local Program" as well (page 655).

RESPONSE: See additional discussion included (Step 5(b)) on DOS technical assistance which will be available to the localities.

5. COMMENT: The Local Program should stress in sections (2) and (4) the importance of protecting environmentally sensitive areas and natural resources in developing a local strategy in accordance with the 44 coastal policies.

   RESPONSE: The importance and requirement for protecting environmentally sensitive areas and natural resources is described in Part 2, Specific Guidelines, pages B-39 to 73 of the FEIS; in particular, Significant Fish and Wildlife Habitat - page B-39; Flooding and Erosion - page B-47; Historic Resources - page B-63; Visual Quality - page B-66; and Agriculture - page B-71. Part I, Section 2 references the specific guidelines of Part II.

6. COMMENT: We recommend that the draft EIS include (a) a time frame or notification of the NYSDOS by the involved State agencies and other parties when coastal issues are involved and (b) what type of legal or other action NYSDOS could take if it found a project inconsistent with the coastal policies.

   RESPONSE: (a) The Coastal Assessment Form, page A-4 of the FEIS, and the SEQRA, page A-3 will assure NYSDOS is adequately informed, (b) See response to comments 2a and 2b above.

7. COMMENT: We recommend that (a) regional concerns be described, (b) GAPCs be designated, and (c) procedures for GAPCs be identified for inclusion in the final EIS.

   RESPONSE: (a) Pages II-2-1 through II-2-13 of the FEIS describe the most significant regional concerns of the three major regions of the New York coastline, (b) three categories of GAPC's (which the NYCMP refers to as Special Management Areas) were identified in the DEIS: State parks, Estuarine Sanctuaries and LWRPs. This fulfills the requirements of 15 CFR 923.21, (c) a reference to the criteria and procedures for designation of areas for preservation (APRs) has been included in the introduction to Part II, Section 8, of the FEIS.

8. COMMENT: The draft EIS for the subject program should identify the relationship and procedures for coordination between the CMP and applicable State and local agency air quality plans pursuant to 15 CFR Section 923.56. Procedures for coordination should be more specific, clarifying the statement in the draft EIS that "mutual program review will concentrate on identification of the effect of each program upon the other." By explicity stating procedures of coordination (e.g. for air quality management), the effectiveness of the voluntary participation in the CMP by local agencies will be increased.

   RESPONSE: As to coordination with applicable State and local air quality plans, the NYSCMP at several stages was thoroughly reviewed by NYS DEC, Division of Air Resources. All comments suggested, additions and deletions were fully incorporated in FEIS. Any future revisions or changes to applicable State air quality plans will be subject to review procedures to ensure consistency with coastal policies, including the policy requiring adherence to the Clean Air Act as a minimum. Furthermore, the preparation of local waterfront revitalization programs will undergo review by applicable State and local agencies to ensure that the program is not contrary to existing air quality plans.

9. COMMENT: It is recommended that the plan provide a clear statement that the requirements of the Clean Air Act (CAA) are the minimum air pollution control requirements applicable within the coastal zone. Also, the CMP should incorporate the air pollution control requirements pursuant to Section 307(f) of the Coastal Zone Management Act. The CMP should provide explicit, legally binding procedures for ensuring that the requirements of the CAA are not impaired.

RESPONSE: The explanation of Policy 41 is amended to state clearly the requirements of the Clean Air Act are the minimum air pollution control requirements applicable within the coastal area, and that all requirements of the State pursuant to the Clean Air Act are incorporated (by reference) in the CM program.

As to ensuring that CMP will not impair the requirements of CAA, the WRCRA provides that "nothing in this Article shall be construed to authorize or require the issuance of any permit, license, certification or other approval...which is denied by the State agency having jurisdiction pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met."

10. COMMENT: CMP should discuss the relationship between its growth policies and those being implemented pursuant to the air quality plans, where applicable.

RESPONSE: The above provisions of Article 42 also govern the relationship of CMP development policies with air quality plans, that is, the development policies are limited by all other coastal policies including provisions of law relating to air quality.

11. COMMENT: The program should expand the identification of whether the air quality control region (AQCR) within the coastal zone is meeting primary and secondary National Ambient Air Quality Standards (NAAQS) by referencing the Code of Federal Regulations 40 CFR Part 52 Section 52,1682 and by discussing how, in general, air quality considerations will be factored into the coastal decision-making process. The CMP should encourage reliance on new source reviews of major emission sources as one of the initial, major determinants of the permissability of certain uses. The CMP should recognize the potential adverse air quality impacts (primary and secondary) of smaller scale commercial and residential development which are not subject to new source review.

RESPONSE: With regard to points raised, the NYS CMP incorporates by reference the requirements of the CAA as the minimum pollution requirements and all requirements of the State pursuant to the CAA. Further elaboration is not required for approval under the CZMA.

12. COMMENT: Identification should be provided on how the CMP would provide for coordination with the Federal permitting processes in areas of the coastal zone where one or more local agencies are not participating while other local agencies are participating.

RESPONSE: The NYSDOS, as the single State agency identified pursuant to 15 CFR 923.53 responsible for consistency review of proposed Federal actions, is responsible for securing necessary review and comment from other State, regional, or local government agencies. It is the only State agency authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity, regardless of whether local governments participate in the NYCMP (See 15 CFR 930). Where local governments have approved LWRPs, these plans will provide more specific policies in addition to the Statewide policies for the NYSDOS to consider in making its Federal consistency comment review. See also response to comment 3, above.

13. COMMENT: The CMP should indicate if it is possible for a local agency to participate only in particular projects of its choosing (with full or limited funding).

RESPONSE: See response to comment 3 above.

14. COMMENT: In general, it is felt that voluntary participation in the subject program by local agencies will reduce the effectiveness of the overall CMP. It appears that local non-participation may be offset to some extent by State authority in the areas of erosion hazards and water dependent uses, due to recent State legislation. However, the air quality management program will still be largely dependent upon the NYS Department of Environmental Conservation. This may become the case in both participating and non-participating local areas unless the CMP identifies and implements procedures for coordination in these areas.

RESPONSE: The NYCMP is sufficiently comprehensive and specific at the State level, and therefore needs to be strengthened and/or made more specific and predictable only where a locality feels it necessary to ensure that its priorities are met. The approval of a LWRP does not substitute for or replace the authorities or controls of the State over coastal resources. Instead, LWRPs will provide additional specificity in policies and priorities for the relevant coastal area.

You are correct that the program does not alter the air quality program, but incorporates it as mandated by 307(j) of the CZMA.

15. COMMENT: The description entitled "Implementation" under Policy 39 needs to be updated to reflect that assistance to states for state solid waste plan development and for resource recovery feasibility under Section 4008 of the Resource Conservation and Recovery Act ceased effective October 1, 1981.

RESPONSE: Neither NYC nor NYS policy 39 refers to this program.

16. COMMENT: In addition, New York State has not submitted a final statewide solid waste plan to EPA for approval, and indications are that no plan will be submitted prior to January, 1983.

RESPONSE: No response necessary.

17. COMMENT: Executive Orders 11988 (Floodplain Management) and 11999 (protection of wetlands) provide for protection of floodplain and wetland areas: (a) With regard to Policy 44, we believe it is important to provide additional consideration to protect freshwater and tidal wetlands less than 12.4 acres in sites that are unique or of local significance to be consistent with these executive orders, (b) in the description of "Content of Local Program," freshwater and tidal wetlands should be included in the list of environmentally sensitive areas to be inventoried and afforded protection.

RESPONSE: (a) The 12.4 acre threshold only applies to freshwater wetlands; not tidal wetland areas. The majority of freshwater wetlands which are less than 12.4 acres in size and that are unique or of local significance are afforded protection by this law or under the Protection of Water Laws Act. See discussion of this implementing authority on pages II-6-188. All freshwater and tidal wetlands that are unique or are of local significance and that meet the criteria described under Policy 7 for designation as a significant habitat, pages II-6-35 to 41 will be mapped on the Coastal Area map, (b) Wetland protection is fully covered by the wetlands laws and the Stream Protection Act.

D. Federal Energy Regulatory Commission
Carl N. Shuster, Jr., Ph.D.
Coordinator, Coastal Affairs

1. COMMENT: In general, the proposed procedures and policies raised no serious problems directly related to energy facility development.

   RESPONSE: No response necessary.

2. COMMENT: In the New York City program we are particularly concerned about prohibition of facilities associated with liquified natural gas (LNG) tankers. The prohibition is not based on defensible standards and does not provide sufficient justification. Furthermore, we believe such an outright prohibition conflicts with sections 306(b)(8) and 306(c)(8) of the CZMA.

   RESPONSE: This policy has been revised. It does not prohibit LNG facilities, but requires consideration of State and national energy needs, public safety concerns and the necessity for a shorefront location. As is noted in Appendix G on page 50, New York City has two functioning LNG plants.

3. COMMENT: Revisions to list of Federal Licenses and Permits are submitted.

   RESPONSE: These revisions are incorporated.

4. COMMENT: There is no statement in the energy facility siting process indicating that Federal review and approval is necessary for hydroelectric generation facilities.

   RESPONSE: In this section there is no mention of the variety of Federal reviews that are needed for most of the facilities described. To repeat all the Federal reviews would add unnecessary length to the document.

5. COMMENT: The 1: 48,000 scale maps were not distributed with the DEIS and thus the requirements of 923.31(a)(8) are not met.

   RESPONSE: 923.3.(a)(i) requires that the State must be able to advise interested parties whether they are within the boundary within 30 days. The text of the Boundary Section gives the reader an understanding of whether they are within the coastal zone. During the first year of program implemention the State will submit the detailed boundaries to Federal agencies.

E. Housing and Urban Development
Stephen J. Bothinger

1. COMMENT: Our staff consulted with the State staff responsible for development and preparation of the CZMP at frequent intervals over the past several years. We have had opportunity to review and comment on applicable chapters. All HUD suggestions have been incorporated.

   RESPONSE: No response necessary.

2. COMMENT: We endorse the proposals and recommmend approval. We plan to begin immediate steps to continue our coordination with the State after approval of the program.

   RESPONSE: No response necessary.

F. Department of Interior
J. Robinson West
Office of the Secretary

1. COMMENT: Notwithstanding the significant achievement represented by this program, the Department has several major concerns.

   RESPONSE: See responses below.

2. COMMENT: The State's policy 29 to "encourage the development of energy resources on the OCS" appears to be inadequate to meet the CZMA because it lacks an implementing mechanism at either the State, regional or local level. We believe the State could resolve our concern by including an OCS oil and gas-specific discussion in the section of the Energy Facility Planning Process which covers assessment of energy site suitability.

   RESPONSE: See revised section on Energy Facility Siting Process.

3. COMMENT: If the State allows local or regional coastal plans to include site suitability assessment procedures, these plans should be considered amendments to the State plan.

   RESPONSE: All local programs must be consistent with the 44 State policies, including Policy 29. In the event a local program would propose a site suitability assessment procedure for OCS facilities that would significantly differ from guidelines contained in Appendix B, such local program would be considered an amendment.

4. COMMENT: The question of what, if any, OCS leasing activities "directly affect" the coastal zone is in litigation. The FEIS should indicate the State reserves the right to request consistency determinations pending outcome of the legislation.

   RESPONSE: While the appeal is pending in the Ninth Circuit Court Appeals on the question of which OCS activities directly affect the coastal zone, the State intends to review leasing activities as stated in the DEIS.

5. COMMENT: It must be made clear to the State that Section 307(c)(1) of the CZMA regulations requires the head of the responsible Federal agency to determine whether an agency program activity outside the coastal zone directly affects the coastal zone.

   RESPONSE: See revised section which clarifies this point.

6. COMMENT: We do not believe it is appropriate to list "operating orders" as a Federal activity that is subject to consistency review.

   RESPONSE: Operating Orders have been deleted.

7. COMMENT: Policies 11 through 17, which deal with barrier island structures, while recognizing their protective value against flooding and erosion, do not consider that these features are actually shifting position.

RESPONSE: The shifting position of the beaches is more fully described in Section 5, Coastal Issues. It would be redundant to repeat the description again.

8. COMMENT: The NYCZMP should be expanded to include provisions supporting sand and gravel mining.

RESPONSE: See Policy 15 and additional information added in Section 5.

9. COMMENT: There has been inadequate Federal-State coordination in preparation of the program.

RESPONSE: Appendix C adequately documents Federal-State consultation. In addition to statewide public hearings, copies of various drafts have been sent to Federal agencies with requests for comments. Ongoing consultation will continue during program implementation.

10. COMMENT: The environmental analyses of the NYCZMP is more of an explanation and rationalization of the proposed program than it is an analysis. It says future impacts will be recognized by the EIS but does not document them.

RESPONSE: The document adequately describes and analyses the impacts of the proposed program. In any situation when discussing likely future impacts, the impacts cannot be documented.

11. COMMENT: Page 20 - Paragraph 3 - DOI suggested updated statistics.

RESPONSE: See revisions, suggestion incorporated.

12. COMMENT: Page 24 - The Hudson River is used as a drinking water source by Poughkeepsie.

RESPONSE: See revisions, suggestion incorporated.

13. COMMENT: Page 25 - Paragraph 3 - suggests addition of two fish.

RESPONSE: See revisions, suggestion incorporated.

14. COMMENT: Page 27 Paragraph 3 - identify lake sturgeon and add information on stocking program and hatchery.

RESPONSE: See revisions, suggestion incorporated.

15. COMMENT: Page 46 - All potential and existing pollutant sources should be determined and recorded to the extent possible.

RESPONSE: To do so would add unnecessarily to the length of the document and is not a requirement for approval under the CZMA.

16. COMMENT: Page 49 - Continued interagency involvement is essential. The NPS can better inform its visitors of such issues with better interagency coordination.

RESPONSE: See revision, suggestion incorporated.

17. COMMENT: Page 63 - A discussion of mineral resources should be included in Section 5 - Coastal Issues. The NYCZMP should indicate basic mineral information and describe how the program supports necessary mining activities.

RESPONSE: See expanded discussion of sand and gravel extraction in Section 5.

18. COMMENT: Page 70 - This section should address the impact of pollutants upon the developing salmonid fishery of Lake Ontario.

RESPONSE: These impacts are addressed in paragraphs 1, 2, & 3 of page II-5-7.

19. COMMENT: Page 74 First Paragraph - Text should be changed to reflect difference in dunes on Long Island and Lake Ontario.

RESPONSE: See revision, suggestion incorporated.

20. COMMENT: Page 77 Fourth Paragraph. Indicate that Lake Ontario Shoreline Protection Study is looking into means of providing cost-sharing for shoreline protection.

RESPONSE: See revision, suggestion incorporated.

21. COMMENT: Pages 131-133 - In view of the Fish and Wildlife Service, landfill projects in the near-shore areas of a major port may not always be acceptable even if the adverse impacts are minimized.

RESPONSE: The CZMA does not affect the Services' responsibilities to deny permits where it determines them inappropriate. We are anticipating that the NYCZMP will serve to help coordinate various Federal and State agencies with overlapping responsibilities and that all efforts to resolve such differences will be attempted.

22. COMMENT: Page 141 - This page should either be deleted or more clearly define why certain types of development are exempted and what constraints still do apply.

RESPONSE: The reasons why these are exempted are clearly stated in the text. All the other coastal policies except Policy 5 still apply to these eight exempted uses.

23. COMMENT: Page 155 - Non-point source pollution should be recognized in the impact analysis of this policy.

RESPONSE: See additions made.

24. COMMENT: Page 167 - We support Policy 11, but caution that long range trends of erosion and accretion may be erratic.

RESPONSE: Agreed. This difficulty is recognized in the "Shoreowners Protection Act" by the required review of recession rates every ten years or less if warranted.

25. COMMENT: Page 175 - We do not believe the State or this CZMP can establish a scientifically justified success probability to determine what is a reasonable probability "of erosion control success". Natural sediment re-establishment should be considered.

RESPONSE: While it may be difficult to define absolutely "reasonable probability" the intent of the policy and of "the Shoreowners Protection Act" is clearly to impose performance standards on the use of erosion control structures. Natural sediment budget re-establishment has been considered and is encouraged in Policy 12.

26. COMMENT: Page 185 - Protecting existing man-made structures are generally costly, ineffective and counterproductive on natural barrier islands. Numerous existing private structures on Fire Island could present long-term problems.

RESPONSE: The limiting nature of the policy fully accounts for the problems mentioned.

27. COMMENT: Page 187 - Reshaping natural dunes conflicts with NPS management policy at Fire Island National Seashore.

RESPONSE: The reshaping of dunes is not included in Policy 17 as a non-structural measure. In any event, the Fire Island National Seashore is classified as excluded Federal lands.

28. COMMENT: Page 245 - Policy 26 is generally acceptable provided agricultural activities do not adversely impact aquatic and ground water systems.

RESPONSE: Agreed.

29. COMMENT: Page 265 - Energy resource recovery on the OCS could significantly impact the ocean and inner bay of Fire Island National Seashore. The impact analysis of this project should recognize such potential.

RESPONSE: See revision, suggestion incorporated.

30. COMMENT: Page 269 - The periodic adverse effects of offshore sewage sludge disposal at FIIS-NS gives us serious reservations about such offshore disposal and lead to support of Corps of Engineers' Interagency Steering Committee.

RESPONSE: Your concerns were adequately reflected in the policy in the DEIS.

31. COMMENT: Page 279 - The guidelines established in the policy are praiseworthy but difficult, if not impossible, to enforce. We recommend local site specific dredge spoil plans and that NPS be involved where relevant.

RESPONSE: Agreed. Local site specific dredge spoil plans could be conducted with coastal management funds. A dredging plan for Long Island has been prepared by the LIRPB and ten-year plan for the Hudson River has been prepared by the Corps of Engineers.

32 COMMENT: Page 283 - This is an excellent policy to minimize non-point source discharges and could be refined by local management plans.

RESPONSE: Agreed.

33. COMMENT: Page 285 - Despite these rules and regulations, ground water contamination on Long Island is increasing. This presents a threat to Fire Island National Seashore water resources.

RESPONSE: See clarifications.

34. COMMENT: Page 297 - We concur fully with this policy. However, the impacts on mosquito control programs should be considered in greater detail.

RESPONSE: Mosquito Control activities are addressed in both the Fresh Water Wetlands Act (Section 24-0701.6) and Tidal Wetlands (Section 25-0401.5) See pages 58 and 50 respectively in Volume 2 of this document for these discussions.

35. COMMENT: A list of changes to DOI agency names are submitted.

RESPONSE: Changes incorporated.

36. COMMENT: Page 336 - Federal licenses or permits are not in themselves subject to consistency, nor are OCS plans; it is the activities requiring a Federal license or permit which are subject to consistency review.

RESPONSE: See change in title and text on page II-9-14 on licenses and permits and OCS plans to reflect it in the activities.

37. COMMENT: Page 345 - "Department of Interior, Mineral (sic) Management Services": Permits to drill are exempt from CZM review by 15 CFR 930.80, if the activity to be permitted is already subject to review in the Plan of Exploration or Plan of Development (POD) review process. OCS pipelines, gathering and flow lines described in detail in approved POD's would likewise be exempt from further CZM review.

RESPONSE: Agreed, if it is an activity described in detail in the POD.

38. COMMENT: Page 370 (Figure 6) - It is imperative that any developmental activities be closely coordinated with Gateway National Recreation Area (GATE-NRA), as well as the U.S. Fish and Wildlife Service (USFWS).

RESPONSE: Agreed.

39. COMMENT: Page 348 5th Paragraph. The text should indicate that not all commerical fishing in the Hudson River has been banned, but only for those species which continued testing show to contain unsafe levels of toxic materials.

RESPONSE: See revisions.

40. COMMENT: Pages 422-423 - In coordination with the Corps of Engineers, positive steps should be taken to assure that "clean and suitable" dredge sands are not dumped at sea but used in a more useful manner (beach nourishment, etc.)

RESPONSE: See revisions.

41. COMMENT: Page 471 - Exxon spudded its first well in the Baltimore Canyon in 1978, not 1976.

RESPONSE: Change incorporated.

42. COMMENT: Page 482 - Policy 39, New York City Policy J). The recommendation for re-negotiation with extension of the major landfill activity in GATE-NRA is not consistent with written agreements and documented understanding by NPS that such activity will not continue beyond December 31, 1985.

RESPONSE: Discussion of re-negotiation has been deleted. Current agreements call for the closure of Fountain and Pennsylvania Avenue landfills by 12/31/85. New York City is aware of FAA, USFWS, and NPA concerns and will continue to cooperate with all Federal, State and local agencies with regard to end-use plans and future closures.

43. COMMENT: Page 632 (Item 4) - While true as far as it goes, this section deals with only the response during a given storm; a greater time frame is necessary to include the effects of stabilization of the barrier. In the next year, more will be known about how important the inlet, overwash, and wind transport processes are on Long Island based on the expected results of the Federal interagency study of beach erosion control and hurricane protection on southern Long Island.

RESPONSE: As new management techniques appear scientifically valid, they can be incorporated into the program: we look forward to the results of this study.

44. COMMENT: Page 636 (Item aa.). There are no criteria for establishing how the "recession rate" is to be consistently measured. What is the "long term" time duration base, does it include major storms, and which line of retreat is measured "receding edge" or MLW (mean low water)?

RESPONSE: For clarification, see Section 505.3(j); which defines "structural hazard area". The basis for the calculation of long-term recession rates includes historical aerial photography as well as current photography flown especially for this purpose, maps and field surveys. The time base for recession rate calculations is 30 years but the data will be scrutinized to ensure that major storms do not distort the record.

45. COMMENT: Page 638 (Item 11). "Toe" should be the lowest point on the slope of the dune; either where it joins the beach or in the intervening swale between the primary and secondary dunes.

RESPONSE: See revision.

46. COMMENT: Page 641 (Item b). It is very difficult to establish or document in advance that a proposed structure will (or will not) cause a measurable increase in erosion rates nearby.

RESPONSE: Given the other two criteria that must be met, this standard appears reasonable. The burden of proof is on the applicant to show no measurable increase.

47. COMMENT: Page 645 (Item 7). What is the penalty and means for enforcement of these provisions to limit use of motorized vehicles on beaches?

RESPONSE: The "Shoreowner's Protection Act" contains no provisions for penalties. However, the municipal, county or State agency administering local erosion programs has available various legal sanctions to impose on violators of any of the sections of the Act.

48. COMMENT: Page 649 (Item b). We are aware of few if any erosion protection structures which have demonstrated success in controlling long-term beach erosion.

RESPONSE: Section 505.9(6) must be considered in conjunction with subsection (c) which requires a long-term maintenance program for their replacement as needed. Further, the State's coastal area has a wide range of shoreline environments some of which are more responsive to structural solutions.

49. COMMENT: Page 650 (Item b). It should be noted that the control of local bluff relief alone is not necessarily well correlated with the recession rate, and hence the setback requirements are rather arbitrary.

RESPONSE: These requirements are for moveable structures within the hazard area. The bluff set backs are correlated with recession rates but are designed to avoid new development on the portion of the bluff prone to sudden failure along slip planes.

50. COMMENT: Page 652 (Item 3). Because of the deficiencies regarding the lack of an established methodology for determination of recession rates (as noted above on page 636), anyone with a newer, albeit inferior, data set could challenge hazard designations and tie up the appeals processes. What is the long term? What is the acceptability of data resources such as field surveys, maps or aerial photos?

RESPONSE: The 30 year setback is established in "The Shoreowner's Protection Act." The hazard designations are based on field surveys, maps and current and historical aerial photos. The sole acceptable basis for appeal of a recession rate is to show that it has been incorrectly calculated (Section 505.11). See also response No. 44.

G. Nuclear Regulatory Commission
Frank W. Young
State Relations Section

COMMENT: We find that the program, as far as the siting of energy facilities is concerned, has been structured on existing regulations and policy. We are familiar with these and have cooperated with New York on the review of proposed facilities. We, therefore, have no comment.

RESPONSE: No response necessary.

H. Department of Transportation
Richard F. Walsh, Director
Office of Economics

1. COMMENT: Many of the policies, particularly #1, 7, 20 and 26 are sound and well developed.

   RESPONSE: No response necessary.

2. COMMENT: Policy 14 (erosion protection structures) - By prohibiting the construction and reconstruction of these structures where there would be a measurable increase in erosion or flooding at or near the site, no recognition is given to the protection of existing investments in the area.

   RESPONSE: Normal maintenance and repair of existing erosion protection structures does not require an erosion hazard area permit (see proposed Coastal Erosion Management regulations, Part 505, Appendix A). Existing investments can be protected provided the methods chosen for protection, structural or nonstructural, meets the regulations, standards and criteria necessary to implement this policy; which are contained in the guidelines for the policy and in Appendix A. Note also that if the reconstruction essentially reproduces the old structure, there is less likelihood that it would cause a measurable increase in erosion.

3. COMMENT: Policy 22 (shoreline development and provisions for recreation) - Unfortunately, civilian recreational use of Coast Guard and other military facilities on a regular basis cannot be allowed due to safety and security problems.

   RESPONSE: We agree; although for some locations, land areas not directly or immediately needed by the facility could, with the permission and cooperation of the Coast Guard, be used periodically for recreation.

4. COMMENT: Policy 23 (historic resources) - The use of a 500 foot perimeter as a boundary of environmental impact seems arbitrary (pp. 232-33).

   RESPONSE: A 500 foot perimeter is used because numerous New York State land use regulations use this figure in calling for review of adjacent uses (State parks, municipal boundaries, etc.)

5. COMMENT: Policy 28 (ice management practices) - The Coast Guard is unaware of any past adverse effects from its domestic icebreaking operations on electric power.

RESPONSE: Past ice management activities by the Coast Guard may not have had adverse effects on the production of hydro-electric power. However, the intent of this policy is to require, for present and future activities, the assessment and prevention or mitigation of adverse impacts on fish and wildlife, the production of hydro-electric power, and shoreline erosion or flooding.

6. COMMENT: Policy 34 (discharge of waste material from vessels) - To prohibit discharge of sewage from all watercraft seems inconsistent with previous statements reflecting the desirability of providing less than secondary treatment for wastewater treatment plants discharging millions of gallons of sewage per day, while watercraft discharges are relatively insignificant.

   RESPONSE: Discharges are already being regulated by the State under Navigation Law (Section 33-C). The prohibition of vessel waste disposal at discrete locations (such as significant fish and wildlife habitats, recreational areas and water supply areas) should provide a very effective means of protecting these areas. The effect of these vessel wastes at these particular areas is by no means insignificant. On the other hand, recent scientific studies indicate that it is not always ecologically desirable to require secondary treatment of sewage being discharged into open marine environments where assimilative capacities are great and ambient nutrient levels are well below acceptable State standards.

7. COMMENT: Policy 35 (dredging and dredge spoil disposal) - No recognition is given to the difference in environmental and economic effects from maintenance versus new dredging, nor is there a discussion on what critical areas and impacts are most important to avoid and when.

   RESPONSE: Additional guidance necessary to determine consistency of an action with this policy has been added to the explanation of policy. Appropriate references have also been cited.

9. COMMENT: Policy 44 (wetlands) - It would be useful to list at least the basic standards for New York's four categories of wetland uses.

   RESPONSE: Standards for the four categories of wetland uses are provided in the regulations found on page 94 of Volume II.

10. COMMENT: Mitigation measures for wetland development should be discussed.

    RESPONSE: See Freshwater and Tidal Wetland regulations in Volume II, which include mitigation measures.

11. COMMENT: There is a need to include specific policies on coastal structures (bridges, submerged infrastructures, dams, etc.).

RESPONSE: We disagree. The direct and significant impacts on the coastal area of activities involving coastal structures/construction are adequately addressed and considered in the comprehensive set of 44 policies described in Part II, Section 6.

12. COMMENT: There is a need to distinguish types of water bodies (rivers, lakes, ocean, etc.) and ecosystem/habitats (shellfish beds, finfish, migratory pathways, etc.) and to integrate these elements into a coherent set of policies.

RESPONSE: The policies described in Part II, Section 6, are applicable to the entire coastal area. Policy 7, the protection of significant fish and wildlife habitats, is the primary policy which addresses the protection of habitats. The variability in habitats that exists in rivers, lakes, wetlands and other types of subecosystems is accommodated for in the new policy guidelines provided in Policy 7.

13. COMMENT: On page 104, paragraph 4: the words "waters of the United States, including the territorial seas" should be substituted for "estuarine" in the discussion of marine sanitation device regulations (from 33 CFR 159.1).

RESPONSE: See revision.

14. COMMENT: Page 338, paragraph 5: We recommend that the New York State Department of Environmental Conservation (DEC), rather than the Department of State, handle consistency reviews for bridge projects since all bridge permit actions require, at minimum, a water quality certificate issued by the DEC. Often wetland and construction permits are also required. This would make for better coordination between Federal agency applicant and State.

RESPONSE: Only one State agency may be designated as the sole reviewer of Federal consistency determinations (15 CFR 9/30.18). The Department of State's mandate makes it most suitable for the variety of policies in the Program. DEC input to this decision will be important.

15. COMMENT: Page 339, paragraph 3: All Coast Guard bridge permit actions require circulation of a public notice. New York's requirement for public notice for license/permit consistency review would be combined with the Coast Guard's process to minimize delays and paperwork.

RESPONSE: The suggestion is appreciated and contact will be made with the Coast Guard, following Federal approval, to examine the possibility of combining permits. Policy 6 on page II-6-31 calls for expediting permit procedures and Department of State gives this a high priority. The U.S. Coast Guard's cooperation in this matter is welcome.

16. COMMENT: Page 343 of the document lists Coast Guard activity which the State of New York feels likely to require a consistency determination including:

a. Location, placement or removal of navigation devices. Although generally stated, we assume this refers to short range aids, buoys, daymarks, radar towers, etc. This does not directly affect the coastal zone and should be deleted;

b. Expansion, abandonment, and designation of anchorages. Anchorages are not licensed or permitted, they are designated by regulation;

c. Expansion, abandonment and designation of lightering areas. Lightering areas are not licensed or permitted. This does not directly affect coastal zone and should be deleted;

d. Expansion, abandonment, and designation of shipping lanes. Shipping areas are not licensed or permitted, they are designated by regulations. This does not directly affect the coastal zone and should be deleted.

e. Expansion, abandonment, and designation of pilot areas. The Coast Guard does not establish pilot areas. The intent of this particular citation is unclear to us. Contact with personnel from the New York Department of State did not clarify this issue since they also were unsure as to its reference. This should be deleted.

f. Ice management practices and activities. This does not directly affect the coastal zone and should be deleted.

RESPONSE: Regarding items a, c, d, and f, we disagree. These activities may directly affect New York's coastal area and are subject to the Federal consistenty provisions of the NYCMP. Regarding item e, pilot areas, this has been deleted. Regarding the comment that b, c, and d above are not licensed and permitted activites -- we agree. However, they are direct Federal activities and therefore should not be deleted from consistency review. They will be listed in the FEIS under Table 2, Section 1, Direct Federal Activities and Development Projects. Regarding item b, navigation devices, these activities have been revised and are now more narrowly defined. These revisions are intended to avoid unnecessary submissions of consistency certifications.

17. COMMENT: Appendix D, addressing excluded Federal land on pages 737-739, requires a few corrections:

a. Bellport Station and St. George Base should be deleted (the Coast Guard no longer owns them);

b. Cape Vincent Light Station should be listed as containing 0.6 acres;

c. Carlton Island Light Station is now owned and maintained by the St. Lawrence Seaway Development Corporation. The complete reference to Carlton Island Station should be deleted;

d. The reference to Gallo Island listed with properties under license to the U.S. Coast Guard, Ninth Coast District, should be deleted;

e. The reference to the HF/FM Antenna Tower in Rochester listed with properties under license to the U.S. Coast Guard, Ninth Coast Guard District, should be deleted.

RESPONSE: Corrections have been made as suggested.

Federal Aviation Administration
Elliott Summer

1. COMMENT: Wording on page 337 suggests all FAA activities in the State would need a consistency determination.

   RESPONSE: See changes in wording which inserts "located in or directly affecting the coastal zone."

2. COMMENT: Page 482 recommends two landfill sites at Gateway National Recreation Area have their termination dates extended so that end-use site plans can be fully developed. These two sites present a serious bird hazard to aircraft operations in to and out of JFK Airport. There is time to develop the land use plans before the 1985 closure date.

   RESPONSE: Current agreements call for the closure of these landfills by 12/31/85. New York City Department of Sanitation is exploring alternative means to waste disposal and is moving forward with the planning phases of two resource recovery facilities. These projects would help reduce the amount of waste currently being landfilled.

   New York City Department of Sanitation is required through NYCRR, Part 360 to develop end-use plans for all landfills operated by the City. End-use plan for Foundation Avenue should begin shortly.

   New York City has tried several tests of proposals designed to disburse the seagulls. Unfortunately, none of the procedures tested have been shown to be effective. New York City has always been responsive to any program the FAA is interested in pursuing to help ameliorate the seagull problem and will continue to fully cooperate.

SECTION 2

RESPONSES TO STATE AND LOCAL WRITTEN COMMENTS ON THE DEIS

A. W. C. Hennessy
Commissioner
New York State Department of Transportation

1. COMMENT: For many of the Department of Transportaion projects multiple consistency determinations will be necessary. This amount of effort seems excessive and redundant. This process is further complicated at the Federal level, for permit and funding actions are governed by different procedures and additional policies. Administrative efforts could be reduced if a "lead agency" was made responsible for the consistency determination which is based upon a single set of criteria.

   RESPONSE: When two or more Federal agencies are involved in determining the consistency of a project with a state's coastal management program, the agencies are encouraged, but not required, to coordinate their reviews and develop a single consistency determination. If Federal agencies choose this approach, administrative efforts will be reduced. It is expected that the evaluation of a project involving Federal actions will be performed during the NEPA review process. Consistency determinations are made with a single set of criteria. Federal agencies utilize the policy statements, explanations and guidelines in the program document. State agencies use the DOS Part 600, Section 600.5 regulations which contain the same criteria except for criteria which are a part of other existing State law already applicable to the actions of state agencies. There is not a "lead agency" for making consistency determinations (each Federal agency has the responsibility for determining the consistency of its proposed actions in the coastal area). However, the NYS DOS has been designated the State "lead agency" for review of consistency determinations.

2. COMMENT: The discussion of the Federal consistency process in the CMP/DEIS document does not identify a class of projects which have no significance and thus do not require a consistency determination. There are many Department of Transportation projects which are of small magnitude and have no significance to the objectives of coastal policies. Projects which are categorically excluded from NEPA should not be subject to the consistency process.

   RESPONSE: Specific types of transportation projects and activities which are likely to affect New York State's coastal area are subject to the Federal consistency process if identified in Table 2, pp. II-9-18 to 25 Federal agencies determine if a proposed project will affect the State's coast. Federal regulations pertaining to this process do not provide for categorical exclusion such as those under NEPA. The State's consistency process does exclude actions based on their significance. Actions which are considered "Type II" under SEQR are not subject to the state consistency procedure. Further, any actions which have been excluded from the SEQR provisions, are excluded from the State agency consistency process.

3. COMMENT: The discussion on page 3 concerning the lack of coordination among State agencies is misleading. The SEQR process requires and has resulted in effective coordination among agencies. Attributing successful coordination to CMP is inaccurate.

   RESPONSE: This discussion has been revised to reflect more accurately the coordination among state agencies.

4. COMMENT: The A-95 process is not working effectively and should not be used for Federal consistency purposes. An alternative means of handling Federal consistency determination should be found. NEPA is an adequate mechanism for determining consistency.

   RESPONSE: If the A-95 process is found to be ineffective, the Department of State will work with the Federal agencies to develop other means of notification for financial assistance activities. NEPA will be used, to the extent possible, for consistency purposes.

5. COMMENT: Staff training on the CMP and its requirements will be essential for the Department of Transportation.

   RESPONSE: The Department of State will offer its assistance in such training endeavors.

6. COMMENT: The CMP/DEIS indicates that State agencies will be eligible for funding of their consistency review activities. The Department of Transportation has estimated that such activities will cost over $50,000 per year.

   RESPONSE: No response necessary.

7. COMMENT: The policy pertaining to the protection of cultural resources is not coordinated with and extends beyond numerous existing regulations. The policy does not allow for balancing impacts on historic resources with other social, economic and environmental consequences. Existing regulations achieve the policy's objective.

   RESPONSE: Article 42 of the Executive Law contains a general policy that calls for the restoration and protection of historic and cultural resources. The resources enumerated in the guidelines are already covered by the existing programs, except for a designated local landmark within the boundary of an approved waterfront revitalization program. This is consistent with Article 42 which requires that local waterfront programs promote and preserve historic and cultural resources and re-use of existing building stock. The actions of state agencies are to be consistent with such programs to the maximum extent practicable. The guidelines under this policy are drawn from the U.S. Secretary of Interior's guidelines for the rehabiliation of historic buildings. Thus, this policy and its guidelines are coordinated with other existing regulations.

As to the issue of balance, this is provided for in SEQR (Part 617), and in DOS (Part 600) regulations. In both regulations, procedures are designed to achieve the balance between competing values.

8. COMMENT: In many instances, the landward boundary of the coastal area is a roadway or some other right-of-way (ROW). This is reasonable, but it subjects improvements requiring additional ROW to the consistency process. If this ROW land does not have any coastal significance, then minimal ROW acquisition should not significantly affect the coastal area. Some mechanism should possibly be provided to faciliate the implemenation of minor ROW widening projects.

   RESPONSE: In most instances, the shoreward side of an existing ROW is considered the landward boundary. Thus, widening projects which are landward of this boundary would be outside the coastal area. In certain locations throughout the State's coast, existing ROW's are close to the shoreline. In those instances, the entire ROW and/or a specified distance landward of the ROW is in the coastal area. If these minor widening projects are deemed a "Type II" for SEQR purposes, then they would not be subject to the state consistency process. Even if not Type II, the CAF addresses coastal issues expeditiously and if determined not to have a significant affect, the CAF could be used as a quick tool for consistency. If Federal funds are to be utilized on the project, then the appropriate Federal agency would determine if the project affects the State's coastal area.

9. COMMENT: A special study on the need for treating stormwater runoff from roads, parking lots, lawns and industrial sites should be conducted.

   RESPONSE: The feasibility of such a study will be investigated.

10. COMMENT: The discussion on state alternatives is not sufficient. Estimates of the amount and duration of program funding, the magnitude of administrative costs and project delays are not provided. The benefits of Federal consistency are discussed, but the possiblity of achieving a similar degree of coordination through existing procedures is not examined.

    RESPONSE: The proposed state action alternative has been revised to include estimates on the amount and duration of funding and costs to administer the CMP. Project delays are not anticipated, for the consistency processes -- both state and Federal -- are tied into or can be accommodated within existing review procedures. Under present Federal review procedures, Federal agencies are not required to uphold existing state policies or positions. Federal consistency requires Federal agencies to adhere to a state's coastal policies. In many instances the review procedures will be shortened as a result of the consistency procedures. This is significantly stronger than mere coordination.

11. COMMENT: Due to the limited availability of CMP funds, local governments should be informed of the level of financial assistance they they could receive before developing local programs.

    RESPONSE: Refer to Part II, Section 4, pp. II-4-18 to20 which discusses program funding, and Section 10, Part II.

12. COMMENT: The discussion on the Barge Canal (p. 66) should be deleted, because it does not accurately describe the operations of the canal and with the exception of two terminal points is outside the coastal area.

RESPONSE: The discussion on the Barge Canal has been deleted.

13. COMMENT: The term "Geographic Area of Particular Concern" should be deleted from the New York City program

RESPONSE: The term has been deleted.

14. COMMENT: Changes to the New York State CMP and proposed regulations should be included in the FEIS.

RESPONSE: Such changes are required to be incorporated. Refer to this document.

B. Mary P. Bass
State of New York Metropolitan Transportation Authority

1. COMMENT: The MTA objects to guidelines which in part define a reduction in the existing level of public access to recreation resources in terms of reductions in the level of public transportation service and/or increases in fares to the resources. MTA feels that results of such guidelines would lead to the establishment of an unfair and unfeasible policy of reduced fares and/or subsidized service for a special group of users.

RESPONSE: The following modification has been made to this guideline to take into account MTA's need to make changes in service in order to satisfy systemwide objectives: "...use, and such reduction cannot be reasonably justified in terms of meeting systemwide objectives." In addition, with respect to increases in fares to the recreation resources, the underlined modification has been made to Subsection A(1)(d)(4) which should satisfy the concern about furthering differential fares, not now a policy: "There are substantial increases in the following: already existing special fares of public transportation to a public water-related recreation resource or facility;..."

2. COMMENT: MTA questions whether OCZM has the authority to adopt "guidelines" regarding mass transportation fares in the New York metropolitan region.

RESPONSE: The State of New York, not OCZM, is adopting the guidelines, since they are part of New York State's Coastal Management Program being submitted to OCZM for Federal approval.

C. Anthony Tozzoli
Director - Port Department
The Port Authority of New York and New Jersey

1. COMMENT: The discussion under Policy 3 in the New York City's local program indicates that the development plans and activities of the Port Authority will be subject to review by the Secretary of State and the City Coastal Commission. This is interpreted to mean that such plans and activities will be subject to study and not a review and approval procedure. The latter would be contrary to the intent of the bi-state legislation and in violation of the compact creating the Authority.

   RESPONSE: Article 42 requires all state agencies to be consistent with the coastal policies. It provides no distinction between types of State agencies. State agencies must also be consistent to the maximum extent practicable with an approved local waterfront revitalization program. As required by the DOS Part 600 regulations and amendments to DEC Part 617, these determinations of consistency would be made by the State agency. The Secretary of State has the authority to review, evaluate, and issue recommendations and opinions concerning programs and actions of state agencies which may have the potential to affect the policies and purposes of this article. In the event the Port Authority were determined to be exempt from review by virtue of its bi-state legislation, it will be required to conform to the state program to the extext permissible under Section 307(e) of the CZMA.

2. COMMENT: Since the stated purpose of Policy 3 for the NYC WRP as explained on page 452 of the DEIS is to "ensure effective interface...", the following modification to the language of the explanation is suggested: "...to ensure effective interface between the Port Authority and State and local waterfront revitalization programs, the Secretary of State and City Coastal Commission will consult with the Port Authority in the development and implementation of the Port Authority's development plans and activities within coastal boundaries."

   RESPONSE: The principal objective of Policy 3, as stated on page II-6-17 of the FEIS, and as elaborated on page 74 of Appendix G is "..to focus efforts on direct and positive actions to support the major port agencies, the New York City Department of Ports and Terminals and the Port Authority of New York and New Jersey, in order to promote their continued and increased vitality." To assure that this policy is achieved within the New York City coastal areas, the City Coastal Commission and the Secretary of State will consult with the Port Authority of New York and New Jersey, the Department of Ports and Terminals, and other affected interests early in the development and implementation of pertinent plans and activities. The Port Authority would determine the consistency of their proposed actions with the approved programs. Refer to the above response.

3. COMMENT: With regard to Policies 19 and 20, the merits of public access to the waterfront are recognized, and the consideration of safety which is cited in the CMP/DEIS is strongly supported. However, consideration must also be given to cost, insurance, liability and available space. Similar consideration should be incorporated under Policies 24 and 25 (Scenic Resources) so that the construction, operation and maintenance of essential port facilities are not constrained.

   RESPONSE: Under both access policies, safety and cost considerations are to be factored into decisions affecting the provision of increased public access. The cost consideration would include the concerns for insurance, liability and space. Also, the provision of access would not be required until some public agency or private association assumes responsibility for maintenance and liability. As for the policy pertaining to significant scenic resources, port operations and construction that impair such resources would be inconsistent with this resource protection policy. However, it is possible that essential port facilities could be constructed elsewhere along the coast. Policy 25 suggests that consideration be given to protecting the scenic quality of the coastal area. Generally, this can be accomplished through proper siting of structures, screening and other efforts which would not constrain existing and future port activities.

D. Robert D. Vessels
Director, Office of Environmental Planning
NYS Department of Public Service

1. COMMENT: Access roads are maintained in connection with transmission rights-of-way (ROW). By working closely with involved utilities, these roads could also provide a means for implementing Policy 20.

   RESPONSE: Agreed

2. COMMENT: The Public Service Commission's (PSC) policy relating to recreational development of transmission ROW is decided on a case by case basis rather than being an automatic part of every order issued. However, joint funding of recreational development for ROW's has been stopped until research on the health and safety effects associated with such ROW's is concluded.

   RESPONSE: The discussion under Policy 22 B.3. has been revised accordingly.

3. COMMENT: In the DEIS Section 7.2.a.ii.1 (p. 303), it is not clear that an application for transmission facilities is made to the New York State Department of Public Service while an application for steam electric generating facilities is made to the New York State Board on Electric Generating Siting and Environment.

   RESPONSE: This clarification has been made.

4. COMMENT: The siting procedures in Article VII of the Public Service Law, discussed under Policy 27 of the New York City Program, relate to major electric and gas transmission facilities and do not apply to underground facilities located in cities with a population in excess of 125,000. Since new transmission facilities in the City of New York are likely to be located underground, their siting would not be reviewed pursuant to Article VII. Such facilities would, depending on location, be subject to a variety of State permit programs, including water quality and wetlands programs.

   RESPONSE: This information is now reflected under New York City Policy 27.

E. Louis M. Concra, Jr.
Director
Division of Regulatory Affairs
New York State Department of Environmental Conservation

1. COMMENT: The proposed filing requirement, with regard to "Unlisted" actions in the coastal area, is burdensome and unnecessary. The volume of activities affected by this requirement is potentially high. "Unlisted" actions receiving a negative declaration should be excluded from the procedural requirements of Part 600 regulations.

   RESPONSE: Article 42 of the Executive Law does not qualify which of the direct actions taken by State agencies should be subject to the consistency requirements contained in Section 919(1). In the development of the proposed Part 600 regulations, it was determined that "Type II" actions would not likely affect the achievement of the Article 42 policies. "Unlisted" actions, however, cover a wide range of activities which, even if they have nosignificant effect upon the environment, could either assist in or impede the achievement of coastal policies. The exclusion of this group of "Unlisted" actions would affect the capability of the Secretary of State to administer the State's coastal program.

2. COMMENT: The proposed Part 600 regulations should reflect the streamlining of regulatory requirements for insignificant "Unlisted" actions.

   RESPONSE: Streamlining existing and future State and other agencies regulations is one of the objectives of the CMP as well as the Office of Business Permits. This objective was, in part, achieved by incorporating the consistency requirements of Article 42 into the Part 617 SEQR regulations. In order to properly administer Article 42, however, additional procedures are necessary to ensure that State agency actions which do not have any significant effect upon the environment are being undertaken consistent with the coastal policies.

3. COMMENT: It should be made clear that the policies contained in an approved local waterfront revitalization program are not determinative on the matter of license issuance. Also, these policies are not to be substituted for specific standards and criteria contained in laws and regulations of State resource protection programs.

   RESPONSE: If a proposed State permit action is inconsistent with the policies of an approved local program, then that permit cannot be issued unless conditions are imposed on the permit which would result in the action being consistent with the policies. At no time, however, can a State agency issue a permit unless the proposed action complies with existing State standards and criteria. This requirement is found in Section 915(8) of Article 42 and Section 600.3(5) of DOS regulations.

4. COMMENT: On page 20 there is a mistake in the oil spill estimate for the North Atlantic field operations.

RESPONSE: This mistake has been corrected and the probability percent updated in accordance with U.S. Department of Interior information.

5. COMMENT: All bays and wetlands along Lake Ontario, and not just Braddock Bay, support bass and perch populations.

RESPONSE: The text has been modified accordingly.

6. COMMENT: The intent of the maps on pp. 38-42 is unclear. Maps of the boundaries and Federal lands would be more helpful.

RESPONSE: As indicated on page II-3-5 of the document, the purpose of the maps on pp. II-3-8 to 12 was to illustrate how some of the boundary criteria were applied in various ares of the State. Maps of the State's Coastal Area, showing boundaries and excluded Federal lands, were officially filed with state agencies in December, 1981. Inclusion of those maps in the CMP DEIS would have added considerable bulk to an alraady voluminous document.

7. COMMENT: The discussion on development in the section on coastal issues does not reflect comments previously submitted by DEC on infrastructure revitalization needs.

RESPONSE: The need to rehabilitate water and sewerage facilities are only part of the total need to revitalize and restore the State's deteriorating and underutilized waterfronts. In the guidelines on Policy 5, recognition is given to the need for rehabilitating essential public facilities and services. Also, the condition of these vital facilities are currently under study by the State Legislature. The results of that study may be incorporated into the CMP upon its conclusion and acceptance by the Legislature and Governor.

8. COMMENT: It was DEC's understanding that a separate policy statement on winter navigation would be included in the CMP DEIS.

RESPONSE: The Coastal Management Program does not contain separate policies on any given activity which may or may not be proposed. The Program policies have been developed and are intended to be used as criteria by agencies when making decisions on the appropriateness of any given proposed action. The policies address the potential effects on the coastal area of any proposed action. Incorporating a separate policy for winter navigation would set the stage for incorporating separate policies for each new major activity as it is being proposed. Over time this would result in an even lengthier, and ultimately outdated and useless document. The specific concerns which have been raised by DEC in regard to winter navigation are addressed in the State policies.

9. COMMENT: On page 73 the sentence should be changed to indicate that beaches are the most valuable coastal landform.

RESPONSE: Change has been made.

10. COMMENT: Changes should be made to sentences pertaining to damages caused by storms.

RESPONSE: Suggested changes have been made.

11. COMMENT: The issue discussion and policy on new energy sources should emphasize that Article 23 of the ECL prohibits production of liquid hydrocarbons in Lake Erie.

RESPONSE: The description of Article 23 under Policy 29 has been revised to reflect this prohibition.

12. COMMENT: The DEIS gives the impression that DEC has decided to proceed with the natural gas leasing program for the lands under Lake Erie. This decision has not been made.

RESPONSE: The explanation under Policy 29 has been revised accordingly.

13. COMMENT: On page 266 the reference to the Public Service Commission on the discussion on Article 23, Section 23-0305 of the ECL is incorrect.

RESPONSE: This reference has been deleted.

14. COMMENT: Comments previously submitted by DEC on the water resources issues section suggested that water quality as well as other water resources concerns should be discussed.

RESPONSE: The water resources section has been expanded to include a discussion on water supply and drought conditions. Other water resource related concerns raised by DEC are discussed under the flooding and erosion issues section.

15. COMMENT: The DEIS should contain more detail relative to the surveillance and cleanup program for oil and other hazardous substance spills which is discussed on page 11-5-46.

RESPONSE: There is considerable discussion of New York State's existing programs on this subject under Policies 18 and 36. Further information is provided in Appendix F, Volume 2. The comment on page 11-5-46 suggests, however, that possibly more could be done under the current authority of State agencies. Through the Coastal Energy Impact Program, the Department of State has funded the preparation of oil spill prevention programs for the eastern end of Lake Ontario and the St. Lawrence River. Similar programs were also developed for all the inlet areas along the southern coast of Long Island. These plans should supplement current State agencies' efforts.

16. COMMENT: The policy on water-dependent uses should be more specific as to how the siting of such uses is determined.

RESPONSE: As stated in the explanation of that policy such uses are to be sited at appropriate locations along the waterfornt. Guidelines are provided to assist decision-makers in determining the type of use and the actual site. The decision to approve an action rests with the appropriate State agency subject to the consistency requirements of Article 42, Section 919(1). This process is explained further under Policy 2 and in Section 4 of the DEIS.

17. COMMENT: The statement on page 123 that the mining of sand and gravel is a water dependent use that should be facilitated in the coastal area is not consistent with Part 505 of the proposed erosion regulations which would limit this activity in coastal erosion hazard areas.

RESPONSE: This policy applies generally throughout New York State's coast. If an activity, use, etc. is specifically prohibited or otherwise limited by existing State law and regulations, that activity cannot take place or, if applicable, must be modified to meet the State's requirements. This condition is contained in Article 42, Section 919(1) and in DOS' Part 600 regulations. Therefore, the inconsistency cited does not exist, and the erosion regulations will limit excavation in coastal erosion hazard areas.

18. COMMENT: Several minor wording changes should be made to the explanation of Policy 11 and the discussions on various State means to implement the policy.

RESPONSE: The suggested wording changes have been made.

19. COMMENT: Statement on page 178 Section B.3 is incorrect. State becomes involved only when local regulation is not accomplished.

RESPONSE: The discussion under this section references another section under Policy 11 where this distinction is clearly made. No change is necessary.

20. COMMENT: The discussions under Policy 27 and in the energy planning process section do not address the federal OCS oil and gas leasing activities, nor the State's policies in reviewing them.

RESPONSE: Policy 29 specifically addressed Federal OCS oil and gas leasing activities. The text in the energy planning process has been modified to take into account such activities.

21. COMMENT: The Federal consistency procedures applicable to OCS gas and oil activities do not reflect the Department of Environmental Conservation's major role in this subject area. DEC is the State's lead agency for OCS matters, and it was understood that the Department would coordinate all OCS reviews.

RESPONSE: Federal regulations, pertaining to the consistency of Federal agencies' actions with a State's coastal management program, require that the State designate one agency which would be responsible for coordinating the review procedure in the State and rendering the consistency determinations. This requirement prevents the sharing of that lead responsibility. As a result the Department of State must, as the designated agency, make such determinations. However, the Department is fully aware of DEC's role and responsibility on OCS matters and will consult with DEC on all OCS matters which are subject to a consistency determination. The discussion on this subject in the CMP DEIS has been modified to reflect this consultation process.

22. COMMENT: The CMP DEIS should identify the method for integrating implementing regulations with the NEPA process.

RESPONSE: The U.S. Department of Commerce consistency regulations urge Federal agencies to utilize the NEPA review process, whenever possible, to satisfy their obligations under these regulations. The CMP DEIS reinforced this recommended approach, for many documents produced under NEPA requirements will be used by the Department of State in concurring or objecting to the consistency determination of a Federal action affecting New York State's coastal area.

23. COMMENT: There is a need to identify and address the impacts of the coastal management program on individual projects approved through DEC's Construction Grants Program.

RESPONSE: Once the State CMP is approved, these projects must be consistent with the coastal policies.

F. Joseph P. Fraioli
Village Manager
Village of Mamaroneck
Mamaroneck, New York

1. COMMENT: The Village of Mamaroneck states that it has created a permanent Coastal Zone Management Committee and urges Federal approval of the N.Y.S. Coastal Management Program so that the Village can complete preparation of, and implement, a local Coastal Zone Management Program.

   RESPONSE: Thank you for your support. No further response needed.

G. Edith A. Mesik
Planning Director
Columbia County Planning Department
Hudson, New York

1. COMMENT: The Columbia County Planning Department states that the New York State Coastal Management Program would have many positive benefits for Columbia County, that the program goals are comprehensive, balanced and realistic, and that the program will protect and enhance the role of local communities in meeting coastal program goals through the preparation of a local waterfront revitalization plan. The Department recommends favorable review and approval of the program by the Office of Coastal Zone Management.

   RESPONSE: Thank you for your support. No further response needed.

H. Frances F. Dunwell
Scenic Hudson, Inc.
Poughkeepsie, New York

1. COMMENT: The erosion policies contained in Section 600.5 of the Department of State's regulations, which advocate the use of non-structural measures to mitigate property damages resulting from erosion, are not appropriate for the Hudson River shoreline. Recreational and other activities along the River require structural protection for erosion caused by ice and the wakes of passing ships. The policies are more appropriate for the Great Lakes and marine coasts. The prohibition for using public funds in the construction of such protective structures will eliminate the provision of access areas and boating activities.

   RESPONSE: The erosion policies referred to in Section 600.5 do not preclude the use and construction of protective structures in any portion of New York State's coastal area. The use of public funds is indeed limited, but it does not prevent structural approaches, specifically in instances where human life, new water dependent uses and existing development would be protected. Therefore, the erosion policies are appropriate for all of New York's coastal area, including the conditions which prevail along the Hudson River shoreline.

I. Samuel H. Sage
Executive Director
Sierra Club - Atlantic Chapter

1. COMMENT: The Department of State is not a natural resources protection agency and has no programmatic interest in the CMP. The Department of Environmental Conservation should be the lead agency or possibly a new, independent agency patterned after the Adirondack Park Agency.

   RESPONSE: Refer to the Response to Comment III, E, 12.

2. COMMENT: The Sierra Club is disappointed by the proposed Program and views it as a veiled raid on the Federal treasury coming up with a barely acceptable program at the last hour in order to qualify for Federal funds. Federal approval should be granted since it will provide for some limited interagency coordination and planning for coastal resources.

   RESPONSE: No response required.

3. COMMENT: The underlying weak legislation behind this program can be strengthened by the yet to be elected Legislature in 1983. The Sierra Club hopes that Federal approval will be contingent upon a good faith effort towards such amendments.

   RESPONSE: Federal approval is based on the adequacy of existing enforceable State authorities.

4. COMMENT: There has been almost no public participation and the Program document contains no recommendations that lead us to believe that the situation will get any better.

RESPONSE: Since 1975, when the State first began to prepare the CMP, over 1,000 meetings have been held by Department of State staff with local elected officials, environmental and development interests, civic groups, and others displaying an interest in providing positive and useful advice and the facts to be incorporated in the Program. In addition, the League of Women Voters, through its Speakers Bureau, conducted numerous meetings concerning this program throughout the State.

Three series of formal public hearings have been held in as many years. One series was conducted by the State Legislature. Two series of informal public meetings have also been held throughout the State, the last being conducted in May/June, 1982. The Department of State has also utilized the advice provided by the State Coastal Management Citizens Advisory Committee, formed in 1977. Many ad hoc advisory committees have also provided valuable information used in this program.

For the future, each local government desiring to prepare a waterfront revitalization program will be required to demonstrate it has reached a consensus as to the future of its waterfront, among the users, regulators, and those affected by the activities occurring in the coastal area. This will obviously require extensive public involvement.

5. COMMENT: The coastal boundary is inadequate and non-uniform, thus limiting protection of shorelines. The boundary should be set with objective natural resources criteria and not be based on administrative convenience.

RESPONSE: The coastal boundary was delineated based on criteria which included natural resource considerations among others. The following criteria were used: (1) utilize a one-tier boundary; (2) conform with the nearest cultural feature or political boundary; (3) include all land and water uses directly impacting coastal waters; (4) include any specially designated management areas; (5) include tidal and saline waters, wetlands, islands and beaches; (6) exclude present federally controlled lands; (7) provide buffer areas, where appropriate; (8) coordinate boundary lines with those of adjacent states; and (9) incorporate, to the greatest extent possible, local agency recommendations. In addition, the following special concerns, which include natural resource considerations, were recognized in the final landward boundary delineation: agricultural lands; viewsheds; power plant sites; historic sites; industrial areas; 100 year flood line; and coastal recreation areas.

Administrative convenience in establishing a coastal boundary is a Program requirement (15 CFR 923.31), i.e. the coastal boundary should be clear and exact enough to permit determination of whether property or an activity is located within the boundary.

6. COMMENT: The inadequate number and protection of GAPCs has been made moot by their elimination from the Program. Provision must be made for protecting critical resource areas and the Program does little in this regard.

RESPONSE: Special Management Areas (SMAs) is the term used in the CMP, not Geographic Areas of Particular Concern (GAPCs). Refer to PART II, Section 8 for a thorough discussion of the Program's Special Management Areas. Substantial provision is made for the protection of critical resource areas throughout the coastal areas. Refer to Policies 4, 7, 8, 12, 23, 24, 26, 27, 28, 31, 32, 33, 40, 41, 42, 43, 44.

7. COMMENT: The proposed amendments to SEQR regulations will not require adequate consideration of impacts of proposed projects on the coastal zone.

   RESPONSE: In addition to the considerations required to be analyzed in SEQR as it stands without the proposed amendments, the proposed amendments will require consideration of all the coastal policies listed in the proposed NYCRR, Title 19, Part 600, Section 600.5.

8. COMMENT: The regulations should not be limited to actions by State agencies.

   RESPONSE: Refer to the Response to Comment III, C, 1.

9. COMMENT: SEQR requires review and coordination and is not a regulatory cut with findings that are binding on anyone.

   RESPONSE: SEQR not only requires full disclosure of environmental impacts but also requires written findings that (a) the action to be taken is the one among the reasonable alternatives which minimizes or avoids adverse environmental efforts to the maximum extent practicable, and (b) to the maximum extent practicable minimizes and avoids those adverse environmental efforts revealed in the EIS. In addition, the amendments proposed for SEQR (617.9(c)(3)) will require consistency with the Part 600, Section 600.5 coastal policies.

   The findings just referred to have been interpreted as providing authority for agencies to condition or deny permits in order to address factors disclosed in an EIS. Miracle Mile Associates, v. DEC, 430 F. Supp. 2nd 440, July 10, 1980. Those factors will not include the coastal policies. See amendments to Part 617, Section 617.14(f)(10).

J. Sarah L. Johnston
Hudson River Sloop Clearwater, Inc.

1. COMMENT: Clearwater has been involved for over a decade in extensive public environmental education and Hudson Riverfront recreation activities. The Clearwater has helped set up a fishery resources management program for the Hudson, and has been involved with dredging issues, pesticide problems and water quality standards. The Clearwater strongly endorses and supports implementation of a coastal program for New York State.

   RESPONSE: Thank you for your support.

2. COMMENT: The CMP regulatory framework lacks a system for determining priorities among the forty-four coastal policies as well as any method for weighing the costs to coastal resources vs. the benefits of a particular project. Some system of conflict resolution should be included.

RESPONSE: Refer to the Response to Comment III, K, 5.

3. COMMENT: Regulations requiring State agencies to fill out coastal assessment forms (CAF) should be expanded to include a required notification process of a proposed action.

RESPONSE: A required notification process for proposed actions is provided for in every instance where any one of the questions on a CAF is answered "yes". DOS Part 600, Section 600.4 requires that a copy of that CAF, with a brief and precise description of the nature and extent of the actions, be forwarded to the Secretary of State.

4. COMMENT: The regulations which set forth requirements for certification of a project [19 NYCRR Part 600.4(2)(3)] should be changed to allow certification of a non-significant environmental impact only if more than one coastal policy is to be advanced (rather than conformance with only one policy).

RESPONSE: The necessity to advance one or more of the coastal policies is only part of the requirements for certification. Before undertaking an action, the State agency must certify that the proposed action will not substantially hinder the achievement of any (emphasis added) of the coastal policies and (emphasis added) advance one or more of such policies. Further, if the action will substantially hinder the achievement of any policy, four additional requirements must be met.

K. Bryan Luftglass
Sierra Club, Westchester-Putnam Group

1. COMMENT: In Section 2 "Coastal Regions of New York" there is no mention or coverage of Westchester County's Long Island Sound Coastline.

RESPONSE: Although that subregion is not specifically discussed in Section 2, the coastal issues and circumstances of this area were a determinant of the final program. The report "Hudson Valley Regional Element", including Westchester County's Long Island Sound Coastline, contains a discussion of the coastal issues of this area and was a major contribution to the final program.

2. COMMENT: It is imperative that as much coastal property as possible as rapidly as possible be set aside to preserve unique environments.

   RESPONSE: The Coastal Management Program recognizes the importance of preserving unique environments. Federal funds which may be allocated to the program may not be used for such acquisition. The CMP will actively seek programming of other funds to preserve such areas. Current DOS participation on the Hudson River Estuarine Sanctuary Program reflects such an effort.

3. COMMENT: The Agricultural runoff of pesticides as a source of toxic pollutants should be noted in the issue discussion on fish and wildlife.

   RESPONSE: Agree, the text will be revised.

4. COMMENT: While the discovery of oil under Lake Erie is unlikely, the potential for longer term damage from condensates associated with natural gas should be investigated.

   RESPONSE: Article 23 of the NYS Environmental Conservation Law prohibits production of liquid hydrocarbons in Lake Erie either alone or in association with natural gas. Therefore, any wells encountering appreciable amounts of oil on natural gas condensate must be plugged and abandoned immediately.

5. COMMENT: While the tidal range in the Great Lakes-St. Lawrence area may be relatively small, these bodies of water are subject to tidal movements.

   RESPONSE: The mean range of true tides on the Great Lakes is .03 meters, This is relatively small.

6. COMMENT: On page 23 it is mentioned that "14,130 cubic feet of debris enter the Hudson River annually". Do these statements imply that the difference (585,870 cubic feet) enters the Harbor annually, or are these statements inconsistent?

   RESPONSE: It is estimated that 600,000 cubic feet enters the New York Harbor annually.

L. William E. Miller
United Mobile Sportsfishermen, Inc.

1. COMMENT: Maps showing coastal boundaries should have been provided with the DEIS.

   RESPONSE: Maps showing the statewide coastal boundary for each coastal county, city, town, and village have been filed with the clerk of each jurisdiction and are available for inspection. The cost of printing and including a coastal boundary map with the DEIS would have been prohibitive.

2. COMMENT: Spawning and nursery areas in the Hudson River for striped bass, in Long Island's Great South Bay for weakfish, and in other areas for important species should be shown on the coastal area map.

   RESPONSE: Where these spawning and nursery areas meet the criteria for the identification as "significant fish and wildlife habitats", which should be the case in most of the above-cited instances, they will be shown on the coastal area map and a narrative prepared detailing information on that particular habitat.

3. COMMENT: Policy 9 for recreational use of fish and wildlife resources seems too oriented to freshwater and cities. It may need to be supplemented to cover saltwater access.

   RESPONSE: There was no intention to exclude or diminish the importance of recreational fishing in the marine waters of the coast. To emphasize its equal importance, a phrase to the effect has been added to the explanation of the policy.

4. COMMENT: Policy 19, dealing with public access to public water-related resources and facilities, may discriminate against suburban and non-urban areas because of guideline A(4) dealing with State agency plans and programs for increasing public access and their priorities for particular areas.

   RESPONSE: In developing the State CMP, the DOS discovered that the most severe access deficiencies occur in urban areas. The guidelines for implementing the access policy recognizes this situation by emphasizing the need to give a higher priority for access projects in urban areas at the present time. Over time, as projects are completed to increase access in urban areas, the priority can change.

5. COMMENT: Existing ORU access routes in the coastal zone to the beach and along the beach should be mapped in order that they are recognized and protected.

RESPONSE: In the first year of the "306" CMP, all existing coastal public access will be located, mapped, and described in terms of mode, capacity, and condition. This will be the basis for a second year analytical phase to determine where and what kinds of increased access are desirable.

6. COMMENT: Policy 21, dealing with water dependent and water enhanced recreation, should specify that, all other things being equal, water dependent should be favored over water enhanced recreation.

   RESPONSE: Agreed. A sentence will be added in the explanation of the policy to reflect this change.

7. COMMENT: With respect to utility transmission facility siting, it is suggested that recreational vehicle trail use (for trail bikes, 4-wheel drive vehicles, and snowmobiles) also be considered a suitable recreational activity.

   RESPONSE: Agreed.

8. COMMENT: In Section 600.2 of the Draft DOS Part 600 regulations, the definition of "Actions" is too narrow by including only SEQR Type I or unlisted actions.

   RESPONSE: The definition of "Actions" was developed in response to the need both to keep the burden of review on State agencies at a reasonable level and at the same time ensure that all significant actions are covered. The DOS believes that the current definition meets both requirements.

NOTE: The following comments address the Draft Part 500 Regulations

9. COMMENT: Where non-movable structures are to be placed in a structural erosion hazard area, Section 505.7(b) would require construction of erosion protection structures which can act as a barrier to lateral access along the shore. This Section should be deleted because this requirement will adversely affect CMP access objectives (in spite of regulations against such effects). Only setback requirements should be applied and, in our view, structure loss is preferable to public access loss. Section 505.7(b) should be deleted.

   RESPONSE: The Part 505 Regulations are derived from "The Shoreowner's Protection Act", Article 34, ECL, which deals solely with erosion hazards. The Act sets rigorous standards for the use of erosion protection structures including: a requirement that there will be no measurable increase in erosion to the site or at other locations; and that adverse effects to natural protective features and natural resources must be minimized.

10. COMMENT: Section 505.8(c)(7) requiring vehicle travel seaward of the upper debris line or, when absent, the toe of the dune, and for no travel on vegatation, are all proper and supported.

RESPONSE: No response required.

11. COMMENT: Section 505.8(c)(8) is highly irregular and is condemned. Local governments always have the authority to regulate uses and do not need DEC permission. This program reveals a bias against our use that is not similarly shown for other inherently more destructive uses and thus selectively waives application of standards in only this particular instance. It is vehemently rejected and DOS and OCZM are urged to require its deletion.

RESPONSE: Provision deleted.

12. COMMENT: Again, a selective bias against motor vehicles is evident in Section 505.8(c)(9) which states that "Nothing in this Part authorizes trespass of motor vehicles on private lands". Does this mean that trespass by hikers, walkers and boaters is authorized? All trespass is covered under existing law regardless of mode, and is a ridiculous provision on its face and should be deleted.

RESPONSE: Provision deleted.

13. COMMENT: Section 505.8(d)(2) - prohibition of vehicular traffic on bluff faces is proper and supported.

RESPONSE: No response necesary.

14. COMMENT: Permit requirements for pedestrian dune crossings will inhibit their use and is regulatory overkill. Elevated walkways/stairways may not be the only viable technique. There is always the alternate option of periodically restoring the dune elevation.

RESPONSE: Ill-planned and poorly constructed pedestrian walkways and stairways can cause substantial damage to the fragile primary dunes, interfere with their dynamics and thus reduce their natural protective character which is recognized in "The Shoreowner's Protection Act." The Department of Environmental Conservation hopes that the permit requirement will be a benefit to applicants by providing technical assistance on the proper construction and design of such walkways.

15. COMMENT: Section 505.7(b) does not address the fact that erosion protection structures frequently impair public access to or along the coast. Bulkheading and backfilling with fill taken from the water side of the bulkhead often results in public movement along the shore being blocked by private property on the landward side of the bulkhead and by water on the waterside. At a minimum, mandatory public easements across such property should be required as a condition for permit approval, with appropriate structure design to permit such movement.

RESPONSE: See also the Response to Comment 9. above. "The Shoreowner's Protection Act" contains no provisions for such conditioning of permits in erosion hazard areas. However, see particularly CMP policies 9, 19 and 20 regarding public access to coastal resources. The inclusion of public access over such structures is encouraged.

16. COMMENT: Section 505.8(e)(5) - the prohibition of vehicular traffic on primary dunes is supported in concept but it should be modified to prohibit traffic dunes "except across designated vehicular dune crossings" to allow access and egress from the beach.

RESPONSE: See revision, suggestion incorporated.

M. Bernard J. Blum
Friends of Rockaway, Inc.

1. COMMENT: There is general dissatisfaction with the manner by which the Jamaica Bay/Rockaway area has been treated by the New York City Planning Commission's CMP. Numerous detailed deficiencies are cited. A principal recommendation is made to the establishment of a Task Force made up of representatives of the community and agencies with jurisdiction in the area. The Task Force would be responsible for setting goals for economic and recreational development conservation, and erosion control.

   RESPONSE: The NYC WRP deals with procedures to be utilized to manage the NYC coastal area. Specific projects for particular areas of the City, such as the Jamaica Bay/Rockaway area, will receive special attention upon implemenation of the WRP. Public participation in these activities will be achieved through the community board, and other mechanisms as appropriate.

2. COMMENT: There is no policy for preventing environmental degradation by private interests in the form of excessive rates of erosion.

   RESPONSE: Policies 13 and 14 are focused on preventing the construction or reconstruction of erosion protection structures if they adversely affect adjacent shorelines. New York City policies E and G add specificity to these policies and apply to both public and private actions. In addition, the Department of City Planning will be developing an erosion hazard area ordinance which will be in conformance with the State's Environmental Conservation Law, Article 34. This law provides for minimum standards and criteria to regulate actvities and developments, including the placement of erosion protection structures so there will be no measurable increase in erosion to the development site or elsewhere.

3. COMMENT: Numerous structural solutions are presented for erosion and marine life problems occuring along the Rockaway beaches.

   RESPONSE: It is not feasible to comment here on the validity of proposed structural solutions to specific erosion on marine life problems. Any proposals, of course, must be consistent with the policies of the approved NYC WRP and must be in accord with New York City's erosion hazard area ordinance, when approved.

4. COMMENT: The Arverne-Edgemere Urban Renewal Area is a violation of state revitalization and access policies.

   RESPONSE: Though this specific project may not be consistent with the coastal policies, the NYS CMP and NYC WRP are not approved. Once approved, all proposed actions in the coastal area must be consistent with coastal policies.

N. Frank R. Seddio
District Manager
Community Board No. 18
Brooklyn, New York

1. COMMENT: Community Board No. 18 requests a special management area for the hydrological areas of Jamaica Bay which would upgrade the environmental quality of the Bay and preserve the unique characteristics and relate to the upgrading of the water quality.

   RESPONSE:
   The New York City WRP includes the periphery of Jamaica Bay within its boundary. However, Jamaica Bay, itself, is a federally owned property and is part of the Gateway N.R.A. As such, it is excluded from the State's, and thus, the City's coastal area. The management of this water body is the responsibility of the National Park Service.

2. COMMENT: The Board requests pollution control in Paerdegat Basin.

   RESPONSE: The New York City proposed waterfront revitalization program contains several policies dealing with water quality and describes what steps the City will take to coordinate water pollution control activities with protection of natural coastal resources. The City's program supports the implementation of a Paendegat Basin tributary study which is designed to address the specific problems of the basin.

3. COMMENT: Illegal dumping is a problem. The Board would support a solid waste policy which would remove solid waste pollution and illegal dumping and which would have prevention and enforcement provisions.

   RESPONSE: The proposed New York City WRP contains measures and city means for implementation of policies on solid waste dumping (cf. NYC policies J and K).

O. Nancy Nagle Kelly
Planner
Group for the South Fork, Inc.

1. COMMENT: Group for the South Fork Inc. commends the efforts of the State to date in developing a comprehensive management program for coastal land and water use activities. While some aspects of the plan need further work and clarification, the framework has been laid for an effective program.

   RESPONSE: Thank you for your support. No further response needed.

NOTE: The following comments refer to the draft DEC Part 500 regulations on the Coastal Erosion Hazards Areas Program.

2. COMMENT: Section 505.7(b) seems to promote the use of erosion control structures. A great deal of evidence exists that so-called erosion protection devices are frequently improperly placed, do not serve their intended purpose, and that groins in particular area of limited are unknown value in preventitive erosion and hurricanedamage and cause scouring of the beach front thus increasing erosion.

   RESPONSE: The intent of the regulations is not to promote structural protection. Such protection could only be built if the requirements of Section 505.9 were met. However, the prominent placement of Section 505.7(b) before the requirements for movable structures contained in Section 505.7(c) may create the impression of preference. To avoid this the final regulations will have the order of the two reversed. Note also that the introduction to 505.9 restates the findings of "The Shoreowner's Protection Act" regarding the problems associated with the use of structural protection measures.

3. COMMENT: In its report, A Coastal Erosion Subplan for Nassau and Suffolk Counties, the Long Island Regional Planning Board states that coastal erosion plans should be designed to promote "the continuation of natural geomorphic processes responsible for the maintenance of coastal landforms." The report emphasizes non-structural solutions to erosion control problems and discourages projects that block the transport of sand.

   RESPONSE: The cited report (which was prepared for the NYS Department of State and financially aided by the Federal Office of Coastal Zone Management) was used extensively in the development of the Coastal Management Program and in drafting the "The Shoreowner's Protection Act'. However, in passing the Act, the State Legislature elected to allow greater discretion to property owners in choosing among the array of alternatives available, for the appropriate method to deal with erosion hazards. Nevertheless, as noted in the response above, the Legislature also prescribed rigorous standards where structural measures are employed. You should also be cognizant of the Coastal Management Program Policy 17 which requires the use of non-structural measures whenever possible.

4. COMMENT: Section 505.8(c)(5) exempts the construction, modification, or restoration of structures less than a certain size and/or of a temporary nature. This may prove detrimental in certain sensitive beach areas.

   RESPONSE: Provision deleted.

5. COMMENT: The protection of barrier islands, spits, and bay barriers would be greatly aided by the Federal Barrier Islands Bill pending in Congress.

RESPONSE: No response necessary.

6. COMMENT: What persons or agencies will be responsible for enforcing and monitoring Section 505.9(c), (d) and (e)?

RESPONSE: The Part 500 regulations serve two purposes: provide minimum standards which must be met by local coastal erosion management programs; and, by the Department when it regulates a coastal erosion management program. In the latter case the Department's Regional Permit Agents would administer the regulations. In the former, each municipality or county must determine how it will administer its local program. See Sections 34-0105, 34,-0106 and 34-0107 of the Act for the conditions determining the implementing unit of government.

7. COMMENT: We question whether the Section 505.10(b) proposed setbacks for movable structures within hazard areas is adequate.

RESPONSE: The setback distances were established with regard for all factors.

8. COMMENT:

. In Section 505.10(c), the setback requirements for non-movable structures protected by erosion control devices need clarification.

. What are the setback requirements for non-movable structures not protected by approved erosion protection structures?

RESPONSE:

. The setback requirements for non-movable structures will vary with the effectiveness of the erosion protection structures protecting the site. That calculation will be made on a case-by-case basis.

. New non-movable structures or major additions to existing structures are not allowed in a structural hazard zone unprotected by an approved erosion protection structure. Refer to Section 505.7(b).

9. COMMENT: As mentioned earlier, we are somewhat sceptical of the effectiveness of erosion protection structures (505.9(b)). A great deal of controversy exists as to whether such devices have demonstrated success in controlling long-term erosion.

RESPONSE: These regulations are meant to govern activities throughout the coastal waters of New York, including the Hudson estuary and the Great Lakes. Structural solutions in these areas are more feasible than on the south shore of Long Island. The regulations have been written as performance standards to enable the use of criteria specific to the site in question when reviewing plans for structural controls.

P. Howard Golden
President of the Borough of Brooklyn
The City of New York

1. COMMENT: The New York State Coastal Management Program provides an innovative approach to public waterfront policy, in that, the review process is equally and separately implemented at the state and local levels. This is particularly evident in the application, a major portion of which is New York City's own management program. Although the local program differs from that of the state's through the added inclusion of land use review procedures, the two programs are integrally linked under the environmental review process.

   RESPONSE: No response necessary.

2. COMMENT: The interrelationship of the State and City environmental quality review processes will determine whether the State CMP can be deemed adequate. It is imperative to note that a separate and identifiable local process is required under the proposed NYCWRP to implement the State CMP.

   RESPONSE: The adequacy and approvability of the State's CMP and the City's WRP is based upon the enforceability of their respective laws, regulations and associated processes. SEQR is only one of the processes that will be utilized by both governments. When this process is used by the City, the departments of City Planning and Environmental Protection will serve as co-lead agencies in accordance with Executive Order No. 91. If an action involves both City and State agencies, the lead agency is determined by the procedures contained in E.O. No. 91 and Sections 617.6 and 617.7 of SEQR. When an action is subject to both ULURP and SEQR, the City's designated agencies will, in most instances, be the lead agencies for SEQR purposes. In either situation, the decisions of involved State agencies must be consistent with the policies of the State's CMP and the City's WRP, as required by Article 42 of the Executive Law.

3. COMMENT: The costs of implementing this local environmental mechanism and coastal management policies makes it crucial that the State plan provide a work program and funding commitments which meet the needs of our local efforts. Although this commitment is not required under the Federal application process, it is necessary in evaluating the benefits to be derived from the City's continued participation in the program and its relationship to the State's environmental process. Certainly, the City's withdrawal from or disapproval of the program could only lead to delaying this application (an identified alternative in the Draft EIS).

RESPONSE: As stated in the comment, the preparation of a work program is not a requirement for approval of either the NYS CMP or the NYC WRP. Further, as of this writing, Congress has not yet appropriated sufficient funds for the State CMP. Therefore, even if required, a commitment of funds would be impossible to make. The Program document and EIS being considered for Federal and State approval does not contain the reference to the alternative identified in the above comment. For your information, withdrawal from, or disapproval of the NYC WRP, would not affect the schedule or status of the NYS CMP or its application for financial assistance.

4. COMMENT: These comments, as well as my original testimony, are not critical of the Coastal Management Program as proposed. In fact, I am supportive of the potential benefits derived from New York City's cooperative efforts and comprehensive submission.

   RESPONSE: Thank you for your support. No further response needed.

5. COMMENT: In order to insure an adequate response to five years of planning, it is essential that I understand whether a proper allocation of resources is associated with this program.

   RESPONSE: Approval or denial of approval of the NYS CMP and/or the NYC WRP is not contingent on the availability of funds. As stated above, as of this writing, Congress has yet to appropriate these funds. Further, the primary benefit of this program, as explained in the Alternatives and other sections of the document is not the funds which relate directly to the Programs, but the consistency provisions of the Federal Coastal Zone Management Act and the State's Waterfront Revitalization and Coastal Resources Act. The first Act, requires Federal activities to be consistent with State policy. The second, requires State agencies to be consistent with those same policies, as well as identified actions of approved local WRPs. These provisions, plus others will for the first time require all activities -- Federal, State and local -- within the coastal area, to accomplish the State policies for waterfront revitalization and coastal resources protection, without conflict or redundancy.

Q. Hilda Regier, Rose Mary Lynch
Community Board No. 4
New York, New York

1. COMMENT: The Draft Environmental Impact Statement of the State of New York Coastal Zone Management Program does not address the revitalization problems of the Waterfront of the west side of Manhattan and the specific needs of Community Board No. 4 in relation to the waterfront, i.e., shipping and possible recreation spots. This report should be expanded to include the revitalization problems of the waterfront as mentioned above. The waterfront within the Board No. 4 area should be designated as a special revitalization area.

   RESPONSE: The DEIS and NYS CMP address the principal issues facing the entire coastal area of the State. These issues fall into three categories: the need to wisely develop coastal resources; the need to protect coastal resources; and the major activities which will occur in the coastal area and which affect numerous coastal resources. The State CMP includes the regulatory framework within which these issues are addressed. The NYC WRP provides specificity to the State policies designed to address those three major categories of issues. These more detailed conditions placed on the broader State policies are implemented by State authority as well as existing City regulatory measures. Specific problems of any particular coastal area of the State, including the west side of Manhattan will be addressed within this regulatory framework upon approval of both the NYS CMP and the NYC WRP.

   The west side of Manhattan has already been designated as an Area of Particular Waterfront Significance in order to address specified problems related to that stretch of the shorefront. The area extends from the Battery to 72nd Street.

R. John W. Meunzinger
Westchester County Department of Planning

1. COMMENT: DOS regulations Part 601.4 should be changed from requiring the sending of a copy of LWRP to "the county wherein the LWRP area is situated" to requiring sending a copy to the county planning board on agency.

   RESPONSE: Each county can make its own arrangements for internal distribution and review.

2. COMMENT: The proposed amendments to SEQR do not relate well to the existing language and format of Part 617 and should be revised. For example, adding the provision of consistency of State actions within the coastal area to Section 617.9(c)(3) does not give the attention needed to this major element of the program. The thought also does not seem to relate to this paragraph to which it is being added.

   RESPONSE: Section 617.9 is the most appropriate location in the SEQR regulations for the addition of the consistency determinations required by Article 42. That section requires the findings for the State Environmental Quality Review Act. Without altering the existing SEQR process, the proposed amendments will assure that the coastal policies will receive the consideration required by Article 42 and necessary for the achievement of the policies and purposes of New York's coastal program.

3. COMMENT: The language is not totally clear in Section 617.14(f) (10), but the intent is obvious. A key word appears to be missing ..."The identification and discussion shall instead be of the potential affect, if any, on the applicable policies and purposes of such an approved local waterfront revitalization program."

   RESPONSE: We agree. See revisions to Section 617.14(f)(10).

4. COMMENT: Language should be added to Part 601 and the Local Government Guidelines to strongly encourage consultation with adjacent communities during the development of a local waterfront revitalization program.

   RESPONSE: Agreed. Appropriate language has been added.

5. COMMENT: Article 42 should be amended or sufficient language should be included in Part 601 and in the Local Government Guidelines to provide for a review of the consistency between county policy and a local waterfront revitalization program before it is approved by the Department of State.

   RESPONSE: See Response to Comment III, A, 2.

6. COMMENT: There should be a provision for the development of County coastal plans for areas of the coastal zone under direct County jurisdiction and management.

RESPONSE: Article 42 provides for the development of a local waterfront revitalization program by cities, towns, and villages. Their legal jurisdictions cover all areas within the CMP boundary, even though counties and other governmental entities may own, lease, or administer property within the boundary of a local government. The Department of State regulations (Section 601.4(3)) do provide counties the opportunity to review and comment on proposed local waterfront revitalization programs prior to approval by the Secretary of State. However, giving an option to allow a county to prepare a WRP would be contrary to Article 42.

S. Thomas La Manna
Community Board No. 1
Staten Island, New York

1. COMMENT: Criteria should be established to ascertain priorities when conflicts arise between different proposed waterfront policies, activities, and uses. For example, while the program places emphasis on economic revitalization and port development, it does not suggest when that use should or should not supersede other coastal uses.

RESPONSE: See Response to Comment III, K, 5.

2. COMMENT: The Staten Island waterfront from the St. George Ferry Terminal to the Pouch Terminal is requested to be included as a shorefront Access Area; the region including the Arthur Kill, Kill Van Kull and adjoining wetlands is requested to be included as an Area of Particular Waterfront Significance and that a Task Force of agency representatives, community groups, and environmentalists be established.

RESPONSE: Refer to Response to Comment III, M, 3.

3. COMMENT: The CMP does not include a work program for carrying out the policies it presents.

RESPONSE: Section 4 of the CMP DEIS discusses detailed program management activities that are required to implement coastal policies. In addition to these detailed activities, annual work programs will be prepared by the Department of State and communities with approved local waterfront revitalization programs. See Part II, Section 10 for an overview of the first year of program implementation.

T. Daniel J. Palm, Ph.D
Executive Director
St. Lawrence-Eastern Ontario Commission

1. COMMENT: Pages 47-52 -- This section could be strengthened by reference to Chapter 701, Article 37 of the Executive Law that established the St. Lawrence-Eastern Ontario Commission.

   RESPONSE: Agreed. See revision.

2. COMMENT: Page 114 , Section 6, Coastal Policies and Implementation would be strengthened by referring to Chapter 701, Article 37, Paragraph 847-g, (Project Review). For example, this legislation specifically addresses policies 23, 24 and 25.

   RESPONSE: The purpose of this Section of the document is to state, and explain coastal policies and describe the means for their implementation throughout the State's coastal area. The referenced State law applies only to the SLEOC service area, and therefore cannot implement policies Statewide.

3. COMMENT: The above 2 items are set forth in a positive sense to reflect that during the past 12 years New York State has implemented coastal resource management along the eastern end of Lake Ontario and along the St. Lawrence River through the Commission.

   RESPONSE: Agreed. The Commission has also had a major role in the development of this Program.

4. COMMENT: The Commission is fully supportive of the program set forth in the DEIS under review. It further hopes that review and approval will be timely.

   RESPONSE: Thank you for your support. No further response needed.

U. Bonnie June Mellon

1. COMMENT: Approval of the DEIS would be in violation of New York's environmental policy to enhance the health, safety and welfare of the people of the State set forth in Article 1 of the Environmental Conservation Law.

   RESPONSE: We disagree. The State has certified that the coastal program is consistent with State law. The U.S. Department of Commerce reviews the program for compliance with the Federal Coastal Zone Management Act.

2. COMMENT: The DEIS completely ignores important scientific and oceanographic data revealing hazards to people residing in oceanfront communities on Western Long Island.

   RESPONSE: During the development of the Coastal Management Program and preparation of the DEIS, a great number of documents and site-specific studies were reviewed but not all of them were cited in the DEIS.

3. COMMENT: The DEIS omits reference to Article 2B, NYS Executive Law.

   RESPONSE: See revision, suggestion incorporated. (See Policy 11)

4. COMMENT: Waves have not been added to the storm surge elevation for flood insurance for the City of Long Beach oceanfront which is devoid of sand dunes. Rezoning for new oceanfront high rise residential buildings has been enacted by City of Long Beach officials.

   RESPONSE: A wave height analysis is being added to the City's Flood Insurance Study: the amendment was delayed to develop a new topographic base map for the City and it is expected that the draft study will be made available by the Federal Emergency Management Agency in early October, 1982. Zoning is, of course, a local government power, however participation in the federal Flood Insurance Program, including the regulation of activities in flood-prone areas, is required by State law.

SECTION 3

RESPONSE TO TESTIMONY RECEIVED AT
JOINT FEDERAL AND STATE PUBLIC HEARINGS ON DEIS

A. Charlene Caile, representing:

Erie County Executive Edward J. Rutkowski
(Written Testimony Submitted)

1. COMMENT: Lake Erie and Niagara River are important to the area for water supply, fishing and swimming purposes. Also, public investment made to improve the quality of these waters requires protection.

   RESPONSE: No response necessary.

2. COMMENT: The guidelines for the development of local waterfront revitalization programs do not give recognition to county-wide issues or the need to coordinate such local efforts with county plans and programs.

   RESPONSE: The guidelines have been modified to direct coastal municipalities to undertake a comprehensive analysis of their entire waterfronts in developing the local programs. This analysis will address both local and areawide concerns as well as considerations of the plans and programs of other governments affecting the waterfronts. The Department of State's regulations (Section 601.4(3)) provide counties the opportunity to review and comment on proposed waterfront revitalization programs prior to approval by the Secretary of State. This review procedure offers counties the chance to raise issues or coordinate concerns that may not have been adequately addressed by a coastal community.

3. COMMENT: The guidelines do not clearly indicate whether projects applied for by counties have to be situated in localities with approved waterfront revitalization programs. Such projects should be eligible for funding in coastal communities with or without an approved local program.

   RESPONSE: Under the provisions of Article 42 of the Executive Law, only cities, towns and villages would be eligible to receive funding. Plus, any project-related funding must be for "activities which serve to facilitate construction projects provided for in an approved waterfront revitalization program" (Section 918(1)(b) of Article 42, Executive Law). However, should a community elect to so provide, a county could be the recipient of funds on behalf of that community.

B. David Stebbins, representing:

City of Buffalo, Division of Planning
(Written Testimony Submitted)

1. COMMENT: The City of Buffalo strongly supports the NYS Coastal Management Program and urges its approval by the Federal government to insure a successful waterfront revitalization effort in the City. The Program represents a workable and effective approach for balanced management of coastal resources and by using existing authorities will promote the beneficial use and prevent the impairment of those resources.

   RESPONSE: Support appreciated, no further response necessary.

C. Frances F. Dunwell, representing:

New York Coastal Coalition
(Comments presented at the public hearing in Albany were contained in written testimony submitted on July 20, 1982. The following comments are from that written testimony)

1. COMMENT: The proposed amendments to the SEQR regulations are confined to significant actions by state agencies. These proposed changes are in violation of the intent of Article 42 of the Executive Law and the mandate contained in Section 919(3) of that Article.

   RESPONSE: The proposed amendments to the SEQR regulations cover all "Type I" or "Unlisted Actions" as defined in Part 617, Section 617.2, not just significant actions. See proposed Section 617.5(d).

   Section 919(3) is contained in the section entitled "Coordination of state actions and programs." (emphasis added) Both subdivisions one and two of Section 919 address state agency actions only. In that context, subdivision three is interpreted to apply only to state agencies. This interpretation is also in accord with the debate in the State Legislature on Article 42.

2. COMMENT: Language, regarding coastal resources, should be added to the list of criteria contained in Section 617.11 which are used in determining the significance of an action under SEQR.

   RESPONSE: Coastal resources considerations are incorporated in the determination of significance by the required use of the Coastal Assessment Form (CAF) prior to any determination of significance under SEQR. See Section 600.4 of the proposed Department of State (DOS) Part 600 regulations.

3. COMMENT: Various environmental criteria in the proposed CAF should be incorporated into the Environmental Assessment Form (EAF) contained in the existing SEQR regulations.

RESPONSE: This recommendation would not alleviate the need for the CAF since not all the criteria in the proposed CAF are "environmental" and, therefore, suited for addition to SEQR and its EAF. It would also be inappropriate since the EAF is used by all agencies, state, county and local, and for all actions, both inside and outside the coastal area. The authority of Article 42 -- and thus the CAF -- is limited in scope to state agencies acting in a coastal area.

4. COMMENT: The Type I list in Section 617.12 of the SEQR regulations should be amended to include certain features that are important to the coastal program such as significant fish and wildlife habitats, import agricultural lands and other ecologically sensitive areas.

RESPONSE: The Section 617.12 Type I listing is primarily a catalog of actions likely to impact on the environment because they exceed certain thresholds keyed to either magnitude or location. To add certain actions to that list because of their coastal features alone would alter the nature of the existing listing.

Also, as indicated similarly in other responses, the suggested change would affect local as well as state agencies and without regard to the location of the actions. Article 42's authority extends only to state agencies acting in a coastal area.

5. COMMENT: Language should be added to SEQR, Section 617.9 to clarify that determinations of consistency pursuant to Article 42, reflected in the proposed amendments to DEC Part 617, Section 617.9, do not require the granting of a permit or other approval which would otherwise be denied pursuant to any other state law.

RESPONSE: None of the findings required by Section 617.9 of SEQR require approval of an action which would otherwise be disapproved. SEQR is simply the mechanism for assessing, analyzing and weighing the environmental impact of an action to be taken by an agency in achieving some program objective. It assures minimization or avoidance of adverse environmental impacts of an action to be undertaken by an agency but it does not and cannot authorize or require that an action be taken which an agency could otherwise not take pursuant to the dictates and standards of the program it is implementing.

6. COMMENT: Permits are not subject to a consistency determination unless they are determined to be a significant action and thus subject to an EIS under SEQR. This is a significant loophole in the regulations.

RESPONSE: Article 42 does not contain the authority for subjecting permitting actions of State agencies to the Part 600 regulations unless the action has been identified by the Secretary pursuant to Section 916(1)(a) of Article 42 , or is subject to SEQR and has the potential to significantly affect the environment, thus requiring an EIS. The Federal CZMA requires States to manage land uses having direct and significant (emphasis added) impacts on the coastal waters; thus the significance test is not a loophole but is in compliance with the Federal Act, and specifically regulations 23.11(b)(1).

7. COMMENT: The CAF form should be amended to direct that a "yes" answer to any question pertaining to natural resources requires the preparation of a long form EAF. This will link the CAF to SEQR.

RESPONSE: The purpose of the CAF is to assist state agencies in assessing the potential impacts that their actions may have upon the achievement of coastal policies. The CAF is also intended to supplement the EAF in determining the significance of proposed actions. This link to SEQR is accomplished by requiring (in Section 600.4) that the CAF be completed prior to any SEQR determination of significance. This connection has been further clarified by the revisions to Section 600.4.

8. COMMENT: In DOS' Part 600 regulations, no reference is made to nor are there requirements for the use of the explanations and guidelines which accompany the coastal policies in the CMP DEIS.

RESPONSE: Revisions have been made to Section 600.5 which identify, reference and clarify the purpose and use of the explanations and guidelines.

9. COMMENT: Rule-making should not be exempt from the consistency requirement.

RESPONSE: Debate in the Legislature on Article 42 indicated that they did not intend the enactment of a measure which imposed additional general regulatory requirements In §919(1) of Article 42 the listing of the types of actions directly undertaken by state agencies that must be consistent with coastal policies does not include rule-making actions. Note further, that in situations where the Legislature intended rule-making actions to be covered in other contexts, express inclusion of rule-making is found. See, e.g., Environmental Conservation Law, § 8-0105.

Rule-making actions, nevertheless must be the subject of a Coastal Assessment Form. This form would provide notification to the Secretary and an opportunity for discussion of proposed rule-making actions which may affect coastal issues. Also, those rule-making actions for which an environmental impact statement is prepared pursuant to the SEQR regulations (Part 617) would be the subject of analysis which must include the coastal policies since the amendments to Part 167 require this (see proposed addition to Part 617.14(f)(10)).

10. COMMENT: The words "the preservation of" should precede the words "those natural resources" in the first sentence of Section 600.1(c).

RESPONSE: The language of DOS Part 600, Section 600.1(c) is a restatement of the legislative intent contained in Section 910 of Article 42.

11. COMMENT: The policies in Section 600.5 of DOS' Part 600 regulations should be amended and state the need to protect fish and wildlife habitats in general.

RESPONSE: Several existing laws, while their principal intent is not directly focused on habitat protection, already afford considerable protection to fish and wildlife habitats. Some of the more noteworthy laws are the Fresh Water and Tidal Wetlands acts, Protection of Waters Act, State Pollutant Discharge Elimination System and the Solid Wastes Management Act.

12. COMMENT: The policies in Section 600.5 provide no protection to fish and wildlife habitats, except those identified as significant, from adverse impact resulting from toxic chemicals and other pollutants.

RESPONSE: Several policies contained in the CMP/DEIS specifically provide protection to these habitats from the adverse effects of hazardous wastes and other pollutants. Policies numbers 30, and 33-40 address the concern raised, but are not in section 600.5 regulations for they are already a part of other existing State law.

13. COMMENT: Public access to publicly owned lands, which have been acquired to protect fragile natural resources and could be threatened by public access, should not be mandated.

RESPONSE: The explanations and guidelines in the CMP/DEIS for both public access policies give recognition to the harm that may result to fragile resources from overuse. In addition, the second policy specifically states that access be "...provided in a manner compatible with adjoining uses."

14. COMMENT: The proposed DEC Part 505 erosion regulations should be amended to include a schedule for designation of those areas within a year of program approval.

RESPONSE: Deadlines for designation of those areas are contained in Article 34 of the Environmental Conservation Law. NYS CMP funds, which are contingent upon Congressional approval, will be provided to the DEC to ensure that the designation of erosion hazard areas will be expedited. The target date for the completion of the designation process is October of 1983.

15. COMMENT: The DOS' Part 601 regulations should be amended to require that a local government be consistent with its approved waterfront revitalization program.

RESPONSE: Consistency is already required by Section 601.6(b) which authorizes the ultimate sanction or revocation of approval. However, this has been further clarified by revisions to Section 601.6(a).

16. COMMENT: Part 601 of DOS' regulations should provide a notification procedure to alert the Secretary of State of local actions so that he is better able to monitor the progress of each local program.

RESPONSE: We agree. Section 601.4(e) has been revised accordingly.

17. COMMENT: State agencies, with programs that have the potential to affect a local waterfront program, have the opportunity to review and comment on every local program prior to approval by the Secretary of State. How will a negative comment from a state agency on a local program affect approval by the Secretary of State?

RESPONSE: Article 42 requires the Secretary to consult with those state agencies with programs affected by a local program. She/he must disapprove any program, if she/he finds after consultation that there is a conflict with any State or Federal policy. The regulations also require disapproval. See Section 601.3(3).

18. COMMENT: Mention should be made in the CMP document of the means for completing and updating the identification of significant habitats, scenic resources and agricultural lands.

RESPONSE: These important coastal resources will be completed and mapped on the Coastal Area map during the first year following program approval.

19. COMMENT: The economic development policies are overly broad and override certain existing protection for environmental resources.

RESPONSE: Each policy statement must be read together with all of the other policies. The balancing of competing policies, which is so vital to the success of New York's coastal effort and which was recognized as such by the State Legislature in Article 42, Section 912(1), will take place in the course of the SEQR process for those actions for which an EIS is prepared pursuant to DEC's Part 617 regulations, and in Section 600.4 of DOS's Part 600 regulations for all non-significant actions. The process of ascertaining consistency, as required in 600.4 and SEQR will result in decisions which balance all relevant coastal policies. See also revisions p.11-5-54.

20. COMMENT: The guidelines applicable to the fish and wildlife policies are totally inadequate and overly restrictive.

RESPONSE: The explanation to the policy on significant fish and wildlife habitats has been expanded to include guidelines on activities likely to affect such habitats and physical, chemical and biological parameters.

D. Bernard Melewski, representing:

Environmental Planning Lobby

1. COMMENT: The SEQR, Part 617 regulations should be amended to add coastal considerations to the Section 617.11 criteria which are to be used when making determinations of significance.

RESPONSE: See response to III, C, 2.

2. COMMENT: The environmental criteria in the Coastal Assessment Form (CAF) should be incorporated into Environmental Assessment Form (EAF) of the SEQR regulations.

RESPONSE: See response to III, C, 3.

3. COMMENT: The second sentence of the proposed Section 617.9(c)(iii) amendment to SEQR, pertaining to the required finding on a state agency action in an area with an approved local program -- should be dropped and, instead, put in the Department of State's Part 600 regulations.

RESPONSE: In an effort to minimize the procedural requirements upon state agencies, consistency determinations on actions necessitating the preparation of an EIS were incorporated into the existing findings requirements of Section 617.9. The suggested revision to this section would require agencies to follow two different processes, thereby complicating rather than facilitating the agency's efforts to comply with the provisions of Article 42 and the SEQR law.

4. COMMENT: The SEQR "Type I" list should be expanded to include identified coastal resources.

RESPONSE: See response to III, C, 4.

E. Frances Hodson, Long Beach, New York

1. COMMENT: Section 8-0103 of the Environmental Conservation Law was omitted in Volume 2.

   RESPONSE: This section is not directly related to the implementation of the program. It has been reprinted as an addendum to this volume.

2. COMMENT: The approval of water supply applications, particularly wells drawing large amounts of water, require public notice.

   RESPONSE: No response necessary.

3. COMMENT: Local governments should be required to adhere to the coastal policies.

   RESPONSE: Local government involvement in the State's coastal program is voluntary. Therefore these units are not required by the Waterfront Revitalization and Coastal Resources Act to adhere to the coastal policies, unless a community has an approved waterfront revitalization program. Many activities involve various state programs. State agencies in implementing those programs must of course be consistent with the coastal policies.

4. COMMENT: The State's enabling laws mandate that local zoning regulations be adopted in accordance with a "comprehensive" plan.

   RESPONSE: It is agreed that such regulations be in line with an overall plan; however, the enabling laws do not require localities to adopt zoning regulations.

5. COMMENT: U.S. Army Corps of Engineers report of Long Beach was not included in the report.

   RESPONSE: A number of Corps documents were consulted in the preparation of this draft EIS. Not all of them were cited.

6. COMMENT: No reference is made to the impact of salt water intrusion upon Long Island's groundwater.

   RESPONSE: This subject is discussed in Part II, Section 5 under water resources. Policy 38 also addresses groundwater supplies, particularly those designated as primary source aquifers.

7. COMMENT: Dune protection and dune creation programs are not mentioned.

RESPONSE: The protection of landforms such as beaches, barrier islands and dunes are discussed on pages III-20 to 21 in Part III of the draft EIS. Also, artificial nourishment activities such as rebuilding or creating beaches and dunes are covered on the above cited pages.

8. COMMENT: Valuable materials produced by the Corps of Engineers and the U.S. Department of Commerce relating to hurricanes, ocean storms, protection of the barrier beach were not used in the draft EIS.

RESPONSE: A number of documents prepared by regional, State, Federal and international agencies were consulted and citied in Part II, Section 5 under flood and erosion hazards, in reference to hurricanes, storms and barrier beaches.

9. COMMENT: No mention is made of the rising sea level.

RESPONSE: This subject is covered on page II-5-11.

10. COMMENT: The draft EIS must be distributed to the public for review and recommendation. It should not be rushed through the public review process.

RESPONSE: Copies of the draft EIS were made available to the chief elected officials of all coastal cities, town, villages and counties, as well as other organizations, businesses and individuals prior to the scheduled public hearings. The review period for the draft EIS was for a period of 45 days.

11. COMMENT: There should be greater discussion of zoning and its effect upon civil rights.

RESPONSE: The State's Coastal Program does not rely upon zoning for implementation purposes.

12. COMMENT: The Department of Environmental Conservation may be better suited to protect the health and safety of the State's residents than the Department of State which is "more suited to the needs of developers".

RESPONSE: Specific responsibility for the State's coastal program was vested in the Department of State by the State Legislature. The Department's ongoing planning and local government responsibilities were a major factor in this decision. The State's coastal program is more than an environmental protection program, for it advocates the beneficial use as well as the protection of the State's coastal resources. The Department of Environmental Conservation will still have a major role to play in the coastal program, because it has jurisdiction over a number of resources protection programs such as wetlands, water and air quality and habitats.

F. Aurora Gareiss, representing:

Udalls Cove Preservation Committee, Citizens Advisory Committee
Governing Board on Water Resources
(Written Testimony Submitted)

1. COMMENT: The approval of New York City's waterfront revitalization program is supported, provided: the program is undertaken with or without Federal funding; the City's work program be developed with public participation; and, the work program include the designation of several special management areas and special staffing to enforce development regulations on the waterfront.

   RESPONSE: Support for Program approval appreciated. The City's participation in the State's Program is dependent upon a determination by the City Planning Commission that adequate implementation funds are available. The Commission's decision will be made when funding levels are established.

2. COMMENT: The concept of the watershed would assist in determining the landward limit of the coastal area.

   RESPONSE: This concept was considered very early in the development stages of the State's coastal program. It was determined then that this concept was not uniformly practical, since its application would result in a coastal area extending in some places hundreds of miles inland. All of the uses in this vast area do not and would not have a direct and significant impact on coastal waters.

G. Mark Wainstock, representing:

Neighborhood Organizations and Citizens Outraged Against Lignite (NO COAL)
(Written Testimony Submitted)

1. COMMENT: "Coalport - Staten Island" is a coal export terminal proposed to be built by 1986. If implemented, NO COAL believes the project will ruin the Island's North Shore, destroy an existing tidal wetland and counter New York State efforts to develop and implement a rational and workable Coastal Management Program. As a result of the project, the Stapleton/Clifton waterfront would cease to be scenic, have its historic character destroyed, cultural vitality sapped, investment in, and reuse of existing building stock dry up, and thwart efforts to apply local aesthetic conditions in the design of new structures. Each of these potential results is apparently contrary to the considerations of Section 914.5 [915.5] of the Waterfront Revitalization and Coastal Resources Act.

RESPONSE: In addition to the LGWRP considerations mentioned above, a LGWRP must also, among other items, facilitate appropriate industrial uses requiring a waterfront location. Both the protection and preservation of resources and the provision for their beneficial use must be balanced and incorporated within a LGWRP. The Coalport - Staten Island project, should it be implemented, may or may not result in the effects described. However, once the New York State Coastal Management Program and the New York City Waterfront Revitalization Program are approved, the provisions of those programs will apply to all such activities in the defined coastal area.

2. COMMENT: NO COAL believes that there is pressure to "grandfather" New York City actions conducted to date from the application of future legislation, regulations, and guidelines emanating from Federal approval of the FEIS and Coastal Management Program. New York City should be made to adhere strictly to the final Coastal Management Program.

   RESPONSE: In New York City, several types of actions which have complied with all SEQR requirements will not be subject to review under the City's WRP. These include: public improvements to be constructed pursuant to the official City map and official drainage plans; a site selection, urban renewal plan or large scale development plan adopted prior to the effective date of the WRP; and any action which has been certified under ULURP prior to the effective date of the WRP. Any major modifications to the above types of actions will, however, be subject to review under the City's WRP.

3. COMMENT: Is the Port Authority, as a bi-state agency, subject to NYS laws enacted in response to the Federally-mandated Coastal Zone Management Act?

   RESPONSE: The Port Authority of New York and New Jersey is a state agency and as such required to adhere to the WRCRA. It should be pointed out that the Coastal Zone Management Act is an Act which encourages, not mandates states to participate. (Also see response to Section II, C.1.).

4. COMMENT: Add a fifth sub-paragraph to NYCRR, Title 19, Part 601.4(a) to read: "(5) in New York City, community boards of affected littoral areas and relevant borough-wide civic/community organizations.", or as an alternative and possibly in lieu of that change, the following could be inserted within the review procedure for LGWRP in Section 601.4: "The Secretary of State will give public notice and schedule public hearing(s) at affected site(s) no later than 30 days following LGWRP submission by the locality."

   RESPONSE: Local discussions should all have occurred by the time the local legislative body (in NYC, the Board of Estimates) votes to approve and submit the local program to the Secretary. Section 915(3) of Article 42 strongly encourages consultation with community based groups and others during program preparation. This has been adequately documented in the case of NYC.

5. COMMENT: Delete the words "if necessary" within NYCRR, Title 19, Part 601.3.

   RESPONSE: We agree. The phrase has been deleted.

6. COMMENT: Add to NYCRR, Title 19, Part 601.7: "Withdrawal of approved LGWRP by locality will rescind further state funding and other assistance, if such funding or assistance is being provided, for local government's LGWRP planning. Benefits under Article 42 of the Executive Law will cease as of the date of withdrawal."

   RESPONSE: We agree. See revisions to Section 601.7.

H. Sister Francis Gerard Kress, CSJ, representing:

Environmental Protection Committee of Community Board No. 1 in Brooklyn, and Greenport Civic Council
(Written Testimony Submitted)

1. COMMENT: Greenpoint and Williamsburg residents feel neglected since no public access to the waterfront exists in those areas.

   RESPONSE: The NYS Coastal Management Program and the NYC Waterfront Revitalization Program contain provisions for the preservation and protection of existing access to the coast and provisions for increasing public access. Refer to the discussion of the provisions found under Policies 19 and 20 of both programs. Upon approval of the NYS Coastal Management Program, the shorefront access and protection requirements outlined in Part II, Section 7 of the Program document will be applied.

2. COMMENT: With or without financial support of the NYC Waterfront Revitalization Program, many things can still be done including public participation by those living and working in a particular area, and establishing a city wide advisory committee.

RESPONSE: No response necessary.

3. COMMENT: Specific areas of the Brooklyn waterfront should be evaluated and designated as wetlands and/or as areas to be protected.

   RESPONSE: NYS's Tidal and Freshwater Wetlands Act and Protection of Water Laws Act are the primary means of protecting wetlands. A discussion of how these Acts are used to implement the wetlands policy can be found after Policy 44 in the NYS and NYC program documents.

4. COMMENT: NYS should have a comprehensive plan for monitoring and managing the New York Harbor and Bight.

   RESPONSE: After approval of the NYS Coastal Management Program, New York State intends to work with affected agencies and interests to develop agreements with such agencies in order to seek methods for more comprehensive management of the Harbor.

5. COMMENT: Various NYC agencies should have been involved in the preparation of the Program and should be involved in its implementation in cooperation with NYC Community Boards.

   RESPONSE: During the six years utilized by the NYC Planning Commission to prepare the NYC Waterfront Revitalization Program, all affected City agencies were consulted. They provided sugnificant information and comments used in shaping the program. As a result of the consistency provisions of the NYS and NYC programs, all affected agencies must adhere to the program. Further, NYS and NYC fully intend to involve appropriate agencies in specific activities during program implementation.

I. Virginia M. Dent, representing:

N.Y.S. Northeastern Queens Nature and Historical Preserve Commission
(Written Testimony Submitted)

1. COMMENT: The purposes of the Commission, the Federal Coastal Zone Management Act and the State's Waterfront Revitalization and Coastal Resources Act were outlined to demonstrate the mutual concerns of each. Also, the Commission expressed its intent to cooperate with the Department of State in the implementation of the State's coastal program.

   RESPONSE: No reply necessary.

2. COMMENT: Despite Article 42 of the Executive Law, New York State must devise and legislate an implementation program. Local governments can help the Department of State in performing this task.

   RESPONSE: This document is a description of the implementation program for the Coastal Management Program. Local governments can aid the Department in carrying out the program, if they choose to participate. Their efforts will add greater specificity to the State's Coastal Program.

3. COMMENT: Specific activities and projects sponsored by the Commission were identified. Several are being undertaken in cooperation with the City of New York, including a reuse plan for Fort Totten which has been declared surplus by the Federal government.

   RESPONSE: No reply necessary.

4. COMMENT: The Commission's program -- consisting of the identified activities and projects -- should be included in the final EIS on the State's Coastal Management Program. The Commission views this program comparable to the City's waterfront program which is included in the draft EIS.

   RESPONSE: Article 42 of the Executive Law requires State agencies' programs to be conducted consistent with coastal policies, not incorporated into the program document.

J. Bea Green, New York, New York

1. COMMENT: There are access problems associated with Gatewy National Recreation Area and Broad Channel which should be addressed by the NYC WRP. Various public agencies often work at cross-purposes with one another, leading to piece-meal planning.

   RESPONSE: Public access to the shorefront is one of the major concerns of the NYS CMP and the NYC WRP. A shorefront access planning process is included in the CMP which will result in a list of specific access improvements to which the State will give priority, within financial and legal limits. The NYC WRP designates several shorefront areas as appropriate for improved access, including those Gateway areas with no access.

   One purpose of the NYS CMP is to coordinate plans and projects of various agencies for the coastal areas to ensure that State and local coastal policies are being followed, thus preventing actions occurring at cross purposes.

K. Sarah Chasis, representing:

Natural Resources Defense Council

(Comments presented after public hearing in New York City were contained in written comments submitted on July 26, 1982. The following comments are from those written comments.)

1. COMMENT: It is a significant achievement that the State has finally developed a comprehensive management program for its coast. Many years of effort went into this program.

   RESPONSE: No response necessary.

2. COMMENT: The relationship between the program document and the regulations is unclear. Nowhere do the regulations that bind the state agencies to the coastal policies refer to the program document itself. As a consequence, the legal effect of the policy explanations and guidelines is unclear.

   RESPONSE: We agree that the relationship between the regulations and the program document was unclear. The regulations have been amended to clarify and explain that relationship by stating: In evaluating proposed actions against the following policies, explanations and guidelines contained in the approved Coastal Management Program document...".

3. COMMENT: There are no policy guidelines for some of the most important policies, such as the protection of significant fish and wildlife, habitats.

   RESPONSE: See revisions which incorporate detailed policy guidelines. Also, see Response to Section I,B,3.

4. COMMENT: State permitting decisions are governed by the coastal policies only if the proposed action is deemed significant under SEQR. Since only a small portion of state permitting actions meet this test, the vast majority of activities permitted by the state will go unregulated under the program. To remedy this deficiency, NRDC recommends that if any answer to Part (e) of the Coastal Assessment Form (p. 626) is answered "yes" the action matically should be deemed significant for purposes of SEQR. This would ensure that actions having a significant impact on the coast and the coastal policies conform to the coastal policies.

   RESPONSE: Refer to the Response to Comment III. C. 6. In addition, it must be pointed out that the CAF is designed and intended for use as a coastal impact assessment tool for state agencies, similar to the use of the EAF for environmental impact assessment in DEC's Part 617. No single response to any inquiry on either form is a form indication of the existence of significant impacts or the lack thereof. However, once a state agency act on is in fact determined by that agency, after completion of the CAF, to have the potential to impact on the environment, then the proposed amendments to Part 617 to insure that the action -- including a permit action -- will be consistent with the DOS Part 600, Section 600.5 coastal policies.

5. COMMENT: No mechanism or guidelines are provided for resolution of conflicts between and among the coastal policies. Many of the development policies are too broad sweeping and unbalanced. For instance they fail to acknowledge that preservation of natural resources may be preferable to development in certain areas.

   RESPONSE: Refer to the Response to Comment III. C. 19.

6. COMMENT: The guidelines must reflect a recognition that certain water-dependent uses and facilities may be inappropriate for certain locations because of their adverse environmental impacts.

   RESPONSE: Refer to those guidelines for additional clarifications.

7. COMMENT: Policy 3 guidelines are totally unacceptable. They, in essence, approve in advance major port expansions. They provide for an override of other coastal policies.

   RESPONSE: This policy is limited as all policies are limited, by the requirement that an action must be consistent with all applicable coastal policies. Language has been added to clarify this requirement. See revisions.

8. COMMENT: Policy 3, Port Activity is nowhere limited to water dependent port activity.

RESPONSE: Guideline 1 states that "in assessing proposed projects within or abutting a major port, the overriding consideration is the maintenance and enhancement of port activity which will have precedence over non port related activities". The intention of this guideline is that port related water-dependent activities have precedence over non water dependent activities. The guideline will be revised to more clearly state that within port areas port related activities, i.e., land use or development essential to waterborne transportation, should take precedence over development that is not related to waterborne transportation.

9. COMMENT: Why should all port dredging be deemed of statewide or regional benefit upon such a meager showing as need and acceptable environmental impacts. Guideline 5, dealing with landfill, should be struck.

RESPONSE: Neither guideline is as sweeping as the comment suggests. They will, however, be modified to make clear that acceptable environmental impacts are only those that would be permitted under all applicable environmental regulations.

10. COMMENT: Guideline 5 under Policy 3 seems overreaching.

RESPONSE: The guideline is not overreaching. However, revisions have been made to clarify the guideline.

11. COMMENT: Why is Policy 5 limited to large scale development only?

RESPONSE: The policy is not limited to large scale development. However, the explanation refers to large scale development as an example to explain the meaning of the policy statement.

12. COMMENT: Guideline 1, Policy 5 would seem to define all cities, built up suburban towns and villages, and rural villages as areas of unconcentrated development having adequate infrastructure and public services.

RESPONSE: Guideline 1 does not define these areas in this way, but as areas of concentrated development which generally have adequate infrastructure and public services. The adequacy of an areas infrastructure and public services must still be assessed against the needs of the proposed development activity to determine whether this policy is being furthered by the action.

13. COMMENT: All water dependent uses should not be excepted from this policy.

RESPONSE: Agree, the text is to be revised to except only water dependent uses with specific site requirements not compatible with this policy.

14. COMMENT: All second home development should not be excepted from the policy on encouraging concentration of development.

RESPONSE: Second home development should be excepted from this policy. However, second home development is not excepted from any other coastal policy. Any development, including second home must be carefully sited so as to maximize the benefits of maintaining open space and public access and be consistent with coastal policies.

15. COMMENT: Policy 22 should require that the recreation provided be open to the public.

RESPONSE: The State does not have the authority to require that all private recreational development be opened to the public. Facilities using public funds will be opened for public access.

16. COMMENT: Many of the types of development listed in Policy 22 should not be sited right on the coast.

RESPONSE: The policy refers to both existing as well as new development, while many of these uses should not, or need not, have been located on the coast, they are there, and it is the intent of this policy that, if precticable, they should provide for water related recreation as a multiple use.

17. COMMENT: Steam electric generating stations and transmission facilities are exempt completely from the coastal policies.

RESPONSE: Actions subject to Article VII and VIII of the PSL are exempt from SEQR and thus from the procedures implementing Article 42. However, the level of environmental protection afforded under Article VII and VIII is equal to that of the coastal policies. In addition, the Secretary of State is a party to both proceedings and will present testimony on a facility's need for a shorefront location and its impacts on all coastal policies. Her/his testimony must be considered by the Board or PSC in reaching its decisions.

18. COMMENT: The explanation of Policy 28 is inadequate. To remedy this, NRDC recommends that the phrase "...if the proposed action is to be implemented..." be deleted.

RESPONSE: It is unnecessary to delete that phrase, since it would be unnecessary to avoid or mitigate adverse effects if the action was not implemented.

19. COMMENT: The OCS Policy (NO. 29) has no specific guidelines accompanying it, thus providing totally inadequate guidance for OCS activities.

RESPONSE: The discussion on oil and gas energy development planning processes has been expanded in the energy facility planning process section of this document. All activities including OCS must be consistent with the applicable policies.

20. COMMENT: The policy explanation for Policy 35 undercuts the natural resource protection intent of that Policy.

RESPONSE: The explanation of Policy 35 has been revised so it more accurately states the meaning of that policy.

21. COMMENT: Many of the important environmental policies (e.g., Nos. 7, 11-17, 24, 26) do not become effective until the state has either identified and ampped significant fish and wildlife habitat, scenic resources, and important farmlands or identified coastal erosion hazard areas. We could find no statement or commitment to a schedule for implementation of these tasks in the program. This is a major omission.

RESPONSE: Upon receipt of Federal funds pursuant to Section 306 of the CZMA, the State will complete these tasks during the first year grant period. See Section 10, Part 2 for more detail.

22. COMMENT: Policy 7 is weak in that it only applies to a range of habitats which is narrowly defined by the criteria listed for determining significance. These criteria are more stringent than in earlier drafts. Specific guidelines are needed governing uses affecting these areas of significance. A policy should be adopted to protect coastal fish and wildlife habitats not rising to to the level of significance set in Policy 7.

RESPONSE: Until the signing into law of Article 42, New York had no law which directly focused on the preservation of fish and wildlife habitats. The protection of several habitats, however, were being provided for indirectly by existing resource protection laws such as the Tidal and Freshwater Wetlands Act and the Protection of Waters Act. The intent of Article 42 was to begin to meet this need by affording special protection to the particularly important or significant habitats. The criteria for determining which habitats are of statewide significance have not been made more stringent than as presented in earlier drafts. The criteria "are essential to the survival of...population" and "are found at a very low frequency within a coastal region" are the same as in the March 1979 draft CMP. A comprehensive policy protecting fish and wildlife habitats not rising to the level of significance set in Policy 7 was not adopted because such a policy would not have been enforceable under existing state law.

23. COMMENT: Specific guidelines should accompany Policy 9 and 10 in order to assure that sound resource management considerations are developed and adhered to.

RESPONSE: The NYS Department of Environmental Conservation is authorized under various sections of Environmental Conservation Law (see "State Means for Implementing the Policy" under respective policies) to regulate the utilization of the State's fish and wildlife resources. Sound resource management considerations such as the biology of the species, carrying capacity of the habitat, and public demands, provide the basis for DEC's decision on harvest restrictions, stocking programs and habitat improvement efforts. Any public or private initiatives to expand recreational or commercial use of the State's fish and wildlife resources can only be done with DEC's approval, thereby assuring that such initiatives will be done within the context of sound resource management considerations.

Additional guidelines for implementing policies 9 and 10, however, have been added to the policy explanations. Such guidelines will reinforce DEC's regulatory efforts to manage these resources.

24. COMMENT: The standards and evidence set forth in the regulations should be referenced in Policies 11 through 17.

RESPONSE: It is sufficient to cite the authorizing legislation.

25. COMMENT: The last sentence of the Policy 15 explanation should be struck since there is no basis in the policy for such a statement.

RESPONSE: The cited sentence is essential to clarify that further offshore mining may be an alternative to land mining.

26. COMMENT: Policy 26 should not be limited to only public actions affecting important agricultural lands. The policy by its terms is much broader and the program would not be achieving the intent of the statute if it limited the policy's applicability so narrowly.

RESPONSE: Article 42 requires State agency actions to be consistent with the coastal policies. In terms of its applicability, Policy 26 is not limited any more than any other policy.

27. COMMENT: Policies 31 and 42 should acknowledge the provision of Section 307 which states that nothing in a State's coastal program shall in any way lessen or impair standards set pursuant to the Clean Air and Water Acts.

RESPONSE: The explanations of policies 31 and 44 have been amended accordingly.

28. COMMENT: NRDC adopts the NYS Coastal Coalition comments on the SEQR and DOS regulations, wishing to emphasize the following:

. The caveat set forth in Sections 919(1) and 915(8) of the statute should be reflected in Section 617.9(c)(3) of the SEQR.

RESPONSE: Refer to the Response to Comment III. C. 5.

. The exception for rulemaking made in the DOS regulations in Section 600.4(2) must be eliminated in order to conform to the statute.

RESPONSE: Refer to the Response to Comment III. C. 9.

. The term "if necessary" should be deleted from the third to the last line of DOS regulations, Section 601.3.

RESPONSE: Refer to the Response to Comment III. G. 5.

. "May" should be replaced with "shall" in the first line of Section 601.6(b).

RESPONSE: We agree. Refer to Revisions.

29. COMMENT: Because the coastal erosion hazard area regulations do not go into effect until those areas have been identified by DEC, it is essential that a schedule for rapid implementation of this program and designation of these areas be included as part of the coastal program.

RESPONSE: Refer to the Response to Comment III., C., 14.

30. COMMENT: Section 505.5(e) fails to follow Section 34-0109(b) of the statute in discussing the applicability of SEQR.

RESPONSE: It is the opinion of the Department of Environmental Conservation that Section 34-0109(b) is not consistent with Article 8 (SEQRA) which is intended to ensure that actions which do have a significant effect on the environment are adequately reviewed prior to approval. There are situations under Article 34 where many regulated activities should it which could not reasonably be construed that they may have a significant effect on the environment. The statutory conflict between the two Articles will require subsequent resolution, and it is felt appropriate not to complicate further the situation by inserting additional matter in the regulations at this time.

31. COMMENT: New non-movable structures and major additions to existing structures should not be allowed in structural hazard areas except perhaps where structural protection already exists. To do otherwise is to encourage the building of new erosion protection structures in lieu of a non-structural solution which is contrary to the findings and spirit of the law.

RESPONSE: The underlying authority for the regulations, "The Shoreowner's Protection Act", does not prohibit the siting of structures, movable or immovable, but sets standards for their location including consideration of the protection afforded by erosion protection structures. However, the prominent placement of Section 505.7(b), before the requirements for movable structures contained in Section 505.7(c) may create the impression of a preference for structural measures. To avoid this the order of the two sections is now reversed. See also CMP Policy 17 regarding the use of non-structural measures whenever possible.

32. COMMENT: Section 505.8(c)(7): this section should be changed to reflect the greater restrictions imposed on motorized vehicles in an earlier draft. Commercial fishing or emergency needs should be considered in permitting vehicular use of the beaches, but other uses should be prohibited.

RESPONSE: The latest draft continues the prohibition of vehicle use on primary dunes and bluffs but allows their operation on the more tolerant portion of beaches seaward of the upper debris lines and toes of primary dunes, thus assuring a virtually equal high level of protection while providing for reasonable use of a natural resource.

33. COMMENT: The limitations in primary dune development are excellent.

RESPONSE: No response required.

34. COMMENT: Section 50519(e) must be revised to state: "The construction, modification, or restoration of erosion protection structures will not be permitted if such activity will result in (1) a measurable increase in erosion at the development site and other locations; or (2) adverse effects on natural protective features, existing erosion control structures or natural resources".

RESPONSE: Disagree: the section as drafted reflects the language and intent of Section 34-0108(3) except that the phrase, "significant fish and wildlife habitats" has been inserted in lieu of "fish spawning and shellfish beds" which is deleted.

L. Joseph Landau, representing:

Howard Golden, Brooklyn Borough President
(Written Testimony Submitted)

1. COMMENT: Supports the City's efforts in developing a local coastal program. The program submitted by the City is very comprehensive.

   RESPONSE: Support appreciated. No reply necessary.

2. COMMENT: One of two public concerns is to prevent unnecessary additions of bureaucratic red tape. The City's program submission accomplishes this with an implementation process within existing laws and procedures.

   RESPONSE: No reply necessary.

3. COMMENT: Other concern is one of providing adequate financing to implement the local program. It is not clear in draft EIS whether or not the City will receive adequate funds to implement its program.

   RESPONSE: At the time of responding to the comments contained in the hearings' testimony, the levels of funding to New York State and consequently New York City were unknown. An allocation for New York State of $3 million has been discussed between Federal and state officials. Funding for New York State under Section 306 of the Coastal Zone Management Act requires Congressional appropriations.

4. COMMENT: There is no indication what elements or projects in the City's program will address the needs of Brooklyn's waterfront. Before the final EIS is issued, city and State officials should develop a work program and reach agreement on funding allocations.

   RESPONSE: The Department of State has prepared a draft grant application covering the use of Federal funds over the next fiscal year. The process for allocating funds within the State is separate from the one governing the review and approval of New York State's coastal program.

M. Marilyn Vogel, representing:

NYC Citizens' Advisory Committee on Water Resources
(Written Testimony Submitted)

1. COMMENT: The NYC WRP should be adopted regardless of whether or not Federal funding is available.

   RESPONSE: Adoption of the Program by NYC is an option whether or not Federal funds are available. However, the City's participation in the State's program will depend upon the availability and level of Federal and state implementation funds.

2. COMMENT: Public participation should be provided for in the implementation of the NYC WRP, including participation by the CAC WR.

   RESPONSE: Proposals for program implementation will be solicited from and reviewed by the public through existing procedures. The public participation mechanism to be utilized in New York City will be the 59 existing Community Planning Boards.

3. COMMENT: The Jamaica Bay/Rockaways/tributaries area should be designated as an Area of Particular Waterfront Significance and a task force created to make recommendations for policies and projects; policies should be developed to address problems in the Arthur Kill, Newtown Creek, the Brooklyn Waterfront, and the Northshore of Queens.

   RESPONSE: Your recommendation is noted. Specific projects and proposals such as yours for areas within the coastal boundary for New York City will be solicited through existing channels from the public after approval of the NYC WRP. (Refer also to Response, Section III, N. 1)

4. COMMENT: The program should contain guarantees of enforcement provisions, through staffing.

   RESPONSE: Approval of the WRP may make funds available that could be used to ensure that adequate enforcement is provided. In fact, the City's WRP strongly recommends funds be used for this purpose.

M. Thornton Willett, representing:

Kane Street Block Association
(Written Testimony Submitted)

1. COMMENT: The Coastal Management Program offers "fuzzy" goals without mentioning their implemention or enforcement.

   RESPONSE: The DEIS lists 44 specific coastal policies in Part II, Section 6. Under each policy are described existing State programs and activities which can be used to implement and enforce the policy. In addition, the consistency provision of the Waterfront Revitalization and Coastal Resources Act (Section 919(1) of Article 42 of the Executive Law) requires that actions directly undertaken by State agencies in the coastal area are to be consistent with coastal policies. Also, when New York's Coastal Management Program is approved, the actions of Federal agencies which impact the coastal area must be consistent with the approved program policies.

2. COMMENT: For numerous reasons cited, New York City's City Environmental Quality Review process (CEQR) does not work and thus is greatly responsible for the deficiencies of the Coastal Management Program.

   RESPONSE: See last response below.

3. COMMENT: The consistency provisions of the Coastal Management Program do not allow for verification or enforcement of the consistency determinations.

RESPONSE: Once the New York City Waterfront Revitalization Program is approved, all City agencies and actions must adhere to that program. To assure that the consistency provisions of LGWRPs are continually and uniformly enforced, the NYCRR, Title 19, Part 600 regulations have been changed to include provisions for monitoring of those programs during their implementation. See Section 600.

4. COMMENT: Several improvements could be made in the CEQR process which, in turn, would help the Coastal Management Program: (1) The Project Data Statement should include a cost benefit analysis; (2) The Project Data Statement should be sent to Community Boards and to appropriate City Departments; (3) The Department of City Planning's involvement in the process should be eliminated.

RESPONSE: CEQR is now under public review for a new Executive Order. Furthermore, CEQR will be one of the means used to implement the WRP. The existing procedure is adequate for program approval purposes; however, improvements could be incorporated into the program.

O. Agnes Hentschel, Woodside, New York

1. COMMENT: Desires extension of greenbelts and open space from Gateway National Recreation Area along the shoreline to western Queens and Long Island City in order to preserve recreation and scenic amenities from high rise development.

RESPONSE: Policy F in the NYC WRP emphasizes the priority to be given to the development of mapped parklands and appropriate open space where the opportunity exists to meet the recreational needs of immobile user groups and communities without adequate waterfront park space and/or facilities. The identification of specific areas for open space and implementation of projects will take place following WRP approval and will be subject to public solicitation and review.

P. Robert Alpern, representing:

NYC Citizens Advisory Committee on Water Resources

1. COMMENT: Regarding the NYS CMP, the CAC approves of the Program and makes these recommendations: (1) a statewide citizens advisory committee should be formed to oversee implemenation of the CMP.

RESPONSE: A statewide advisory committee will be formed and support for it is included in a proposed first year work program.

2. COMMENT: Establishment of an areawide Citizens Advisory Committee should be a pre-condition for State approval of all local Waterfront Revitalization Programs.

   RESPONSE: Article 42 strongly encourages local governments to consult with all affected agencies and community based groups during the preparation of a local waterfront revitalization program. The DOS guidelines for LWRP indicate the need for broad local support. Such support would necessitate extensive public involvement. The precise form of such involvement may vary with each locality.

3. COMMENT: Consideration should be given to establishing a new State CMP policy on monitoring and control of physical modifications to the shoreline to avoid adverse cumulative effects.

   RESPONSE: While no specific policy addresses the concern reflected in the above comment, specific coastal features -- dunes, beaches, wetlands, etc. -- the modification of which are of particular concern, are controlled by specific policies and specific adverse effects of modification are addressed in policies on access, water quality, dredging etc. Also, as to monitoring, the DOS will receive descriptions of, and comments upon, all major actions in the coastal area.

4. COMMENT: Consideration should be given to establishing a New State CMP policy on comprehensive monitoring and management of New York Harbor and New York Bight.

   RESPONSE: The proposed first year work program includes a task that will address the issue of comprehensive management of the New York Bight including attention to cooperation with New Jersey and federal agencies.

5. COMMENT: Expand NYS Office of Business Permits master application program to include Federal, substate, and interstate permits.

   RESPONSE: Article 42 requires that the Office of Business Permits shall conduct continuing studies of means of expediting development called for in approved programs. During the first year work program, the DOS will be working closely with the Office of Business Permits to identify and implement means for streamlining permit procedures in the coastal area.

Q. Maurice Hinchey, representing:

Member of New York State Assembly
Chairman of Environmental Conservation Committee
New York State Assembly

1. COMMENT: Urges the approval of the NYS Coastal Zone Management Program. The Legislature has worked closely with the NYS Department of State, Department of Environmental Conservation and other involved agencies and passed the Waterfront Revitalization and Coastal Resources Act and the Shoreowners Protection

Act. The Legislature has been energetically working to fulfill the mandates of the Federal Coastal Zone Management Act in the establishment of a State plan. Without adequate Federal funding and approval of New York's Coastal Management Program, the prospects of prompt action consistent with the established federal program is considerably diminished.

RESPONSE: Thank you for your support.

APPENDICES

Regulations and Amendments

Department of State
Part 600

Amendments to NYCRR, Title 19, Chapter 13 for purposes of Executive Law, Article 42. The Department of State adopts a new Part 600 to read as follows:

Section 600.1 Authority, intent and purpose. (a) This Part is adopted pursuant to section 913 of the Executive Law to implement the provisions of the waterfront revitalization and coastal resources act.

(b) This Part is intended to provide for state agencies acting in the coastal area the necessary framework for the consideration and application of the state's policies with respect to waterfront revitalization and coastal resources, as contained in Article 42 of the Executive Law.

(c) It was the intention of the Legislature that the preservation, enhancement and utilization of the natural and man-made resources of the State's unique coastal area take place in a coordinated and comprehensive manner to ensure the proper balance between those natural resources and the need to accommodate the needs of population growth and economic development. Accordingly, it is the intention of this Part to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems.

(d) In adopting the waterfront revitalization and coastal resources act, it was the Legislature's intention that review by state agencies required pursuant to Article 42 of the Executive Law, to determine the consistency of proposed actions with the policies of Article 42 and with any applicable approved local waterfront revitalization program, be coordinated with and made a part of each agency's existing procedures, including reviews conducted under the State environmental quality review act ("SEQR"), (Environmental Conservation Law, Article 8). Accordingly, in compliance with Article 42, this Part provides a framework which is compatible with and capable of coordination with a state agency's existing review responsibilities under SEQR (NYCRR, Title 6, Part 617).

§600.2 Definitions. (a) "Actions" mean either Type I or unlisted actions as defined in SEQR (NYCRR, Title 6, Part 617.2), which are undertaken by state agencies; the term shall not include excluded actions as defined in SEQR (NYCRR, Title 6, Part 617.2) or actions not subject to SEQR pursuant to toher provisions of the law.

(b) "Certification" means a notice prepared and filed by a state agency with the secretary at 162 Washington Avenue, Albany, New York 12231, which notice shall: 1) contain a statement that is a certification for purposes of Article 42 of the Executive Law, the name and address of the state agency and the name and telephone number of a person who can provide further information; 2) briefly state and precisely describe the nature, extent and location of the action; and 3) briefly state the reasons supporting certification.

(c) "Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in Article 42 of the Executive Law. It includes lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill van Kull and Arthur Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes. The specific boundaries of the coastal area are shown on the coastal area map on file in the office of the secretary, as required by section 914(2) of the Executive Law. A copy of the coastal area map has been provided to each state agency with jurisdiction over programs identified by the secretary pursuant to Executive Law, Article 42 as having the potential to affect coastal resources.

(d) "Direct action" or "directly undertaken action" means an action planned and proposed for implementation by a state agency. Direct actions include but are not limited to capital projects, procedure making and policy making.

(e) "Funding" means any financial support given by a state agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a propósed action.

(f) "Involved agency" means a state agency that has jurisdiction by law to fund, approve or directly undertake a given action.

(g) "Permit" means a permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by a state agency.

(h) "Secretary" means the Secretary of State.

(i) "State agency" means any department, bureau, board, commission, public authority or other agency of the state, including any public benefit corporation, any member of which is appointed by the governor.

§600.3 General rules. (1) No state agency involved in an action shall carry out, fund or approve the action until it has complied with the provisions of Article 42 of the Executive Law.

(2) In accordance with Executive Law, Article 42, actions directly undertaken by state agencies within the coastal area, including grants, loans or other funding assistance, land use and development, planning and land transactions, shall be consistent with the applicable coastal policies set forth in section 600.5 of this Part so as to achieve a balance between the protection of natural resources and the need to accommodate the needs of population growth and economic development, as provided in Executive Law, sections 910 and 912(1). It is intended that this balancing occur in the manner specified in section 600.4 of this Part.

(3) In accordance with Executive Law, Article 42, when the secretary has approved a local government waterfront revitalization program, and has identified state agency program actions which are likely to affect the achievement of the policies and purposes of such approved local waterfront revitalization program, the state agency program actions so identified shall be undertaken in a manner which is consistent to the maximum extent practicable with the approved local waterfront revitalization program.

(4) This Part shall not apply to actions for which a final environmental impact statement has been prepared or for which a determination has been made that the action will not have a significant effect on the environment, pursuant to NYCRR, Title 6, Part 617, prior to the effective date of this Part.

(5) Nothing in this Part shall be construed to authorize or require the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

§600.4 Initial review of actions. As early as possible in a state agency's formulation of an action it proposes to undertake, or as soon as a state agency receives an application for a funding or approval action, it shall determine whether the action is located within the coastal area. For purposes of this Part, planning or rulemaking actions which affect land or water in the coastal area shall be deemed to be located therein. At the time it is determined that the action is located within the coastal area the state agency shall follow the review procedures set forth in this Part, including the completion of a coastal assessment form (CAF) in a form prescribed by the secretary. The CAF shall be completed prior to the agency's determination of significance pursuant to SEQR (NYCRR, Title 6, Part 617) so that it can then supplement other information used by state agencies in making determinations of significance pursuant to such Part 617. If it is determined that an action will not have a significant effect on the environment, the CAF is intended to assist state agencies in arriving at their decision as to certification if required by section 600.4. Where any question on the CAF is answered yes, a brief and precise description of the nature and extent of the action shall be provided on the CAF, and a copy of the CAF forwarded to the secretary; provided, however, this requirement does not apply to permit actions unless such actions involve federal review, funding, or approval. For the purposes of complying with the requirements of Executive Law, Article 42, state agencies shall meet the requirements of either paragraph (1), (2) or (3) of this section, whichever applies.

(1) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action may have a significant effect on the environment, the agency shall comply with the requirements of NYCRR, Title 6, Part 617, subdivision 617.9(e). Fulfilling such requirements constitutes a determination of consistency as required by Executive Law, Article 42.

(2) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action will not have a significant effect on the environment, and where a state agency is undertaking a direct or funding action, other than rulemaking, the state agency, at the time of making its decision on the action, shall file with the secretary a certification that such action will not substantially hinder the achievement of any of the coastal policies set forth in section 600.5 of this Part and whenever practicable will advance one or more of such policies. If the action will substantially hinder the achievement of any policy, the agency shall instead certify that the following four requirements are satisfied: (a) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy; (b) the action taken will minimize all adverse effects on such policies to the maximum extent practicable; (c) the action will advance one or more of the other coastal policies; and (d) the action will result in an overriding regional or statewide public benefit. Such certification shall constitute a determination of consistency as required by Executive Law, Article 42.

(3) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action will not have a significant effect on the environment, and where the action is in the coastal area within the boundaries of an approved local waterfront revitalization program area, and the action is one identified by the secretary pursuant to section 916(1)(a) of the Executive Law, a state agency shall submit, through appropriate existing clearinghouse procedures, information on the proposed action to the local government and, at the time of making its decision on the action, file with the secretary a certification that the action will not substantially hinder the achievement of any of the policies and purposes of the applicable approved local waterfront revitalization program and whenever practicable will advance one or more of such policies. If the action will substantially hinder the achievement of any policy or purpose of the applicable approved local waterfront revitalization program, the state agency shall instead certify that the following three requirements are satisfied: (i) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy or purpose; (ii) the action taken will minimize all adverse effects on the local policy and purpose to the maximum extent practicable; and (iii) the action will result in an overriding regional or statewide public benefit. Such certification shall constitute a determination that the action is consistent to the maximum extent practicable with the approved local waterfront revitalization program as required by Executive Law, Article 42.

§600.5 Coastal Policies. In evaluating proposed actions against the following policies, state agencies are strongly encouraged to consider the coastal policies, explanations and guidelines contained in the approved Coastal Management Program document.

(a) Development policies.

(1) Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial and industrial, cultural, recreational and other compatible uses.

(2) Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.

(3) Encourage the development of the State's existing major ports of Albany, Buffalo, New York, Ogdensburg, and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of State public authorities of land use and development which is essential to or in support of waterborne transportation of cargo and people.

(4) Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.

(5) Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas.

(b) Fish and wildlife policies.

(1) Significant coastal fish and wildlife habitats, as identified on the coastal area map, shall be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.

(2) Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

(3) Further develop commercial finfish, shellfish and crustacean resources in the coastal area by:

(i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities;

(ii) increasing marketing of the State's seafood products; and

(iii) maintaining adequate stocks and expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them.

(4) Ice management practices shall not damage significant fish and wildlife and their habitats, increase shoreline erosion or flooding, or interfere with the production of hydroelectric power.

(c) Agricultural lands policy.

(1) To conserve and protect ricultural lands in the State's coastal area, an action shall not result in a loss, nor impair the productivity, of important agriculture lands, as identified on the coastal area map, if that loss or impairment would adversely affect the viability of agriculture in an agricultural district or if there is no agricultural district, in the area surrounding such lands.

(d) Scenic quality policies.

(1) Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include:

(i) the irreversible modification of geological forms, the destruction or removal of vegetation, the destruction or removal of structures, wherever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and

(ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

(2) Protect, restore and enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the scenic quality of the coastal area.

(e) Public access policies.

(1) Protect, maintain and increase the levels and types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas and waterfront parks.

(2) Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided, and it should be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

(f) Recreation policies.

(1) Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over nonwater related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development.

(2) Development, when located adjacent to the shore, shall provide for water-related recreation, as a multiple use, whenever such recreational use is appropriate in light of reasonably anticipated demand for such activities and the primary purpose of the development.

(3) Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities or the Nation.

(g) Flooding and erosion hazards policies.

(1) Whenever possible, use nonstructural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include:

(i) the set back of buildings and structures;

(ii) the planting of vegetation and the installation of sand fencing and drainage systems;

(iii) the reshaping of bluffs; and

(iv) the flood-proofing of buildings or their elevation above the base flood level.

(2) Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

(3) The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

(4) Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

(5) Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations.

(6) Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

(h) Water resources policies.

(1) State coastal area policies and purposes of approved local Waterfront Revitalization Programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.

(2) Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high given the size of the existing tax base of these communities.

(3) Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

(4) Discharge of waste materials from vessels into coastal waters will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

(5) Best management practices will be utilized to minimize the nonpoint discharge of excess nutrients, organics and eroded soils into coastal waters.

(i) To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

Department of Environmental Conservation
Part 617 Amendments

SEQR amendments to Part 617 of Title 6 of the NYCRR for purposes of Executive Law, Article 42.

1) Reletter definition items (f), (g), etc. of §617.2 to be (g), (h), etc., and add a new item (f) to read as follows:

"Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in Article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the office of the Secretary of State, as required by section 914(2) of the Executive Law.

2) Add a new §617.5(d) to read as follows: *For state agencies only, determine whether the action is located in the coastal area. If the action is either a Type I or unlisted action as defined in section 617.2 and is in the coastal area, the provisions of NYCRR, Title 19, Part 600 shall apply.*

3) Add new material to §617.9(e) to read as follows: *State agency actions in the coastal area, shall be consistent with the applicable policies of Executive Law, Article 42 as contained in NYCRR, Title 19, Part 600, section 600.5, so as to achieve a balance between the protection of natural resources and the need to accommodate social and economic considerations as provided in such policies. When the state agency action in the coastal area is within the boundaries of an approved local waterfront revitalization program and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, the action shall be consistent to the maximum extent practicable with the applicable policies of such local waterfront revitalization program.*

4) Add a new §617.10(e)(6) to read as follows: *one copy with the Secretary of State where the action is a state agency action in the coastal area.*

5) Renumber §617.14(f)(10)-(12) to be (11)-(13) and add a new item (10) to read as follows:

(10) for state agency actions in the coastal area, an identification of the coastal policies of Executive Law, Article 42 as contained in NYCRR, Title 19, Part 600, section 600.5 which are applicable to such actions and a discussion of the effects of the proposed action on such applicable policies, except when that state agency action in the coastal area is within the boundaries of an approved local waterfront revitalization program area, and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, the identification and discussion shall instead be of the effects of the proposed action on the applicable policies and purposes of such an approved local waterfront revitalization program.

Department of State
Part 601

Amendments to NYCRR, Title 19, Chapter 13 for purposes of Executive Law, Article 42. The Department of State adopts a new Part 601 to read as follows:

Section 601.1 Authority, intent and purpose. This Part is adopted pursuant to section 915 of the Executive Law to implement the optional local government waterfront revitalization program ("LGWRP") provisions of the waterfront revitalization and coastal resources act. It includes:

(1) procedural requirements for voluntary participation by local governments;

(2) criteria for review of local programs by the secretary;

(3) procedural requirements for review and comment on each LGWRP submitted.

§601.2 Submission of LGWRP. (a) Every submission of a LGWRP to the secretary, in order to be deemed a completed submission eligible for approval, must be accompanied by a resolution of the legislative body providing for such submission. In those instances where two or more local governments are cooperatively submitting a LGWRP, resolutions from each of the participating local governments shall be necessary before a submission is deemed complete and eligible for review by the secretary.

(b) Pursuant to the New York City Charter, the Board of Estimate, as the appropriate body, shall approve the New York City Program before it is deemed complete and eligible for review.

(c) Each LGWRP shall include, for purposes of a completed submission eligible for review by the secretary, all of the elements contained in section 915(4) of the Executive Law.

§601.3 Criteria. In order to approve a submitted LGWRP as eligible for the benefits of section 915 of Article 42 of the Executive Law, the secretary must find: 1) that the LGWRP incorporates the criteria listed in section 915(5) of Article 42 of the Executive Law to an extent commensurate with the circumstances of the local government or local governments seeking approval; and 2) that the LGWRP is consistent with the policies of Article 42 of the Executive Law as contained in NYCRR, Title 19, Part 600, §600.5; and 3) after consultation with potentially affected state and federal agencies that the LGWRP will not conflict with any applicable state or federal policy.

§601.4 Procedure for review. (a) Upon receipt of a completed LGWRP the secretary shall circulate the program to such parties as the secretary shall deem appropriate, which parties shall include: 1) every state agency (as defined in Article 42 of the Executive Law) with programs identified in the submitted LGWRP as having the potential to affect the achievement of the waterfront revitalization program; 2) any adjacent local government with contiguous coastal area; 3) the county wherein the LGWRP area is situated; and 4) the regional planning board, if any, wherein the LGWRP area is situated.

(b) Each agency shall have 60 days for review and comment before the secretary can render a decision as to the approvability of such LGWRP.

(c) Amendments to any approved LGWRP shall be reviewed in the same manner as any original LGWRP.

(d) Notice of disapproval by the secretary shall be issued in writing and shall include findings with respect to the criteria which the LGWRP fails to meet. Disapproval of a LGWRP shall be without prejudice and any local government may resubmit a LGWRP without regard to prior disapprovals.

(e) The secretary may, as a condition to approval of a LGWRP, require that notice of certain identified actions of that local government or its agencies be given to the secretary prior to such actions being taken.

§601.5 Approved programs. A LGWRP approved by the secretary shall be eligible for the benefits provided in Article 42 of the Executive Law.

§601.6 (a) The secretary shall periodically review the administration and implementation of every approved LGWRP to assure, among other things, that the local government itself acts consistent with the policies and goals of its approved LGWRP.

(b) The secretary shall, after written notice to the legislative body of the participating local government, revoke approval if at any time he finds that the policies and goals of the approved LGWRP are not being carried out in accordance with the terms of such LGWRP.

§601.7 Withdrawal. A local government may withdraw its approved LGWRP at any time as provided in section 915(10) of the Executive Law. Withdrawal of an approved LGWRP will effect an immediate termination of all benefits accruing under section 916 of the Executive Law, including but not limited to any funding or technical assistance.

Coastal Assessment Form

NEW YORK STATE
DEPARTMENT OF STATE

(a) State agencies shall complete this assessment form for actions which are subject to Part 600 of Title 19 of the NYCRR. This assessment is intended to supplement other information used by state agencies in making determinations of significance pursuant to the State Environmental Quality Review Act (see 6 NYCRR, Part 617). If it is determined that an action will not have a significant effect on the environment, this assessment is intended to assist state agencies in arriving at their decision as to certification as required by 19 NYCRR § 600.4.

(b) If any question in subsection (e) on this form is answered "yes," then the proposed action may affect the achievement of the coastal policies contained in Article 42 of the Executive Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to either (a) making a certification of consistency pursuant to 19 NYCRR Part 600, or (b) if the action is one for which an environmental impact statement is being prepared, making the findings required under SEQR, 6 NYCRR, § 617.9. If an action cannot be certified as consistent with the coastal policies, it shall not be undertaken.

(c) Before answering the questions in subsection (e), the preparer should review the coastal policies as explained in 19 NYCRR § 600.5. Actions should be evaluated as to their beneficial and adverse effects upon the coastal area.

(d) Description of Action

1. Type of Action
   - ____ (a) Directly undertaken, pursuant to: _____.
   - ____ (b) Funding, pursuant to: _____.
   - ____ (c) Permit(s), pursuant to: _____.
   - ____ (d) Planning activity(ies), pursuant to: _____.
   - ____ (e) Rule, regulation, procedure, policymaking, pursuant to: _____.
2. Location of Action, fill in blank(s), as applicable.

County(ies)	Town(s)	City(ies), Village(s)	Site

3. Anticipated Start Date of Action: _____. (month/day/year)
4. Will the action require review, funding, and/or approval by a federal agency(ies)? If yes, which federal agency(ies) _____.

(e) Coastal Assessment

	Yes	No
1. Will the action result in a large physical change to coastal site or physically alter more than two acres of land, land under water, or coastal waters, if located adjacent to the shore, or five acres if elsewhere within the coastal area?	—	—
2. Will the action be located in or significantly affect the viability of a significant fish or wildlife habitat identified on the coastal area map?	—	—
3. Will the action have a significant effect on the commercial or recreational use of fish and wildlife resources?	—	—
4. Will the action be located in or have a significant effect upon an area identified on the coastal area map as a scenic resource of statewide significance?	—	—
5. Will the action have any significant visual effect upon a natural or manmade resource which contributes to the scenic quality of the coastal area?	—	—
6. Will the action be located on or significantly affect the conservation of important agricultural lands identified on the coastal area map?	—	—
7. Will the action be located in or have a significant effect upon any area included in an approved local waterfront revitalization program?	—	—
8. Will the action significantly affect existing or the development of future water dependent uses?	—	—
9. Will the action have a significant effect upon the operation of the State's major ports?	—	—
10. Will the action significantly affect land or water uses in and adjacent to the State's small harbors?	—	—
11. Will the action require new or expansion of public services or infrastructure into undeveloped or low density areas of the coast?	—	—
12. Does the action involve an energy facility not subject to Article VII or VIII of the Public Service Law?	—	—
13. Will the action be located in or significantly affect development in designated flood or erosion hazard areas, or on a beach, dune, barrier island, or other feature that functions as a natural protection feature against erosion or flooding?	—	—
14. Does the action involve mining, excavation or dredging within coastal waters?	—	—
15. Will the action result in a reduction of existing or potential public access to or along the shore?	—	—
16. Does the action involve the sale or change in use of state-owned underwater lands or lands adjacent to the coastline?	—	—
17. Will the action affect existing or potential recreation opportunities?	—	—
18. Will the action affect any structures, districts, areas, or sites of historic, archeological or cultural significance to the State or nation?	—	—

(f) If you checked other than (d)(1)(c), and answered yes to one or more questions in subsection (e) on this form, briefly and precisely describe the nature and extent of the proposed action, in the space below, and submit the Department of State copy to the Division of Local Government and Community Services, NYS Department of State, 162 Washington Avenue, Albany, NY 12231.

Preparer's Name: _____ Telephone Number: _____

Title: _____ Agency: _____ Date: _____

DEC Part 505

Pursuant to the Environmental Conservation Law, §§3-0301 and 34-0108, the Department of Environmental Conservation adopts a new Part 505 of Title 6 NYCRR to read as follows:

INTRODUCTION
Coastal Erosion Management

Section 505.1 Purpose. (a) The general purpose of this Part is to implement the provisions of Article 34 of the Environmental Conservation Law, the Coastal Erosion Hazard Areas Act. More specifically, this Part defines when the Department will administer a regulatory program within identified coastal erosion hazard areas and establishes standards for the issuance of erosion area permits by the Department. This Part also establishes minimum standards the Department will use in certifying local erosion management programs submitted to the Commissioner.

(b) Land use, development and other activities are regulated in coastal areas subject to serious erosion. The purpose is to minimize or prevent damage or destruction to man-made property, natural protective features and other natural resources, due to inappropriate actions of man.

(c) New construction or placement of structures are regulated to place them a safe distance from areas of active erosion. This is to ensure that such structures are not prematurely destroyed or damaged due to improper siting.

(d) Public investment in services, facilities, or activities which are likely to encourage new permanent development in erosion hazard areas is severely limited.

(e) Publicly financed structures to minimize erosion damage are to be used only where necessary to protect human life or where the public benefits of such structures clearly outweigh the public expenditures.

505.2 Definitions. The following terms used in this Part have the meaning indicated, unless the context clearly requires otherwise:

(a) "Act" means the Coastal Erosion Hazard Areas Act which has been codified as Article 34 of the Environmental Conservation Law, as amended.

(b) "Appurtenances" means minor or accessory structures attached to or placed near a principal structure.

(c) "Barrier island" means a detached, elevated landform surrounded by water, which is essentially parallel to the mainland, and which separates open water from a bay, lagoon, or wetland. Barrier islands usually consist of beaches, dunes, interdunal troughs, bay shores, and vegetation.

(d) "Bay barrier" means an elongate, elevated landform commonly consisting of sand or gravel deposited by longshore drifting. Bay barriers separate open water from wetlands or lagoons and are connected to the mainland at both ends.

(e) "Beach" means the zone of unconsolidated material that extends landward, from the mean low waterline, to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, or to the seaward toe of a dune, whichever is most seaward.

(f) "Bluff" means any bank or cliff with a precipitous or rounded face adjoining a beach or a body of water. The seaward limit of a bluff is the landward limit of its contiguous beach. Where no beach is present the seaward limit is mean low water. The landward limit is the bluff's receding edge.

(g) "Coastal waters" means Lakes Erie and Ontario, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill van Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, their connecting water bodies, bays, harbors, shallows, and wetlands.

(h) "Coastline" means the lands adjacent to the state's coastal waters.

(i) "Commissioner" means the Commissioner of Environmental Conservation or his duly authorized representative.

(j) "Debris line" means a linear accumulation of waterborne debris deposited by high waters on a beach.

(k) "Department" means the Department of Environmental Conservation.

(l) "Dune" means a ridge or hill of loose, windblown, or artifically placed material, principally sand.

(m) "Erosion" means the loss or displacement of land due to the action of waves, currents, tides, wind-driven water, waterborne ice, or other impacts of storms. It also means the loss or displacement of land due to the action of wind, runoff of surface waters, or groundwater seepage.

(n) "Erosion area permit" means the written Departmental approval required by this Part for the undertaking of any regulated activity within erosion hazard areas as shown on erosion hazard maps.

(o) "Erosion hazard area" means an area of the coastline which is:

(1) a structural hazard area, or

(2) a natural protective feature area.

(p) "Erosion hazard map" means the final map issued by the Commissioner which delineates the boundaries of erosion hazard areas subject to regulation under this Part.

(q) "Erosion protection structure" means a structure specifically designed to prevent erosion such as a groin, jetty, seawall, revetment, bulkhead, or breakwater. Artificial beach nourishment projects are also regulated as erosion protection structures.

(r) "Existing structures" means those structures and appurtenances in existence within erosion hazard areas on the effective date of any erosion hazard area local law or ordinance enacted by a local government pursuant to Article 34 of the Environmental Conservation Law or on the effective date of this Part, whichever is first. Existing structures also includes structures and appurtenances which were initially constructed outside a coastal erosion hazard area, but as a result of additional shore recession are located in a revised coastal erosion hazard area.

(s) "Local government" means a village, town (outside the area of any incorporated village), city, or county.

(t) "Major addition" means an addition which results in a 25 percent or greater increase in the ground area coverage of a structure. The increase will be calculated as the ground area coverage to be added, including any additions previously constructed under an erosion area permit, divided by the ground area coverage of "existing structures" as defined in subdivision (r) above.

(u) "Movable structures" means structures designed and constructed to be readily relocated with minimum disruption of intended use.

(v) "Natural protective features" means beaches, dunes, sandbars, spits, shoals, barrier islands, bay barriers, nearshore areas, bluffs, and wetlands, and the vegetation thereon.

(w) "Nearshore area" means those lands under water beginning at the mean low waterline and extending in a direction normal to the shoreline to a point where mean low water depth is 15 feet, or to a horizontal distance of 1000 feet from the mean low waterline, whichever is greater.

(x) "Person" means any individual, public or private corporation, political subdivision, government agency, partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(y) "Primary dune" means the most seaward major dune where there are two or more parallel dune lines within a coastal area. Where there is only one dune present it is the primary dune. Occasionally one or more relatively small dune forms exist seaward of the primary dune. For the purposes of this Part, such forms will be considered to be part of the primary dune. The seaward limit of a primary dune is the landward limit of its fronting beach. The landward limit of a primary dune is 25 feet landward of its landward toe.

(z) "Receding edge" means the most landward line of active erosion, or in cases where there is no discernible line of active erosion, it is the most seaward line of permanent vegetation.

(aa) "Recession rate" means the rate, expressed in feet per year, at which an eroding shoreline moves landward.

(bb) "Regional permit administrator" means the person designated to process permits in each Regional Office of the Department.

(cc) "Regulated activity" means the construction or placement of a structure, or any action or use of land which materially alters the condition of land, including grading, excavating, dumping, mining, dredging, filling, or other disturbance of soil.

(dd) "Sandbar" means an elongate offshore ridge, mound or bank of unconsolidated material such as sand or gravel, which is submerged at high tide. Sandbars are often located at the mouth of a river or estuary, or are located a short distance from, and usually parallel to, a beach.

(ee) "Secondary dune" means the major dune immediately landward of the primary dune. The seaward limit of a secondary dune is the landward limit of its fronting primary dune. The landward limit of a secondary dune is 25 feet landward of its landward toe.

(ff) "Shoal" means a detached elevation of the bottom of a sea, lake, bay, or river, consisting of or covered by sand, mud, gravel or other unconsolidated material. Shoals are covered by less than 6 feet of water at mean low water.

(gg) "Significant fish and wildlife habitat" means those habitats which:

(1) are essential to the survival of a large portion of a particular fish or wildlife population, or

(2) support rare or endangered species, or

(3) are found at a very low frequency within a geographic area, or

(4) support fish or wildlife populations having significant commercial or recreational value, or

(5) would be difficult or impossible to replace.

(hh) "Spit" means a long, narrow arm of land commonly consisting of sand or gravel, deposited by longshore drifting, and having one end attached to the mainland and the other terminating in open water.

(ii) "State agency" means any department, division, bureau, commission, board, public authority, or other agency of the state. Any public benefit corporation, any member of which is appointed by the governor, is a state agency.

(jj) "Structural hazard area" means those shorelands, other than natural protective features, subject to erosion and located landward of shorelines receding at an average annual rate of 1 foot or more per year. The inland boundary of a structural hazard area is calculated by starting at its receding edge and measuring along a line which is normal to the line of mean low water a distance which is 40 times the long-term average annual recession rate.

(kk) "Structure" means any object constructed, installed or placed on land or in water including, but not limited to, a building, shed, garage, mobile home, tank, pier, dock, jetty, wharf, bulkhead, or any addition to or alteration of the same.

(ll) "Toe" means the lowest point on a slope of a dune or bluff.

505.3 Functions of natural protective features. (a) Natural features such as beaches, bluffs, dunes, barrier islands, sandbars, shoals, nearshore areas, spits, bay barriers and wetlands, and the vegetation thereon, protect coastal areas and human lives from wind and water erosion and storm-induced high water. Inappropriate activities of man may diminish or eliminate entirely the erosion buffering function of natural protective features.

(b) The specific functions and protective values of different types of natural protective features may vary. Certain types of natural protective features are intrinsically better suited for certain types of uses, activities

or development than others. The standards and development restrictions of this Part that apply to regulated activities within specific types of natural protective features are based on:

(1) the protective functions that specific types of natural protective features provide, and

(2) the interaction between specific types of natural protective features and physical coastal processes.

(c) Described below are the erosion protection functions of various types of natural protective features and their relationship to physical coastal processes.

(1) Beaches buffer shorelands from erosion by absorbing wave energy that otherwise would be expended on the toes of bluffs or dunes. Steep, high, wide beaches protect shorelands from erosion more effectively than flat, low, narrow ones. Beaches also act as a reservoir of sand or other unconsolidated material for longshore littoral transport and offshore sandbar and shoal formation.

(2) Bluffs protect shorelands and coastal development by absorbing the often destructive energy of open water. Like dunes, bluffs are of greatest protective value during times of storm-induced high water. Bluffs are a source of depositional material for beaches and other unconsolidated natural protective features.

(3) Dunes, along with bluffs and beaches, buffer shorelands from the energy of open water and are of greatest protective value during conditions of storm-induced high water. The two primary functions of dunes are prevention of wave overtopping and storage of sand for coastal processes. High, vegetated dunes provide a greater degree of protection than low, unvegetated ones. The key to maintaining a stable dune system is the establishment and maintenance of beachgrass or other vegetation on the dunes.

(4) The protective functions of barrier islands reflect those of beaches and dunes, their major components. Because barrier islands often protect some of the most biologically productive as well as developed coastal areas, their value as protective features is especially great. The key to the maintenance of barrier islands and the protection provided by them is the preservation of their dunes and assurance that supplies of sand or gravel are not artifically impeded from nourishing barrier island beaches.

(5) Sandbars control the orientation of incoming waves and remove a substantial amount of wave energy before it reaches the shoreline. Sandbars often serve as reservoirs of sand that are eventually returned to upper beach areas by natural processes. Sandbars also promote the development of icecap formations which help to protect shorelines during winter storms.

(6) Shoals and nearshore areas function similarly to sandbars because they absorb incoming wave energy by decreasing wave length and velocity. Shoals and nearshore areas also function as reservoirs of sand, gravel, and other unconsolidated material.

(7) Spits and bay barriers are similar to barrier islands and function like them by protecting adjacent bays, wetlands, shellfish beds, and other natural areas as well as mainland development. The key to maintaining relatively stable spits and bay barriers is to protect and preserve their dunes and to ensure that longshore littoral transport to them is not obstructed.

(8) Wetlands function similarly to nearshore areas, shoals and sandbars by reducing wave energy before it can be expended on the shoreline. The roots of wetland vegetation bind fine grained silts, clays and organic matter to form a fairly cohesive bottom which resists erosion.

DEPARTMENT REGULATION OF COASTAL EROSION HAZARD AREAS

505.4 Applicability. (a) This section enumerates the instances when the Department will exercise jurisdiction over the issuance of erosion area permits. With the exception of direct actions by state agencies, the Department will not assume or exercise such jurisdiction until after all appropriate local levels of government have had an opportunity to assume and exercise such jurisdiction.

(b) Any state agency that proposes to undertake any regulated activity within an identified erosion hazard area must first obtain an erosion area permit from the Department.

(c) The Department is the regulatory authority and will process erosion area permit applications for regulated activities within the City of New York when:

(1) New York City fails to submit to the Commissioner an erosion hazard area local law or ordinance within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0105(3) of the Act, and, the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(2) New York City's proposed erosion hazard area local law or ordinance is not approved by the Commissioner within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0105(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(3) The Commissioner revokes his approval of New York City's erosion hazard area local law or ordinance because of improper administration or enforcement.

(d) The Department is the regulatory authority and will process erosion area permit applications for regulated activities within any county outside New York City when:

(1) A county outside New York City fails to submit to the Commissioner an erosion hazard area local law or ordinance within six months after receipt of notification as required by subdivision 34-0106(1) of the Act, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0106(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(2) A county's proposed erosion hazard area local law or ordinance is not approved by the Commissioner within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0106(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(3) The Department does not designate a county to administer a city, town, or village erosion hazard area local law or ordinance which has been revoked because of improper administration or enforcement; or

(4) The Commissioner revokes his designation of a county to administer and enforce a city, town or village erosion hazard area local law or ordinance because of improper administration or enforcement; or

(5) The Commissioner revokes his approval of a county erosion hazard area local law or ordinance because of improper administration or enforcement.

505.5 Permits; regulatory procedures. (a) Any person proposing to undertake a regulated activity within a designated erosion hazard area must first obtain an erosion area permit.

(b) Permit applications are available from each regional office of the Department. Applications must be made on a form prescribed by the Department, and must include the following information:

(1) a description of the proposed activity, and

(2) a map drawn to scale, showing the location of the proposed activity, and

(3) any additional information the department may require to properly evaluate the proposed activity. Permit applications are not complete until the appropriate fee, as specified in section 505.15 of this Part, is submitted. Completed permit applications should be submitted to the appropriate regional permit administrator.

(c) Before the Department issues an erosion area permit for a state agency activity within an area having an erosion hazard area local law or ordinance the Department must first make a finding that the standards and criteria of the local law or ordinance, adopted pursuant to section 34-0108 of the Act, have been met.

(d) The procedures of Part 621 of this Title (Uniform Procedures) govern the processing of permit applications under this Part and the modification, renewal, suspension, and revocation of erosion area permits.

(e) All regulated activities are subject to the review procedures required by the State Environmental Quality Review Act (SEQR), Article 8 of the Environmental Conservation Law. The applicant may be required to submit information necessary for compliance with SEQR in addition to information required under this Part.

(f) An erosion area permit may be issued with conditions and limita-

tions as are necessary to ensure compliance with the policies and provisions of the Act and of this Part.

505.6 Standards for issuance of erosion area permits. An erosion area permit will be issued only if the Commissioner finds that the proposed regulated activity:

(a) is reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the proposed activity requires a shoreline location, and

(b) will not cause a measurable increase in erosion at the proposed site or at other locations, and

(c) minimizes adverse effects to natural protective features, existing erosion protection structures, or natural resources including, but not limited to, significant fish and wildlife habitats and shellfish beds.

505.7 Restrictions on regulated activities within structural hazard areas. (a) Applicability. The regulated activities described in this section, when undertaken in structural hazard areas, are subject to the standards of this section and the minimum setback requirements included in section 505.10 of this Part.

(b) Movable structures. Movable structures and their additions may be constructed or placed within a structural hazard area only if an erosion area permit has been granted. Permit requirements include the following:

(1) No permanent foundation is attached to the movable structure and any temporary foundations are removed at the time the structure is moved. Below grade footings will be allowed if satisfactory provision is made for their removal.

(2) Notwithstanding the setback distances of section 505.10 of this Part, no movable structure may be placed or constructed such that it's weight places an excessive ground loading on a bluff according to accepted engineering practice.

(3) A plan for the landward relocation of a movable structure and it's appurtenances, when threatened by shoreline recession, must be included with each erosion area permit application.

(4) Movable structures and appurtenances which have been located within an erosion hazard area, pursuant to an erosion area permit, must be removed prior to the time the receding edge reaches a distance from the structure equal to 2 times the long-term average annual shoreline recession rate established for that site. Debris from structural damage which may occur as a result of sudden, unanticipated bluff edge failure or erosion must be removed within 60 days of the damaging event.

(5) The last owner of record, as shown on the latest assessment roll, of real property upon which a movable structure is placed is responsible for removing that structure and its foundation and appurtenances, unless the last owner of record and the owner of the structure, if the structure is not owned by the last owner of record, have made an agreement providing otherwise in a form acceptable to the Department.

(c) New nonmovable structures or major additions to existing structures. The construction or placement of a nonmovable structure, or major nonmovable addition to an existing structure, is allowed within a structural hazard area only if the structure is protected by an erosion protection structure approved pursuant to this Part. Such construction or placement is subject to the permit requirements of this Part.

(d) An erosion area permit is required for the installation of publicly-owned or publicly-serviced distribution, transmission, or collection systems for gas, electricity, water, or wastewater. Systems installed on mainland shorelines must be located landward of the shoreline structures being served.

505.8 Restrictions on regulated activities within natural protective feature areas.

(a) Applicability. The regulated activities described in this section, when undertaken in natural protective feature areas, are subject to the restrictions of this section and the minimum setback requirements in section 505.10 of this Part.

(b) Shoals, sandbars, and nearshore areas. The following restrictions and requirements apply to regulated activities in shoals, sandbars, and nearshore areas.

(1) Mining, excavation, and dredging, which diminishes the erosion protection afforded by shoals, sandbars, or nearshore areas is prohibited. However, erosion area permits for dredging may be issued for constructing or maintaining navigation channels, bypassing sand around natural and manmade obstructions, or artificial beach nourishment.

(2) An erosion area permit for deposition of material on shoals, sandbars, or nearshore areas will be issued only when acceptable material is used.

(3) An erosion area permit is required for new construction, modification, or restoration of docks, piers, wharves, groins, jetties, seawalls, bulkheads, breakwaters, and artificial beach nourishment. Normal maintenance or repair of such structures does not require an erosion area permit.

(4) Exception. The permit requirement of the preceding paragraph does not apply to docks, piers, wharves, or structures built on floats, columns, open timber, piles, or similar open-work supports having a top surface area of 200 square feet or less. Docks, piers, wharves, or other structures built on floats and which are removed in the fall of each year are similarly excepted.

(c) Beaches. The following provisions apply to regulated activities on beaches:

(1) Excavation or mining which diminishes the erosion protection afforded by beaches is prohibited.

(2) An erosion area permit for deposition of material on beaches will be issued only for expansion or stabilization of beaches; appropriate material must be used.

(3) Beach grooming and clean-up operations do not require an erosion area permit.

(4) An erosion area permit is required for new construction, modification, or restoration of existing docks, piers, wharves, boardwalks, groins, jetties, seawalls, bulkheads, breakwaters and artificial beach nourishment. Normal maintenance or repair of such structures is not subject to the permit requirements of this Part.

(5) The following restrictions apply to the use of motor vehicles on beaches:

(i) motor vehicles must operate seaward of the upper debris lines at all times. On those beaches where no debris line exists motor vehicles must operate seaward of the toe of the primary dune; and

(ii) motor vehicles must not travel on vegetation.

(6) Active bird nesting and breeding areas must not be disturbed.

(d) Bluffs. The following restrictions and requirements apply to regulated activities on bluffs.

(1) The removal, excavation, or mining of bluffs is not allowed except where:

(i) the minor modification of a bluff is done in accordance with conditions stated in an erosion area permit issued for the construction of an erosion protection structure; or

(ii) a bluff cut is made in a direction normal to the shoreline for the purpose of providing shoreline access. Such proposed excavation must be done in accordance with conditions stated in an erosion area permit.

(2) Vehicular traffic is prohibited on bluffs.

(3) An erosion area permit is required for new construction, modification, or restoration of erosion protection structures, walkways or stairways. Normal maintenance or repair of such structures does not require an erosion area permit.

(4) All development is prohibited on bluffs unless specifically allowed by subdivision 505.8(d) of this Part.

(5) Active bird nesting and breeding areas must not be disturbed.

(e) Primary dunes. The following restrictions and requirements apply to regulated activities on primary dunes.

(1) Primary dunes must not be mined, excavated, or removed.

(2) Clean sand obtained from excavation, dredging, or beach grading may be deposited on a primary dune, or on an area formerly a primary dune, to increase its size or restore it. Such deposition is subject to erosion area permit requirements.

(3) All development is prohibited on primary dunes, except elevated walkways, stairways, or other approved means, to provide pedestrian or vehicular access to beaches. Construction or placement of such elevated walkways, stairways or other structures is subject to erosion area permit requirements.

(4) Planting and fencing, to stabilize or entrap sand in order to maintain or increase the profile of dunes, are allowed. Such activities do not require an erosion area permit.

(5) Vehicular traffic is prohibited on primary dunes, except in those areas designated for dune crossing.

(6) Foot traffic which causes sufficient damage to primary dunes to diminish the erosion protection afforded by them is prohibited. Pedestrian passage across primary dunes must utilize elevated walkways and stairways or other specially designed dune crossing structures.

(7) Active bird nesting and breeding areas must not be disturbed.

(f) Secondary dunes. The following restrictions and requirements apply to regulated activities on secondary dunes.

(1) Secondary dunes must not be mined, excavated or removed such that the erosion protection afforded by them is diminished.

(2) Clean sand obtained from excavation, dredging, or beach grading may be deposited on a secondary dune, or an area formerly a secondary dune, to increase its size or restore it. Such deposition is subject to erosion area permit requirements.

(3) The construction or placement of a structure, or major addition to an existing structure, requires an erosion area permit. Permit requirements include:

(i) the lowest floor of a new structure or major addition to an existing structure must be built on adequately anchored pilings at least four feet above the surface of the secondary dune, and

(ii) the space below the lowest floor must be left open and free of obstructions.

(4) Planting and fencing to stabilize or entrap sand in order to maintain or increase the profile of dunes, are allowed. Such activities do not require an erosion area permit.

(g) Regulated Wetlands. Article 25 of the Environmental Conservation Law, the Tidal Wetlands Act, identifies the erosion and flooding damage protection from storm tides and waves provided by tidal wetlands. Article 24 of the Environmental Conservation Law, the Freshwater Wetlands Act, identifies erosion, flood and storm control benefits provided by freshwater wetlands. Because tidal and freshwater wetlands subject to regulation are protected and regulated for their erosion and storm control values by other Parts of this Title, erosion area permits are not required for regulated activities within them as long as the policies, purposes, and permit requirements of 6 NYCRR, Parts 505, 661, 662, 663, and 664 are met.

(h) Nonregulated freshwater wetlands must not be filled, mined, excavated, modified, or otherwise disturbed such that the erosion protection afforded by them is diminished. Regulated activities in freshwater wetlands which are not subject to regulation under the Freshwater Wetlands Act are subject to the permit requirements of this Part.

505.9 Erosion protection structures. Construction of erosion protection structures is expensive, often only partially effective over time, and may even be harmful to adjacent or nearby properties. In some areas of the coastline major erosion protection structures of great length would be required to effectively reduce future damages due to erosion. However, in those cases where a non-structural approach to reducing erosion damages is not feasible, construction of an erosion protection structure might be warranted. In such cases, the construction, modification or restoration of erosion protection structures is subject to the following standards and requirements:

(a) An erosion area permit is required for construction, modification, or restoration of erosion protection structures. Normal maintenance or repair of such structures does not require an erosion area permit.

(b) All erosion protection structures must be designed and constructed according to sound engineering principles, which have demonstrated success in controlling long-term erosion. The protective measures must have a reasonable probability of controlling erosion on the immediate site for at least 30 years.

(c) A long-term maintenance program must be included with every permit application for construction, modification, or restoration of an erosion protection structure. That program must include specifications for periodic maintenance of degradable materials, periodic replacement of removable materials, and financial commitments to assure the accomplishment of these requirements.

(d) All materials used in such structures must be durable and capable of withstanding inundation, wave impacts, weathering, and other effects of storm conditions. Individual component materials may have a working life of less than 30 years only when a maintenance program ensures that they will be regularly maintained and replaced as necessary to attain the required 30 years of erosion protection.

(e) The construction, modification, or restoration of erosion protection structures must:

(1) ensure that there will not be any measurable increase in erosion at the development site or other locations; and

(2) minimize adverse effects to natural protective features, existing erosion protection structures, and natural resources such as significant fish and wildlife habitats.

505.10 Setback requirements. (a) Regulated activities within structural hazard areas are subject to the following setback requirements and restrictions.

(b) Setback for movable structures within structural hazard areas.

(1) No movable structure, additions, or appurtenances thereto, may be placed closer to the receding edge than a distance equal to the elevation differential between mean low water and the bluff's receding edge, except:

(i) where the elevation differential is less than 15 feet a setback of 15 feet is required,

(ii) where the elevation differential is greater than 40 feet a setback of 40 feet is required.

(2) No movable structure, additions, or appurtenances thereto, may be placed within 25 feet of the landward toe of a primary dune.

(3) Where there are no bluffs or dunes present, no movable structure, additions or appurtenances thereto, may be placed within 25 feet of the landward limit of a beach.

(c) Setbacks for non-movable structures which are protected by approved erosion protection structures within structural hazard areas.

(1) Where structural protection has been constructed and is adequately maintained the setback requirement established for the protected section of shoreline will reflect the effectiveness of such protection. The setback requirement will continue to be applied to these protected areas as long as:

(i) the integrity of the structural protection is maintained, or restored at any time partial failure occurs, as part of a committed maintenance program, and

(ii) continued maintenance or restoration activities do not cause damage to adjacent or nearby properties or exacerbate erosion conditions thereon.

(2) If the Department determines that adequate maintenance is not being provided for an existing erosion protection structure, the Department will modify the setback requirement for the protected section of shoreline.

(3) Modification or restoration of an erosion protection structure, either to augment existing structures or to replace the existing structure with a new design, will be considered as a newly proposed structure. Where new erosion protection structures are approved and constructed the setback requirements are determined by the Department based on:

(i) the anticipated stability and durability of the structures, and

(ii) commitment to a maintenance program for the proposed structures.

505.11 Appeal of erosion hazard area designation.

(a) Pursuant to subdivision 34-0108(2) of the Act, any person who owns real property within a designated erosion hazard area identified pursuant to subdivision 34-0104(3) of the Act, may appeal the designation of such real property.

(b) Erosion hazard area designation appeals may be made at any time after the final identification of the subject lands has been completed. The procedural steps leading to final identification of erosion hazard areas are outlined in subdivision 34-0104(3) of the Act.

(c) Any person wishing to make an appeal pursuant to this section must complete an erosion hazard area designation appeal application and submit it to the Department. Appeal applications are available at Department regional offices and the Bureau of Flood Protection at the central office in Albany. Appeal applications are not complete until the applicant provides all necessary information and the appropriate fee.

(d) The Commissioner will decide such appeal within 30 days after receipt of a complete appeal application, and will adjust the erosion hazard area boundaries accordingly.

(e) The sole acceptable basis for an erosion hazard area designation appeal is technical information indicating that:

(1) the long-term average annual rate of shoreline recession was calculated incorrectly, or

(2) the subject area was erroneously identified as a natural protective area.

505.12 Emergency activities. (a) The permit requirements of section 505.5 of this Part do not apply to emergency activities that are immediately necessary to protect public health or safety, or to prevent damage to natural resources. Whenever emergency activities are undertaken, as allowed by this subdivision, damage to natural protective features and other natural resources must be minimized. Within two working days after the commencement of emergency measures, the person responsible for taking those measures must:

(1) notify the appropriate Regional Permit Administrator (see 6 NYCRR Appendix 1) and describe the emergency and the resources or life whose protection was sought, and

(2) describe the measures which were taken to secure such protection.

(b) After completion of the emergency measures, the Department may require such information in writing.

505.13 Bond. The Department may require a bond or other form of financial security if it determines that a person submitting an application for an erosion area permit has a record of non-compliance with the terms and conditions of permits issued by the Department. Such security must be in an amount, and with surety and conditions satisfactory to the Department, to ensure compliance with the conditions stated in the erosion area permit.

505.14 Variances. (a) When an applicant can demonstrate that the strict application of the standards, development restrictions, or other requirements of sections 505.7, 505.8, 505.9 or 505.10 of this Part will cause practical difficulty or unnecessary hardship, they may be varied or modified, provided that the following criteria are met:

(1) the public benefits clearly outweigh the long-term adverse effects for any proposed activities and development where public funds are utilized; and

(2) no reasonable, prudent, alternative site is available; and

(3) all responsible means and measures to mitigate adverse impacts on natural systems in the area have been incorporated into the project design and will be implemented at the developers expense; and

(4) the development will be reasonably safe from flood and erosion damage; and

(5) the variance requested is the minimum necessary to overcome the practical difficulty or hardship which was the basis for requesting it.

(b) Any person wishing to make a request for a variance must do so in writing. The variance request must specify the standard, restriction, or requirement to be varied and how the requested variance meets the criteria established in subdivision (a) of this section. The burden of demonstrating that the requested variance meets these criteria rests entirely with the applicant.

(c) The regional permit administrator may on his own motion treat an application for a permit under this Part as a request for a variance and may request from the applicant the information required by this section.

505.15 Fees. (a) Applications for erosion area permits and erosion hazard area designation appeals must be accompanied by a certified check or money order made payable to the Department of Environmental Conservation in the amount specified in subdivision 505.15(c) of this Part.

(b) If an application is withdrawn before it is determined complete, the fee will be returned to the applicant upon request.

(c) Fees for review of applications.

(1) Appeal of erosion hazard area designation, $50.

(2) Construction or placement of structures other than erosion protection structures, docks, piers, and wharves, $40.

(3) Excavation, grading, mining, or filling:

(i) projects not exceeding 100 cubic yards, $25.

(ii) projects greater than 100 cubic yards, $50.

(4) Dredging:

(i) projects not exceeding 100 cubic yards, $25.

(ii) projects greater than 100 cubic yards, $50.

(5) Construction or modification of docks, piers, or wharves:

(i) docks, piers, or wharves on piles, $35.

(ii) docks, piers, or wharves on fill, $50.

(iii) all other docks, piers, or wharves, $25.

(6) Construction or modification of erosion protection structures:

(i) structures not exceeding 100 linear feet, $50.

(ii) structures greater than 100 linear feet, $100.

(7) All projects or activities not listed in paragraphs (1) through (6) of this section, $25.

(d) When a project involves two or more applications for Department permits which are to be reviewed concurrently and for which fees are required, the fee charged will be 80 percent of the total fee required or the highest single fee whichever is greater.

(e) When an owner of real property appeals the designation of that real property as an erosion hazard area pursuant to section 505.11 of this Part and such appeal is successful, resulting in an amendment to an erosion hazard map, the erosion hazard area designation appeals fee will be refunded.

505.16 Severability. The provisions of the Act and this Part are severable. If any clause, sentence, paragraph, subdivision or Part is adjudged invalid by a court of competent jurisdiction the effect of such order or judgment is confined to the controversy in which it was rendered. Such order or judgment does not affect or invalidate any other provisions of or their application to other persons and circumstances.

LOCAL REGULATION OF COASTAL EROSION HAZARD AREAS

505.17 Submission of local coastal erosion management programs. Local governments must submit local coastal erosion management programs to the Commissioner for certification after the erosion hazard maps which cover their area of jurisdiction have been filed. The procedures, requirements, and time limitations for such submissions are described by sections 34-0105 and 34-0106 of the Act.

505.18 Minimum standards for certification of local coastal erosion management programs.

(a) Coastal erosion management programs submitted by local governments to the Commissioner for certification pursuant to subdivisions 34-0105(1) and 34-0106(1) of the Act must meet, at a minimum, the standards, restrictions, and requirements set forth in subdivisions 505.5(a), 505.5(b), 505.5(e) and 505.5(f), and sections 505.6, 505.7, 505.8, 505.9, 505.10, 505.12 and 505.14 of this Part.

(b) Whenever terms relating to the Commissioner or Department are used in the subdivisions and sections listed in subdivision (a) of this section, local governments should substitute for these terms the title of the local official or agency performing the equivalent function.

APPENDIX B

GUIDELINES FOR LOCAL WATERFRONT REVITALIZATION PROGRAMS

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Part I - General Guidelines

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

GETTING STARTED

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

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

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

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

1. Assistance in Funding Local Program Development.

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

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

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

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

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

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

   (f) commitment to implementing the program;

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

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

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

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

2. Technical Assistance and Advice.

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

3. Needed Tools.

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

CONTENT OF LOCAL PROGRAM

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

1. Undertaking an Inventory and Analysis

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

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

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

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

(c) Current land and water uses.

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

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

2. Determining Local Policies and Applicable State Policies

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

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

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

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

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

(d) generate excitement and commitment

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

3. Defining the Waterfront Revitalization Area Boundary

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

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

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

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

4. Identifying Uses, Projects, and Procedures

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

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

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

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

5. Identifying the Techniques for Implementing the Program

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

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

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

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

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

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

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

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

6. Obtaining Local Commitment

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

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

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

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

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

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

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

7. Consultation with Other Affected Governments

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

DIRECTIONS FOR SUBMISSION OF A PROGRAM

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

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

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

   -- boundary of the state coastal area

   -- inventory information prepared as part of the local program

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

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

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

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

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

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

-- evidence of local support of the program

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

BENEFITS OF AN APPROVED LOCAL PROGRAM

Consistency

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

The 'Consistency' provision will work as follows:

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

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

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

   -- U.S. Environmental Protection Agency

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

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

-- U.S. Dept. of Defense - Army Corps of Engineers

-- Federal Emergency Management Administration

-- U.S. Dept. of Housing and Urban Development

-- NYS Dept. of Environmental Conservation

-- NYS Office of Parks, Recreation, and Historic Preservation

-- NYS Dept. of Transportation

-- NYS Dept. of Commerce

-- NYS Energy Office

-- NYS Dept. of Public Service

-- NYS Office of General Services

-- Port Authorities, if located in that community

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

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

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

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

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

Project Funding

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

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

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

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

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

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

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

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

Technical Assistance

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

Part II - Specific Guidelines

INTRODUCTION

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

DETERIORATED AND UNDERUTILIZED URBAN WATERFRONT AREAS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Proposed actions will enhance existing and anticipated uses;

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

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

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

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

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

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

WATER DEPENDENT USES

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

There is a finite amount of waterfront space suitable for development purposes. Consequently, while the demand for any given piece of property will fluctuate in response to varying economic and social conditions, on a statewide basis the only reasonable expectation is that long-term demand for waterfront space will intensify.

The traditional method of land allocation, i.e., the real estate market, with or without local land use controls, offers little assurance that uses which require waterfront sites will, in fact, have access to coastal waters. To ensure that such "water dependent" uses can continue to be accomodated, a community should avoid undertaking, funding, or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses, and should utilize appropriate programs to encourage water dependent activities.

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

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

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

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

Water Dependent Uses and Facilities

The following uses and facilities are considered as water dependent:

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

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

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

4. Structures needed for navigational purposes (for example: locks, dams, lighthouses);

5. Flood and erosion protection structures (for example: breakwaters, bulkheads);

6. Facilities needed to store and service boats and ships (for example: marinas, boat repair, boat construction yards);

7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);

8. Uses that rely heavily on the waterborne transporation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near to shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);

9. Uses which operate under such severe time constraints that proximity to shipping facilities becomes critical (for example: firms processing perishable foods);

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

11. Support facilities which are necessary for the successful functioning of permitted water dependent uses (for example: parking lots, snack bars, first-aid stations, short-term storage facilities). Though these uses must be near the given water dependent use they should, as much as possible, be sited inland from the water dependent use rather than on the shore.

Water-enhanced Uses

In addition to water dependent uses, uses which are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water dependent uses. A water-enhanced use is defined as a use that has no critical dependence on obtaining a waterfront location, but the profitability of the use and/or the enjoyment level of the users would be increased significantly if the use were adjacent to, or had visual access to, the waterfront. A restaurant which uses good site design to take advantage of a waterfront view, and a golf course which incorporates the coastline into the course design, are two examples of water-enhanced uses.

"Temporary" Non-Water Dependent Uses

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

Choice of Sites

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

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

2. Competition for space -- competition for space or the potential for it, should be indicated before any given site is promoted for water dependent uses. The intent is to match water dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a water dependent use area. The choice of a site should be made with some meaningful impact on the real estate

market anticipated. The anticipated impact could either be one of increased protection to existing water dependent activities or else the encouragement of water dependent development.

3. In-place facilities and services -- most water dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water dependent uses, consideration should be given to the following factors:

   a) The availability of public sewers, public water lines and adequate power supply;

   b) Access to the area for trucks and rail, if heavy industry is to be accommodated; and

   c) Access to public transportation, if a high number of person trips is to be generated.

4. Access to navigational channels -- if commercial shipping, commercial fishing, or recreational boating are planned, the locality should consider setting aside a site, within a sheltered harbor, from which access to adequately sized navigation channels would be assured.

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

6. Preference to underutilized sites -- the promotion of water dependent uses should serve to foster development as a result of the capital programming, permit expediting, and State and other local actions that will be used to promote the site. Nowhere is such a stimulus needed more than in those portions of the State's waterfront areas which are currently underutilized.

7. Providing for expansion -- a primary objective of the policy is to create a process by which water dependent uses can be accomodated well into the future. Localities should therefore give consideration to long-term space needs and, where practicable, accommodate future demand by identifying more land than is needed in the near future.

Promoting Water Dependent Use Areas

In promoting water dependent uses, the following kinds of actions should be considered:

1. Favored treatment to water dependent use areas with respect to capital programming. Particular priority should be given to the construction and maintenance of port facilities, roads, railroad facilities, and public transportation within areas suitable for water dependent uses.

2. When areas suitable for water dependent uses are publicly owned, favored leasing arrangements could be given to water dependent uses.

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

4. Local planning and economic development agencies should actively promote water dependent uses. In addition, a list of sites available for non-water dependent uses should be maintained in order to assist developers seeking alternative sites for their proposed projects.

5. Local, state and federal agencies should work together to streamline permitting procedures that may be burdensome to water dependent uses. This effort should begin for specific uses in a particular area.

6. Local land use controls, especially the use of zoning districts exclusively for waterfront uses, can be an effective tool of local government in assuring adequate space for the development of water dependent uses.

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

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

CONCENTRATION OF DEVELOPMENT

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

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, large scale development in the coastal area will be encouraged to locate within, contiguous to, or in close proximity to, existing areas of concentrated development where infrastructure and public services are adequate, where topography, geology, and other environmental conditions are suitable for and able to accommodate development, and where development will not have significant adverse effects on the achievement of other coastal policies.

The above policy is intended to accomplish the following:

- strengthen existing residential, industrial, and commercial centers
- foster an orderly pattern of growth where outward expansion is occurring
- increase the productivity of existing public services and moderate the need to provide new public services in outlying areas
- preserve open space in sufficient amounts and where desirable
- foster energy conservation by encouraging proximity between home, work, and leisure activities

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

This policy applies to every community.

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

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

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

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

2. Other locations in the coastal area may also be suitable for such land development, if three or more of the following conditions prevail:

   a. Population density of the area surrounding or adjacent to the proposed site exceeds 1,000 persons per square mile;

   b. Less than 50% of the buildable sites (i.e., sites meeting lot area requirements under existing local zoning regulations) within one mile radius of the proposed site are vacant;

   c. Proposed site is served by or is near to public or private sewer and water lines;

   d. Public transportation service is available within one mile of the proposed site; and

   e. A significant concentration of commercial and/or industrial activity is within one-half mile of the proposed site.

3. The following points shall be considered in assessing the adequacy of an area's infrastructure and public services:

   a. Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;

   b. Development's water needs (consumptive and fire fighting) can be met by the existing water supply system;

c. Sewage disposal system can accommodate the wastes generated by the development;

d. Energy needs of the proposed land development can be accommodated by existing utility systems;

e. Stormwater runoff from the proposed site can be accommodated by on-site and/ or off-site facilities, and

f. Schools, police and fire protection, and health and social services are adequate to meet the needs of the population expected to live, work, shop, or conduct business in the area as a result of the development.

Exceptions are made in recognition that certain forms of land development may and/ or should occur at locations which are not within or near areas of concentrated development. Thus, this coastal development policy does not apply to the following types of land development projects and activities:

1. Economic activities which depend upon sites at or near locations where natural resources are present, e.g., lumber industry, quarries.

2. Land development which by its nature is enhanced by a non-urbanized setting, e.g., a resort complex, campgrounds, second home developments.

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

4. Water dependent uses.

5. Land development which because of its isolated location and small-scale has little or no potential to generate and/or encourage further land development.

6. Uses and/or activities which because of public safety considerations should be located away from populous areas.

7. Rehabilitation or restoration of existing structures and facilities.

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

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

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

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

MAJOR PORTS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to encourage the development and use of existing ports ..... so as to reinforce their roles as valuable components within the State's transportation and industrial network" and that LWRPs provide for the "strengthening of the economic position of the state's major ports" (Section 912.2). Therefore, DOS regulations require that affected localities in their LWRPs "ENCOURAGE THE DEVELOPMENT OF THE STATE'S EXISTING PORTS OF ALBANY, BUFFALO, NEW YORK, OGDENSBURGH AND OSWEGO AS CENTERS OF COMMERCE AND INDUSTRY, AND ENCOURAGE THE SITING, IN THESE PORT AREAS, INCLUDING THOSE UNDER THE JURISDICTION OF STATE PUBLIC AUTHORITIES OF LAND USE AND DEVELOPMENT WHICH IS ESSENTIAL TO OR IN SUPPORT OF WATERBORNE TRANSPORTATION OF CARGO AND PEOPLE."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SMALLER HARBORS

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to encourage the development and use of ..... small harbors including use and maintenance of viable existing infrastructures" (Section 912.2), and that LWRPs incorporate means for "strengthening the economic position of... small harbors"(Section 915.5.d). Therefore, DOS regulations require that to be approved a LWRP "STRENGTHEN THE ECONOMIC BASE OF SMALLER HARBOR AREAS BY ENCOURAGING THE DEVELOPMENT AND ENHANCEMENT OF THOSE TRADITIONAL USES AND ACTIVITIES WHICH HAVE PROVIDED SUCH AREAS WITH A UNIQUE MARITIME IDENTITY."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PERMIT SIMPLIFICATION

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

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

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

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

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

For specific types of development activities and in areas suitable for such development, state agencies and local governments participating in the Waterfront Revitalization Program, should, to the maximum extent practicable, coordinate and synchronize existing permit procedures and regulatory programs, as long as the integrity of the regulations' objectives is not jeopardized. These procedures and programs should be coordinated within each agency. Also, efforts should be made to ensure that each agency's procedures and programs are synchronized with other agencies' procedures at each level of government. Finally, regulatory programs and procedures should be coordinated and synchronized between levels of government, and if necessary, legislative and/or programmatic changes recommended.

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

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

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

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

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

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

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

SIGNIFICANT FISH AND WILDLIFE HABITATS

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

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

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

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

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

2. support populations of rare and endangered species;

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

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

5. would be difficult or impossible to replace.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMERCIAL FISHING

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

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

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

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

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

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

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

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

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

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

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

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

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

RECREATIONAL USE OF FISH AND WILDLIFE

Introduction

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

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

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

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

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

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

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

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

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

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

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

FLOOD AND EROSION HAZARDS

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

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

(2) "THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES SHALL BE UNDERTAKEN ONLY IF THEY HAVE A REASONABLE PROBABILITY OF CONTROLLING EROSION FOR AT LEAST THIRTY YEARS AS DEMONSTRATED IN DESIGN AND CONSTRUCTION STANDARDS AND/OR ASSURED MAINTENANCE OR REPLACEMENT PROGRAMS."

(3) "ACTIVITIES AND DEVELOPMENT INCLUDING THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES, SHALL BE UNDERTAKEN SO THAT THERE WILL BE NO MEASURABLE INCREASE IN EROSION NOR FLOODING AT THE SITE OF SUCH ACTIVITIES OR DEVELOPMENT OR AT OTHER LOCATIONS."

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

(5) "PUBLIC FUNDS SHALL ONLY BE USED FOR EROSION PROTECTIVE STRUCTURES WHERE NECESSARY TO PROTECT HUMAN LIFE, AND NEW DEVELOPMENT WHICH REQUIRES A LOCATION WITHIN OR ADJACENT TO AN EROSION HAZARD AREA TO BE ABLE TO FUNCTION, OR EXISTING DEVELOPMENT; AND ONLY WHERE THE PUBLIC BENEFITS OUTWEIGH THE LONG TERM MONETARY AND OTHER COSTS INCLUDING THE POTENTIAL FOR INCREASING EROSION AND ADVERSE EFFECTS ON NATURAL PROTECTIVE FEATURES."

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

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

I. <u>Determining the degree to which these policies apply to each locality</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

ICE MANAGEMENT PRACTICES

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

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

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

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

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

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

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

PUBLIC ACCESS

Introduction

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

(1) "PROTECT, MAINTAIN AND INCREASE THE LEVELS AND TYPES OF ACCESS TO PUBLIC WATER-RELATED RECREATION RESOURCES AND FACILITIES SO THAT THESE RESOURCES AND FACILITIES MAY BE FULLY UTILIZED BY ALL THE PUBLIC IN ACCORDANCE WITH REASONABLY ANTICIPATED PUBLIC RECREATION NEEDS AND THE PROTECTION OF HISTORIC AND NATURAL RESOURCES. IN PROVIDING SUCH ACCESS, PRIORITY SHALL BE GIVEN TO PUBLIC BEACHES, BOATING FACILITIES, FISHING AREAS AND WATERFRONT PARKS."

(2) "ACCESS TO THE PUBLICLY-OWNED FORESHORE AND TO LANDS IMMEDIATELY ADJACENT TO THE FORESHORE OR THE WATER'S EDGE THAT ARE PUBLICLY-OWNED SHALL BE PROVIDED, AND IT SHOULD BE PROVIDED IN A MANNER COMPATIABLE WITH ADJOINING USES. SUCH LANDS SHALL BE RETAINED IN PUBLIC OWNERSHIP."

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

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

the location and type of existing residential, commercial, and industrial development; the location of public transportation; the natural characteristics of the waterfront as they relate to potential recreation and access opportunities; and the types and location of specific uses and projects proposed to implement the local program objectives.

The initial inventory and analysis steps required of all localities wishing to prepare a program will reveal much of the information in the above factors about existing public access to the waterfront and the potential for maintaining or increasing access. Several different situations with respect to access are possible, depending upon the circumstances of the locality. For example, a locality with existing water-related recreation resources along its waterfront should show that existing access is sufficient or, if it is not, show how access can be improved.

On the other hand, a community may be developed to such an extent that little or no waterfront recreation facilities exist and there is little prospect for their development. In this case, the potential for increased access must focus on taking advantage, in existing development and in every proposed specific use or project, of the opportunity to provide access to the waterfront -- even if it is just to an overlook from which to view the shoreline and its activities or the provision of a footbridge across a transportation facility to allow access to a city waterfront.

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

There are several methods available to localities for maintaining or increasing access to the waterfront. Those most suitable for a locality's particular situation should be identified in the waterfront program. The following methods should be considered:

A. Regulation

There are a number of regulatory techniques available to localities to increase public access to the waterfront. They may (a) establish zoning districts, where appropriate, which prescribe water-related uses to facilitate public access for recreation; (b) require provision, through the site plan or special permit approval process, for open space and waterfront access; (c) establish design criteria and standards for large planned developments which ensure provision of waterfront access; (d) require access to the waterfront in new residential subdivisions through subdivision regulations; or (e) require "in lieu" fees for the acquisition of public access at locations other than that of the planned subdivision.

B. Land Acquisition and Capital Construction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECREATION

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

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

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

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

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

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

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

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

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

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

(A) Land Acquisition and Capital Construction

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

(B) Regulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORIC RESOURCES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To be considered adequate a program should:

A. Provide assurance that significant historic resources will be protected

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

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

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

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

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

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

VISUAL QUALITY

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

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

(i) THE IRREVERSIBLE MODIFICATION OF GEOLOGICAL FORMS, THE DESTRUCTION OR REMOVAL OF VEGETATION, THE DESTRUCTION OR REMOVAL OF STRUCTURES, WHEREVER THE GEOGOLIC FORMS, VEGETATION OR STRUCTURES ARE SIGNIFICANT TO THE SCENIC QUALITY OF AN IDENTIFIED RESOURCE; AND,

(ii) THE ADDITION OF STRUCTURES WHICH BECAUSE OF SITING OR SCALE WILL REDUCE IDENTIFIED VIEWS OR WHICH BECAUSE OF SCALE, FORM, OR MATERIALS WILL DIMINISH THE SCENIC QUALITY OF AN IDENTIFIED RESOURCE."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-- removal of attractive vegetation

-- modification of existing landforms

-- demolition of attractive structures

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

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

-- setting structures back from shorelines or in other inconspicuous locations to retain views to and from the shore;

-- clustering or orienting structures to retain views, save open space and provide visual organization to a development;

-- incorporating sound, existing structures (especially historic buildings) into the overall development scheme;

-- removing deteriorated and/or degrading elements;

-- maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest;

-- maintaining or adding vegetation to provide interest, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters;

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

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

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

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

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

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

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

AGRICULTURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WATER QUALITY
and
COASTAL DEVELOPMENT

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

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

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

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

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

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

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

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

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

OTHER WATER QUALITY ISSUES

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

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

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

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

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

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

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

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

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

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

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

Alternative sewage treatment systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost-effective in smaller

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX C

FEDERAL-STATE CONSULTATION AND PLAN COORDINATION

Consultation Activities

The State's federal consultation process was initiated in 1975 with the identification of, and the establishment of contact with those agencies most likely to be affected by the Coastal Management Program. Those agencies were then invited to attend a Federal Coordination Workshop on October 6, 1976. Program information packets were sent to all agencies prior to the meeting. The workshop included presentations on New York's Program development activities, and exchanges of information and views on federal consistency, national interest, excluded federal lands and other requirements of the Coastal Zone Management Act pertaining to federal/state relations. Subsequent to that meeting, copies of several preliminary Program documents were mailed to federal agency contacts for review and comment: Goals and Objectives, Preliminary Statewide Boundary, and Geographic Areas of Particular Concern. As the State's Program development efforts gained momentum, a second federal agency workshop was held on September 15, 1977. Twenty-four federal agency representatives participated in discussions of both the content and alternative organizational approaches being developed for the State's Program as well as federal/state coordination concerns.

A major step in furthering the federal consultation process was taken when the March 1979 Draft New York State Coastal Management Program documents were sent for review and comment to all federal agencies with whom contact had been established (See Part Six of this document for a list of those agencies). Written responses received from ten federal agencies were evaluated by the Department of State and accommodated, where appropriate. The agencies' comments are on file at the Department of State.

Notices of public hearings held around the State on the Coastal Management Program were also mailed to federal agencies to afford them additional opportunities for comment.

At a less formal level, through participation in other workshops, committees, meetings on specific state and federal projects, and consultations on mutual concerns, Program staff has continued to maintain an information exchange with the federal agencies including updates on the status of the Program.

Plan Coordination

The State Coastal Management Program's Plan Coordination efforts have been ongoing since the inception of its development through the use of two approaches. First, the Department of State entered into contracts with State, regional, county and municipal governmental agencies to obtain data on coastal resources, issues and existing plans and programs which could be employed in Program development. The list of Agencies included all those designated under Sections 201 and 208 of the Clean Water Act at the state, regional and city level. Second, the 1979 Draft Coastal Management Program was submitted to all coastal area governments as well as to state agencies. Comments were received at public hearings and in writing, and if there were conflicts of a regulatory or programmatic nature, they were accommodated in the revised Program document or a mutual resolution negotiated. In December 1981, a second Draft Coastal Management Program was sent to state agencies for review. Comments received have been analyzed and no substantive conflicts found.

APPENDIX D

EXCLUDED FEDERAL LAND

(includes underwater lands)

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U.S. Maritime Administration	Merchant Marine Academy	Kings Point	Nassau	73.9
U.S. Corps of Engineers	COE property	Buffalo	Erie	212.3
	Buffalo Harbor Breakwater	Buffalo	Erie	174.5
	CK Channel Improvement	Glen Cove	Nassau	12.2
	Channel Improvements	New York	New York	7.9
	Harlem River Channel	New York	Bronx	160.6
U.S. Treasury Department	U.S. Bullion Depository	Highlands	Orange	4.9
Veterans Administration	V.A. Hospital	Fishkill and Wappinger	Dutchess	109.4
	V.A. Hospital	Cortlandt	Westchester	215.3
	V.A. Hospital	New York	Bronx	29.8
	V.A. Hospital	New York	Kings	17.1
	V.A. Hospital	New York	New York	6.4
U.S. Department of Agriculture	Plum Island	Southold	Suffolk	840.0
	Plum Island Terminal	Southold	Suffolk	9.5
	Circuit Breaker House	Southold	Suffolk	0.2
	Brookhaven National Laboratory	Brookhaven	Suffolk	10.2
U.S. Coast Guard - Ninth District	Alexandria Bay CG Station	Wellesley	Jefferson	27.0
	Braddock Point Light	Greece	Monroe	0.8
	CG Base Buffalo	Buffalo	Erie	29.59
	Cape Vincent Lt. Station	Cape Vincent	Jefferson	0.6
	Chaumont Harbor Light	Lyme	Jefferson	0.1

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U.S. Coast Guard - Ninth District (continued)	Cherry Island Light	Lyme	Jefferson	0.1
	Dunkirk Light Station	Dunkirk	Chautauqua	3.9
	East Charity Shoal Lt.	Cape Vincent	Jefferson	0.9
	Fort Niagara Lt. Station	Porter	Niagara	1.10
	Galloo Island LS	Hounsfield	Jefferson	30.84
	Galloo Island CG Station	Hounsfield	Jefferson	3.4
	Grand Is. Range Rear Light	Grand Island	Erie	0.1
	Grand Is. Range Front Light	Grand Island	Erie	0.1
	Niagara Coast Guard Station	Porter	Niagara	2.50
	Niagara LBS Lookout Tower	Porter	Niagara	0.036
	Oswego Coast Guard Station	Oswego	Oswego	1.8
	Oswego Hbr. W. Prhd. LS	Oswego	Oswego	Off Shore
	Rochester CG Station	Rochester	Monroe	2.8
	Rochester LBS Dwelling	Rochester	Monroe	3.25
	Rochester Auxiliary	Rochester	Monroe	Permit
	Sackets Harbor Light	Hounsfield	Jefferson	0.23
	Sodus Outer LS (Dwelling)	Sodus	Wayne	3.4
	Sodus Point Station	Sodus	Wayne	0.28
	Stony Point Light	Henderson	Jefferson	0.33
	Strawberry Is. Rear Lt.	Buffalo	Erie	0.124
	Thirty Mile Pt. Lt. Station	Somerset	Niagara	3.3
	Tibbetts Point Lt. Station	Cape Vincent	Jefferson	2.96
Property under license to the U.S. Coast Guard - Ninth District	Aux. Station	Henderson Harbor	Jefferson	NA

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
Property under license to the U.S. Coast Guard - Ninth District (continued)	ATON - Niagara River	N. Tonawanda	Niagara	NA
	Buoy Storage	Oswego	Oswego	NA
U. S. Coast Guard - Third District	Brooklyn Air Station	New York	Kings	90.2
	Montauk Station	East Hampton	Suffolk	1.9
	Eatons Neck Station	Northport	Suffolk	10.6
	Fire Island Station	Bay Shore	Suffolk	137.7
	Fishers Island Station	Southold	Suffolk	4.4
	Moriches Station	Brookhaven	Suffolk	47.1
	Shinnecock Station	Southampton	Suffolk	10.0
	Reserve Group - Albany	Albany	Albany	NA
	Bar Beach Light	Hempstead	Nassau	0.7
	Cedar Island Light	East Hampton	Suffolk	0.4
	Cold Spring Harbor Light	Cold Spring	Putnam	0.7
	College Point Reef Light	New York	Queens	0.7
	Upper Hudson River Lights (18)	--	--	24.0
	Gangway Rock Light	Port Washington	Nassau	0.7
	Great Kills Lights	New York	Richmond	0.2
	Middle Hudson River Lights (13)	--	--	13.5
	Hart Island Light	New York	Bronx	0.7
	Horton Point Light	Southold	Suffolk	0.8
	Rockaway Station	New York	Queens	3.8
	Hudson City Light	Hudson	Columbia	0.2
	Kingston Flat Light	Kingston	Ulster	0.7
	Lawrence Pt. Ledge Light	New York	Bronx	0.7
	North Brother Island Lights (2)	New York	Queens	1.2
	Old Orchard Shoal Light	New York	Richmond	0.7

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U. S. Coast Guard - Third District (continued)				
	Port Chester Hbr. Ch. Light	Port Chester	Westchester	0.7
	Port Chester Light	Port Chester	Westchester	0.7
	Sand Spit Light	Sag Harbor	Suffolk	0.7
	Sands Point Light	Sands Point	Nassau	0.7
	Sunken Meadow Light	New York	New York	0.2
	Whitestone Point Light	New York	Queens	0.4
	Sag Harbor Light	Sag Harbor	Suffolk	0.7
	Flushing Bay Light	New York	Queens	0.7
	Lower Hudson River Lights (9)	--	--	5.0
	Mid Ground Fl. W. Ch. Light	Athens	Greene	0.7
	Turkey Pt. Lt. At. Station	Saugerties	Ulster	8.2
	Coney Island Lt. Station	New York	Kings	0.6
	Esopus Meadows Light	Esopus	Ulster	0.2
	Execution Rocks Lt. Station	New Rochelle	Westchester	0.2
	Latimer Reef Light	--	Suffolk	8.8
	Little Gull Isl. Lt. Station	Southold	Suffolk	1.0
	Montauk Pt. Lt. Station	East Hampton	Suffolk	2.2
	Orient Point Light	Southold	Suffolk	1.0
	Montauk Antenna Site	East Hampton	Suffolk	5.0
	Plum Island Light Station	Southold	Suffolk	3.0
	Race Rock Lt. Station (Fishers Island)	Southold	Suffolk	1.0
	Romer Shoal Light	New York	Richmond	1.0
	Saugerties Light Station	Saugerties	Ulster	1.0
	Stepping Stones Light	New York	Bronx	0.7
	Stony Point Lt. Station	Stony Point	Rockland	1.2
	Tarrytown Light Station	Tarrytown	Westchester	0.7
	Throgg's Neck Family Hsng. Site	New York	Bronx	0.4

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U. S. Coast Guard - Third District (continued)				
	Staten Island Rg. Re. Light	New York	Richmond	0.2
	Atlantic Beach Station	Long Beach	Nassau	0.8
	Short Beach Station	Freeport	Nassau	4.0
	Saugerties Lt. At. Station	Saugerties	Ulster	3.2
	New York MIO (Governor's Island)	New York	New York	1.7
	Support Center New York (Governor's Island)	New York	New York	205.0
	Fort Totten Station	New York	Queens	9.6
	W. Hampton Fam. Housing	Westhampton Beach	Suffolk	12.7
	Rosebank Fam. Housing (Staten Island)	New York	Richmond	8.3
	Mantauk Fam. Housing	East Hampton	Suffolk	3.6
	Staten Island Lt. At. Station	New York	Richmond	0.3
U.S. Department of Health, Education and Welfare	USPHS Hospital	New York	Richmond	24.1
Federal Aviation Administration	Middle Marker (La Guardia)	New York	Queens	0.2
	Homing Beacon	Southampton	Suffolk	1.7
	Remote Comm. Air/Ground (Douglaston)	New York	Queens	1.1
General Services Administration	Federal Office Building	Albany	Albany	3.2
	U.S. Post Office - Courthouse	Albany	Albany	1.0
	F.D.R. Library	Hyde Park	Dutchess	16.3
	Disposal Center	Buffalo	Erie	12.4
	Federal Buildings (3rd Avenue)	New York	Kings	12.4

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
General Services Administration (continued)	Federal Building (Ryerson Street)	New York	Kings	0.7
	Federal Building (Washington St.)	New York	New York	1.2
	U.S. Mission to the U.N.	New York	New York	0.3
	Federal Office Building	New York	Richmond	1.2
	Rooseveltown Border Station	Massena	St. Lawrence	4.8
	Customhouse	Ogdensburg	St. Lawrence	1.7
	Peconic MHW Facility	Brookhaven	Suffolk	15.1
	Former U.S. Post Office	Huntington	Suffolk	0.6
National Parks Service	Vanderbilt Mansion	Hyde Park	Dutchess	211.0
	Home of FDR	Hyde Park	Dutchess	263.4
	Statue of Liberty	New York	New York	10.4
	Gateway NRA	New York	Queens, Kings, Richmond	16,655.0
	Gen. Grant National Memorial	New York	New York	18.0
	Sagamore Hill NHS	Oyster Bay	Nassau	85.0
	Fire Island National Seashore	Brookhaven, Islip	Suffolk	6,033.92
	Ellis Island	New York	New York	27.5
	Castle Clinton NM	New York	New York	1.0
U.S. Navy	Naval Support Activity	New York	Kings	43.34
	USN and MCRC	Buffalo	Erie	4.76*
	USN and MCRC (Fort Schuyler)	New York	Bronx	8.04
	USNRC	Freeport	Nassau	2.03
	USN and MCRC	Huntington	Suffolk	3.27*
	USN and MCRC	New Rochelle	Westchester	2.9*
	USNRC	Poughkeepsie	Dutchess	2.41*
	USNRC (Whitestone)	New York	Queens	NA
	Naval Air Station	New York	Kings	142.65

*=Leased

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U.S. Navy (continued)	NUSC, Wilderness Point, Fishers Island	Southold	Suffolk	77.36 + 5.62*
	Radio Ship Positioning Station	East Hampton	Suffolk	NA
U.S. Fish and Wildlife	Conscience Point NWR	Southampton	Suffolk	247.7
	E.A. Morton NWR	Southampton	Suffolk	187.3
	Amagansett NWR	East Hampton	Suffolk	36.0
	Oyster Bay NWR	--	--	3,117.0
	Seatuck NWR	Islip	Suffolk	10.4
	Lido Beach NWR	Hempstead	Nassau	22.4
	Wertheim NWR	Brookhaven	Suffolk	1,936.9
	Target Rock NWR	Huntington	Suffolk	80.1
U.S. Department of the Army (except Corps of Engineers)	U.S. Military Academy	Highlands	Orange	NA
	(parts)	Philipstown	Putnam	NA
	Watervliet Arsenal	Watervliet	Albany	138.0
	Fort Hamilton	New York	Kings	177.0
	Fort Wardsworth	New York	Richmond	226.0
	Hart Island	New York	Bronx	NA
	Fort Totten	New York	Queens	NA
	Unnamed	Brookhaven	Suffolk	NA
	USARC Kingston	Kingston	Ulster	4.0
	ARARC Messena	Messena	St. Lawrence	5.0
	Manhattan Beach Housing	New York	Kings	5.0
	Nike NY 04, 05	NA	Rockland	115.0
	Nike NY 23	NA	Nassau	46.0
	Nike NY 24	Brookhaven	Suffolk	75.0
	Nike NY 25	Brookhaven	Suffolk	115.0
	Nike Niagara Falls 41	NA	Erie	182.0
U.S. Air Force	Montauk Air Force Station	East Hampton	Suffolk	307.65
	Ground-to-Air Transmitter	East Hampton	Suffolk	NA

*=Leased

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
Saint Lawrence Seaway Development Corporation	Area No. 1 - Easement	Sodus	Wayne	0.66
	Area No. 2 - Transferred Land	Cape Vincent	Jefferson	1.68
	- Easement	Cape Vincent	Jefferson	0.46
	Area No. 3 - Easement	Cape Vincent	Jefferson	0.05
	Area No. 4 - Easement	Alexandria	Jefferson	0.21
	Area No. 5 - Purchased Land	Alexandria	Jefferson	1.04
	Area No. 6 - Transferred Land	Alexandria Bay	Jefferson	0.30
	Area No. 7 - Easement	Alexandria	Jefferson	0.04
	Carlton Island Light Station	Lyme	Jefferson	0.1
	Areas No. 8 and 8A - Purchased Land	Massena	St. Lawrence	134.42
	Area No. 9 - Purchased Land	Massena	St. Lawrence	2,758.76
	- Easement	Massena	St. Lawrence	81.38
	Area No. 10 - Purchased Land	Massena	St. Lawrence	7.31
	- Easement	Massena	St. Lawrence	1.05
	Area No. 11 - Purchased Land	Massena	St. Lawrence	2.48
	Area No. 12 - Purchased Land	Massena	St. Lawrence	25.04
	Letter of Agreement Land	Massena	St. Lawrence	0.57
	Area No. 13 - Purchased Land	St. Regis Reservation	Franklin	36.51
	- Easement	St. Regis Reservation	Franklin	52.06
	Area No. 14 - Easement	St. Regis Reservation	Franklin	4.50
	Area No. 15 - Easement	St. Regis Reservation	Franklin	4.01