# The New York Coast

*your coast, your choice, your future*

# Proceedings of Five Regional Conferences

New York State Department of State
DIVISION OF COASTAL RESOURCES AND WATERFRONT REVITALIZATION

Mario M. Cuomo, Governor
Gail S. Shaffer, Secretary of State

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The New York State Department of State is a diverse agency which combines modern activities with historic responsibilities. Twelve different program areas reflect the growing role of the agency and its unique ability to act as liaison between state government and the public, and provide a variety of services to New Yorkers. New York's Coastal Program is housed in the Department of State. It oversees the state's 3,200 miles of coast, balancing protection of coastal resources with careful waterfront development.

If you would like additional information on New York's Coastal Program, please write:

Secretary of State Gail S. Shaffer
NYS Department of State
162 Washington Avenue
Albany, New York 12231

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of
Five Regional Conferences

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New York State Department of State
DIVISION OF COASTAL RESOURCES AND WATERFRONT REVITALIZATION

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GAIL S. SHAFFER
SECRETARY OF STATE

December 1989

Dear Friend of the Coast:

"Your coast...your choice...your future."

With this phrase, we asked you to express your commitment to the stewardship of the state's coastal resources.

It is, therefore, my pleasure to present the proceedings of the five regional coastal conferences held throughout New York in the fall of 1989.

These conferences provided a unique opportunity for technical experts, government officials, members of public interest groups, citizens, and leaders in coastal affairs to present and exchange ideas for the future use of our coastlines.

The array of knowledge and ideas presented at these conferences provided a solid indicator of public interest in charting a future course in coastal management.

New York stands at the crossroads in determining our most critical coastal priorities. We must now activate concepts presented at these proceedings in order to achieve our common goal--the conservation, revitalization and prudent development of one of our greatest resources--the coast.

It is my hope that all of us can work together for the protection of these valuable coastal resources--a legacy from our past...a treasure for the future.

Sincerely,

Gail S. Shaffer

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CONFERENCE PROCEEDINGS

LONG ISLAND SOUND and PECONIC BAY

Regional Coastal Conference

September 26, 1989

Melville, New York

**LONG ISLAND SOUND AND PECONIC BAY**
**COASTAL CONFERENCE**

**September 26, 1989**

**Agenda**

**8:30 - 9:00 a.m.** **Registration**

**9:00 - 10:00 a.m.** **Opening Session**

- Welcome by Secretary of State Gail S. Shaffer
- Welcome by host Town of Huntington Supervisor Antonia Rettaliata
- Remarks by Secretary Shaffer
- Presentation by Secretary Shaffer to Town of Smithtown Supervisor Patrick R. Vecchio of Certificate of Approval for the Town's Local Waterfront Revitalization Program
- Remarks by State Senator Owen Johnson
- Opening address by Lt. Governor Stan Lundine

**10:00 - 10:15 a.m.** **Coffee Break**

**10:15 - 12:30 p.m.** **Workshop Sessions**

**Growth Management**

- James Larocca - President, Long Island Association
- DeWitt Davies - Chief, Environmental Analyst, Long Island Regional Planning Board
- Jean Piette - Director of Intergovernmental Relations, Minister of the Environment, Government of Quebec, Canada
- Robert Funicello - President, Federated Conservationists of Westchester County

**Harbor Management**

- Larry Johnston - L.R. Johnston Associates
- Tom Watkins - Chairman, Stonington, CT Harbor Management Commission
- Joanne Kesner - Environmental Planner, Town of Oyster Bay

**Habitats**

- Bill Colodnicki - Theodore Roosevelt Sanctuary
- Kevin McDonald - Vice-President, Group for the South Fork
- Sara Davison - Executive Director, South Fork/ Shelter Island Chapter, Nature Conservancy

**12:45 - 1:45 p.m.** **Lunch**

**1:45 - 2:30 p.m.** **Intergovernmental Panel on Coastal Resource Issues**

**2:30 - 4:45 p.m.** **Workshop Sessions**

**Coastal Non-Point Source Pollution**

- Lauretta Fischer - Senior Planner, Long Island Regional Planning Board
- Nina Marden - Soundwatch
- Helene Tenner - Maryland Department of Natural Resources
- Larry Penny - Director, Department of Natural Resources, Town of East Hampton

**Scenic Areas**

- Laura Zeisel - Attorney
- Harry Dodson - Dodson Associates
- Robert Pirani - Planner, Regional Plan Association

**Water Dependent Uses**

- Jason Anderson - Kearney/Centaur Division, A.T. Kearney, Inc.
- David Terkla - Department of Economics, University of Massachusetts, Boston Harbor Campus

# PLENARY SESSIONS

## OPENING SESSION

### Welcome by Secretary of State Gail S. Shaffer

Secretary of State, Gail S. Shaffer welcomed the participants to the conference, one of five regional conferences sponsored by the Department of State. She noted the purpose of the conference, which is to bring together leaders in coastal affairs, technical experts, government officials, knowledgeable citizens, and members of public interest groups in order to facilitate an exchange of opinions and ideas and to seek a consensus for needed changes in the way New York's coast is managed.

### Welcome by host Town of Huntington Supervisor Antonia Rettaliata

Supervisor Rettaliata welcomed the conference participants. She noted the importance of finding solutions to the ever-increasing problems facing coastal Long Island. She stressed the need for cooperation and coordination between all levels of government and the private sector and looked forward to workable solutions emerging from the conference for improved management of coastal resources.

### Presentation of Secretary of State, Gail S. Shaffer of a Local Waterfront Revitalization Program Certificate to Supervisor Patrick Vecchio of the Town of Smithtown

Secretary of State, Gail S. Shaffer presented a Certificate of Approval to Supervisor Patrick Vecchio for the Town of Smithtown Local Waterfront Revitalization Program. Smithtown was the first town on Long Island to complete, adopt, and receive approval of its local waterfront program. Secretary Shaffer stressed that there cannot be effective coastal management without management of land use, which is a primary responsibility of local government. She praised the residents of Smithtown for their commitment to wise coastal management shown by their municipality's participation in the Local Waterfront Revitalization Program.

### Remarks of Secretary of State Gail S. Shaffer

It is a pleasure for me and the staff of the New York Coastal Program to host the regional conferences on Long Island.

I am going to take a few moments to describe where the New York Coastal Program has been, and suggest where it might be going.

The national effort began in 1972 with the passage of the federal Coastal Zone Management Act. The Coastal Zone Management Act set in place a management scheme that encouraged the United State's 30 coastal states and 5 territories to undertake the arduous task of protecting and wisely developing 95,000 miles of shoreline.

With federal financial assistance and the promise of a new concept called "consistency", states and territories began planning for the coast.

In New York, the effort began in 1975 and with the passage of the Waterfront Revitalization and Coastal Resources Act and federal approval of the State's Coastal Program, implementation of new management approaches for the State's 3,200 miles of coastline began in 1982.

What the New York Coastal Program created, in concept, is a "trinity" -- an intricate partnership of federal, State, and local governments, working towards a common goal--preservation, revitalization, and the wise development of one of the State's greatest resources -- your coasts.

After seven years of program implementation, I am pleased to say that the basic ingredients for accomplishing this laudable objective are in place, and have had results. Working together, governments are advancing improvements of water, the land, and the overall quality of New York's coast. On Long Island, the federal government has initiated the Coastal Barrier Resources Act. Congress has designated Long Island Sound and Peconic Bay as estuaries in the National Estuary Program. And, in 1990, Congress will be considering sweeping changes to the Coastal Zone Management Act, in an effort to respond to the current crises facing the coast.

At the State level, the Department of State has designated 101 significant coastal fish and wildlife habitats on Long Island, resulting in increased protection to these most vital resources.

Work to resolve erosion hazard problems is progressing in cooperation with sister agencies, municipalities, and the Long Island Regional Planning Board. A comprehensive hazard area management program for the South Shore barrier island complex will soon be aired.

The State has made sweeping consistency decisions including stopping the proposed disposition and privitization of Montauk Air Force Base, which would have been used for private development, but which is now a State park.

As a result of a Department of State decision two years ago, last week the State proposed a reconfiguration of the Army Corps' proposal to nourish the beach at Westhampton which will result in a safer barrier, and significant new public beaches, at half the cost of the original proposal. Further, New York is on the forefront, nationally, for the fight for public access to the shore, and the State is committed to resolving the decline in Long Island's commercial fishing industry.

At the local level, Long Island coastal communities have made great strides. All of Long Island's coastal towns, save one, two

cities, and fourteen villages are preparing or implementing Local Waterfront Revitalization Programs. These programs embody land use regulations to guide coastal development and preserve coastal resources. They contain capital investment programs to revitalize working waterfronts, improve public access and strengthen the regions thriving tourist industry. These Local Waterfront Revitalization Programs are, and will continue to be, a major component in achieving the statewide and national coastal management objectives.

After seven years, this "trinity" has made a difference. But, despite these advances, in New York and around the nation, the coast remains under siege by a multitude of threats documented daily by the media. Shellfish beds are closed due to continued pollution, wetlands are continually lost, houses are falling into the ocean, and a cadence of development along the shores, precludes public access, denigrates barrier islands, and mars the scenic beauty of the coast. The coast has experienced a gruesome array of medical wastes, sewage closing beaches, and oil spills -- not only in Prince William Sound, but in New York's own Hudson River.

Given the severity of today's coastal problems, it is clear that enough has not been done; but with the existing legal authority restricting certain government actions, and with the level of existing financial resources devoted to management of coastal areas, you must question how much more can realistically be done.

There is a complex set of factors that may account for the public and private sectors' inability or unwillingness to respond more effectively to the challenges of managing coastal areas. A partial list includes: the diffused public interest; skewed national, Statewide, regional and local priorities; inadequate legislation; special interest politics; and fragmentation of responsibilities within and among levels of government.

Moreover, governments are not, and cannot, be the only sector to carry the coastal burden. A private sector code of coastal conduct must also be developed. Markets must begin to reflect and absorb the true costs of development in coastal areas and exploitation of coastal resources. The public, as consumers, must express their concern for the coast to business, with the same zeal they express these concerns to government.

Nearly two decades into the national task of managing our coastal environment. There are accomplishments, and there are shortcomings. That is why we are here today. Your ideas and commitment are essential to the formation of a more effective coastal management effort. As the theme of this conference implies, the reality of coastal management is that this <u>is</u> your coast; the choices <u>are</u> your choices; and its future <u>is</u> your future.

During this conference a number of issues facing the Long Island coast, and the State's coastal area as a whole will be covered. These include managing the growth and development of our shoreline, which affects not only coastal resources, but the quality of life in coastal communities. The competing demands and conflicting activities which affect harbors, water-dependent industries and the accessibility of the coast for recreational activities will be addressed - and the condition of the resource base including habitats, water quality, fisheries, and aesthetics, as well as the hazards and costs of living in a coastal area will be discussed.

Each of you have been given brief papers on the topics to be covered. Do not look at these as an authoritative treatise on the topic. Their purpose is to provide a groundwork for discussion in today's workshops. Our distinguished panelists will offer their own thoughts on the topic at hand; and most of all, we need you to ask questions, make comments, and present your own ideas and proposals for improving management of the coast.

Over the next few weeks, we will be holding similar conferences for the Hudson River Valley, the Great Lakes, and New York City. We will also be seeking the advice and counsel of people in those regions. On February 28 and March 1, 1990, we will convene a statewide conference in Albany to air what we have heard, and reach a consensus on a number of options for future action.

In New York State, we have reached the point at which the integrity and future of the coast must take its rightful place in the arena of public issues. Residents, interest groups, and businesses on the coast must increase pressure on public and private decisionmakers, to defend coastal values that have been given lesser priority.

I urge you to work together, and with us, to meet the challenge that faces us all. Unless, or until, the requisite will for fundamental change emerges, progress towards our goals in managing coastal areas will only progress as it has, which has been too slow, if not nearly too late.

Remarks of Senator Owen H. Johnson

Good Morning. My name is Senator Owen Johnson and I am the Chairman of the Senate Subcommittee on the Long Island Marine District. I would like to thank Secretary of State Gail Shaffer for holding this meeting on coastal issues and for giving me the opportunity to speak today.

Today's meeting addresses many of my concerns for the coastline: development and planning, water quality, and public access for recreational purposes. I hope we will now be able to address some of the problems that are facing our coastline.

Development along our shores is both a pleasure and a headache. Many of us want to live on the shore, boat or fish in our waters, and play on the beaches. Unfortunately, so many of the amenities we want on our coast are destructive and may ultimately cause problems that are both difficult and expensive to correct. However, we are learning to build and develop in more environmentally conscientious ways. We've stopped bulldozing sand dunes and we're now restoring and protecting them. We've learned that the dunes are nesting areas for many shorebirds and that we have to keep enough around to ensure survival of the species. We've learned that our wetlands are a necessary habitat for many marine and wildlife species and we've begun to protect them too. During this year's Legislative Session, a bill I sponsored became law, which provides for greater funding for the state's Tidal Wetlands Program. We've enacted stricter regulations on development in wetlands areas. However, we need to do more.

Wetlands are still being destroyed unnecessarily. This is foolish, because our wetlands act as natural filters of pollutants from land runoff, and keep our waters clean. It is my hope that we will hear from speakers today who will inform us of innovative ways to protect such habitats.

Maintaining good water quality is an important coastal issue. Clean waters provide many commercial and recreational opportunities that contribute to our economy. Several bills I sponsored this year will help ensure that our waters become cleaner, both for ourselves and for marine life. A new Clean Oceans Fund will provide monies to develop alternatives to ocean dumping of sewage sludge. A new State Revolving Fund will provide monies to upgrade sewage treatment plants. A new law to improve handling of medical waste and to deter illegal dumping, which will keep our beaches cleaner, was enacted this year. I've brought some information with me today on these new laws and programs.

One issue I would like to focus on in my talk today is on a kind of development that is being proposed for New York City. This development involves building of non-water-dependent projects in the water or on pilings out over our waterways. Such a proposal was proposed in the City on the Hudson River and was the focus of much attention in the Legislature this year. The project involves the building of a hotel out on a piling/platform structure in the Hudson. Environmentalists opposed this project because of the potential negative effects it might have on the Hudson, an important nursery area for many fish species. Developers are fighting the environmentalists.

This is an important example for many reasons. It shows us that we need a coordinated and logical plan for development along our coastlines. Indeed, that development on platforms might become the norm for our shoreline is frightening. Although one project on a platform may not seriously impact a particular water body,

there is no real way to assess the cumulative impacts of many such projects along a shoreline. I think that the controversy that arose this year about the Hudson points out the need for improvements in our State's Coastal Zone Management Program. I am pleased that Gail Shaffer has put together this important conference covering these issues.

I look forward to hearing and learning from the speakers on the agenda, and I anticipate much of what is discussed will be issues facing the Legislature during the 1990 Legislative Session. I hope to speak with as many of you here today as possible, so I can incorporate your comments and concerns into legislative proposals to correct the problems facing our coast and to protect it for the future. Thank you.

Introduction of Lieutenant Governor Lundine by Secretary of State Shaffer

Lieutenant Governor Stan Lundine is Governor Mario M. Cuomo's partner in running New York State government. He has also taken on special assignments addressing drug and alcohol abuse, housing, job training, and high-technology research.

The Lieutenant Governor is the presiding officer of the State Senate and in that role serves as a principal advocate for the Governor's progrm in the Legislature.

Lieutenant Governor Lundine serves as chairman of the Statewide Anti-Drug Abuse Council. The Council, made up of state commissioners and division directors, is developing an action plan to fight drug abuse throughout New York State. It will submit its proposals to the Governor in October.

Lieutenant Governor Lundine also chairs New York State's Housing Subcabinet, working to increase the supply of affordable housing around the state.

Lieutenant Governor Lundine is a former Congressman from New York's Southern Tier, which includes part of the Lake Erie coastline. The Lieutenant Governor's first elective office was as Mayor of his home town of Jamestown, from 1970-1976. He was elected to Congress in 1976 and to his current post in 1986. He has earned a reputation as a hardworking and effective advocate for New York's interests. Moreover, his breadth of experience at all levels of government has given him a keen appreciation of intergovernmental relationships.

Lieutenant Governor Lundine has used his recognized expertise in economic development, science and technology, housing, and the federal government to aid the state in a broad range of responsibilities.

It is with great pleasure that I ask Lieutenant Governor Stan Lundine to address this conference.

Remarks of Lieutenant Governor Lundine

Governor Cuomo and I believe that a broad cross-section of the people of New York should focus concentrated attention on an extremely important region of New York State -- the coastal region.

Major coastal crises have made headline news in the last few years, from the infamous "garbage barge" and medical waste washing ashore, to oil spills in the East River and the Hudson this month.

These crises raised our collective consciousness. And now we're looking for some permanent solutions to the problems that plague our coast. We also should use our creative capability so that we can improve access to and the quality of our coastal resources.

New York's 3,200 miles of coastline comprise a distinct region of the state. 13 million people live in coastal communities on Long Island, in New York City, in the Hudson Valley, and along the Great Lakes and St. Lawrence River.

Our coastal resources are invaluable. The scenic areas are a retreat for millions of visitors each year. The harbors are hubs of recreational and economic vitality. And the coastal zone is home to numerous species of fish and wildlife.

In order to ensure the stability and enhance the beauty of these areas and their resources, we must begin to address the problems facing our coast.

The North Shore of Long Island is magnificent. But as you well know, it is far from problem-free. Although medical waste was under control this summer, the water was still contaminated by several non-point sources of pollution, such as stormwater runoff and boaters' waste. These factors threaten water quality in the Sound.

Beach erosion is another concern. We are pleased at last week's announcement of a state proposal to resolve the problem at Westhampton Beach. But this is only one small step. Erosion will continue to be a problem with which Long Island must contend for years to come.

Yet another ongoing issue is trying to strike a balance between the need for growth and economic development and the need for preservation of our coastal resources.

We in state government need your input to bring clear focus to these and other issues. This series of coastal conferences provides an excellent opportunity for you, the leaders of your communities, to sit down and discuss coastal resource issues.

Your experience on Long Island makes your perspective extremely valuable as we try to chart the course of the State's Coastal

Management Program. The work you do together today will shape our state policies affecting Long Island Sound and the Peconic Bay.

Cooperation between the state and local governments is critical to the success of this program.

You are all familiar with the work of the Department of State which administers the Coastal Management Program and the Department of Environmental Conservation which is also integrally involved in decisions regarding the coastal zone.

The work of these and other state agencies is extensive. But in recent years, as the problems of the coast have become larger and more complex, the need for greater coordination of the state's coastal policy has grown as well.

Recognizing this, Governor Cuomo has formed a new Task Force on Coastal Resources. The Task Force, which has not yet been formally announced, will be charged with guiding and unifying a planning and conservation course for the coastal zone.

The Governor has asked me to chair this Task Force. Taking care of our coastal resources is crucial to overall environmental improvement and for the quality of life of millions of New Yorkers.

The work before us is very important. Many of the issues are extremely complicated. We will need to make tough choices along the way. We must strive for a balanced policy.

I cannot stress enough the need for your input in shaping our policy. We look forward to working with you to develop a broad consensus for the future of New York's coast.

## LUNCHEON SESSION

Intergovernmental Panel

Panelists:

James Conte, Assemblyman, New York State Assembly
David Sayre, Trustee, Village of Head-of-the-Harbor
Gail Horton, Trustee, Village of Greenport
Bill Gillooly, Community Development Director, Village of Greenport

Moderator:

Owen Johnson, Senator, New York State Senate

Discussion:

The local government panelists praised the Department of State for the high level of assistance and commitment they received in developing their Local Waterfront Revitalization Programs and called for continued and increased support for the State Coastal Management Program.

The panelists agreed that all levels of government must act in concert and not independent of one another if coastal problems are to be resolved successfully. Harbor mismanagement, surface water pollution, boater safety, and habitat protection were cited as examples of common problems which local governments need to address with the cooperation of county, State, and federal governments.

Increased funding from State and federal sources was urged to assist local governments in addressing increasingly complex coastal problems. Budget cuts or abolition of the Coastal Management Program would be foolish. The problems faced today, if not adequately addressed, will only intensify and become much costlier to address in the future.

Government must work with the private sector to properly manage coastal areas, since the degree to which they are managed on Long Island, particularly the East End, is directly related to the strength of the economy. We must protect the integrity of our coasts if the commercial fishing, tourism, and recreation industries are going to continue to be a big part of the Long Island economy.

Development, particularly the use of erosion protection structures, must be carefully regulated to prevent severe erosion and the loss of property. The problem at Dune Road was cited as an example.

Efforts to achieve coastal management in New York State have been moderately successful. An improved Coastal Management Program is necessary to achieve greater success.

WORKSHOPS

. Growth Management
. Harbor Management
. Habitats
. Coastal Non-Point Source Pollution
. Scenic Areas
. Water Dependent Uses

## GROWTH MANAGEMENT

Panelists:

James Larocca, President
Long Island Association

Jean Piette, Director
Intergovernmental Relations, Minister of the Environment,
Quebec, Canada

Dewitt Davies, Chief Environmental Analyst
Long Island Regional Planning Board

Robert Funicello, President
Federated Conservationists of Westchester County

Moderator:

George Stafford, Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

James Larocca

Mr. Larocca stated that the business community is concerned with the environment, as well as the economy. It is the Island's quality of life including its recreational opportunities that attract the well-trained work force. Tourism is also important to the economy. Long Island has a well-trained work force for developing industries. The business community needs a rich and protected environment.

Long Island does not want to be bigger, it wants to be better. Long Island has not been faced with some of the bad development that has occurred in other coastal states, such as South Carolina, where oceanfront condominiums line the shore.

Waste washup on the beaches is a big public perception issue. The Marine Sciences Research Center at Stony Brook recently held a conference to discuss the waste problem and better inform the media.

When public safety is threatened because beaches are unclean, it means business loses money. The business community is frustrated because little has been done to protect the coast. The business community is not at odds with the preservationist community -- there are common concerns.

There are unresolved issues that State government has delayed, such as Westhampton Beach and Shinnecock Inlet. The business community does not want coastal resources compromised further.

The coastal environment needs to be enhanced and protected.

Jean Piette

Mr. Piette presented Canadian perspectives on sustainable development. The notion of sustainable development is applicable to management of coastal resources. The government is in the process of looking at case studies that deal with problems in land use planning and conservation.

Eleven years ago, the government developed an agricultural zoning plan. Agricultural resources are limited because of the climate and pressure from suburban development on forests, wetlands, farmlands, and scenic areas. To preserve farming, the government developed a policy which called for a mandatory zoning plan, designating two classes of land use: 1) an agricultural zone or green zone in which only farming was allowed; and 2) a development zone, or white zone, in which development was allowed. These zones were mapped and local governments had to adopt the zoning.

Mr. Piette also discussed the process of developing regional land use plans for the province, enacted by local government. While the plans were being drafted, there was a freeze on all development pending the adoption by municipalities of control ordinances approved by the province. The purpose of the regional plans was to provide coordination between urban and rural areas, urban and suburban areas, and to provide a regional perspective on the resources. After the plans were approved, the municipal governments were directed to bring local laws into compliance.

Sustainable development was defined as development designed to protect the resources over the long term. Development must be compatible and provide sustained use yields.

Based on the United Nation's World Commission report of 1987, the Canadian government has put together an action plan which includes a provincial round table with representatives from private companies, local government, environmental groups and others, who come together to determine how to find a better balance between competing goals.

Mr. Piette stated that the public must be aware and sensitive to the threats to our resources. Government leadership must be committed to their protection.

Dewitt Davies

Mr. Davies discussed the land use planning process on Long Island. In the past, goals included intensive use and development for the region; but in more recent years as the population continued to escalate, policies on growth have changed. Initially, industrial, residential, and tourism development was a goal, but now Suffolk County has focused on

In the past 15-20 years, much progress has been made in the protection of wetlands and ground water recharge areas, control of non-point source pollution, and protection of open space.

The County has embarked on an acquisition program to preserve 75,000 acres. Deep water recharge areas have been purchased with 1986 Environmental Quality Bond Act II funds, and funds from the Suffolk County quarter percent sales tax. Between 10,000 and 15,000 acres have been acquired in the Pine Barrens. But land costs limit the program from reaching its goal.

Mr. Davies commented that if the State mandates participation in the Local Waterfront Revitalization Program, it must follow through with funding.

Robert Funicello

Mr. Funicello stated that the coastal waters are in jeopardy. In managing New York's coast, the State moves with glacial speed. The federal resources in the State coastal program are its only resources; the State has not committed one dollar to the program. The coastal program must be used to manage growth, even if we have to tax fuel, land sales, or ask business for the money. The State receives $1.9 million a year from the federal Coastal Zone Management Act, and it is not enough for coastal planning. The State has spent such funds on the Adirondack and Catskill Mountains, but not on the coast.

In addition, the coastal program needs tighter controls and a greater coordination function. Currently, there is little coordination between the Department of State, the Department of Environmental Conservation, and other agencies, especially the Office of General Services, where the coastal program appears to be ignored. The current decentralized State consistency review does not make sense. What is needed are tighter policies, better guidelines, and more teeth in the coastal decision-making process.

Mr. Funicello also stated that the coastal fish and wildlife habitats work of the Coastal Management Program is commendable. Yet, the work bears no institutional relationship to what the Department of Environmental Conservation is doing under its acquisition program. Priority for acquisition must be given to identified habitats.

Mr. Funicello also stressed the need for more money. The Environmental Quality Bond Act is out of money, and there is a lack of new sources. If threatened resources cannot be regulated, development rights to that land should be acquired. Mr. Funicello is not confident that New York State has the leadership to combat the issues that face our coast.

Discussion:

A question was asked of Mr. Piette regarding the legal challenges that were brought against the freeze on development in the second case study he discussed. He responded by saying that there were no lawsuits. Development proposed prior to the freeze was given one year to complete construction. Further, the enabling legislation stated that no claim could be brought against the government.

A question was raised about lobbying for the Coastal Management Program. Mr. Funicello responded by pointing out that no lobbying occurs. In addition, the funds for the program under the Reagan Administration decreased. The diverse interest groups of the coast must be pulling to form an effective constituency if the program is to get the legal and financial resources needed to make it address today's problems. The ingredient for a successful program is a grassroots effort. The public must be made aware of the program's needs.

It was stated that environmentally damaging actions are slipping through the permitting system because of lack of State agency cooperation.

Further, it was suggested that maximum sustainable yield should be a regulatory principle to enable permitting agencies to limit or prevent use or development of strained resources.

There was considerable discussion over strengthening Local Waterfront Revitalization Programs. It was suggested that participation could be discretionary for the municipality and county, but if neither the municipality nor the county produced a Local Waterfront Revitalization Program, the State should be given the authority to do so directly. It was also suggested that financial incentives are needed to assure the Local Waterfront Revitalization Program work is completed by local government in a maximum of two years.

Some suggested that Local Waterfront Revitalization Programs be mandated.

Whatever approach is taken, it was agreed the approach needs to be stronger, and the program must be related to municipal circumstances and needs.

It was also agreed that the first priority is to obtain State funding for the Coastal Management Program. Further, the production of Local Waterfront Revitalization Programs must be coordinated, with the Department of State serving a facilitator role between municipalities to address shared resources and problems.

## HARBOR MANAGEMENT

Panelists:

Larry Johnston
L.R. Johnston Associates

Tom Watkins, Chairman
Harbor Management Commission
Stonington, Connecticut

Joanne Kesner, Environmental Planner
Town of Oyster Bay

Moderator:

Charles T. McCaffrey, Chief
Bureau of Local Waterfront Revitalization Programs
New York State Department of State

Presentations:

Larry Johnston

Mr. Johnston, illustrating his presentation with slides of various harbor conditions, described the components of a harbor management plan and what is necessary for successful harbor management. He stated that it is essential that local communities receive good technical assistance. While noting that at present there is a dearth of knowledge at the local level regarding local regulatory authority in harbor areas, he added that at all levels of government there is lack of knowledge about the inter-relationship among harbor management issues. He stated that in response to these problems the Department of State should clarify the sources of existing regulating authority and the relationship between shoreline land use regulations and water surface use regulations.

Expanding on a particular problem, Mr. Johnston noted that the complexties of underwater land ownership significantly influence harbor management planning. There is a great deal of misinformation regarding littoral rights among the regulating agencies, the general public, and the courts. There is a need for a better understanding of riparian and littoral rights, especially the limits of such rights when they are in conflict with public rights. To correct this, the State needs to better fulfill its responsibilities under the Public Trust Doctrine and provide more information regarding littoral rights and underwater land ownership to municipalities and the general public.

In order to resolve gaps and conflicts in authority, clear laws governing in water activities need to be established. Mr. Johnston suggested, as a first step, that the Navigation Law and Town Law be amended to extend the specific authority granted to a

few municipalities to all municipalities. New legislation should authorize local government to prepare harbor management plans. Harbor management plans should be related to, and be a part of, Local Waterfront Revitalization Programs, Mr. Johnston stated, thus requiring consistency of all government actions in harbor areas. He said the State needs to establish parameters for harbor management so local government and consultants are dealing with consistent information.

He concluded that there is a need to provide funds to local government to develop and implement harbor management plans on a State/local cost-sharing basis.

Tom Watkins

Mr. Watkins described the experience of the Town of Stonington, Connecticut in developing and implementing a harbor management plan. He emphasized that historical uses of the water should be used as a guide in addressing competing demands for harbor space and that existing cultural and natural resources should not be sacrificed.

Among the issues to be addressed in a harbor management plan, Mr. Watkins said, were the increasing demand for vessel mooring and dock space, overlapping jurisdiction, dock size and configuration, and accomodation of competing recreational uses -- boating, diving, bathing, fishing. In areas which provide commercial fisheries and support facilities, it is imperative that these uses be allowed to continue. He noted the importance of maintaining high water quality in harbors to assure continued commercial and recreational shellfish harvesting. Mr. Watkins stressed that the general public must be involved in the process as well as special interest groups, whose claims to special rights may or may not be valid in fact or in law. He further stated that, to coordinate land-side and water-side activities, harbor plans should be carried out in conjunction with local planning boards. Finally, Mr. Watkins noted that the State of Connecticut provides funds to local government to develop harbor management plans and has approved a one hundred dollar mooring fee to offset harbor management administration.

Joan Kesner

Ms. Kesner described how the Town of Oyster Bay regulates activities in multiple harbor areas on both the north and south shores of Long Island. She noted that, while most development activities in the Town have stabilized, little open space remains in private ownership. The Town is nevertheless being inundated with requests for more moorings and slips at marinas. There are extensive habitats throughout the harbor areas. These, include extensive shellfish growing and harvesting areas which support a large shellfish industry which, she said, must be protected from competing interests and uses. Traditional boat building is another harbor use which needs protection, she said.

In response to the above concerns, the Town enacted a local law regulating structures in the coastal area including those below mean high tide. Ms. Kesner stated that the Town was hesitant to add another regulatory program to existing State and federal permit requirements but felt compelled to regulate these activities since structures were receiving permit approvals that conflicted with other activities in the harbors. The Town feels that it has a better understanding and regard for specific needs in harbor areas and can be more responsible in managing harbors.

Ms. Kesner also described how the Town requires the use of non-point source best management practices to reduce erosion and sedimentation in surface waters. She said that the Town feels that high water quality is absolutely necessary to maintain habitat values, the shellfishing industry, and primary contact recreation. The control of stormwater runoff is of utmost importance to the Town in achieving the necessary water quality. She concluded by saying that LWRPs should address these issues and that harbor management plans should be incorporated into Local Waterfront Revitalization Programs.

Discussion:

The discussion that followed the presentation focused on the following areas: managing vessel waste and non-point sources of pollution in harbors, the effects of marinas on shellfish areas, the need for boater education, determining the carrying capacity of harbors, the necessity for better enforcement of existing laws, intermunicipal cooperation in shared harbors, riparian rights, local authority, and the place of harbor management plans in the Local Waterfront Revitalization Program.

With regard to vessel waste, the following points were made: (1) municipalities should be given authority to adopt laws regulating all vessel waste, (2) increased enforcement of vessel waste laws is necessary, (3) sufficient Marine Sanitation Device pumpout facilities are required that are convenient to use (Long Island lacks a sufficient number of such facilities), (4) very few sewage treatment plants will accept Marine Sanitation Device waste.

There was general consensus that more controls are needed in this area and that local government, if given the authority and assistance, can carry them out.

On the related matter of non-point source pollution, management strategies must include input from local government. The Department of Environmental Conservation's non-point source pollution management strategy could be implemented through Local Waterfront Revitalization Programs.

There was concern expressed about approval of marina development near shellfish areas despite a national Shellfish Sanitation Program requirement that shellfish waters be closed to harvesting

when proximate to marinas. Such marinas and the resulting closures preclude shellfishing which is a higher and better use of coastal waters.

Several participants raised questions about how carrying capacity within harbor areas could be determined. It was noted that this is a very difficult task, but its limitations should not be an excuse for lack of management.

One community described an approach to joint municipal ordinances which could be applied elsewhere to assure that uniform standards are enforced in harbors shared by more than one municipality.

On the subject of riparian rights, concern was expressed about individuals expanding structures and docks into the public domain in a seemingly unlimited manner, relegating public rights to the "back seat". It was noted that these rights are, or should be, limited to the right of access to navigable water. Riparian rights are Common Law rights and their exercise must be reasonable; the question is what is reasonable?

There was much discussion of the need for harbor management plans and their role in the Local Waterfront Revitalization Program. Some of the points on which there was consensus were: (1) local government needs more authority over water surface uses and clear authority to prepare harbor management plans; (2) local government needs technical assistance particularly on finding a pathway through the maze of overlapping jurisdictions; (3) there is a need for uniform regulations governing the use of the water surface; (4) harbor management plans should be incorporated into Local Waterfront Revitalization Programs to assure, through consistency provisions, that all agencies with jurisdiction in a harbor adhere to the plan.

Finally, there was a discussion of funding of harbor management planning and implementation. It was apparant that harbor management planning would require some kind of funding. User fees were identified as at least a partial source of funding. Among those discussed were fees from use of public underwater lands by marinas, fees for moorings and certain other uses of the water surface, as well as vessel registration fee increases.

## HABITAT PROTECTION

Panelists:

Kevin McDonald, Vice President
Group for the South Fork

Sara Davison, Executive Director
South Fork, Shelter Island Chapter
The Nature Conservancy

William Colodnicki, Executive Director
Theodore Roosevelt Sanctuary

Moderator:

William Barton, Chief
Project Review Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Kevin McDonald

Mr. McDonald briefly described his organization's involvement in the project review processes of local, State and federal agencies. The Group for the South Fork has been interested in habitat protection for a long time. He indicated that, in general, public concern for the protection of fish and wildlife habitats is not as strong as it is for hazardous wastes (e.g. oil spills), commercial resources (e.g. fisheries) and other issues. The generation of local government revenues is also given far greater priority than habitat protection (e.g. shopping center construction and related development projects).

He stated that the regulatory agencies devote considerable attention to protecting listed endangered and threatened species and little to other important, but unlisted, species. Also, he thought that preference is given to protecting and maintaining marine food production and perpetuation of marine habitats essential to that production. Wildlife habitats, he added, are almost always overlooked and must be viewed in terms of their quality of life and commercial values. Mr. McDonald said that the State tidal and freshwater wetland laws do not fully address the totality of habitat concerns, and that there was need for legislative action to correct this deficiency.

He indicated that there is need for a comprehensive data base on as many species and habitats as possible. This information, he added, should be brought into the review process early so that it can be adequately addressed by developers and local planners.

Finally, Mr. McDonald stated that there is a need for all

regulatory agencies to work together while following their own regulations in order to protect species and their habitats to the greatest extent practicable.

Sara Davison

Ms. Davison provided an overview of The Nature Conservancy's activities and objectives and indicated that the organization's goal is to preserve the biological diversity of the three million acres of land and water nationwide which it strives to protect. She stated that the Conservancy's activities involve protection to habitats of various fish, wildlife and plant species.

Ms. Davison indicated that the organization's efforts to protect important habitats are implemented in a variety of ways including land acquisition, management of donated lands, purchase of conservation easements or development rights and informal agreements with property owners having an interest in protecting on-site habitats. She stated that the conservation easement is popular because it can be claimed as a federal tax deduction due to the decreased value of the property. Her organization has also helped public entities acquire sites for habitat protection purposes, when public funds were not immediately available for purchasing the properties.

She indicated that fish, wildlife and plant habitats can be important without the presence of an endangered, threatened or commercially/recreationally valuable species (e.g. natural, old-growth white oak forests). She mentioned that colonial nesting waterbirds present a big challenge for habitat protection on Long Island, because the species (least terns, piping plovers, etc.) are extremely mobile. It is important, she added, to work with local government agencies to convince them of the need to protect these waterbirds.

William Colodnicki

Mr. Colodnicki explained briefly the Sanctuary's involvement with the study of colonial nesting waterbirds, particularly least terns, since 1974. He indicated that the general public has been eager to help the Audubon Society in its ongoing study of habitats in Oyster Bay.

He thought that inadequate monitoring of projects affecting fish and wildlife habitats and insufficient enforcement of environmental regulations were the greatest problems preventing proper habitat protection. Mr. Colodnicki attributed these problems in part to the staffing situation in the Department of Environmental Conservation, where the number of conservation officers and biologists is not adequate to keep pace with the projects needing enforcement and monitoring. He suggested that to ensure improved habitat protection: (1) State funding for environmental matters must be increased; (2) this subject must become part of the educational "curriculum" for persons of all

must be stepped up. Mr. Colodnicki described further his viewpoint on improved educational efforts in order to heighten public awareness and concern. He spoke of the virtues of "watchdog" groups such as the Friends of Oyster Bay and their educational capabilities. He concluded by saying that he would like to see this watchdog concept extended to other North Shore bays such as Huntington Bay and Northport Harbor.

Discussion:

The need for improved educational efforts pertaining to habitat protection was the principal topic discussed by the workshop participants. The discussion covered several areas. Generally, the public is aware of the need to protect our habitat resources, but is not sure what it can do about the matter. Local officials, however, were identified as a group needing further help in this area, for they ultimately will be responsible for ensuring that existing habitats are protected. Educational activities are conducted by a number of public and private organizations (e.g. Group for the South Fork, Friends of the Bay), but greater efforts must be taken to alert people of these activities. Increased funding was seen as the critical need for improving the current level of educational activity on habitat protection.

Information on our existing habitats and the species using these areas was another major topic of discussion. A comprehensive habitat data base was considered essential to habitat protection decisionmaking, but this base does not now exist and cannot be put together overnight. The information will need to be gathered over time. Whatever information is or becomes available, however, should be disseminated to the decisionmakers, possibly through cooperative agreements between public and private entities.

Other items which were raised during the discussion portion of the workshop included: (1) the need for local governments sharing jurisdiction over common waterbodies and habitat areas to establish cooperative arrangements for reviewing projects that may affect those resources; (2) whether habitat management plans and habitat acquisition could effectively protect these resource areas (differing viewpoints were expressed on this subject); (3) the need to consider modifying the Department's habitat rating system in order to cover areas of local significance; (4) getting State agencies to be more sensitive to coastal policies such as the significant habitat policy; and (5) the need for greater legislative backing to the significant habitat designations.

## COASTAL NON-POINT SOURCE POLLUTION

Panelists:

Lauretta Fischer, Senior Planner,
Long Island Regional Planning Board

Nina Marden, Soundwatch

Larry Penny, Natural Resources Director
Town of East Hampton

Helene Tenner, Public Affairs Officer
Coastal Resources Maryland Division
State of Maryland Department of Natural Resources

Moderator:

Neil MacCormick, Assistant Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Lauretta Fischer

Ms. Fischer explained that the Department of State and the Long Island Regional Planning Board are undertaking a joint effort to develop recommendations for maintaining and improving fresh and marine water quality in stream/river corridors feeding into the Great South Bay. The study is being conducted using one semi-rural and one urban stream corridor.

Ms. Fischer said that the purpose of the study is to identify for the first time, the options, costs, and recommended actions needed to cope with stream corridor pollution in the Great South Bay. Water quality conditions in the Bay system indicate that the stream corridors are significant contributors of pollutant loadings to the Bay system. While regional evaluations of land use and surface water quality relationships have been conducted for Long Island, e.g Long Island Comprehensive Waste Treatment Management Plan; Long Island Segment of the Nationwide Urban Runoff Program, the opportunity to determine the extent to which regulatory changes, land use policy, and structural measures can be employed at the local level to maintain or improve surface water quality has not been addressed.

Ms. Fischer also reported that recommendations for semi-rural and urban stream corridors are to be based on land and water use considerations, including existing land use and zoning, land available for development, environmental resources, fresh and marine water quality conditions, and point and non-point sources of pollution. In addition, the results are to be based on water

quality data identifying and ranking priority water quality problems, and establishing potential links between land uses and activities and observed water quality conditions.

Based on these considerations, the type of recommendations anticipated will include: identification of the relationship between specific land and water uses and densities and fresh and marine water quality, identification of land and water use and densities in urban corridors which should be regulated in semi-rural corridors, identification of structural and non-structural approaches to the control of runoff to streams, and identification of State and local standards and practices that should be modified to more effectively control non-point source pollution.

The focus of this study is to identify, compare, and contrast water quality problems in a semi-rural and urban stream corridor emptying into the Great South Bay, the land and water use causes of the problems, and structural, non-structural, and regulatory methods of alleviating these problems. The findings and recommendations of the study can be interpreted for use and will provide a model for other areas with similar characteristics.

Ms. Fischer displayed a series of maps that had been prepared showing existing land uses within the two stream corridor study areas. Neguntatogue Creek in Babylon was chosen as the urban stream and Beaver Dam Creek in Brookhaven was chosen as the semi-rural stream. The maps also included data showing stream corridor watersheds, the direction of movement of surface drainage, groundwater movement, and selected stream sampling sites. The sampling sites were chosen by the Long Island Regional Planning Board in conjunction with the State University of New York at Stony Brook, Marine Sciences Research Center, which is conducting the field studies component of the study in each stream corridor. Field data collection includes data on water chemistry, coliform loadings, sediment analysis and bio-assays. An attempt is being made to link impaired water quality with specific land uses.

Recommendations will be developed to improve and prevent water quality degradation, which will be implemented through amendments to the State Coastal Management Program, and, where applicable, Local Waterfront Revitalization Programs.

In closing, Ms. Fischer said that the study is different from earlier work because it provides a detailed and specific parcel-by-parcel analysis of each type of land use contributing to substandard water quality, providing the opportunity for discrete detailed, parcel-by-parcel and use-by-use recommendations to improve water quality, rather than a generalized, regional approach to addressing non-point sources of pollution.

Nina Marden

Ms. Marden said that Soundwatch recognizes that non-point source pollution is the cause of a very large part of the degradation of Long Island Sound and its surrounding coastal areas. The sources of this pollution include road runoff, ill-advised dredging, poor construction and farming practices, old cesspools and vessel waste. The situation will be worsened by rising sea level which will deprive us of wetlands and their value as non-point source pollutant filters.

The role of New York's Coastal Program was emphasized by Ms. Marden. There must be increased federal and state funding for the Coastal Program so that non-point source pollution can be adequately addressed. The State coastal boundary should be extended inland to include entire watershed areas. Local Waterfront Revitalization Programs are probably the most effective way of controlling non-point source pollution. Therefore, Sound Watch wants all municipalities bordering on the Sound to have approved Local Waterfront Programs. Ms. Marden also said that Sound Watch advocates the establishment of a coastal permit administered by the Department of State for all activities in the coastal area affecting water quality.

Ms. Marden also argued that there is a great need for outreach and education to address non-point source pollution. Elected officials must be kept well informed, because local government will be responsible for the many necessary zoning and regulatory changes, while state and federal legislators will be pressed to provide essential financial assistance. Local government officials must also be kept apprised of changes to the Coastal Management Program and the elements of the Long Island Sound Management Plan, and that this could best be done through the Department of State. Similarly, members of the public have to be soundly educated because they will eventually be asked to accept the burden of higher taxes. Citizens must be assured that the need is unquestionable and that funding will be wisely used.

Finally, Ms. Marden recommended the development of a bi-state growth management policy that stresses the balance of economic development with a healthy environment. In addition, according to Ms. Marden, a separate non-elected Long Island Sound Committee should be established to recommend non-point source pollution management techniques, analyze and disseminate resource information, and provide an arbitration forum to resolve conflicts between the states bordering Long Island Sound.

Larry Penny

Mr. Penny spoke about the Town of East Hampton's comprehensive program to combat non-point source pollution in the Town's seven major bays and harbors. The Town is attacking the problem through a combination of techniques which include the following: (1) land acquisition and conservation easement programs; (2)

construction projects at road ends to minimize runoff; (3) land regulations such as setbacks from surface waters for structures and septic systems, and low density zoning; (4) fertilizer and land clearing restrictions; (5) a natural resources permit system which requires special review of projects near designated natural features; (6) surface water quality monitoring and testing; and (7) local law enforcement.

Mr. Penny mentioned that the Town benefited from the watershed studies which were prepared by the Suffolk County Planning Department. The studies provided solid baseline data and recommendations to minimize impacts to the water bodies from development. The Town implemented many recommendations from these studies.

Mr. Penny argued that pollutant loadings from individual septic treatment systems are greatly underrated and feels that not enough attention is being paid to this problem.

He cited the Coastal Management Program and Local Waterfront Revitalization Programs as primary means to minimize non-point source pollution. Mr. Penny finds it particularly frustrating when the Town is working with a developer to make a project environmentally sensitive to have a State or federal agency, without coordinating their project review with the Town, issue a permit with weaker conditions than those proposed by the Town. Local Waterfront Revitalization Programs will serve to improve inter-governmental communication and will bind all permitting agencies to agreed-upon standards and conditions.

Mr. Penny indicated that greater financial resources are needed from State and federal agencies to acquire environmentally sensitive parcels of land.

He also asked that State government establish a surface water quality monitoring and testing program designed to assist local governments in monitoring surface water quality and determining pollutant sources. Currently, there are no such programs. The only way for testing to be done is by local government initiative.

Helene Tenner

Ms. Tenner opened by pointing out that the political climate for improved or new environmental programs to address surface water quality problems is very good.

Ms. Tenner then described some of the efforts underway in Maryland to address non-point source pollution. These efforts are often being done cooperatively with local and regional governments, the cost being shared on a 50/50 matching basis. The Green Shore Program targets the shores of Chesapeake Bay. The goal of this program is to replant public and private lands so that non-point source runoff is trapped in vegetated areas

thus reducing direct discharges to surface water. The Chesapeake Bay Critical Area Program requires counties to prepare development plans for areas 1000 feet landward of Chesapeake Bay. In some areas, lands have been rezoned to one dwelling unit per twenty acres to prevent non-point source pollution. Another state program makes funds available to homeowners to install new septic systems. The state is also involved in efforts to design, construct, and fund shallow marsh detention basins to contain runoff.

Ms. Tenner said that non-point source pollution resulting from highway construction is a major problem, so that the state conducts sediment control training courses for public works employees. Grants are available to local governments for the development and implementation of non-structural erosion control programs which may include the reshaping and planting of bluffs to minimize the loss of soil. Maryland's Vessel Waste Pumpout Program has a mobile pumpout station on board a roving vessel. The state is also providing grants to existing marinas for the installation of pumpout facilities and requires new or expanding marinas to provide such facilities.

Because the public sector does not have the resources to deal with all the problems associated with non-point pollution, the state has also turned successfully to the private sector for funds and volunteer assistance. The state has developed informative pamphlets to educate the public about ways to clean up surface water quality. The public needs and is willing to work on problems, so the state has developed a menu of activities from which citizens can choose. One such activity is the "Save Our Streams" program in which the state solicits civic and environmental organizations to help clean up particular streams. In adition to the Save Our Streams program, the state also involves citizen groups in painting signs for storm drains, so residents of a community are warned not to deposit debris or toxic materials in the drains.

Ms. Tenner said that jurisdictional issues are most important and must be resolved. Local agencies and State agencies must work together to address non-point source problems. Regional approaches work well and should be developed. Watershed management approaches are also important. State officials must buy into regional and watershed management approaches to manage non-point source problems. In Maryland, it was necessary to educate both the Governor and the Legislature in order to mobilize and receive support for regional cooperation in the Chesapeake Bay area.

Discussion:

After technical questions were answered seeking clarification of certain aspects of the presentations, the discussants made several recommendations regarding the roles of federal, state, county and municipal governments, methodologies for dealing with

non-point source pollution and technical and financial assistance needs, and education.

There was a clear sense that more should be done to improve monitoring of non-point source pollution such as the use of dye testing to indicate malfunctioning cesspools, and the study of potential sinks of non-point source pollutants, such as wetlands.

It was suggested that local health departments should consider approving a wider range of sanitary systems in addition to cesspools to deal with non-point pollution.

Funding from both the State and federal governments is needed to assist local governments in addressing non-point source problems, and it should be directed through the Coastal Management and Local Waterfront Revitalization Programs.

There is a need to re-examine the prohibition on municipalities having a role in making decisions on drainage control for Suffolk County roads.

There should be a State law requiring environmental education in schools which should encompass non-point source pollution.

Education is also essential for those engaged in work which has an effect on water quality - for example, booklets on how to mitigate non-point source pollution should be prepared for public works crews. Best Management Practice technology transfer is extremely important, especially for local government.

Wetlands preservation is vital to preserving near-shore water quality. It is inexpensive when compared with structural solutions. Regulatory programs and developers should consider the importance of wetlands as pollutant filters and thus as natural non-point source treatment systems. In general, natural areas should be preserved wherever possible to mitigate non-point source pollution.

There should be laws requiring mandatory pump-out of septic systems.

## SCENIC AREAS

Panelists:

Harry Dodson, Dodson Associates

Robert Pirani, Planner, Regional Plan Association

Laura Zeisel, Attorney at Law

Moderator:

Alan Lillyquist, Chief
Project Development Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Harry Dodson

Mr. Dodson stated that the visual character of our surroundings is important to the overall quality of life on Long Island and to our basic health and safety. This in turn is one basis for the adoption and implementation of zoning.

For the United States, visual landscape values were in large part shaped by the Hudson River Valley school of painters. These pioneers in landscape recognition presented an appreciation of the romantic landscape tradition found in the early 19th century - scenes depicting large natural areas contained small human activities, thus expressing humanity as part of a natural scene. Man blended into nature and was not depicted as shaping it.

The Coastal Program in New York State is providing for scenic resource protection far beyond what is being done in other states. While Massachusetts conducted a visual land inventory, it had no regulatory authority. However, an important document was produced which is guiding development to where growth has the least impact on important scenic landscapes.

Mr. Dodson stated that the method developed for identifying and designating Scenic Areas of Statewide Significance in New York's coastal area is a cultural landscape approach which is unique compared to other methods which generally recognize only wilderness type areas as having scenic value. The method used in New York is similar to that of the Countryside Commission in Great Britain, which considers areas of natural beauty and includes as well the built landscape of urban towns and cities.

Mr. Dodson said that the methodology that was developed was one that can be applied at a Statewide level. A pilot project in the Hudson Valley is the first application of the methodology to the coastal landscape of the State.

For evaluation purposes, the landscape is broken down into visual subunits which have similar land use patterns or characteristics. Each subunit is rated, based on its visual characteristics, as either common, noteworthy, or distinctive. Those areas rated distictive are those to be considered for designation as Scenic Areas of Statewide Significance. For the Hudson River Valley, all subunits have been inventoried, mapped, described in words, and rated. Areas will be proposed for designation as Scenic Areas of Statewide Significance. Public meetings and hearings will be held to obtain comment on proposed designations.

The consistency provisions of the Coastal Management Program provide strong protection for scenic landscapes designated as Scenic Areas of Statewide Significance. While large projects are subject to State level review for consistency, it is anticipated that performance standards and guidelines for small-scale development will be implemented through the adoption of local ordinances by communities participating in the Local Waterfront Revitalization Program.

Mr. Dodson emphasized that the goal of a scenic protection program is not to prevent development, but to shape development by minimizing impacts on valuable scenic resources which enhance our sense of place.

Robert Pirani

Mr. Pirani opened his discussion by asking two questions -- why are scenic values important, and do scenic resources have an equal footing with economic and ecological concerns?

By way of examples that scenic values are important, Mr. Pirani noted that, in the City of Denver, views of the Rocky Mountains have been protected with site specific regulations. Here in New York State, views from the Brooklyn Promenade have received protection. The Trust for Public Lands has a program which affords protection of farmland in Connecticut.

Mr. Pirani went on to say that the Governor of New York has called for linking public open spaces together by the creation of a Greenway along the Hudson River. The greenway would be a visual linkage of green spaces connecting parks together.

Mr. Pirani noted that sprawling urbanization is changing the traditional land use patterns we have historically been accustomed to. The metropolitan New York area has maintained the same population level from 1970 to 1988. This area covers approximately 1,000 square miles of urban development. However, since 1974, land development has consumed the same amount of land that previously took 300 years to develop.

Mr. Pirani talked about the Regional Plan Association's Palisades Conservation Plan, which covers 18 miles along the Hudson River in New Jersey from Ft. Lee to Bayonne. This plan

provides for 70,000 additional residents and 100,000 new workers. The redevelopment is desirable because it brings people back to the River. The Regional Plan Association's plan calls for a mass transportation system, waterfront access by a continuous walkway, and conservation of palisades cliffs. Preservation of scenic resources includes the views from cliffs to the waterfront along the Hudson, views of New York City, and views of the cliffs from the Hudson River and the west side of Manhattan.

New Jersey requires waterfront redevelopment plans for new development in their coastal zone. In a plan, consideration must be given to protecting open spaces and the quality of views. There are three strategies to protect scenic resources: 1) a State Coastal Zone Management permit, 2) local land use regulations, and 3) acquisition of scenic easements, where regulations don't provide enough protection. Options for protection of scenic resources are included in the site plan review process, with the burden being on the developer. This is done through a policy statement requiring that new public viewpoints be included in a development.

Laura Zeisel

Ms. Ziesel said she intended to discuss what local government can do now to protect scenic areas. In terms of recent court decisions regarding such local government protection, a 1980 Supreme Court case held it to be an appropriate role for government to zone for scenic qualities or open space. Mandatory clustering was determined to be a reasonable type of development which was allowed and was deemed constitutional.

Ms. Ziesel outlined the steps that need to be taken by local government to protect scenic areas: (1) conduct an inventory of scenic areas, describe scenic areas geographically, justify why they are significant, and amend the master plan to identify specific scenic areas for protection (it is important for the inventory to be overseen by a committee or commission); (2) under a zoning ordinance, designate areas as having scenic significance. The creation of a scenic overlay district can be used to protect areas of scenic significance and additional restrictions can be put in place, such as larger setback requirements which limit density, height restrictions, and site plan review requirements.

Ms. Zeisel noted that New York State case law covering 25 years has held that it is appropriate to zone for aesthetic purposes. However, all development cannot be eliminated by zoning ordinances, as this would result in a taking and the community would have to pay for the value of the property. However, under New York State Law, condemnation of property for scenic protection purposes is allowable.

Within the State's coastal area, Local Waterfront Revitalization Programs should be used to protect scenic areas. Local plans

should also promote tourism for economic development purposes.

Ms. Zeisel then discussed the State Environmental Quality Review Act, which applies to all decisions of local governments prior to approval being given for development proposals. Appendix B to the State Environmental Quality Review Act Environmental Assessment Form contains a Visual Assessment Addendum which can be used to describe the visual impact of a proposal; visual impact mitigation can then be addressed.

Another way to address scenic issues is to prepare a list of activities which would have a significant effect on the environment. Scenic issues that are not on the State's Type 1 list can be included on the local list.

Ms. Ziesel then discussed the Critical Environmental Area process. Under the State Environmental Quality Review Act regulations, if a community deems an area to be a Critical Environmental Area, that area will be afforded additional protection. Once designated a critical area, proposed projects in the area are deemed Type 1 actions and additional attention is then given to the proposed action.

Finally, communities can consider acquiring scenic areas outright or obtaining conservation easements. Article 49 of the Environmental Conservation Law sets forth procedures for holding conservation easements which can limit the type of development.

Discussion:

The point was made that communities inventorying scenic areas for protection must involve local public input in the inventory process. This was done in the Massachusetts Landscape Inventory and is also being done in New York State Scenic Areas of Statewide Significance Program.

The provision of technical assistance to local communities undertaking scenic inventories was stressed as important, particularly if the Scenic Areas of Statewide Significance Program is expanded to other coastal areas of the State. A representative from Sea Grant noted that this might be an activity they could become involved in.

## WATER DEPENDENT USES

Panelists:

David Terkla
Center for Applied Social Science
Boston University

Jason Anderson
Kearney/Centaur Division
A. T. Kearney, Incorporated

Moderator:

Charles T. McCaffrey, Chief
Bureau of Local Waterfront Revitalization Programs
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

David Terkla

Mr. Terkla began his remarks by describing a study undertaken in 1988 for the New York/New England Coastal Zone Task Force that focused on the economics of water dependent uses and on the legal techniques that are available to government to encourage continuation of these uses. Mr. Terkla then provided an indepth evaluation of the problems faced by water dependent uses which make it difficult for them to compete with non-water dependent uses for valuable and scarce waterfront space. Five case study communities along the northeast coast including Greenport, New York, were used to gain firsthand information on the precise nature of the economic pressures which are forcing water dependent uses out of the waterfront.

Mr. Terkla's investigation of these five disparate communities revealed that water dependent uses operate in very localized markets which affects their competitiveness within a particular community. Specific industries are not equally threatened by development pressures and, in fact, some water dependent uses, such as commercial fishing, are being displaced by other water dependent uses like marinas. The study also examined the intangible benefits accruing to a community from water dependent uses which Mr. Terkla felt were not given sufficient attention by policymakers. The case studies illustrated that tourists and non-residents valued a community's working waterfront. This value is not reflected in the economics of water dependent use. Further, local governments often looked at the short-term benefits of new non-water dependent construction rather than the long-term benefits of maintaining a stable economic base of water dependent uses, particularly in less affluent communities.

Mr. Terkla illustrated his comments by referring to examples of

action taken by the case study communities in an effort to promote water dependent uses. Portland, Maine, for instance, has restricted the use of its waterfront to allow the commercial fishing fleet to locate there. Other options for protecting water dependent uses include land banking and purchasing of development rights. It is important to understand the regional context of planning for water dependent uses. For example, encouraging commercial fishing in an area where stocks are low or where pollution precludes harvesting, dooms an effort to failure. Methods of protecting some uses, such as fish processors or boat repair facilities, are more difficult to design because these uses are more likely to meet with public opposition.

Jason Anderson

Mr. Anderson began by saying that the Freeport area has long been an important fishing port in New York. In the preface of the draft LWRP for the Village of Freeport, it is stated that Freeport has a widespread reputation as one of the few places remaining in the greater New York City and New Jersey area where small maritime industries can locate. Today, the Village of Freeport area has the closest large concentration of commercial fish harvesting activities to New York City.

Currently, the main problems for fishermen in Freeport appear to be crowding in the harbor and the high cost of operating. Due to its premier location and inherent advantage, Freeport has become an extremely crowded port. This lack of space makes it very difficult for commercial fishermen and charter and party boats to operate, and in a worst case scenario, could crowd these fishermen out altogether.

It became apparent that if the commercial fishing and charter boat industries were to survive in Freeport, a course of action for preservation of these industries was necessary. The Village of Freeport, with the encouragement of the aquatic resources industry and with Department of State funds, commissioned a study to determine: (1) the extent of the docking shortage; (2) a summary of benefits provided by the aquatic resources industry; (3) tabulation of infrastructure needs of the aquatic resources industry; (4) an assessment of the preservation of the aquatic resource industry at existing locations; (5) a summary of alternative development sites for the aquatic industry; and (6) a list of priorities for preservation of the aquatic resources industry.

Discussion:

Those present at this session raised concerns about the methods of ensuring that water dependent uses continue to have access to waterfront sites. It was noted that some communities on Long Island prohibit commercial use on their waterfronts. However, all the shoreline cannot be changed to water dependent uses. Restrictive zoning is complex because some water dependent uses

have already introduced non-water dependent uses into their sites. Each community has different needs with regard to water dependent uses.

Another issue of concern was the development of dockominiums. This form of dock ownership could make marinas more expensive and exclusive. New York needs to closely examine this issue as soon as possible.

One commentator felt that there was a need to examine the definition of water dependent use and to look at the philosophy behind maintaining water dependent uses. Economic criteria should be considered in this analysis. Also of concern in the overall discussion of preserving water dependent uses was the preservation of natural resources, and the need to develop a regional planning framework for promoting water dependent uses. It was noted that counties are often left out of any planning effort. Examples of involved counties were Erie County, which has worked with local governments to set priorities for water dependent uses and has worked to establish a regional authority to guide land use.

Finally, participants questioned what the State was doing to protect water dependent uses. Right-to-fish laws and the idea of mandatory LWRPs were raised. The need for a comprehensive marketing strategy was also noted.

LONG ISLAND SOUTH SHORE

Regional Coastal Conference

September 27, 1989

Melville, New York

**LONG ISLAND SOUTH SHORE**
**COASTAL CONFERENCE**

**September 27, 1989**

**Agenda**

**8:30 - 9:00 a.m.** **Registration**

**9:00 - 10:00 a.m.** **Opening Session**
- Welcome by Secretary of State Gail S. Shaffer
- Welcome by host Town of Huntington Supervisor Antonia Rettaliata
- Remarks by Secretary Shaffer
- Remarks by Lee Koppelman - Executive Director, Long Island Regional Planning Board
- Remarks by State Senator Owen Johnson

**9:55 - 10:15 a.m.** **Coffee Break**

**10:15 - 12:30 p.m.** **Workshop Sessions**

**Coastal Non-Point Source Pollution**
- Lauretta Fischer - Senior Planner, Long Island Regional Planning Board
- Larry Penny - Director, Department of Natural Resources, Town of East Hampton

**Habitats**

- Carl Safina - Research & Policy Ecologist, National Audubon Society
- Kevin McDonald - Vice-President, Group for the South Fork
- Sara Davison - Executive Director, South Fork/ Shelter Island Chapter, Nature Conservancy

**Scenic Areas**
- Laura Zeisel - Attorney
- Harry Dodson - Dodson Associates
- Bob Yaro - Department of Landscape Architecture and Regional Planning, University of Massachusetts, Amherst

**12:45 - 1:45 p.m.** **Lunch**

**1:45 - 2:30 p.m.** **Intergovernmental Panel on Coastal Resources Issues**

**2:30 - 4:45 p.m.** **Workshop Sessions**

**Coastal Hazards**

- Kathryn Cousins - North Atlantic Regional Manager NOAA - Office of Ocean and Coastal Resource Management
- Henry Bokuniewicz - Marine Sciences Research Center, SUNY at Stony Brook
- Jay Tanski - Marine Sciences Research Center, SUNY at Stony Brook
- Kevin McDonald - Vice-President, Group for the South Fork

**Water Dependent Uses**

- Jason Anderson - Kearney/Centaur Division, A.T. Kearney, Inc.
- Gene Murphy - Senior Planner, Planning Department, Town of Islip
- Linda O'Leary - President, New York Towboat and Harbor Carriers Association

**Public Access**

- Bryan Cullen - Attorney, New York State Department of State
- Steve Whitney - Division of Coastal Resources, New Jersey Environmental Protection Agency
- Cathy Lester - Councilwoman, Town of East Hampton

# PLENARY SESSIONS

## OPENING SESSION

### Welcome by Secretary of State Gail S. Shaffer

Secretary of State, Gail S. Shaffer welcomed the participants to the conference, one of five regional conferences sponsored by the Department of State. She noted the purpose of the conference, which is to bring together leaders in coastal affairs, technical experts, government officials, knowledgeable citizens, and members of public interest groups in order to facilitate an exchange of opinions and ideas and to seek a consensus for needed changes in the way New York's coast is managed.

### Welcome by host Town of Huntington Supervisor Antonia Rettaliata

Supervisor Rettaliata welcomed the conference participants. She noted the importance of finding solutions to the ever-increasing problems facing coastal Long Island. She stressed the need for cooperation and coordination between all levels of government and the private sector and looked forward to workable solutions emerging from the conference for improved management of coastal resources.

### Summary of Remarks by Lee Koppelman, Executive Director of the Long Island Regional Planning Board

Mr. Koppelman spoke of major water quality problems around Long Island. These include both local and illegal dumping in mid Long Island Sound of river dredge spoil tainted with pollutants from Connecticut. Another problem is the eastward spread of sewage plumes from New York City.

To respond to these problems, Mr. Koppelman made several recommendations. He called for a New York - Connecticut authority to include Nassau and Suffolk County representatives to manage Long Island Sound. Second, he recommended establishing a commission for Great South Bay and one for the Peconic-Flanders Bay system. These commissions would set overall policy to guide multigovernmental management activities in the bays. Finally, he advocated State designation of Peconic-Flanders Bay as a marine santuary.

### Remarks of Secretary of State Gail S. Shaffer

It is a pleasure for me and the staff of the New York Coastal Program to host the regional conferences on Long Island.

I am going to take a few moments to describe where the New York Coastal Program has been, and suggest where it might be going.

The national effort began in 1972 with the passage of the federal Coastal Zone Management Act. The Coastal Zone Management Act set

in place a management scheme that encouraged the United State's 30 coastal states and 5 territories to undertake the arduous task of protecting and wisely developing 95,000 miles of shoreline. With federal financial assistance and the promise of a new concept called "consistency", states and territories began planning for the coast.

In New York, the effort began in 1975 and with the passage of the Waterfront Revitalization and Coastal Resources Act and federal approval of the State's Coastal Program, implementation of new management approaches for the State's 3,200 miles of coastline began in 1982.

What the New York Coastal Program created, in concept, is a "trinity" -- an intricate partnership of federal, State, and local governments, working towards a common goal--preservation, revitalization, and the wise development of one of the State's greatest resources -- your coasts.

After seven years of program implementation, I am pleased to say that the basic ingredients for accomplishing this laudable objective are in place, and have had results. Working together, governments are advancing improvements of water, the land, and the overall quality of New York's coast. On Long Island, the federal government has initiated the Coastal Barrier Resources Act. Congress has designated Long Island Sound and Peconic Bay as estuaries in the National Estuary Program. And, in 1990, Congress will be considering sweeping changes to the Coastal Zone Management Act, in an effort to respond to the current crises facing the coast.

At the State level, the Department of State has designated 101 significant coastal fish and wildlife habitats on Long Island, resulting in increased protection to these most vital resources.

Work to resolve erosion hazard problems is progressing in cooperation with sister agencies, municipalities, and the Long Island Regional Planning Board. A comprehensive hazard area management program for the South Shore barrier island complex will soon be aired.

The State has made sweeping consistency decisions including stopping the proposed disposition and privitization of Montauk Air Force Base, which would have been used for private development, but which is now a State park.

As a result of a Department of State decision two years ago, last week the State proposed a reconfiguration of the Army Corps' proposal to nourish the beach at Westhampton which will result in a safer barrier, and significant new public beaches, at half the cost of the original proposal. Further, New York is on the forefront, nationally, for the fight for public access to the shore, and the State is committed to resolving the decline in Long Island's commercial fishing industry.

At the local level, Long Island coastal communities have made great strides. All of Long Island's coastal towns, save one, two cities, and fourteen villages are preparing or implementing Local Waterfront Revitalization Programs. These programs embody land use regulations to guide coastal development and preserve coastal resources. They contain capital investment programs to revitalize working waterfronts, improve public access and strengthen the regions thriving tourist industry. These Local Waterfront Revitalization Programs are, and will continue to be, a major component in achieving the statewide and national coastal management objectives.

After seven years, this "trinity" has made a difference. But, despite these advances, in New York and around the nation, the coast remains under siege by a multitude of threats documented daily by the media. Shellfish beds are closed due to continued pollution, wetlands are continually lost, houses are falling into the ocean, and a cadence of development along the shores, precludes public access, denigrates barrier islands, and mars the scenic beauty of the coast. The coast has experienced a gruesome array of medical wastes, sewage closing beaches, and oil spills -- not only in Prince William Sound, but in New York's own Hudson River.

Given the severity of today's coastal problems, it is clear that enough has not been done; but with the existing legal authority restricting certain government actions, and with the level of existing financial resources devoted to management of coastal areas, you must question how much more can realistically be done.

There is a complex set of factors that may account for the public and private sectors' inability or unwillingness to respond more effectively to the challenges of managing coastal areas. A partial list includes: the diffused public interest; skewed national, Statewide, regional and local priorities; inadequate legislation; special interest politics; and fragmentation of responsibilities within and among levels of government.

Moreover, governments are not, and cannot, be the only sector to carry the coastal burden. A private sector code of coastal conduct must also be developed. Markets must begin to reflect and absorb the true costs of development in coastal areas and exploitation of coastal resources. The public, as consumers, must express their concern for the coast to business, with the same zeal they express these concerns to government.

Nearly two decades into the national task of managing our coastal environment. There are accomplishments, and there are shortcomings. That is why we are here today. Your ideas and commitment are essential to the formation of a more effective coastal management effort. As the theme of this conference implies, the reality of coastal management is that this <u>is</u> your coast; the choices <u>are</u> your choices; and its future <u>is</u> your future.

During this conference a number of issues facing the Long Island coast, and the State's coastal area as a whole will be covered. These include managing the growth and development of our shoreline, which affects not only coastal resources, but the quality of life in coastal communities. The competing demands and conflicting activities which affect harbors, water-dependent industries and the accessibility of the coast for recreational activities will be addressed - and the condition of the resource base including habitats, water quality, fisheries, and aesthetics, as well as the hazards and costs of living in a coastal area will be discussed.

Each of you have been given brief papers on the topics to be covered. Do not look at these as an authoritative treatise on the topic. Their purpose is to provide a groundwork for discussion in today's workshops. Our distinguished panelists will offer their own thoughts on the topic at hand; and most of all, we need you to ask questions, make comments, and present your own ideas and proposals for improving management of the coast.

Over the next few weeks, we will be holding similar conferences for the Hudson River Valley, the Great Lakes, and New York City. We will also be seeking the advice and counsel of people in those regions. On February 28 and March 1, 1990, we will convene a statewide conference in Albany to air what we have heard, and reach a consensus on a number of options for future action.

In New York State, we have reached the point at which the integrity and future of the coast must take its rightful place in the arena of public issues. Residents, interest groups, and businesses on the coast must increase pressure on public and private decisionmakers, to defend coastal values that have been given lesser priority.

I urge you to work together, and with us, to meet the challenge that faces us all. Unless, or until, the requisite will for fundamental change emerges, progress towards our goals in managing coastal areas will only progress as it has, which has been too slow, if not nearly too late.

Remarks of Senator Owen H. Johnson

Good Morning. My name is Senator Owen Johnson and I am the Chairman of the Senate Subcommittee on the Long Island Marine District. I would like to thank Secretary of State Gail Shaffer for holding this meeting on coastal issues and for giving me the opportunity to speak today.

Today's meeting addresses many of my concerns for the coastline: development and planning, water quality, and public access for recreational purposes. I hope we will now be able to address some of the problems that are facing our coastline.

Development along our shores is both a pleasure and a headache. Many of us want to live on the shore, boat or fish in our waters, and play on the beaches. Unfortunately, so many of the amenities we want on our coast are destructive and may ultimately cause problems that are both difficult and expensive to correct. However, we are learning to build and develop in more environmentally conscientious ways. We've stopped bulldozing sand dunes and we're now restoring and prtoecting them. We've learned that the dunes are nesting areas for many shorebirds and that we have to keep enough around to ensure survival of the species. We've learned that our wetlands are a necessary habitat for many marine and wildlife species and we've begun to protect them too. During this year's Legislative Session, a bill I sponsored became law, which provides for greater funding for the state's Tidal Wetlands Program. We've enacted stricter regulations on development in wetlands areas. However, we need to do more.

Wetlands are still being destroyed unnecessarily. This is foolish, because our wetlands act as natural filters of pollutants from land runoff, and keep our waters clean. It is my hope that we will hear from speakers today who will inform us of innovative ways to protect such habitats.

Maintaining good water quality is an important coastal issue. Clean waters provide many commercial and recreational opportunities that contribute to our economy. Several bills I sponsored this year will help ensure that our waters become cleaner, both for ourselves and for marine life. A new Clean Oceans Fund will provide monies to develop alternatives to ocean dumping of sewage sludge. A new State Revolving Fund will provide monies to upgrade sewage treatment plants. A new law to improve handling of medical waste and to deter illegal dumping, which will keep our beaches cleaner, was enacted this year. I've brought some information with me today on these new laws and programs.

One issue I would like to focus on in my talk today is on a kind of development that is being proposed for New York City. This development involves building of non-water-dependent projects in the water or on pilings out over our waterways. Such a proposal was proposed in the City on the Hudson River and was the focus of much attention in the Legislature this year. The project involves the building of a hotel out on a piling/platform structure in the Hudson. Environmentalists opposed this project because of the potential negative effects it might have on the Hudson, an important nursery area for many fish species. Developers are fighting the environmentalists.

This is an important example for many reasons. It shows us that we need a coordinated and logical plan for development along our coastlines. Indeed, that development on platforms might become the norm for our shoreline is frightening. Although one project on a platform may not seriously impact a particular water body,

there is no real way to assess the cumulative impacts of many such projects along a shoreline. I think that the controversy that arose this year about the Hudson points out the need for improvements in our State's Coastal Zone Management Program. I am pleased that Gail Shaffer has put together this important conference covering these issues.

I look forward to hearing and learning from the speakers on the agenda, and I anticipate much of what is discussed will be issues facing the Legislature during the 1990 Legislative Session. I hope to speak with as many of you here today as possible, so I can incorporate your comments and concerns into legislative proposals to correct the problems facing our coast and to protect it for the future. Thank you.

LUNCHEON SESSION

Intergovernmental Panel

Panelists:

Maurice Hinchey, Assemblyman, New York State Assembly
Fred Thiele, Legislator, Suffolk County
Mardyth DiPirro, Supervisor, Town of Southampton

Moderator:

Owen Johnson, Senator, New York State Senate

Discussion:

The local government panelists praised the Department of State for the high level of assistance and commitment they received in developing their Local Waterfront Revitalization Programs and called for continued and increased support for the State Coastal Management Program.

The panelists agreed that all levels of government must act in concert and not independent of one another if coastal problems are to be resolved successfully. Harbor mis-management, surface water pollution, boater safety, and habitat protection were cited as examples of common problems local governments need to address in full cooperation with county, State, and federal governments.

Increased funding from the State and federal sources was urged to assist local governments address increasingly complex coastal problems. Budget cuts to or abolishment of the coastal management program would be foolish. The problems we face today, if not adequately addressed, will only intensify and become much costlier to address in the future.

Government must work with the private sector to properly manage coastal areas since the degree to which they are managed on Long Island, particularly the East End, is directly related to the

strength of the economy. The integrity of our coasts must be protected if the commercial fishing, tourism, and recreation industries are going to continue to be a big part of the Long Island economy.

Development, particularly the use of erosion protection structures, must be carefully regulated to prevent severe erosion and the loss of property. The problem at Dune Road was cited as an example.

Efforts to achieve coastal management in New York State have been moderately successful. An improved coastal management program is necessary to achieve greater success.

## WORKSHOPS

- Coastal Non-Point Source Pollution
- Habitats
- Scenic Areas
- Coastal Hazards
- Water Dependent Uses
- Public Access

## COASTAL NON-POINT SOURCE POLLUTION

Panelists:

Lauretta Fischer, Senior Planner
Long Island Regional Planning Board

Larry Penny, Natural Resources Director
Town of East Hampton

Moderator:

Neil MacCormick, Assistant Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Lauretta Fischer

Ms. Fischer explained that the Department of State has entered into a study with the Long Island Regional Planning Board to develop recommendations for maintaining and improving fresh and marine water quality in stream/river corridors feeding into the Great South Bay. The study is being conducted using one semi-rural and one urban stream corridor.

Ms. Fischer said that the purpose of the study is to identify for the first time, the options, costs, and recommended actions needed to cope with stream corridor pollution in the Great South Bay. Water quality conditions in the Bay system indicate that the stream corridors are significant contributors of pollutant loadings to the Bay system. While regional evaluations of land use and surface water quality relationships have been conducted for the Long Island area, e.g Long Island Comprehensive Waste Treatment Management Plan; Long Island Segment of the Nationwide Urban Runoff Program, the opportunity to determine the extent to which regulatory changes, land use policy and structural measures can be employed at the local level to maintain or improve surface water quality has not been addressed.

Ms. Fischer also reported that recommendations for semi-rural and urban stream corridors are to be based on land and water use considerations, including existing land use and zoning, land available for development, environmental resources, fresh and marine water quality conditions, and point and non-point sources of pollution. In addition, the results are to be based on water quality data identifying and ranking priority water quality problems, and establishing potential links between land uses and activities and observed water quality conditions.

Based on these considerations, the type of recommendations anticipated will include: identification of the relationship between specific land and water uses and densities and fresh and

marine water quality, identification of land and water use and densities in urban corridors which should be regulated in semi-rural corridors, identification of structural and non-structural approaches to the control of runoff to streams, and identification of State and local standards and practices that should be modified to more effectively control non-point source pollution.

The focus of this study is to identify, compare, and contrast water quality problems in a semi-rural and urban stream corridor emptying into the Great South Bay, the land and water use causes of the problems, and structural, non-structural, and regulatory methods of alleviating these problems. The findings and recommendations of the study can be interpreted for use and will provide a model for other areas with similar characteristics.

Ms. Fischer displayed a series of maps that had been prepared showing existing land uses within the two stream corridor study areas. Neguntatogue Creek in Babylon was chosen as the urban stream and Beaver Dam Creek in Brookhaven was chosen as the semi-rural stream. The maps also included data showing stream corridor watersheds, the direction of movement of surface drainage, groundwater movement, and selected stream sampling sites. The sampling sites were chosen by the Long Island Regional Planning Board in conjunction with the State University of New York at Stony Brook, Marine Sciences Research Center, which is conducting the field studies component of the study in each stream corridor. Field data collection includes data on water chemistry, coliform loadings, sediment analysis and bio-assays. An attempt is being made to link impaired water quality with specific land uses.

Recommendations will be developed to improve and prevent water quality degradation, which will be implemented through amendments to the State Coastal Management Program, and, where applicable, Local Waterfront Revitalization Programs.

In closing, Ms. Fischer said that the study is different from earlier work because it provides a detailed and specific parcel-by-parcel analysis of each type of land use contributing to substandard water quality, providing the opportunity for discrete detailed, parcel-by-parcel and use-by-use recommendations to improve water quality, rather than a generalized, regional approach to addressing non-point sources of pollution.

Larry Penny

Mr. Penny spoke about the Town of East Hampton's comprehensive program to combat non-point source pollution in the Town's seven major bays and harbors. The Town is attacking the problem through a combination of techniques which include the following: land acquisition and conservation easement programs; construction projects at road ends to minimize runoff; land

regulations such as setbacks from surface waters for structures and septic systems; low density zoning; fertilizer and land clearing restrictions, - a natural resources permit system which requires special review of projects near designated natural features; surface water quality monitoring and testing; and local law enforcement.

Mr. Penny mentioned that the Town benefited from the watershed studies which were prepared by the Suffolk County Planning Department. The studies provided solid baseline data and recommendations to minimize impacts to the water bodies from development. The Town implemented many recommendations from these studies.

Mr. Penny argued that pollutant loadings from individual septic treatment systems are greatly underrated and feels that not enough attention is being paid to this problem.

He cited the Coastal Management Program and Local Waterfront Revitalization Programs as primary means to minimize non-point source pollution. Mr. Penny finds it particularly frustrating when the Town is working with a developer to make a project environmentally sensitive to have a State or federal agency, without coordinating the project review with the Town, issue a permit with weaker conditions than those proposed by the Town. Local Waterfront Revitalization Programs will serve to improve inter-governmental communication, and will bind all permitting agencies to agreed-upon standards and conditions.

Mr. Penny indicated that greater financial resources are needed from State and federal agencies to acquire environmentally sensitive parcels of land.

He also asked that State government establish a surface water quality monitoring and testing program designed to assist local governments to monitor surface water quality and determine pollutant sources. Currently, there are no such programs. The only way for testing to be done is by local government initiative.

Discussion:

There should be laws to mandate the pumpout of septic systems. Local governments should be given more authority to regulate and enforce sanitation laws because county government does not have the resources to enforce existing law.

Alternative sewage treatment systems should be permitted by the (Suffolk) county health department.

Non-point source pollution could be reduced by local governments amending their zoning laws to classify shallow depth to groundwater areas and wetlands as sensitive environmental areas. Such areas then should be deleted from minimum lot size and

building coverage computations, and should be deleted as areas where structures may be placed.

The location of municipal vessel pumpout facilities should be placed on NOAA navigation charts.

Laws should be passed banning the sale and use of products harmful to the environment which are bought by consumers for use in vessel waste holding tanks. The use of these products prohibits pumpout wastes from being treated by municipal scavenger waste treatment plants. As a result, there is no place to deposit these wastes except for the Bergen Point facility in western Suffolk County.

There is a need for State coordination of permit decision-making and other regulatory programs which regulate shoreline development.

The New York State Department of Environmental Conservation's regulatory affairs program is very weak and, as a result, the shore is under threat.

## HABITAT PROTECTION

Panelists:

Kevin McDonald, Vice President
Group for the South Fork

Carl Safina, Research and Policy Ecologist
National Audubon Society

Sara Davison, Executive Director
South Fork/Shelter Island Chapter
Nature Conservancy

Moderator:

William Barton, Chief
Project Review Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Kevin McDonald

Mr. McDonald briefly described his organization's involvement in the project review processes of local, State and federal agencies. The Group for the South Fork has been interested in habitat protection for a long time. He indicated that, in general, public concern for the protection of fish and wildlife habitats is not as strong as it is for hazardous wastes (e.g. oil spills), commercial resources (e.g. fisheries) and other issues. The generation of local government revenues is also given far greater priority over habitat protection (e.g. shopping center construction and related development projects).

He stated that the regulatory agencies devote considerable attention to protecting listed endangered and threatened species and little to other important, but unlisted, species. Also, he thought that preference is given to protecting and maintaining marine food production and perpetuation of marine habitats essential to that production. Wildlife habitats, he added, are almost always overlooked and must be viewed in terms of their quality of life and commercial values. Mr. McDonald thought that the State tidal and freshwater wetland laws do not fully address the totality of habitat concerns, and there was need for legislative action to correct this deficiency.

He indicated that there is need for a comprehensive data base on as many species and habitats as possible. This information, he added, should be brought into the review process early so that it can be adequately addressed by developers and local planners.

Finally, Mr. McDonald stated that there is a need for all regulatory agencies to work together while following their own regulations in order to protect species and their habitats to the greatest extent practicable.

Carl Safina

Dr. Safina stated that habitat protection may be accomplished in four ways: (1) regulation; (2) research and education; (3) advocacy; and (4) acquisition. With respect to the first method, he stated that it is now too late to try to protect endangered, threatened and other species of special concern from becoming extinct. He advocated that our regulatory efforts be directed to protecting common species or else they will become endangered. Dr. Safina indicated that although there have been some successes in protecting endangered species, there have also been many failures. He cited the California condor as an example of the latter.

Land acquisition, he claimed, cannot be viewed as the answer to habitat protection, because not enough land can be acquired. Dr. Safina advocated limiting growth, because growth ultimately results in habitat displacement and reduction in species populations. He suggested that one of the means for addressing this issue was to adopt a population growth policy.

As for advocacy, Dr. Safina indicated that in many situations there are viable alternatives to projects which may affect coastal habitats. Involved and interested parties must get together in these instances and attempt to reach solutions to the problems or issues which a project may raise.

With respect to educational activities relating to habitat protection, Dr. Safina stated that such efforts must be directed to all social, cultural, racial and age groups. A more comprehensive data base on species, their habitats and measures to protect them from adverse effects, he added, is necessary. For example, he stated that there is no law specifically requiring pumpout stations at marinas, yet our water quality and habitat protection policies support the need for such a requirement.

Sara Davison

Ms. Davison provided an overview of The Nature Conservancy's activities and objectives and indicated that the organization's goal is to preserve the biological diversity of the three million acres of land and water nationwide which it strives to protect. She stated that Conservancy's activities involve protection to habitats of various fish, wildlife and plant species.

Ms. Davison indicated that the organization's efforts to protect important habitats are implemented in a variety of ways including land acquisition, management of donated lands, purchase of

conservation easements or development rights and informal agreements with property owners having an interest in protecting on-site habitats. She stated that the conservation easement is popular because it can be claimed as a federal tax deduction due to the decreased value of the property. Her organization has also helped public entities acquire sites for habitat protection purposes, when public funds were not immediately available for purchasing the properties.

She indicated that fish, wildlife and plant habitats can be important without the presence of an endangered, threatened or commercially/recreationally valuable species (e.g. natural, old-growth white oak forests). She mentioned that colonial nesting waterbirds present a big challenge for habitat protection on Long Island, because the species (least terns, piping plovers, etc.) are extremely mobile. It is important, she added, to work with local government agencies to convince them of the need to protect these waterbirds.

Discussion:

The discussion portion of the habitat protection workshop focused on three major items. The first of these was the need to heighten the general public's awareness and appreciation of fish and wildlife habitats. Most participants agreed that this need was in part due to the current level of educational activities on habitat protection. As one individual stated, "Education is like the weather, everyone talks about it but no one does anything about it." Adequate funding and other pressing work priorities were cited as the principal reasons for the low level of habitat educational activities. There was considerable discussion over what groups should be the target of these educational efforts and how they could best be provided.

Another item addressed by the participants was whether the regulatory steps necessary to protect Long Island's important habitats would deprive property owners of their constitutional rights to develop their land as they saw fit. Virtually all the participants saw the value of regulatory controls for habitat protection purposes, and several indicated that such regulations do not necessarily preclude, nor should they cause, substantial delay of development activity.

Growth's effects upon our efforts to protect important fish and wildlife habitats was another item of discussion. The participants did not embrace Dr. Safina's recommendation to establish a population control policy, but they did see a need to undertake long-term areawide planning and budgeting to minimize the effects upon habitats and other environmentally sensitive locations.

## SCENIC AREAS

Panelists:

Bob Yaro, Professor
Department of Landscape Architecture and Regional Planning
University of Massachusetts at Amherst

Harry Dodson, Dodson Associates

Laura Zeisel, Attorney at Law

Moderator:

Alan Lillyquist, Chief
Project Development Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Bob Yaro

Mr. Yaro began his presentation by giving an overview of scenic area protection. He stated that the good news for Long Island is that it has maintained a high quality of life. The bad news is that development is still occurring and that every undeveloped portion of land that contributes to the quality of life and that is not in public ownership is zoned for some type of development. Further, there is a lack of funds for programs like the Department of State's Scenic Areas of Statewide Significance Program to work with localities to protect the valuable scenic resources that remain.

He noted that we are in a period where we are experiencing pollution of the traditional visual values that have shaped our pattern of development, which have led to the development of tourism industries, attracted businesses, and given us the quality of life we have come to expect. In the eastern United States, it is the diversity and interaction of natural landscape with the man-made cultural features that make areas scenic and desirable.

The Scenic Areas of Statewide Significance program developed for New York State is unique and possibly the best in the country. The methodology developed is a creative approach in that it relies on local government for the long term implementation. The procedure will work very well on Long Island to preserve scenic resources.

The implementation mechanism which should be used to achieve scenic resource protection is the adoption of overlay districts. State of the art protective measures can be incorporated into the site plan review process. The elements which need to be

incorporated are subdivision regulations and performance standards for visual concerns. There is also a need to train professionals such as planners, architects, and landscape architects.

Another approach to scenic resource protection as well as other resources is one which establishes a regional commission so that there is a way to coordinate planning efforts. In many instances, resources are of regional, statewide, or even national importance, yet these resources overlap the historic political boundaries we have created. Further, the responsibility for protection of these resources, especially scenic resources, which contribute to our quality of life often falls on local government.

Along the barrier strip of Cape Cod, a regional commission has been created to protect the resource with regional regulations. Long Island should examine what has been done to look for its application here.

Harry Dodson

Mr. Dodson stated that the visual character of our surroundings is important to the overall quality of life on Long Island and to our basic health and safety. This in turn is one basis for the adoption and implementation of zoning.

For the United States, visual landscape values were in large part shaped by the Hudson River Valley school of painters. These pioneers in landscape recognition presented an appreciation of the romantic landscape tradition found in the early 19th century - scenes depicting large natural areas incorporated human activities at a small scale, thus expressing humanity as part of a natural scene. Man blended into nature and was not depicted as shaping it.

The coastal program in New York State is providing for scenic resource protection far beyond what is being done in other states. While Massachusetts conducted a visual land inventory, it had no regulatory authority. However, an important document was produced which is guiding development to where growth has the least impact on important scenic landscapes.

Mr. Dodson stated that the method developed for identifying and designating Scenic Areas of Statewide Significance in New York's coastal area is a cultural landscape approach which is unique compared to other methods which generally recognize only wilderness type areas as having scenic value. The method used in New York is similar to that of the Countryside Commission in Great Britain, which considers areas of natural beauty and includes as well the built landscape of urban towns and cities.

Mr. Dodson said that the methodology that was developed was one that can be applied at a Statewide level. A pilot project in the

Hudson Valley is the first application of the methodology to the coastal landscape of the State.

For evaluation purposes, the landscape is broken down into visual subunits which have similar land use patterns or characteristics. Each subunit is rated, based on its visual characteristics, as either common, noteworthy, or distinctive. Those areas rated distinctive are those to be considered for designation as Scenic Areas of Statewide Significance. For the Hudson River Valley, all subunits have been inventoried, mapped, described in words, and rated. Areas will be proposed for designation as Scenic Areas of Statewide Significance. Public meetings and hearings will be held to obtain comment on proposed designations.

The consistency provisions of the Coastal Management Program provide strong protection for scenic landscapes designated as Scenic Areas of Statewide Significance. While large projects are subject to State level review for consistency, it is anticipated that performance standards and guidelines for small-scale development will be implemented through the adoption of local ordinances by communities participating in the Local Waterfront Revitalization Program.

Mr. Dodson emphasized that the goal of a scenic protection program is not to prevent development, but to shape development by minimizing impacts on valuable scenic resources which do much to enhance our sense of place.

Laura Zeisel

Ms. Zeisel said she intended to discuss what local government can do now to protect scenic areas. In terms of recent court decisions regarding such local government protection, a 1980 Supreme Court case held it to be an appropriate role for government to zone for scenic qualities or open space. Mandatory clustering was determined to be a reasonable type of development which was allowed and was deemed constitutional.

Ms. Zeisel outlined the steps that need to be taken by local government to protect scenic areas: (1) conduct an inventory of scenic areas, and amend the master plan to identify specific scenic areas for protection (It is important for the inventory to be overseen by a committee or commission. Describe scenic areas geographically and justify why they are significant); and (2) under a zoning ordinance, designate areas as having scenic significance. The creation of a scenic overlay district can be used to protect areas of scenic significance and additional restrictions can be put in place, such as larger setback requirements which limit density, height restrictions, and site plan review requirements.

Ms. Zeisel noted that New York State case law covering 25 years has held that it is appropriate to zone for aesthetic purposes. However, all development cannot be eliminated by zoning

ordinances, as this would result in a taking and the community would have to pay for the value of the property. Also, under New York State Law, condemnation of property for scenic protection purposes is allowable.

Within the State's coastal area, Local Waterfront Revitalization Programs should be used to protect scenic areas. Local plans should promote tourism for economic development purposes.

Ms. Zeisel then discussed the State Environmental Quality Review Act, which applies to all decisions of local governments prior to approval being given for development proposals. Appendix B to the State Environmental Quality Review Act Environmental Assessment Form contains a Visual Assessment Addendum which can be used to describe the visual impact of a proposal; visual impact mitigation can then be addressed.

Another way to address scenic issues is to prepare a list of activities which would have a significant effect on the environment. Scenic issues that are not on the State's Type 1 list can be included on the local list.

Ms. Zeisel then discussed the Critical Environmental Area process. Under the State Environmental Quality Review Act regulations, if a community deems an area to be a Critical Environmental Area, that area will be afforded additional protection. Once designated a critical area, proposed projects in the area are deemed Type 1 actions and additional attention is then given to the proposed action.

Finally, communities can consider acquiring scenic areas outright or obtaining conservation easements. Article 49 of the Environmental Conservation Law sets forth procedures for holding conservation easements which can limit the type of development.

Discussion:

The point was made that communities inventorying scenic areas for protection must involve local public input in the inventory process. This was done in the Massachusetts Landscape Inventory and is also being done in New York State Scenic Areas of Statewide Significance Program.

A point was raised by a member of the East Hampton Village Planning Board that when the laws include a long list of restrictions, it is easier to deny a permit application. He gave an example of how strict the Village's Historic Preservation Laws are and related how the Architectural Review Board has been successful in upholding them. It is important in developing laws which will regulate scenic resources to make them very specific so that the local review board will have the language behind them to implement.

## COASTAL HAZARDS

Panelists:

Kevin McDonald, Vice-President
Group for the South Fork

Jay Tanski, New York Sea Grant Extension Program
State University of New York at Stony Brook

Henry Bokuniewicz, Marine Science Research Center
State University of New York at Stony Brook

Kathy Cousins, North Atlantic Regional Manager
Office of Ocean and Coastal Resource Management,
National Oceanic Atmospheric Administration

Moderator:

Charles McCaffrey, Chief
Bureau of Local Waterfront Revitalization Programs,
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Kevin McDonald

Mr. McDonald opened his remarks by noting that coastal hazards and management of hazardous areas is very topical because of Hurricane Hugo and its destruction on the Carolina Coast. He said that the regulatory agencies have been advising the public against building in hazardous areas. Yet, structures are continuously being erected. There is enough technical information available to make prudent management decisions as to where not to build. Yet, the South Shore of Long Island had been vigorously developed. And now over $10 billion worth of investment can be lost if a major hurricane hits. There is the Hurricane Disaster Mitigation Plan and local evacuation plans but these are not enough. South Carolina also has such plans which failed when Hugo hit. People are asking themselves "Did I build in the wrong place?" and "How can I recover my investment?"

Mr. McDonald said the question is how do we reconcile fixed structures and boundaries on a fragile, mobile and impermanent resource like the barrier island system. Sea level is rising and we need to know what this means for coastal processes and development along the shoreline especially along the barrier system.

He stated that the permitting agencies have acted in an ad-hoc manner when permits were granted. There should be a unified approach when reviewing building applications in hazardous coastal areas. Federal flood insurance has been withdrawn from

the Village of Westhampton Beach because of non-compliance with standards and the granting of many variances to local regulations. The Federal Emergency Management Agency has also told the Village to get their act together before flood insurance is made available again.

According to Mr. McDonald, the federal insurance program and income tax deductability subsidize development in hazardous areas. The flood insurance system is not on a sound footing.

These problems can be solved if during planning all options are evaluated and the best plan adopted. Government should ensure that there are no variances from this. This, he said, could save long term expenditure of public funds.

Henry Bokuniewicz

Mr. Bokuniewicz outlined the sequence of events and the rationale for the three workshops which were held from January to June of 1989 in conjunction with a study being funded by the Department of State and undertaken by the Long Island Regional Planning Board. The purpose of the workshops was to decide what information is necessary to make sound recommendations regarding flooding and erosion management plans for the South Shore of Long Island and to recommend feasible erosion management strategies for various sections of the South Shore.

The first workshop was held in Tampa, Florida and brought together national coastal engineering experts who identified what information was needed to prepare a meaningful management plan for the South Shore of Long Island.

The second group was comprised of geologists who had worked on the South Shore of Long Island and who knew what data was available, where, whether it would be useful, and what other data would be needed to implement a meaningful management plan. The group met in Long Island and assessed the adequacy of information for preparing a South Shore Hazard Management Plan.

The third workshop brought together both groups and made recommendations as to what are the most feasible erosion management strategies for various sections of the South Shore given land use patterns and plans, and coastal processes.

Among the overall recommendations were: (1) allow for continuous longshore transport of sediment, (2) establish sand bypassing at inlets, and 3) identify shoreline trends.

Mr. Bokuniewicz said that the plan to be developed should be active - not static - so as to accommodate changes in knowledge and technologies. There is a lot of data on Fire Island Inlet but not much along other reaches of the South Shore. A system to

monitor changes in wave climate, beach morphology, and the effects of man-made structures on coastal processes and the shoreline is also recommended.

Jay Tanski

Mr. Tanski, who organized the workshops described above in association with Henry Bokuniewicz, said the final report on the workshops should be published by Sea Grant.

Mr. Tanski elaborated on some of the general conclusions of the workshops. He said inlet zones are the areas where the greatest amount of erosion occurs. In these areas littoral drift must be maintained by sand bypassing. Inlet projects - dredging and stabilization - are normally based on navigation concerns not erosion concerns. Both should be considered in future projects.

Formation of new inlets can have effects on bay water salinity, commercial fisheries, inlet shoaling, and other coastal process. New inlets should be closed and special attention should be paid to areas of potential inlet formation.

Sea level rise is definite, but the rate is conjectural. Management plans should take it into consideration especially for long-lasting publicly funded structures such as roads, bridges, sewers, and power plants. However, he said the more important near term concerns are not erosion and flooding from sea level rise but from daily tides and disasters such as storms and hurricanes.

Kathy Cousins

Ms. Cousins began by noting that the threat is real, for if Hurricane Gloria had hit New York during high tide, the damage would have been disastrous. She then described some of the initiatives being undertaken in other States to better manage coastal hazards.

In North Carolina, about 50% of the shore is publically owned and 50% privately owned. The erosion rate is greater than 6 feet per year. In response, the State has established three overriding goals: (1) minimize loss of lives and damage to property; (2) maintain public beaches; (3) prevent the hardening of the shoreline, i.e., no groins, sea walls, and bulkheads. Their policy is to retreat if a severe storm hits. They have the most rigorous coastal policies of all the eastern states. They are not replenishing beaches, thus reducing public costs. And they have a 30 year setback policy in their coastal permit process.

South Carolina has a new 40 year setback policy and prohibits all new construction, including erosion protection structures, in front of the set-back line. This is expected to be enforced during rebuilding following Hurricane Hugo.

Florida's policy is to protect the public beaches at all cost with beach replenishment so as to attract tourism. They have spent $60 million over a 10 year period for beach nourishment.

Private structural approaches to erosion protection are discouraged.

New Jersey has spent $5 million for replenishment of its beaches but the material only lasted for 2 months.

In the San Francisco Bay area, sea level rise is incorporated into the permit process and set backs are usually 70 to 100 times the annual rate of erosion especially for sewers, roads, and bridges.

Rhode Island has established higher flood proofing standards than the Federal Emergency Management Agency standards for development in hazardous areas.

She concluded by urging that in New York local governments take the initiative and responsibility for the Coastal Erosion Hazards Area Act rather than allow the authority to devolve to the New York State Department of Environmental Conservation. This could result in closer and better management of the coastal hazard areas.

Discussion:

The discussion focused on questions of government subsidies for development in hazardous areas, sea level rise, and the plan being prepared by the Long Island Regional Planning Board and the Department of State.

A few participants, residents of the barrier island, questioned why they shouldn't be allowed to live in hazardous areas; it is, after all, at their own risk. The Federal Flood Insurance Program is not a subsidy, they said. Others countered that development on the barrier beach is subsidized by the government. The Federal Flood Insurance Program, though it seeks to be actuarily sound, is not now such. In addition, federal and State disaster assistance costs millions in New York and could cost billions in the event of a major hurricane. It was noted that in the absence of a disaster, people will say I'm willing to assume all the risks; but the public, when faced with the human tragedy of a catastrophic event, cannot withhold assistance -- no matter how foolishly people have placed themselves at risk. Others suggested that those who develop or redevelop in hazardous areas sign waivers of any future disaster assistance. The California Coastal Commission requires such a waiver. It was stated that the original purpose of the Federal Flood Insurance Program, to provide a safety net for people of modest means who live in river valleys, has been corrupted to provide a subsidy for development of second homes for the affluent in high-priced coastal areas. It was also stated that the insurance industry is very concerned

about the potential magnitude of claims against it due to natural disasters. This concern is heightened by the scale of the damage caused by Hugo. If such a storm were to hit New York, the monetary damage could be even greater given the high real estate values found on New York's coast.

Regarding sea level rise, the question was asked when should sea level rise be factored into land use planning. In response, it was said that at present sea level rise is of secondary importance to storms and associated effects of storm surge, overwash, inlet creation, as well as erosion caused by inlet maintenance. However, accelerated sea level rise should now be factored into major public investments with a life span greater than 30 years.

It was commented that some erosion problems are due to a lack of coordination among agencies and a clear public policy on erosion management. The South Shore Hazards Management Plan is, it was said in response, an attempt to correct that problem.

In response to questions concerning the study the Long Island Regional Planning Board is undertaking in cooperation with the Department of State, the study objectives were described. The South Shore Hazard Management Program is intended to reduce risks to property and life and the expenditure of public funds in flooding and erosion hazards areas. To accomplish this, it will establish the basis for agreement among all levels of government by identifying: 1) where there is sufficient public interest in the use or development of the South Shore to warrant public investment in flooding and erosion management strategies, and what the appropriate strategies are, 2) where development should ultimately be induced to relocate due to insufficient public benefit from protection and the public cost of sustaining that development is high, or 3) where development may continue only at its own risk and subject to regulation of private protection efforts. The State and its municipalities must first reach consensus, and then, through cooperation, or if necessary, application of consistency authority under the Coastal Program, gain agreement from federal agencies.

## WATER DEPENDENT USES

Panelists:

Linda O'Leary, President
The Towboat and Harbor Carriers
Association of New York/New Jersey

Eugene Murphy, Senior Planner
Town of Islip

Jason Anderson, Consultant
Kearney/Centaur Division
A.T. Kearney, Incorporated

Moderator:

Neil MacCormick, Assistant Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Linda O'Leary

Ms. O'Leary briefly outlined the types and levels of use that the Port of New York and New Jersey supports. She represents operators of 200 tugboats, 300 barges, and 16 coastal tankers that use the Port, arriving from areas covering Virginia to Maine. These vessels are heavy users of the waters around Long Island. One of the principal products either carried or moved by these vessels is petroleum or petroleum products.

There is constant pressure from new types of waterfront users to move water dependent uses which support these vessels away from waterfront locations. The pressure to replace water dependent uses is greatest from residential development of the shoreline. Along with waterfront development projects comes a reduction in the available pier space for tug and barge operations. There is a desperate need for tugboat tie-ups in New York City while the tugs are waiting for new assignments. A study conducted by several State and local agencies in the Port of New York and New Jersey concludes that the need to locate barge tie-up points and potentially create waterfront vessel support areas will continue well into the 21st century. However, at present, there are no facilities to accommodate the needs of the shallow draft industry, which, Ms. O'Leary argued, is one of the most environmentally sound and cost-effective industries for the transportation of bulk commodities. Specific locations for maritime support centers have been identified in the study and their designation must be acted upon through a coordinated effort of State and local agencies.

Ms. O'Leary noted that legislative proposals to date have focused on amendments to the State's laws to exempt such uses from the "nuisance" provision of tort law. This would provide some measure of protection for existing uses which are often pressured into relocation through litigation. A "first in time" principle could apply such that a newly developed residential or commercial enterprise would be precluded from initiating a lawsuit against the more industrial use of an adjacent property owner (scrap yard, shipyard, fueling facility, for example).

Another issue is the New York taxation of petroleum products which presently equals one-half the cost of transporting the product itself. Because the level of taxes charged by adjacent states in no way approaches New York's, many firms have relocated or simply do all their business in these other states to the detriment of the economy of New York State. Ms. O'Leary also remarked on the draft report of Governor Cuomo's Blue Ribbon Panel which indicates that there are taxes imposed on the marine industry which require complex and voluminous paperwork but contribute little, if anything, to the State's revenue flows. She hoped that these recommendations will be acted upon very soon.

Ms. O'Leary also said that the intricate waterway network surrounding New York City has proven to be its most important asset. Failure to properly maintain it has resulted in its inefficient utilization, increased cost to the consumer of products carried by marine vessels, and environmental and navigational problems. The system's channels need regular maintenance dredging to remove existing conditions which are extremely dangerous, especially for vessels transporting petroleum products. The potential for petroleum spills and other accidents is too high and the industry is concerned since it bears the brunt of criticism and financial losses when accidents occur. The State should be prepared to assist in the funding of federal dredging projects which, because of the federal Water Resources and Development Act of 1986, require cost-sharing.

The industry is experiencing increasing pressure from recreational marinas to conduct tug and barge operations further from shore, and is bearing the brunt of lawsuits from recreational vessel owners in marinas located adjacent to regular shipping channels. Marinas located in these areas should be required to install wave attenuation devices to protect their facilities and vessels using them. It must be understood that large commercial vessels must maintain a minimum headway to be able to steer and control them, especially in the turbulent and busy waters and channels of New York Harbor.

Ms. O'Leary also pointed out that there are direct conflicts between recreational and commercial vessel uses in the waters of New York Harbor. Many recreational vessel operators are unaware of how much space commercial vessels need in order to operate safely, and believe that commercial vessels must give way to

recreational vessels. Commercial vessel operators are constantly trying to avoid accidents due to recreational vessel operators who place themselves and others in danger because of their poor navigational skills and ignorance of basic rules of the road. The commercial industry feels that recreational vessel operators should be licensed or certified for vessel operation, as is required of all commercial vessel operators.

At present, Ms. O'Leary noted, there are more than seven federal, State and local agencies which review or regulate activities of great importance to water dependent industries. The sheer lack of coordination between these agencies is resulting in lost opportunities for water dependent users. Therefore, she recommended that there should be one agency with the authority to review the input from sister agencies and make a decision on the proposal before them.

Last, Ms. O'Leary argued for the creation of a "Maritime Advocate" in New York State government to articulate the interests of the maritime industry. This would raise the visibility of this vital water dependent use industry and concentrate the decision making process at one focal point.

Eugene Murphy

Mr. Murphy opened his discussion by providing a general overview of water dependent uses in the Town of Islip on Long Island's South Shore. The Town's municipal boundaries extend from the island's south shore mainland to the Atlantic Ocean side of Fire Island, encompassing portions of the Great South Bay which averages 12 feet in depth.

Water dependent uses fronting on the Great South Bay include 11 private marinas, 4 commercial shellfish companies, 7 boat repair yards, and 4 large ferry operators. There are approximately 20,000 boats within the Town which all require vessel services and maintenance. The marina industry in the Town is expanding and is profitable. Marinas need more places in which to locate and expand. Most importantly, marinas require permanency over the long term.

Mr. Murphy described conflicts between an expansion of established boat yards and neighboring residential uses, and the techniques the Town used in resolving these and other potential conflicts during a proposed zone change review and site plan review process. The Town worked with the owner of the boat yard to develop a sensitive site plan which provided efficient use of the waterfront and its adjacent area, while preserving the visual character of area and views from upland areas to and across the water. These arrangements satisfied the needs of the boat yard and the community's concerns regarding the character of the neighborhood.

Mr. Murphy recommended that all municipalities that develop Local Waterfront Revitalization programs plan them carefully, so that water dependent uses are preserved. The Local Waterfront Revitalization Programs should develop and adopt a water dependent use zoning category to protect water dependent uses.

Jason Anderson

Mr. Anderson began by saying that the Freeport area on Long Island has long been an important fishing port in New York State. In the preface of the Local Waterfront Revitalization Program for the village of Freeport, it is stated that Freeport has a widespread reputation as one of the few places remaining in the greater New York City and New Jersey area where small maritime industries can locate. Today, the Village of Freeport area has the largest concentration of commercial fish harvesting activities close to New York City.

Currently, the main problems for fishermen in Freeport appear to be crowding in the harbor and the high cost of operating. Because of its premier location and inherent advantages, Freeport has become an extremely congested port. This lack of space makes it very difficult for commercial fishermen and charter and party boats to operate, and in a worst case scenario, could force these fishermen out altogether.

It became apparent that if the commercial fishing and charter boat industries were to survive in Freeport, a course of action for preservation of these industries was necessary. The Village of Freeport, with the encouragement of the aquatic resources industry and with Department of State funding, commissioned a study which has been completed to determine: (1) the extent of the shortage of docking; (2) a summary of benefits provided by the aquatic resources industry; (3) tabulation of infrastructure needs of the industry; (4) an assessment of the feasibility of preserving the industry at existing locations; (5) a summary of alternative development sites; and (6) a list of priorities for preservation of the industry.

Discussion:

After considerable discussion regarding what constitutes a water dependent use, the workshop participants reached a consensus on a number of issues.

Water dependent uses should be preserved.

Anti-nuisance laws designed to protect water dependent uses should be adopted in water dependent use zoning districts.

Non-water dependent use platforming over the water should be prohibited.

Houseboats used as dwelling units should be prohibited.

Water dependent use tax incentives similar to those offered to agricultural uses should be developed and adopted, especially for small water dependent use businesses.

In New York City and on Long Island, extraordinary increases in property tax reassessments jeopardize the continual viability of many water dependent use businesses, especially where properties are assessed based on their value for non-water dependent uses. For properties actively engaged for water dependent uses, property taxes should be based on their value for these purposes.

## PUBLIC ACCESS AND RECREATION

Panelists:

Steven C. Whitney, Assistant Director
Coastal Resources Division
New Jersey Department of Environmental Protection

Catherine Lester, Councilwoman
Town of East Hampton

Moderator:

Bryan P. Cullen, Associate Counsel
New York State Department of State

Presentations:

Steven Whitney

Mr. Whitney cited two components through which public access is maintained or increased in New Jersey: case law history establishing important public trust legal precedents, and state public policy and management systems.

Mr. Whitney first discussed important cases which have upheld and enhanced the public trust doctrine in New Jersey. These cases have more clearly defined and established the public's right to gain access to the shore, particularly when there are privately owned lands involved. The cumulative result of these cases is the implied right that the public not only has the right to public access along the shoreline, but the right to gain reasonable access to it as well. Thus, beaches owned by municipalities and quasi-public associations in New Jersey must be open to all members of the public, regardless of residence.

The New Jersey Public Trust Doctrine, like that of the thirteen original colonies, flows from English Common Law and was embodied in the New Jersey Constitution of 1776. Public trust rights include traditional public trust rights of navigation, commerce, and fishing. Recreation is a modern public trust recognized by the courts. The geographic scope of the public trust in New Jersey is all lands now or formerly flowed by the mean high tide. In addition, New Jersey case law has held that the public trust responsibilities of the State may not be forfeited by the State to private parties.

Another area covered by Mr. Whitney was liability of private landowners who provide access on their property to the shore. Pursuant to a New Jersey law passed in August of 1989, owners are held liable for injuries only where there is willful or malicious conduct, a fee is charged, or the user enters the property for a purpose unrelated to public access. The statute further

addresses the issue of who is responsible for maintenance of accessways, roads, buildings, etc. in a safe condition by providing that the New Jersey Department of Environmental Protection shall be responsible.

Catherine Lester

Ms. Lester identified several issues of importance to local governments seeking to implement public access goals. Planning for access through preparation of comprehensive access inventories as part of Local Waterfront Revitalization Programs and a municipal-wide trail system plan can help identify and understand public access needs. Liability must be addressed and clarified both for public and private owners who allow access on their land.

Ms. Lester stressed that acquisition by all levels of government does provide public access and protect environmentally sensitive lands. She indicated that the Town of East Hampton spends between $500,000 to $1,000,000 annually on small lot acquisition to provide access and protect sensitive areas. The Town has also spent millions for large tract acquisitions. On this issue, she emphasized that the time to buy is now as prices will only continue to increase, that State and Federal assistance is necessary to further access acquisition, and that a funding mechanism, such as a real estate transfer tax, needs to be established on State and local levels to implement access goals.

Ms. Lester concluded by stating that loss of beaches to erosion from structures to protect property is a big threat to public access because hard structures eliminate public access.

Bryan Cullen

Mr. Cullen outlined the federal and New York State statutes and policies which underscore the importance of public access to the coastal zone. He also described the scope of the State's public trust lands and explained that under the common law public trust doctrine, the State, as sovereign, holds submerged and tidal lands in trust for the people of the State who have certain recognized rights to these lands, including fishing, navigation, commerce and recreation.

The State consistency review process and its limitations were discussed along with coastal management programs of other States which have greater control over all actions within their coastal zone.

Mr. Cullen then provided further illumination on the proposed responses to public access issues outlined in the discussion papers provided to workshop participants. Highlights are included here. He explained that the site plan and subdivision review response is intended to provide municipalities with a source of revenues to be used, with greater latitude, to purchase

recreational access. He mentioned that a bill for these purposes was pending in the Legislature as S. 6471. Mr. Cullen explained that current law provides landowners with limited liability for injuries when the public is invited to use the land for certain recreational activities. Swimming and beach-related recreation, however, are not within the scope of the statute. An amendment including these activities would protect State and local governments from litigation and would hopefully cause landowners to open their property for beach-related recreation.

While the State and local governments are precluded by the Constitution from taking private property without just compensation, Mr. Cullen explained that when a public entity conditions the receipt of public funds on the provision of access, there is no Constitutional violation. Rather, the situation becomes one of a bargained for exchange: a publicly subsidized improvement for public access.

In the case of codification of the public trust doctrine, extreme caution was urged because of the fluid nature of the doctrine and the inevitable give and take of the legislative process.

Mr. Cullen also discussed the importance of education programs for local governments and how harbor management plans can be a very good tool to insure continued public access for a variety of water dependent activities.

Finally, the use of financial incentives by the State and local governments to encourage public access were considered. Incentives include tax credits and preferential assessments when an owner grants an access easement.

Discussion:

After the presentations by the panelists, problems related to public access and needed responses were identified by the audience.

With regard to problems, it was stated that off-road vehicles are a form of public access which is destructive to beaches and conflicts with other uses. Conflicts were also identified where access interferes with fragile environmental areas or where public uses conflict, as in the case of fishermen and bathers. Beach access fees for non-residents were described as too excessive, and lack of public access to publicly-owned facilities such as the Kings Park facility in Smithtown were other specified problems.

Responses to the above included: stricter regulation of off-road vehicles, monitoring of conflicts between users, establishment of more beach areas by State and local governments open to everyone without charge, retention of ownership of Kings Park by the State with allowed public access, encouragement of public access via public transportation to relieve the pressure to destroy dunes

and environmental areas for parking lots.

In addition, several other responses were identified. There was an almost universal call for improvement of the State consistency review process to ensure a greater degree of State agency consistency with the State Coastal Management Program. It was indicated that the State should move quickly on all of the responses, before it is too late and access opportunities are lost to development pressure. One commentator indicated that more actions in the waterfront area should be classified as Type I actions under the State Environmental Quality Review Act. An example cited was that currently a 400 slip marina is an unlisted action under the State Environmental Quality Review Act.

HUDSON RIVER

Regional Coastal Conference

October 5, 1989

Fishkill, New York

**HUDSON RIVER**
**COASTAL CONFERENCE**

**October 5, 1989**

**Agenda**

**8:30 - 9:00 a.m.** **Registration**

**9:00 - 10:00 a.m.** **Opening Session**
- Welcome and remarks by Secretary of State Gail S. Shaffer
- Welcome by host Dutchess County Executive Lucille Pattison
- Remarks by Mayor Robert Bleakley, City of Poughkeepsie
- Remarks by Supervisor Anna Bucholz, Town of Poughkeepsie
- Remarks by Mayor Kiernan Quinn, Village of Nyack

**10:00 - 10:15 a.m.** **Coffee Break**

**10:15 - 12:30 p.m.** **Workshop Sessions**

**Harbor Management**
- Larry Johnston - L. R. Johnston Associates
- Steve Resler - N.Y.S. Department of State
- Jay Hogan - City of Kingston

**Public Access and Recreation**
- Phil Pearl - Scenic Hudson
- Brian Smith - Robinson & Cole
- Juli Neander - Hudson River Sloop Clearwater

**Habitats**
- Bridget Barclay - Hudson River Sloop Clearwater
- Len Houston - U. S. Army Corps of Engineers

**12:45 - 1:45 p.m.** **Lunch**

**1:45 - 2:30 p.m.** **Luncheon Address by Tony Hiss-The New Yorker**

**2:30 - 4:45 p.m.** **Workshop Sessions**

**Growth Management**
- Carol Sondheimer - Scenic Hudson
- Rosemary Nichols - N.Y. Land Institute

**Scenic Areas**
- Harry Dodson - Dodson Associates
- Mary Lou Lutters - Heritage Task Force
- Sally Mazzarella - Town of Rhinebeck Planning Board

**Coastal Non-Point Source Pollution**
- Patty Hotchkiss - Westchester County Legislature
- David Church - The Conservation Foundation

# PLENARY SESSIONS

## OPENING SESSION

Welcome by Secretary of State Gail S. Shaffer

Secretary of State, Gail S. Shaffer welcomed the participants to the conference, one of five regional conferences sponsored by the Department of State. She noted the purpose of the conference, which is to bring together leaders in coastal affairs, technical experts, government officials, knowledgeable citizens, and members of public interest groups in order to facilitate an exchange of opinions and ideas and to seek a consensus for needed changes in the way New York's coast is managed.

Welcome Remarks by:

. Lucille Pattison, Dutchess County Executive
. Robert Bleakley, Mayor of the City of Poughkeepsie
. Anna Bucholz, Supervisor of the Town of Poughkeepsie
. Kiernan Quinn, Mayor of the Village of Nyack

Each of these elected officials from Hudson River communities welcomed the conference participants and looked forward to workable solutions emerging from the conference for improved management of Hudson River coastal resources.

Remarks of Secretary of State Gail S. Shaffer

The national effort to address the problems facing our coastlines began in 1972 with the passage of the federal Coastal Zone Management Act. The Coastal Zone Management Act set in place a management scheme that encouraged the United State's 30 coastal states and 5 territories to undertake the arduous task of protecting and wisely developing 95,000 miles of shoreline. With federal financial assistance and the promise of a new concept called "consistency", states and territories began planning for the coast.

In New York, the effort began in 1975, and with the passage of the Waterfront Revitalization and Coastal Resources Act and federal approval of the State's Coastal Program, implementation of new management approaches for the State's 3,200 miles of coastline began in 1982.

What the New York Coastal Program created, in concept, is a "trinity" -- an intricate partnership of federal, State, and local governments, working towards a common goal--preservation, revitalization, and the wise development of one of the State's greatest resources -- your coasts.

After seven years of program implementation, I am pleased to say that the basic ingredients for accomplishing this laudable objective are in place, and have had results. Working together, governments are advancing improvements of water, the land, and

the overall quality of New York's coast. In the Hudson River Valley, the federal government has initiated the Hudson River National Estuarine Research Reserve and is working cooperatively with the state in addressing the needs and problems of dredging in the river. And, in 1990, Congress will be considering sweeping changes to the Coastal Zone Management Act, in an effort to respond to the current crises facing the coast.

At the State level, the Department of State has designated 35 significant coastal fish and wildlife habitats along the Hudson River and has recently completed nominations for designating Scenic Areas of Statewide Significance along the River's Coastal Corridor extending from Troy to New York City. These two programs are resulting in increased protection to some of the region's most vital resources.

The State has made significant consistency decisions, including preventing the inappropriate siting of an oil refining facility on the City of Hudson's waterfront. The Department of State, in reviewing the proposed Halfmoon Bay Marina development, required continuous public access and public use of facilities. Working with sister agencies, the State mitigated aesthetic impacts and required public access as a condition of approval of the Pierpoint-on-Hudson project in Yonkers.

Further, New York is on the forefront, nationally, in the fight for public access to the shore.

At the local level, Hudson River coastal communities have made great strides. Thirty-eight valley communities are preparing or implementing Local Waterfront Revitalization Programs. These programs embody land use regulations to guide coastal development and preserve coastal resources. They contain capital investment programs to revitalize working waterfronts, improve public access and strengthen the region's thriving tourist industry. These Local Waterfront Revitalization Programs are, and will continue to be, a major component in achieving the statewide and national coastal management objectives.

After seven years, this "trinity" has made a difference. But, despite these advances, in New York and around the nation, the coast remains under siege by a multitude of threats documented daily by the media. Wetlands are continually lost, commercial and recreational fisheries remain closed, and a cadence of development along the shores precludes public access, and mars the scenic beauty of the coast. The coast has experienced a gruesome array of medical wastes, sewage closing beaches, and oil spills -- not only in Prince William Sound, but in New York's own Hudson River.

Given the severity of today's coastal problems, it is clear that not enough has been done; but with the limited legal authority restricting certain government actions, and with an insufficient level of existing financial resources devoted to management of

coastal areas, you must question how much more can realistically be done.

There is a complex set of factors that may account for our inability or unwillingness to respond more effectively to the challenges of managing coastal areas. A partial list includes: the diffused public interest; skewed national, Statewide, regional and local priorities; inadequate legislation; special interest politics; and fragmentation of responsibilities within and among levels of government.

Moreover, governments are not, and cannot, be the only sector to carry the coastal burden. A private sector code of coastal conduct must also be developed. Markets must begin to reflect and absorb the true costs of development in coastal areas and exploitation of coastal resources. The public, as consumers, must express their concern for the coast to business, with the same zeal they express these concerns to government.

Nearly two decades into the national task of managing our coastal environment, there are accomplishments, and there are shortcomings. That is why we are here today. Your ideas and commitment are essential to the formation of a more effective coastal management effort. As the theme of this conference implies, the reality of coastal management is that this <u>is</u> your coast; the choices <u>are</u> your choices; and its future <u>is</u> your future.

During this conference a number of issues facing the Hudson River Valley coast, and the State's coastal area as a whole will be covered. These include managing the growth and development of our shoreline, which affects not only coastal resources, but the quality of life in coastal communities. The competing demands and conflicting activities which affect harbors, water-dependent industries and the accessibility of the coast for recreational activities will be addressed - and the condition of the resource base including habitats, water quality, fisheries, and aesthetics will also be covered.

Each of you have been given brief papers on the topics to be covered. Do not look at these as an authoritative treatise on the topic. Their purpose is to provide a groundwork for discussion in today's workshops. Our distinguished panelists will offer their own thoughts on the topic at hand; and most of all, we need <u>you</u> to ask questions, make comments, and present your own ideas and proposals for improving management of the coast.

Last week we held two very successful conferences on Long Island. I am pleased to say that at the Long Island forum, Lieutenant Governor Stan Lundine announced that Governor Cuomo had asked him to chair the Governor's Task Force on Coastal Resources.

Over the next few weeks, we will be holding similar conferences for the Great Lakes, and New York City. We will also be seeking the advice and counsel of people in those regions. On February 28 and March 1, 1990, we will convene a statewide conference in Albany to air what we have heard, and reach a consensus on a number of options for future action. I hope that these conferences can facilitate the efforts of the Governor's Task Force.

In New York State, we have reached the point at which the integrity and future of the coast must take its rightful place in the arena of public issues. Residents, interest groups, and businesses on the coast must increase pressure on public and private decisionmakers, to defend coastal values that have been given lesser priority.

I urge you to work together, and with us, to meet the challenge that faces us all. Unless, or until, the requisite will for fundamental change emerges, progress towards our goals in managing coastal areas will only progress as it has, which has been too slow, if not nearly too late.

Thank you.

LUNCHEON SESSION

Remarks and slides from Tony Hiss, writer for The New Yorker

Mr. Hiss presented, in verbal and visual form, many of his ideas and concepts about landscape conservation extracted from his recent two part article in The New Yorker entitled "Encountering the Countryside" (August 21 and 28, 1989 issues).

WORKSHOPS

- Harbor Management
- Public Access and Recreation
- Habitats
- Growth Managment
- Scenic Areas
- Coastal Non-Point Source Pollution

## HARBOR MANAGEMENT

Panelists:

Larry Johnston
L. R. Johnston Associates

Jay Hogan, Harbormaster
City of Kingston

Steve Resler, Coastal Resources Specialist
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Moderator:

Charles T. McCaffrey, Chief
Bureau of Local Waterfront Revitalization Programs
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Larry Johnston

Mr. Johnston described the issues involved in harbor development, taking particular note of the blocking of public access, channel encroachments, lack of mooring space, and use conflicts.

Noting that a harbor management plan will give a municipality greater say in what happens in local waters, he then described the steps to be followed in preparing a harbor management plan. These were: establish a committee; inventory the environmental conditions, the existing uses, and the institutional and jurisdictional conditions; analyze the issues - safety, access, use and resource conflicts, future demands; establish goals and objectives; involve the public at the beginning, middle, and end of the planning process; develop policies to guide decisionmaking; prepare and map a water use plan; prepare implementing laws and administrative structure.

Mr. Johnston described harbor management efforts in other states. In Maine, that state has published a harbor management guide. Connecticut passed enabling legislation in 1984, has produced a model harbor management plan, and provides grants of $10,000 to $25,000 to municipalities for plan preparation. Massachusetts has provided matching grants of $10,000-$15,000 to municipalities.

Jay Hogan

Mr. Hogan described conditions in the Rondout Creek, one of the busiest harbors on the Hudson River. He noted that last year the

Rondout Creek harbor was 1,000 berths short of demand. The Creek is particularly suited as a harbor because it has a 23-foot deep channel for three and one-half miles upstream. He said that a major problem was a lack of uniform standards for bulkheads and wave attenuation. He also stated that there is no room at marinas for transients, resulting in people dropping anchor in the main channel. He said that the wakes of 40 to 50 foot sport fishing boats cause erosion and structural damage. Speed boats also create safety problems and interfere with fishermen. He described conflicts between recreational boaters and the large commercial shipping that occurs in the main channel of the Hudson.

Steve Resler

Mr. Resler described how boating demand has increased significantly in New York State. Between 1980 and 1987 the number of motorized vessels registered in New York State increased 20%, from 319,492 to 383,368 vessels. There are at least 100,000 other vessels plying New York waters.

However, he stated, accommodating the safe movement and use of the growing number of recreational vessels is not sufficient. Conflicts between recreational and commercial vessel movements, between recreational boating and other recreational uses of the water and adjacent foreshore, and conflicts between all uses and the natural resource value of the State's water bodies are increasing.

He said significant coastal fish and wildlife habitats, such as the Rondout Creek, are threatened by both treated and untreated vessel waste, vessel noise, erosion and sedimentation resulting from wakes and propeller wash, and by encroachment and intrusion in areas otherwise inaccessible except by boat.

Despite the scope of problems, Mr. Resler stated that State and local regulatory programs dealing with vessel operation are safety-based only, rather than related to overall harbor and water surface management, and are based on specific waterborne activities, not the management of the water surface for its biological, physical, cultural, and recreational carrying capacity.

Discussion:

The discussion focused on the following topics: underwater land ownership and riparian rights, boater safety and education, the need for uniform standards, jurisdictional issues, and harbor management and its funding.

In responding to a question regarding the authority of the State to grant underwater lands to private individuals, it was noted that a recent Department of State funded study in the Village of Mamaroneck, conducted by L. R. Johnston, found that 400 acres

of underwater land adjacent to the Village shoreline had been granted away by the State over the past 150 years. If underwater lands are in private hands, they are subject to local property tax. However, not all municipalities are taxing these lands. The fact that underwater lands are privately owned does not preclude a municipality from regulating vessels on the surface of the water. It was further noted in discussion that the status of a grant of underwater land ownership is often unclear, each grant or area must be examined on a case-by-case basis to determine the extent, if any, of private interest in the underwater or formerly underwater land. Even court interpretation of grants is not consistent.

A related discussion of riparian rights indicated that the limits of riparian rights is not clear. There was a brief discussion of how one extends the property lines of a riparian owner into the water to determine the area in which riparian rights might be exercised. Encroachment by one person on another person's riparian rights is a problem the State and the Corps of Engineers have not paid attention to.

Boater education was identified as a major problem. It was suggested that training programs for boaters be mandatory. In 1991, Connecticut will mandate training. It was also suggested that a license be required for operating any motor boat.

Uniform minimum standards for use of the water surface were suggested, as was the need to clarify jurisdictional authority over the use of the water surface. In response to the question, can a municipality zone the water surface, it was stated that authority to zone the water surface has not been upheld in some court decisions, but a municipality does have authority to regulate certain activities. The extent of that authority varies significantly among municipalities.

The discussion noted that the conflicts that exist between motor boats and other uses heighten the need for harbor management plans. In response to the question, Can harbor management plans be incorporated in Local Waterfront Revitalization Programs?, the moderator said that the Department of State urges such incorporation. Others noted the incorporation is important because following broad review of the Local Waterfront Revitalization Program by State and federal agencies, the consistency provisions of the Coastal Program will apply to the local harbor management plan incorporated into a Local Waterfront Revitalization Plan. It was urged that harbor management plans anticipate the future as well as solve current conflicts. There was discussion of municipal cooperation in preparing harbor management plans for shared waterbodies. The need for Kingston, Esopus, and Ulster to undertake a joint harbor management plan was spoken of.

As to funding of harbor management, user fees at the State and local level were suggested as sources.

## PUBLIC ACCESS AND RECREATION

Panelists:

Juli Neander, Environmental Associate
Sloop Clearwater, Incorporated

Philip Pearl, Land Preservation Director
Scenic Hudson

Brian R. Smith, Associate
Robinson and Cole, Hartford, Connecticut

Moderator:

Bryan P. Cullen, Associate Counsel
New York State Department of State

Presentations:

Juli Neander

Ms. Neander began with a slide presentation which identified many factors limiting public access along the Hudson River. Included were topography, railway lines and crossings and private ownership of shoreland. She stressed that the problem is becoming more severe due to rapid development and overcrowding at recreational sites, and that the present will likely be our last chance to preserve areas for recreational access.

Ms. Neander stated that today we all can enjoy many access sites along the Hudson and the views from Bear Mountain State park because someone took the time and devoted the energy to make this a part of our heritage. Today we must look for the remaining access opportunities that exist so we can achieve the most river for the most people.

In summary, she referenced those tools with potential to increase access along the River as follows: zoning for water dependent uses within the coastal zone; providing for consideration of meaningful public access to private property; resolving the issues surrounding liability through legislative amendments; increasing the amount of funding available for new acquisition and maintenance of existing sites by establishing a new bond act or instituting a real estate transfer tax; and coordinating efforts of federal, State, local governments, and volunteers wherever possible.

Brian R. Smith

Mr. Smith discussed the Public Trust Doctrine and how it was used by the highest court in New Jersey to find that since the public had rights in the foreshore, they also had the right to get to these areas; therefore, New Jersey municipal beaches were

required by the court to be available to all members of the public, regardless of residence. It was indicated that while the New York courts have recognized the Doctrine, they have not been as liberal in declaring open access to municipal beaches.

The United States Supreme Court case of Nollan v. California Coastal Commission was also highlighted. In this case, the Nollans were owners of a dilapidated beach cottage which they sought to tear down and replace with a larger modern structure which would block existing views of the ocean from the nearby road. The Coastal Commission granted the necessary permit, but only on condition that the Nollan's grant permanent public access across the dry sand on the ocean side of their property. The Nollans refused, arguing that this was an unconstitutional taking of private property for a public purpose without payment of just compensation. The Court agreed, holding that there must be a substantial rational relationship between the condition imposed in the permit as a result of the landowner's activity and the public purpose sought to be advanced by the condition. Here the court could not find such a nexus because the construction in no way affected public access. Significantly, the court would have allowed a permanent public viewing spot on the property because of the impact the new home had on public views from the road.

Mr. Smith cautioned that municipalities should not be terrified into submission when a developer or permit applicant raises Nollan because the case is actually very narrow and is not the death knell to regulatory authority it was feared to be. Mr. Smith also discussed codification of the Public Trust Doctrine and stressed that, as with most common law doctrines, it is best for the courts to decide cases on a case-by-case basis and avoid codification which involves great risks that the spirit and history of the law will be lost by having to pass through the legislative process. Codification could also restrict the courts to looking only at the legislation and not the full and developing scope of the Doctrine.

Philip Pearl

Mr. Pearl indicated that General Obligations Law Section 9-103 deals with landowner liability and seeks to have private owners open their land for specified public recreational activities. Generally, many of the public users of private property are not inclined to sue. However, this could change, and even the threat of defending a costly frivolous suit can discourage owners.

Many changes are needed in the statute, and Mr. Pearl outlined the most necessary. First was clarification of the types of recreational uses and activities within the scope of limited liability. Currently there are almost twenty activities listed; and some courts have been very strict in construing the statute to mean only that activity and not an associated activity, thus increasing landowner exposure to liability. A better statute would be more general and address all recreational activities.

Mr. Pearl also stated that the statute should specifically provide that it is applicable to minors, man-made improvements such as trails and foot bridges, and to all recreational areas and not just those opened up since 1963 when the law became effective.

Discussion:

During the discussion period, many of the participants expressed a need to know which land use control devices could validly be utilized to obtain public access. It was indicated that rezoning in exchange for public access was not a defensible practice. However, the use of cluster developments could preserve scenic access at the barest minimum. The use of incentive zoning techniques whereby a landowner is able to increase a density or dimensional feature in exchange for a voluntary dedication of public access can be quite effective. In adition, it was stressed that although public access can't generally be required, many municipalities and states have had success with simply asking for access as part of a development process.

Problem areas were identified in the state consistency process and land disposition practices. With regard to consistency, it was indicated that the weakness of Article 42 of the Executive Law in dealing with state agency actions in the coastal area should be addressed. Because the state owns much property in the coastal zone, the sale of underwater lands or lands that were formerly under water to private developers can drastically hinder or prevent public access. Therefore, it was expressed that control over such transfers should be built into the State Coastal Management Program with authority in the Department of State to sign off on the sale of public trust lands.

## HABITAT PROTECTION

Panelists:

Bridget Barclay, Environmental Director
Hudson River Sloop Clearwater, Incorporated

Len Houston, Chief
Special Projects Section
United States Army Corps of Engineers, New York District

Moderator:

William Barton, Chief
Project Review Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Len Houston:

Mr. Houston briefly described the United States Army Corps of Engineers' major regulatory and civil works responsibilities pertaining to the navigable and other waters of the United States which are located in the Hudson River Valley coastal region. For each of these major responsibilities, he indicated that the Corps must assess the impacts of the projects which are approved or undertaken by his agency. For example, Mr. Houston described the analysis which was undertaken by the Corps in the preparation of the Generic Environmental Impact Statement for future maintenance dredging activities in the Hudson River federal channel. The problem, he said, was finding appropriate upland disposal sites, because many of the previous disposal locations had, over time, become wetlands and in turn important fish and wildlife habitats. As a rule,he indicated that the Corps' dredging projects are designed to avoid direct effects upon designated habitats and wetlands.

Mr. Houston thought the joint Department of State/The Nature Conservancy effort to study the habitat areas in the Hudson River will be helpful to the Corps and other agencies because of the specific habitat data that the resulting document will provide. He suggested, however, that the assembled data be continually updated. Mr. Houston questioned the rationale behind the significant habitat designation process, and the value that is often associated with such designation. He contended that all habitats are not of equal value, and therefore do not require equal levels of protection. He indicated that there is a need to better understand fish and wildlife habitats, and this need could in part be met by: (1) collecting available data and placing it in a central repository; (2) identifying missing information; and (3) developing and undertaking appropriate studies which will fill the informational gaps.

Mr. Houston concluded his remarks with the observation that the State's coastal policies appear to be in conflict with one another, because some call for the protection of habitats while others provide for navigation and other water-related uses of the Hudson River.

Bridget Barclay

Ms. Barclay stated that the Department of State's significant coastal fish and wildlife habitat designations possessed considerable potential, but must be viewed as only one of several state and federal programs aimed at protecting habitats in the Hudson Valley. Despite this potential, she thought that the regulations implementing the significant habitat program should be strengthened. She cited several recent projects where stronger regulations may have altered governmental decisions.

Although the significant habitat designations are important, Ms. Barclay indicated these resources are only part of estuary systems which must be protected as a whole. She thought that the designations needed more "teeth" in order to provide a greater level of protection to the habitats. She also thought that the public and governmental agencies are not fully aware of the habitat designations and what they mean.

Ms. Barclay indicated that assessing the cumulative adverse effects which a project may have upon a habitat is difficult, for we do not have adequate data and understanding as to when these effects become significant, particularly in the areas of hazardous wastes and synthetic organic chemicals.

She stated that several designated habitats and others are located, in whole or in part, on underwater lands. Although under the jurisdiction of the Office of General Services, Ms. Barclay expressed her concern over that agency's willingness to sell off these lands to the upland owners without any effort to ensure the protection of the habitat resources.

She suggested several ways for increasing the effectiveness of the significant habitat program: (1) provide state financial support to the Coastal Management Program; (2) designate the significant habitats as "critical environmental areas" under the State Environmental Quality Review Act; (3) assign greater weight to the habitat and fish and wildlife policies; (4) develop more protective water quality standards for significant habitats; (5) extend the protection afforded by the Tidal Wetlands Act to all wetlands in the Hudson River; (6) get more coastal communities in the valley to participate in the Local Waterfront Revitalization Program through increased public education efforts and financial assistance; (7) develop detailed management plans for designated habitats; (8) transfer jurisdiction over underwater lands in designated habitats and on environmentally sensitive areas to appropriate agencies, or prohibit the Office of General Services from selling these lands;

(9) vest responsibility for determining the consistency of State agency actions in the Department of State; (10) link habitats which are in close proximity to one another so as to extend protection to a larger unit; and (11) improve coordination between the Departments of State and Environmental Conservation.

Discussion:

Most of the discussion period was devoted to the probable impacts of proposed projects in several Hudson River communities. Concern for the effects of these projects upon significant habitats was one of the subjects addressed in this discussion. Greater attention was paid to the existing project review processes and how they were not effectively utilized or followed. Ms. Barclay indicated that agencies are not using State and federal environmental review processes adequately in terms of the identification and analysis of alternatives. Another participant claimed that local and State governments are not communicating with each other on environmental matters. Some participants indicated that the general public was not aware of its responsibilities or was confused by the project review processes. As for habitats, it was recommended that all wetlands in the Hudson River be designated as significant. A question was raised as to why the habitat designations were tied so closely to specific species rather than to particular systems.

## GROWTH MANAGEMENT

Panelists:

Rosemary Nichols, Executive Director
New York Land Institute

Carol Sondheimer, Associate Director
Scenic Hudson

Moderator:

George Stafford, Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Rosemary Nichols

Ms. Nichols focused on the need to minimize undesirable consequences of development, such as displacement of water-dependent uses, imbalance between development on the riverfront and upland, and the need to minimize water pollution by relating growth to the carrying capacity of the river.

Ms. Nichols attributed displacement of water-dependent uses to market forces which are main determinants of land use decisions. Controlling market forces would require local, state and federal agencies to be subject to some form of central control. The sale of public underwater lands to private developers was cited as an example of the uncontrolled operation of the market that could result in displacement.

While the State Environmental Quality Review Act was an acknowledged mechanism for central control, it would not impact displacement since it deals primarily with environmental concerns.

Displacement impairs the stability of a community by narrowing its economic base, thus causing unemployment and emigration of labor.

While the State Environmental Quality Review process can help mitigate water quality problems, its ability to do so is often limited by lack of adequate information about the carrying capacity of the river.

Ms. Nichols advocated the use of the special permit as a tool for mitigating the problem of water pollution, and the overlay zone as a tool for addressing the imbalance problem.

Ms. Nichols stressed the need for technical assistance to communities and suggested that the Department of State could

provide assistance for the development of local laws.

Ms. Nichols proposed the following to address the problems which she had outlined: conduct a study, coordinated by the Department of State, on the carrying capacity of the Hudson River; establish new mechanisms to encourage cooperation between State agencies and communities, with one incentive being more money for the localities; strengthen state consistency; and improve oversight of the transfer of underwater lands.

Carol Sondheimer

Ms. Sondheimer centered her presentation on the need to make the Coastal Management Program and Local Waterfront Revitalization Programs more effective. Ms. Sondheimer supported the Department of State priorities of protecting water dependent uses, improving public access, and protecting scenic quality, but felt that the Coastal Management Program needs to better address development.

A Scenic Hudson survey revealed that between 1984 and 1986, 60 percent of the proposed development in the coastal area was multi-family residential. A total of 11,000 units were proposed in 1986. The proposals are larger, denser, and taller along the river than elsewhere in the Hudson Valley because the financial return on construction in the coastal area is greater. The development is exclusive in its approach, not water dependent, and cuts off the public's visual and physical access to the shore. Priority resources such as habitats, scenic character and recreational opportunities are threatened.

To improve the Coastal Management Program, Ms. Sondheimer suggested the following be considered: 1) Local Waterfront Revitalization Programs should be mandatory - in the communities surveyed above, only 14 of the 26 municipalities were preparing Local Waterfront Revitalization Programs; 2) a mechanism should be developed to ensure that a Local Waterfront Revitalization Program is adhered to even though it may yet need to be formally approved; 3) funds from the State are needed for preparation and implementation of Local Waterfront Revitalization Programs - demand has exceeded available federal funds; 4) a date should be set by which all Local Waterfront Revitalization Programs should be completed - if the deadline is not met, the county or the State would prepare the Local Waterfront Revitalization Program, or a moratorium should be imposed until the Local Waterfront Revitalization Program is adopted; 5) a better consistency requirement should be designed, both for State agencies and at the local level - no one presently has the ability to review consistency decisions, and there are only cursory reviews - it should be considered to give the Department of State certification authority, the same as it has with federal actions.

Discussion:

The discussion focused on the need for regional planning, ways to increase participation by municipalities in the Coastal Management Program, and the need to address development proposed during the Local Waterfront Revitalization Program planning process.

It was suggested that there is a need either to make Local Waterfront Revitalization Programs mandatory, or to improve incentives for local governments to prepare Local Waterfront Revitalization Programs. The Local Waterfront Revitalization Program may still be driven by the market. Money is needed to help cities like Poughkeepsie to hold onto land and market their resources.

Technical assistance, including design assistance, is needed at the local level. The State should offer more or different incentives depending on the needs of the municipality. Since there are overlapping programs, focus should be set on State or regional objectives.

Counties should be used to begin making regional links both across the river, as well as north and south. Not every community knows what their neighbors are doing. Someone needs to assess how many marinas and water dependent sites are needed, which should be held in the public domain, and what mechanisms could accomplish this. Department of State resources should be available to assist the counties in carrying out this function.

There is a need for inter-municipal consistency, but how can this be achieved? The Horizons Waterfront Commission effort in Erie County is a way to establish regional priorities, but there has not been a tradition of cooperative effort in the Hudson River Valley.

A moratorium could be imposed until a Local Waterfront Revitalization Program is completed; or State standards could be applied in the interim to reviews of development proposals.

The middle of the planning process must also be reviewed. There is a tradition of imposing a moratorium until plans are enforceable. Until a local plan is enforceable, perhaps standards should be set by the State that would trigger State review of a project, so that a municipality is not left bare while the planning is being done. This approach doesn't close things down. Developers now fight moratoriums, so they are not an adequate solution.

The Department of State should incorporate evaluation of impacts on the estuary, scenic resources, and other issues in doing consistency decisions. A regional perspective should be reflected in decisions, especially regarding marina development.

It was suggested that another approach to accomplish a regional outlook would be through educational efforts. This would include providing information to regional and local entities on State concerns, and on what is occurring in other municipalities. Publicity should also be used to inform local officials.

Another suggestion was that a set period should be given to each municipality within which it must participate in the Coastal Management Program. If the municipality doesn't, the next higher level, the county, should prepare the plan. If the county doesn't, then the State should prepare and enforce the local program for the municipality.

The zoning of municipalities which are not participating should be reviewed. One way of achieving this is by making participation in the Coastal Management Program a requirement, prior to a municipality receiving other public funds.

It was noted that having each State agency do its own consistency review without the benefit of an oversight authority was an inherent weakness of the existing program.

## SCENIC AREAS

Panelists:

Harry Dodson, Dodson Associates

Mary Lou Lutters, Heritage Task Force

Sally Mazzarella, Chair
Town of Rhinebeck Planning Board
President, New York State Planning Association

Moderator:

Alan Lillyquist, Chief, Project Development Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Harry Dodson

Mr. Dodson began by noting that over the past few years there are more and more grounds for establishing visual quality as an important aspect of public health and welfare. New York is very fortunate to have legislation, at least in the coastal zone, which gives agencies authority to regulate for protection of visual resources. Under the Coastal Management Program, the Department of State has the authority to review projects which require federal permits for impacts on visual resources. In addition, the implementation of the program will bring with it protective measures in the form of management plans and design guidelines to work towards protection of areas prior to responding to proposed threats.

The method that was developed is applicable in the entire state and, as a pilot project, is being implemented in the Hudson River Valley portion of the coastal area. It was fortunate to begin the project in the Hudson River Valley because historically there has been a long-standing tradition of appreciation of the landscape in the valley. As reflected in the Hudson River School of Painting, emphasis shifted during the latter half of the 19th century from human domination to human participation in the environment. In the paintings of this period, people are subsumed in the landscape; the people and landscape are one. The integration of humans illustrates a philosophy that there is melding of the human environment and ecology. Remarkably, much of the Valley's landscape has not changed.

Mr. Dodson indicated that the methodology for identifying Scenic Areas of Statewide Significance is largely based on landscape preservation work undertaken for many years in Great Britain. The method recognizes the appreciation of the human contribution to the landscape which is common in the eastern portion of the

United States. The methodology emphasizes appreciation for farmlands, historic structures, natural topography, and waterbodies. It is sensitive to how we perceive the landscape, as well as the symbolism within the landscape. All of this has been incorporated into the Scenic Areas of Statewide Significance methodology so that public perception of the landscape is accounted for. The methodology also strives to be as objective as possible.

The methodology is based on dividing the landscape into scenic districts covering large areas and then further breaking the districts into detailed scenic subunits. There were more than 250 subunits identified along the Hudson. Public values were obtained by having the public participate in an opinion survey and by incorporating the resulting values into a Table of Scenic Components developed especially for the Hudson, and including more than 30 categories. The values were taken into account in evaluation of each of the identified subunits and included the following landscape features: vegetation, water, landscape edges, eyesores, views, landscape composition, viewing points, and frequently seen views. This enormous amount of inventory information and evaluation material was tabulated and assigned into one of three categories of scenic quality: common, noteworthy, and distinctive. Landscape types which fell into the highest category, i.e., distinctive, tended to group in certain areas.

Mr. Dodson said it is very important that the methodology be applied scientifically and have precise documentation in the event the designations are challenged in court.

The work is currently in a draft stage. Once the analysis is completed, the areas proposed for designation will go through a public meeting and hearing process. Comments made during this period will be considered and the areas modified as a result.

Mr. Dodson ended by saying that there is a great deal of work that needs to be done once the designations are made. It would be useful to have design guidelines developed, especially for residential development. The guidelines can go a long way in reducing impacts without preventing new development. In many instances, allowing sensitive development can enhance the landscape. There are many examples of new development blending with the historical pattern which has evolved during the past 300 years and which we have come to treasure.

Mary Lou Lutters

Ms. Lutters stated that the work that the Department of State has begun with its Scenic Areas of Statewide Significance program is really building on some previous momentum for scenic resource protection. Many residents of the Valley have understood and seen the need for protecting scenic resources, which is really part of the bigger job of protecting all the resources of the

Valley. The growing numbers of citizens who are aware of the needs are also fairly sophisticated in their understanding of scenic resources. Unfortunately, the forces against scenic protection are very well organized. The legal basis for protecting the visual environment is becoming much stronger and it is, as Mr. Dodson said, very critical that the application of the Scenic Areas of Statewide Significance methodology be legally valid.

The history of scenic resource protection in the Hudson has been one of disappointment in that there have been many programs and studies done, such as Judy Lobell's study of the Highlands in the mid-seventies; yet very little has come from this work. The DEC Scenic Roads program under Article 49 attempted to get municipalities to prepare formal resolutions of acceptance of scenic road designations. All we got was a promise for scenic protection, as the program has no teeth and is not much more than a public education program. At present, the study work that went into the program sits on a shelf. This has been the total attempt for scenic resource protection in the Valley.

Ms. Lutters noted that the future for scenic resource protection under the consistency provisions of the Coastal Management Program is good. Unlike the designations made under Article 49 of the Environmental Conservation Law, the Coastal Program does have teeth. Scenic protection will be further advanced by the communities with approved Local Waterfront Revitalization Programs. There is a lot of work that needs to be done. The Scenic Areas of Statewide Significance program needs to be applied in other regions of the coastal area.

Ms. Lutters then discussed several proposals, and made recommendations for future action. The first recommendation was that there needs to be greater liaison between local governments and State agencies, and more technical assistance available to local governments as follows: (1) the Department of State needs additional funding for a greater amount of visibility to assist local government in preparation of Local Waterfront Revitalization Programs; (2) there is a need for more model ordinances and State staff to work with local governments in developing protective laws; and (3) there is a need for a liaison program consisting of an independent group of people who can be a buffer between State and local government. This would be a type of problem solver/trouble shooter mechanism. All of this requires funding to implement with either public or philanthripic dollars, probably the latter.

The second recommendation was that a training program is needed so that a skilled core of people who know how to deal with threats to the environment, scenic values, and land preservation can be available to train and provide technical assistance to review boards such as Planning Boards, Conservation Advisory Committees, and Environmental Conservation Councils.

Her third recommendation was that there needs to be further education of the general public regarding the artistic heritage of the Valley. People must become interested in art, historic preservation, and tourism. Once people are educated about the value of these sites, such as the Thomas Cole House, preservation of these resources would follow. Her final recommendation was related to the fact that there is not enough public participation. The Scenic Areas of Statewide Significance Program would have benefited from greater participation. The people and municipalities ust join together behind the programs that will benefit them.

Sally Mazzarella

Ms. Mazzarella began by emphasizing the value and richness of the Hudson River Valley's scenic resources. Yet, the region is increasingly under development pressures that have the potential for adverse effects on scenic resources. Under the strong home rule concept in New York, each municipality is responsible for protecting its scenic resources. A new planning tool for municipalities is the Coastal Management Program's Local Waterfront Revitalization Program. While involvement in this program process can be frustrating, Ms. Mazzarella highly recommended that all riverfront communities prepare a program.

Ms. Mazzarella then spoke of her Town of Rhinebeck's experience with its Local Waterfront Revitalization Program. As background to preparation of a program, she noted that the Town includes within its boundaries an 8 1/2 mile long National Register Historic District as well as part of a 25 mile long State Shorelands Scenic District encompassing the natural and man-made landscapes of the estate area along the east shore of the Hudson River. A management plan has been prepared for the scenic district and, in the Town of Rhinebeck, the coastal and scenic boundary are co-terminus. The recommendations of the management plan are to be implemented through the Town's Local Waterfront Revitalization Program. Ms. Mazzarella stated that, as a result, the Town is becoming more aggressive in using long term protective measures for scenic areas.

For example, she said there are now 15-20 conservation easements along scenic roads. At first, it was difficult for the Town planning board to understand the conservation easement concept. Now, however, developers often automatically draw conservation easements strips in their plans as well as contact the community in advance about its scenic district requirements. They want to know the standards that are required before they undertake their projects. A good deal of negotiating is now going on between the planning board and developers before plans are approved. Mandatory clustering is a regular feature of these discussions. Planning board members themselves actively inspect proposed sites for development, looking to ensure that important visual qualities of the site are retained.

Ms. Mazzarella went on to describe a number of projects and their successful outcome as a result of the active participation of the planning board in the approval process.

Discussion:

It was emphasized by several people that there is difficulty in documenting the monetary value of protecting scenic resources. Ms. Mazzarella pointed out, however, that the results of their negotiations with developers in the Town of Rhinebeck to protect visual resources actually increased the market value of the project for developers. These results thus provide a direct indication of the monetary value of protecting scenic resources.

Concern was expressed over the difficulty of getting agreement about the protection of scenic resources in the Hudson Highlands given the multitude of government jurisdictions, with some municipalities expressing interest and others expressing no interest in such protection. The suggestion was made that meetings be set up between the Shorelands Scenic District municipalities and those in the Hudson Highlands to discuss approaches to scenic resource protection, standards to be used, and means of educating the public. Scenic Hudson was suggested as a facilitator of such meetings, particularly the public education aspects of them.

Emphasis was also placed on the importance of having all communities along the River prepare Local Waterfront Revitalization Programs. One community, however, expressed frustration over the process of preparing such a program and the apparent State imposition of requirements on the community. The complaint was made that there was not enough assistance from the Department of State, with a recommendation that more funds be made available to provide increased assistance. It was particularly emphasized that training of planning board members is very important.

## COASTAL NON-POINT SOURCE POLLUTION

Panelists:

Patricia Hotchkiss, Member
Westchester County Legislature

David Church, Associate
The Conservation Foundation

Moderator:

Neil MacCormick, Assistant Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Patricia Hotchkiss

Ms. Hotchkiss began by saying that single instances of non-point source pollution may at times seem insignificant. However, the cumulative impacts of non-point source pollution and the resulting levels of water quality deterioration are astronomical, and it therefore must be addressed.

The establishment of coastal areas as Critical Environmental Areas pursuant to the State Environmental Quality Review Act provides a mechanism whereby environmental constraints and non-point source pollution issues may be "red flagged." Bedford, New York, in the Mianus River area, was one of the first communities to develop Critical Environmental Areas. Three aquifer areas in the Town of Bedford were also designated and mapped. Local regulations prohibit underground fuel storage over these aquifer areas or in areas where petroleum leaks would drain into these aquifers.

There are no municipal sewage systems in Bedford, only septic systems. The monitoring of septic systems (cesspools) is mandatory every 5 years. Over 100 rural water supply wells are also monitored. The use of fertilizers is regulated, and salt is not used for road de-icing on Town roads. New York State and Westchester County continue to use salt for road de-icing.

Critical Environmental Areas are also being established countywide in Westchester. There is tremendous pressure to develop in these designated areas along the Hudson River and Long Island Sound.

Ms. Hotchkiss stated that there is a need and support for increasing existing watershed boundaries by at least 500'.

In the Croton Point area, water quality degradation is of great concern and can be attributed to sewage. There is also a need

for vessel waste pumpout facilities in this area, and vessel waste discharge regulations need to be enforced.

There is a need for revegetation and the planting of trees. Ms. Hotchkiss said that she believes there is latent demand for the planting of approximately 5 million trees throughout Westchester.

Landfill leachate is a problem that needs attention. In Croton Point, the County operated a landfill for 75 years. Then the Hudson River Fishermen's Association identified a leachate problem resulting in closure of the landfill by the Environmental Protection Agency.

Upcoming issues and plans for the Croton Point area include the establishment of an Estuarine Research Center and a County amusement park. Most of the solid waste generated in the County goes to an incinerator in Peekskill. One-third of the material is not burned. Leachate from this waste enters the Hudson River via a small brook.

A pro-active position must be taken in addressing non-point source pollution. Ms. Hotchkiss stressed the need to look at the cumulative impacts of all non-point pollution sources and their results on water quality. Her operative words are" pro-active", "regional approaches", and " cumulative".

David Church

Mr. Church gave a brief summary of a variety of non-point pollution sources and briefly discussed studies conducted under the Federal 208 and National Urban Runoff Programs of the 1970's and early 1980's. Both studies identify non-point source problems and offer some solutions.

He emphasized the need to implement non-point source Best Management Practices that are already available. Examples of Best Management Practices, which are readily available and can be used by local governments or others, are listed in the New York Soil and Water Conservation Society's 1988 publication entitled Guidelines for Urban Erosion and Sediment Control.

Watershed planning and stream corridor management is desperately needed statewide to prevent and address non-point source pollution issues. Political jurisdictional boundaries present problems that must be overcome between states, counties, cities, towns and villages. New York State is one of the few states not involved in State and regional planning, an effort which is absolutely necessary to deal with political and jurisdictional problems. Watershed planning is also needed at the county level. In Massachusetts, every major watershed area has a watershed management commission or board, which can suggest best management practices for specific problems, sites and conditions.

New York State's Non-point Source Working Group, which is preparing a management strategy, has identified several major sources of non-point source pollution: 1)mining, 2) diffuse urban runoff, and 3) hydrologic modification. The State currently takes a "soft" approach to the problem, saying in effect, "we will establish Best Management Practices"; but the State does not require that these practices be utilized to prevent or mitigate non-point source pollution. Many states regulate Best Management Practices. New York does not.

Mr. Church also said that the Heritage Task Force, in their report, supports either a new Best Management Practices regulatory program at the State level or clear authority to local government to regulate non-point source pollution and require Best Management Practices. Whatever the approach chosen, State government must provide local government with clear guidance.

The State should give technical assistance and grants to local government to conduct non-point source pollution research, to take a hard look at non-point source problems, and to design small-scale demonstration projects. The Coastal Management Program could provide such assistance if funds were made available. The Department of Environmental Conservation could provide more formal technical assistance than that currently available.

At the regional level, Mr. Church argued, watershed planning could provide for the "cross-fertilization" of community problems and discussions, prevent duplication of efforts, and provide information in a broader arena. Many neighboring communities address problems differently, even though the problems are the same.

In Rockland and Westchester Counties, a stream corridor permit program is in effect, which requires a permit to do any work in stream corridors.

Mr. Church also feels that non-point source pollution can be addressed very effectively at the local level using existing zoning and subdivision review powers. Zoning and subdivision regulations should require setbacks and buffers between development and streams, wetlands and surface water areas. Mr. Church cited a Florida State University study which indicated that most buffers are not effective enough because setbacks are too limited. A 100 foot setback from streams, wetlands and open water is common throughout New York but is virtually ineffective. A distance closer to 1000 feet is needed.

Other approaches to non-point source pollution problems which should be undertaken include the following actions:

1) Adopt sediment and erosion control regulations and stormwater management regulations.

2) Adopt a "no net loss of wetlands and flood plain" policy and implement by deleting these areas from lot size computations and by prohibiting construction in such areas. (Require developers to replace such areas in kind when they are developed.)

3) Acquire sensitive lands and buffer areas. (This may meet with some resistance. When presented as a water quality issue, however, public opinion and desire to acquire such lands may result in support for acquisition).

4) Create water quality districts and authorities and use them to control non-point source pollution.

5) Create water quality districts and authorities and use them as taxing districts to charge those activities or developments which benefit from locating in coastal areas.

6) Lobby the Department of Environmental Conservation for water quality classification upgradings.

7) Designate areas as Critical Environmental Areas. (This designation requires a harder look at activities effecting water quality. It can be a cumbersome approach administratively as it generates huge amounts of paperwork and State Environmental Quality Review "headaches", but it does provide a means of addressing non-point source pollution issues.)

8) Adopt watershed and reservoir regulations which address non-point source pollution issues and concerns.

9) Use advocacy methods to achieve non-point source pollution goals through volunteer, non-profit, and special interest groups such as Trout Unlimited. (They plant trees to improve fishery habitats, thereby reducing sediment runoff.)

10) Form watershed associations similar to those in Massachusetts which can do the following: a) educate, b) act as land trusts (using association easements or deed restrictions), and c) conduct water quality monitoring programs.

Discussion:

Dutchess County is looking at watershed management as a means of controlling non-point source pollution and is developing Best Management Practices for watershed management. A list of Best Management Practices is being compiled and will be printed in the Spring of 1990. Best Management Practices must be applied countywide in order to address non-point source issues properly. Political boundaries are not recognized by non-point source pollution. Therefore, the means of addressing them should go beyond such boundaries by taking a regional approach.

Westchester County has multiple volume Best Management Practices manuals which are used for County projects.

The Soil Conservation Service also supplies interested agencies and individuals with non-point source pollution Best Management Practices information and provides some technology transfer services. Concerns were expressed regarding gaps between planning and the implementation of Best Management Practices.

A poll of all attendees resulted in unanimous support for mandatory Best Management Practices for municipal projects and mandatory Best Management Practices regulations at the State, County and local levels. In addition, most attendees indicated that State funds should be set aside to provide Best Management Practices criteria, standards and information to all agencies at all levels of government and also to the public.

The dumping of "red bag" medical waste along the Hudson River and the Fishkill and Sprout streams were identified as problems that should also be addressed. It was also indicated that there are coordination and consistency problems among State agencies, which might be addressed through the Legislature. Consistency with coastal policies is extremely weak at the State level, and this must be resolved.

There was agreement with the Moderator's suggestion that the term, "non-point source" pollution is misleading. All non-point source pollution originates from a source. Sources must be identified and pollution prevented or mitigated. The term "non-point source pollution" appears to minimize pollution problems and results in "passing the buck".

Consensus was that education on non-point source pollution is important.

It was also agreed that the New York State Department of Transportation can make a significant contribution to the diminution of non-point source pollution through use of Best Management Practices.

GREAT LAKES AND ST. LAWRENCE AND NIAGARA RIVERS

Regional Coastal Conference

October 17, 1989

Rochester, New York

**GREAT LAKES AND ST. LAWRENCE AND NIAGARA RIVERS COASTAL CONFERENCE**

**October 17, 1989**

**Agenda**

**8:30 - 9:00 a.m.** **Registration**

**9:00 - 10:00 a.m.** **Opening Session**
- Welcome by Secretary of State Gail S. Shaffer
- Welcome by host City of Rochester Councilman Robert J. Stevenson
- Presentation by Secretary of State Shaffer of a Certificate of Appreciation to The Ontario Dunes Coalition
- Remarks by Secretary of State Shaffer

**10:00 - 10:15 a.m.** **Coffee Break**

**10:15 - 12:30 p.m.** **Workshop Sessions**

**Coastal Hazards**
- Frank Mancini - National Committee on Property Insurance
- Sally Ball - NYS Department of State
- Chuck O'Neil - NYS Sea Grant

**Scenic Areas**
- Rod McNeil - St. Lawrence Eastern Ontario Commission
- Teresa Mitchell - Seaway Trail, Inc.
- Joanne Jackson - Jackson and Kihn

**Habitats**
- Philip Weller - Great Lakes United
- Michael Corey - NYS Department of State

**12:45 - 1:45 p.m.** **Lunch**

**1:45 - 2:30 p.m.** **Intergovernmental Panel**

- Joseph Pillittere - Member of New York State Assembly
- Tom Frey - Monroe County Executive
- Tim Horanburg - Supervisor of Town of Newfane
- Ted Curtis - Chairman, Monroe County Waterways Commission and President, Monroe County Convention and Visitors Bureau

**2:30 - 4:45 p.m.** **Workshop Sessions**

**Harbor Management**

- Jeff Steadman - L.R. Johnston Associates
- Tim Horanburg - Town of Newfane
- Paul Johnson - Monroe County Department of Planning

**Public Access**

- Tom Dearing - Erie County Planning Department
- Richard White-Smith - New York Parks and Conservation Association
- Bryan Cullen - NYS Department of State

# PLENARY SESSIONS

## OPENING SESSION

Welcome by Secretary of State Gail S. Shaffer

Secretary of State, Gail S. Shaffer welcomed the participants to the conference, one of five regional conferences sponsored by the Department of State. She noted the purpose of the conference, which is to bring together leaders in coastal affairs, technical experts, government officials, knowledgeable citizens, and members of public interest groups in order to facilitate an exchange of opinions and ideas and to seek a consensus for needed changes in the way New York's coast is managed.

Welcome Remarks by Host City of Rochester,
Councilman Robert J. Stevenson

Good morning and welcome to Rochester.

I am very proud to have the City of Rochester serve as the host of this coastal management conference and wish to thank Secretary Shaffer for her selection.

Rochester has been an active participant in coastal zone management programs since the mid-70's. We are now in the final stages of completing our local waterfront revitalization program in cooperation with the Department of State. I have confidence that our Local Waterfront Revitalization Program will successfully guide the transformation of Rochester's developed waterfront areas, while maintaining the integrity of its natural splendor.

Rochester has been blessed with over 40 miles of shoreline along Lake Ontario, the Genesee River, and the Erie Canal. It is by virtue of its waterfront location that Rochester exists. Rochester came to being in the first quarter of the 19th century as a flour milling and transportation hub. While the power of the Genesee River was harnessed to mill the wheat to flour, the Erie Canal and Lake Ontario were used to transport raw materials and finished goods to market. Other manufacturers followed suit and the Genesee River became an industrial corridor.

Rochester's waterfront has evolved over the years and is no longer the spine of local industry. It is now, decidedly, a place of recreational pursuits. I am not aware of any other major city in this country which can boast a seven mile gorge with two 100 foot waterfalls. This spectacular scenery and the incomparable Lake Ontario salmon fishery make a visit to Rochester's Lower Falls a must in the autumn.

I regard Rochester's waterfront as our single greatest community and economic revitalization asset. We have just concluded a successful four-day celebration encouraging Rochesterians to "Rediscover the River", in kicking-off the City's "Bicentennial

of Manufacturing". Our events included: a colorful sound and light show at the Upper Falls, hiking and boating tours of the Gorge, live entertainment, historic site tours, and the Inaugural Bausch & Lomb Invitational Regatta, which attracted hundreds of participants and thousands of spectators.

As the emphasis now shifts from planning to implementation, people will witness our waterfront revitalization efforts taking form. In the past year we have taken significant steps to increase public access through property acquisitions and trail construction. Those efforts will continue until the Genesee River Recreationway links the Lake Ontario/Seaway Trail with the Erie Canal Heritage Trail. As strategic public works projects are implemented, I expect a significant private sector response in underutilized portions of the waterfront. Our marketing research projects a 1:5 leveraged ratio of public to private investment.

At the same time, however, we must heed the signs of abuse caused by our past practices and prevent history from repeating itself. The value and desirability of our coastal waterfronts across New York State are inextricably linked to their environmental quality. We must adopt an ecological approach to the management of our waterways. Public policy must reflect that axiom.

I encourage each of you to carefully consider your role and responsibility during this conference with three thoughts in mind which are embodied in the State Environmental Quality Review Act:

1. The capacity of the environment is limited.

2. There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the State.

3. We are the stewards of the air, water, land, and living resources and have an obligation to protect the environment for the use and enjoyment of this and all future generations.

Again, welcome to Rochester, and I wish you a successful and rewarding day of deliberation on the future of our coastal resources.

Presentation by Secretary of State Gail S. Shaffer of a Certificate of Appreciation to the Ontario Dune Coalition

Secretary of State Gail S. Shaffer presented a Certificate of Appreciation to Anthony Kotz, President of the Ontario Dune Coalition, for the Coalition's efforts toward the protection and optimum public and private use of the sand dunes in the eastern Lake Ontario barrier system - the largest and most extensive freshwater sand dune formations in New York State.

Remarks of Secretary of State Gail S. Shaffer

It's a pleasure for me and the staff of the New York Coastal Program to host the Great Lakes Regional Conference. I am going to take a few minutes to describe where the New York Coastal Program has been, and suggest where it might be going.

The national effort to address the problems facing our coastlines began in 1972 with the passage of the federal Coastal Zone Management Act. The Coastal Zone Management Act set in place a management scheme that encouraged the 30 coastal states and 5 territories to undertake the arduous task of protecting and wisely developing 95,000 miles of shoreline. With federal financial assistance and the promise of a new concept called "consistency", states and territories began planning for the coast.

In New York, the effort began in 1975, and with the passage of the Waterfront Revitalization and Coastal Resources Act and federal approval of the State's Coastal Program, implementation of new management approaches for the State's 3,200 miles of coastline began in 1982.

What the New York Coastal Program created, in concept, is a "trinity" -- an intricate partnership of federal, State, and local governments, working towards a common goal--preservation, revitalization, and the wise development of one of the State's greatest resources -- your coasts.

After seven years of program implementation, I am pleased to say that the basic ingredients for accomplishing this laudable objective are in place, and have had results. Working together, governments are advancing improvements of water, the land, and the overall quality of New York's coast. In the Great Lakes Region, the federal government has expanded the Coastal Barrier Resources Act to barrier systems in the Great Lakes. The State is working with the federal government in designating portions of the St. Lawrence River as a National Estuarine Research Reserve. And, in 1990, Congress will be considering sweeping changes to the Coastal Zone Management Act, in an effort to respond to the current crises facing the coast.

At the State level, the Department of State has designated 86 significant coastal fish and wildlife habitats along the Great Lakes shores and has recently completed a comprehensive management program for the eastern Lake Ontario dune barrier system--the largest freshwater sand dune formations in the State. We have also worked cooperatively with Save the River and property owners along the St. Lawrence in mitigating non-point source pollution problems resulting from septic disposal.

The State has made significant consistency decisions, including our inconsistent determination of a project regarding a house constructed over the waters of Sodus Bay. Affirmed by the U.S.

Secretary of Commerce, our decision established a national precedent that construction of residential uses over water does not further the national objectives or purposes of the federal Coastal Zone Management Act. The Department of State also required continuous shoreline public access and public use of open space areas as a condition of redeveloping Madison Barracks in Sackets Harbor and has helped the City of Oswego and the Oswego Port Authority resolve conflicts between proposed development of port facilities and the City's Local Waterfront Revitalization Program. Working with sister agencies, the State is developing a comprehensive plan for the development and possible disposition of surplus New York Power Authority lands in St. Lawrence County. This plan will ensure the protection of coastal resources, provide for public access, and encourage appropriate development.

At the local level, Great Lakes coastal communities have made great strides. Thirty-eight communities are preparing or implementing Local Waterfront Revitalization Programs. These programs embody land use regulations to guide coastal development and preserve coastal resources. They contain capital investment programs to revitalize working waterfronts, improve public access and strengthen the region' s thriving tourist industry. These Local Waterfront Revitalization Programs are, and will continue to be, a major component in achieving the statewide and national coastal management objectives.

After seven years, this "trinity" has made a difference. But, despite these advances, in New York and around the nation, the coast remains under siege by a multitude of threats documented daily by the media. Wetlands are continually lost, recreational fisheries remain closed, and a cadence of development along the shores precludes public access, and mars the scenic beauty of the coast. Forty-two toxic hot spots in the Great Lakes system have been identified, and evidence from toxic fallout mounts. The threats of fluctuating lake levels continue to shape our shorelines and irresponsible and short-sighted calls for diverting Great Lakes water continue.

Given the severity of today's coastal problems, it is clear that not enough has been done; but with the limited legal authority restricting certain government actions, and with an insufficient level of existing financial resources devoted to management of coastal areas, you must question how much more can realistically be done.

There is a complex set of factors that may account for our inability or unwillingness to respond more effectively to the challenges of managing coastal areas. A partial list includes: the diffused public interest; skewed national, Statewide, regional and local priorities; inadequate legislation; special interest politics; and fragmentation of responsibilities within and among levels of government.

Moreover, governments are not, and cannot, be the only sector to carry the coastal burden. A private sector code of coastal conduct must also be developed. Markets must begin to reflect and absorb the true costs of development in coastal areas and exploitation of coastal resources. The public, as consumers, must express their concern for the coast to business, with the same zeal they express these concerns to government.

Nearly two decades into the national task of managing our coastal environment, there are accomplishments, and there are shortcomings. That is why we are here today. Your ideas and commitment are essential to the formation of a more effective coastal management effort. As the theme of this conference implies, the reality of coastal management is that this is your coast; the choices are your choices; and its future is your future.

During this conference a number of issues facing the Great Lakes coast, and the State's coastal area as a whole will be covered. These include managing the growth and development of our shoreline, which affects not only coastal resources, but the quality of life in coastal communities. The competing demands and conflicting activities which affect harbors, water-dependent industries and the accessibility of the coast for recreational activities will be addressed - and the condition of the resource base including habitats, water quality, fisheries, and aesthetics will also be covered.

Each of you have been given brief papers on the topics to be covered. Do not look at these as an authoritative treatise on the topic. Their purpose is to provide a groundwork for discussion in today's workshops. Our distinguished panelists will offer their own thoughts on the topic at hand; and most of all, we need you to ask questions, make comments, and present your own ideas and proposals for improving management of the coast.

Over the past three weeks, we have held three very successful conferences on Long Island and in the Hudson River Valley. I am pleased to say that at the Long Island forum, Lieutenant Governor Stan Lundine announced that Governor Cuomo had asked him to chair the Governor's Task Force on Coastal Resources.

Next week we will be holding a similar conference in New York City. As we have at each conference, we will also be seeking the advice and counsel of people in the New York region. On February 28 and March 1, 1990, we will convene a statewide conference in Albany to air what we have heard, and reach a consensus on a number of options for future action. I hope that these conferences can facilitate the efforts of the Governor's Task Force.

In New York State, we have reached the point at which the integrity and future of the coast must take its rightful place in

the arena of public issues. Residents, interest groups, and businesses on the coast must increase pressure on public and private decisionmakers, to defend coastal values that have been given lesser priority.

I urge you to work together, and with us, to meet the challenge that faces us all. Unless, or until, the requisite will for fundamental change emerges, progress towards our goals in managing coastal areas will only progress as it has, which has been too slow, if not nearly too late.

Thank you.

## LUNCHEON SESSION

Intergovernmental Panel

Panelists:

Joseph Pillittere, Assemblyman, New York State Assembly
Tom Frey, County Executive, Monroe County
Tim Horanburg, Supervisor, Town of Newfane
Ted Curtis, Chairman, Monroe County Waterways Commission and President, Monroe County Convention and Visitors Bureau

Discussion:

Speakers discussed the need for planning at the local, county and State level to take proper advantage of the growth in tourism and water-related recreation in the region. This is the result, among other things, of improvements in water quality and promotion of the Great Lakes fishery.

WORKSHOPS

. Coastal Hazards
. Scenic Areas
. Habitats
. Harbor Management
. Public Access

## COASTAL HAZARDS

Panelists:

Frank Mancini, Counsel
National Committee on Property Insurance

Chuck O'Neill, Extension Specialist
New York State Sea Grant Extension

Moderator:

Sally Ball, Supervisor
Great Lakes Unit
Division of Waterfront Revitalization and Coastal Resources
New York State Department of State

Presentations:

Frank Mancini

Mr. Mancini described the anticipated effects of sea level rise, storm-influenced and chronic erosion, and poor development and land use practices. These include: loss of oceanfront land, more intense hurricanes, and mounting costs of disaster relief.

Erosion and hurricane dangers are exacerbated because more people, who are unaware of flood and erosion dangers, are choosing to live in coastal areas.

The response to erosion and hurricane hazards has often been to build erosion protection structures to stabilize property. Many of these structures are ineffective, and may hasten erosion damage.

Mr. Mancini voiced concern about the insurance industry's ability to handle growing hurricane risk unless coastal development is better managed. He noted that the industry could possibly handle two successive $7 billion disasters, however, there are four or five coastal population centers where a $14 or $15 billion occurrence is possible. This could bankrupt some insurers.

Mr. Mancini then offered two areas for future action. First, land use laws must be strengthened to redirect development from the most hazardous areas. Second, building codes must be re-evaluated and should include provisions for wind resistance; and there must be better enforcement.

Chuck O'Neill

Mr. O'Neill noted that too many people are buying waterfront property who are uninformed about coastal processes. Hurricane

Hugo demonstrated the serious problems which result when major storms hit areas of unprotected development.

Much of the erosion problem results, not from storms but from poorly-designed or poorly-sited erosion control structures used to protect houses and beaches.

One problem contributing to poor coastal development practices is the lack of understanding of the dynamics of the shoreline. The public has a bias for building as close to the shore as possible to maintain the view and amenities despite potential problems. Mr. O'Neill called for a major long term public information and educational program on coastal hazards.

A second problem is that a seller of property on the lakeshore does not have to inform the buyer that it is in a hazard area. There must be provision for notification to buyers of potential hazards.

Mr. O'Neill then turned to a discussion of the Coastal Erosion Hazard Area Act (CEHA), that requires erosion control projects to be designed to last at least 30 years. It is difficult, if not impossible, to design an erosion structure for a specific longevity. What criteria do you use to ensure a 30-year lifespan? An engineer can design a project to stand up to a specific size wave or to a specific return interval storm. A longevity time frame, however, has no meaning in engineering terms. This issue needs to be re-evaluated, and an engineering standard set.

The challenge is for all levels of government to adopt realistic, scientifically valid development criteria tailored to a specific location. Possible options include: (1) fully using the Coastal Erosion Hazards Area Act; (2) developing regulations in zoning ordinances that utilize erosion hazard or flood hazard overlay districts and set standards; and (3) prohibiting extensions of public infrastructure into areas that are not suitable for development.

There are creative ways to avoid the taking issue in shoreline areas where building and development should be prevented. Transfer of development rights holds promise. Similarly, public funds (usually some sort of bond issue) can be used to purchase coastal land that is not in hazard areas. Those lands could then be used as a trade for lands that are in hazard areas to relocate threatened development, or to act as public open space.

Discussion:

General questions about the impact of fluctuating lake levels on coastal properties were raised. Comments then turned to the problems faced by local government in regulating coastal development.

The aesthetic appeal and emotional value of waterfront land is driving development close to the lakeshore, creating an inflated land value. Older houses have been improved and become year-round homes. When erosion threatens, owners may not have the money to move the house or the land to move it to. The owners often feel that they are entitled to public help as taxpayers. The emotional response of the public and property owners was raised as an impediment to improved coastal management.

It was noted, however, that regardless of the funding source, there is a legitimate reason for protecting existing property. The more difficult problem to deal with is the vacant lot that someone has bought and expects to develop. The problem can be addressed through zoning regulations which is a local responsibility.

A new understanding of natural systems has been developed over the last several years. This information can be used as a basis for developing new mechanisms to address flooding and erosion.

Suggestions for improving land use and development practices in coastal hazard areas included transfer of development rights and comprehensive erosion plans to guide land use decisions. It was also mentioned that prospective buyers should be informed of potential erosion problems. This information could go in the purchase contract. An information and educational program could better inform buyers.

The insurance industry would encourage government to think about the way that public policy should address two issues: (1) Should all of us subsidize the people living in places that are known to be hazardous? (2) Should people be responsible for their own decisions if their houses fall into the lake as a result of storms and erosion damage?

## SCENIC AREAS

Panelists:

Joanne Jackson
Jackson and Kihn

Teresa Mitchell, Executive Director
Seaway Trail, Inc.

Rod McNeil, Director of Planning
St. Lawrence-Eastern Ontario Commission

Moderator:

Alan Lillyquist, Chief
Project Development Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Joanne Jackson

Ms. Jackson is a member of the consultant team developing a visual assessment methodology for the Scenic Areas of Statewide Significance Program sponsored by the Department of State. The team is testing the methodology on the Hudson Valley.

Up to the 19th century, wild and natural landscapes were not deemed to be beautiful. After this period, however, people preferred and would celebrate a natural landscape as being something majestic and beautiful. In 1865, Congress ceded Yosemite Valley to the State of California for a state park. This was the beginning of a movement to preserve wild and scenic landscapes in this country.

During the 1950's, many methods of landscape assessment were developed, but they largely relied on the expert opinion of artists and landscape architects. For the most part, these methodologies had an anti-urban bias and were largely applied in the West where there were vast open lands. Ms. Jaskson, in describing the development of the methodology for the Scenic Areas of Statewide Significance Program, noted the lack of an anti-urban or anti-built bias.

Ms. Jackson remarked that scenic resource protection is very much like motherhood and apple pie -- everyone is for it but tastes vary -- and that differing perceptions of what constitutes a scenic resource had to be incorporated into their methodology. Thus, public participation and establishing public values are important components of the methodology. An advisory committee for the Hudson region was established which meets with the consultant and the Department of State so that public evaluation

of various landscape types can be established. In addition, newspaper polls are taken to obtain information regarding people's favorite places. The criteria used to determine scenic areas includes the quality of the landscape, the uniqueness of the landscape, public recognition, and public accessibility. The method incorporates those areas which the local people feel are important so that regional choice is taken into account to provide guidance for ultimate State designation of Scenic Areas of Statewide Significance.

Teresa Mitchell

Ms. Mitchell described the Seaway Trail as a 454 mile designated highway route legislated by New York State in 1984. In 1986, the Seaway Trail was recognized by the Federal Department of the Interior as a national recreational trail designated for mixed usage. The Seaway Trail is a unique mix of experiences, which cumulatively result in an exceptional scenic byway.

She noted that Seaway Trail, Incorporated was created in 1978 to gain recognition for the Trail as a tourist destination and promote regional economic development through tourism. The linear corridor, signed with over 1,500 green and white trail blazer signs, was chosen for its close proximity to the St. Lawrence River, Lake Ontario, the Niagara River, and Lake Erie. It is the longest National Recreation Trail in the United States. Sixty-four municipalities are situated along the inland coast of the Great Lakes. The areas adjacent to the designated linear Trail are great resources. Major coastal wildlife areas include barrier dunes, coastal embayments, islands, shoreline, wetlands, rivers, streams, and open waters. Inland are bogs, wetlands, wet woods, forest, and farmlands. Migratory birds use several areas of the Trail. There are 13 wildlife management areas operated by the New York State Department of Environmental Conservation.

Seaway Trail's major emphasis is in three areas: (1) planning and development; (2) operations and signage; and (3) merchandising.

In the area of planning, a comprehensive plan for the entire Trail was prepared. In January, 1989, the Seaway Trail Action Plan was distributed as an outline for public and private sectors to follow.

For the Trail's planning purposes, the area has been divided into ten development zones. The criteria for delineation include demographics, resources, themes, image, and product. A specific tourism plan has been completed for Dunkirk (as a small waterfront city and the western gateway to the Seaway Trail). The plan includes a specific timetable for Dunkirk's tourism future and identifies suggested improvements and specific projects. Plans for the Seaway Valley, Eastern Shore, Monroe County, and the Niagara River will be completed by June, 1990.

In the area of operations and signage, the trail is being interpreted with trailblazer signs, War of 1812 signs, and unmanned information center units.

In merchandising the Trail, a number of public relations, promotion, and paid advertising methods are packaged. Seaway Trail's consumer fulfillment piece, Journey magazine and the directory, can be utilized to test market consumer interest and introduce new ideas to Trail residents and visitors alike. The 20 Trail lighthouses were featured, creating great interest and motivation for travelers to explore new areas. Natural history species were identified. The scenic byway connection between the Canal system and Adirondack highways was presented. In the 1990 issue, the freshwater coastline boat tours of the past and present will be highlighted along with a Trailscape photo section featuring specific itineraries -- itineraries identified as scenic or unique theme loops of the Trail connecting inland destinations.

In summary, Seaway Trail's goal is to continue the comprehensive effort to maximize the value of the natural and manmade assets of our scenic byway through research, planning, implementation, and evaluation relying on the assistance and direction of the public and private sectors.

Rod McNeil

The St. Lawrence-Eastern Ontario Commission was created in 1969 to target resource protection in the narrow coastal strip from Sterling to Massena. The Commission has the authority for project review and has been working on scenic resource protection. The result of the review function is that some scenic resource protection can be achieved.

In one project, scenic easements and a conservation area were established which included 1,700 acres and 5,800 feet of shoreline buffers. In another project, an area surrounding Carlton Island in the St. Lawrence River was protected.

When the St. Lawrence-Eastern Ontario Commission is successful in obtaining deed restrictions or easements, they are usually dedicated to the Trust for Public Land or the Thousand Islands Land Trust. In some instances, the dedications are made directly to the municipality. Often, the premise for obtaining the easements is to provide protection for ecological or natural areas. This often provides protection for scenic areas as well.

In 1982, the St. Lawrence/Eastern Ontario Commission received a foundation grant from the State University of New York at Syracuse, School of Landscape Architecture, to conduct a Scenic Access Study in the coastal area of the St. Lawrence River. The study involved a photographic analysis of the visual character of the area and an evaluation of the visual quality. Visual quality

information was placed on a base map which was overlaid with land ownership information. The information was interpreted to depict land use character, edge character, and orientation of land use, among other visual characteristics.

There was a public perception component of the study in which people that were not participating in the study were asked to view photographs and to rate the scenes. The results were given as high, medium, and low scenic quality. High quality scenes were framed views to the water without clutter. Low quality scenes were cluttered views of the river blocked by vegetation. The Commission has been able to use the results of the study in reviewing projects, but this opportunity is limited. The study also called for a wide range of implementation, including adoption of local zoning, fee simple purchase of land, consistency review with the State Coastal Management Program, and the development of local design guidelines.

In many cases, the St. Lawrence-Eastern Ontario Commission has been successful in scenic preservation by working directly with the land trusts previously mentioned. Several thousand acres have been dedicated, including the Islands of Murray, Wesley, and Grindstone. The other means to achieve scenic resource protection is by completing Local Waterfront Revitalization Programs, for which the St. Lawrence-Eastern Ontario Commission has been providing technical assistance to communities in the region since 1981. Mr. McNeil noted an important point to remember is that each of the communities differ and so do their needs. With the pressure for sewer and water facilities, and dealing with growth management, communities give scenic resource protection a low priority. Just as the needs of one community differ from another community, the perceptions are different from one agency to another, even at the regional level. They change again at the local level.

Discussion:

The point was made by a local government representative that the methodology for identifying, evaluating, and recommending areas for designation as Scenic Areas of Statewide Significance should be made widely available to local governments. In response, it was stated that a technical memorandum describing the methodology should be available in January, 1990.

The comment was made, with respect to scenic and other resources, that the pressures for economic gain become the deciding force for the use of the resource. It was emphasized that we should not lose our focus; we must be careful to manage for resource protection rather than managing resources solely for local economic gain. An example is the salmon issue. Should salmon resources be maintained solely because local business thrives due to increased tourism, which also means more local employment?

Related to this, a Town of Carlton resident noted that local governments receive a lot of pressure for development, especially related to promotion of fisheries. The Town has been unable to react to the many new improvements such as parks, bridges, and other facilities that are occurring at the State and county level with respect to promotion of fisheries. Local governments were unprepared for the resulting tourism, with no ready source for assistance. It was mentioned that, with respect to this need for assistance, the Local Waterfront Revitalization Program can be a great asset for a community. However, in response to this suggestion, representatives from several communities expressed frustration. One noted that the Towns of Kendall, Carlton, and Yates had submitted their joint Local Waterfront Revitalization Program to the Department of State three to four years ago for approval and it sat in limbo. Now, these communities are faced with development pressures and do not have an approved local waterfront program in order to have consistency review over proposed projects. The Department of State, it was said, should take responsibility for this situation by finding a way to speed up the approval process.

As follow-up, it was stated that more funds should be available for Local Waterfront Revitalization Programs, with more technical assistance and guidance made available for local communities. More funds to communities with approved local waterfront programs should be available for increased staffing to keep track of the daily routine work involved, such as site plan review, permitting, and grant applications. Local governments also need more funds to preserve scenic resources. In many rural areas, now is the time to purchase scenic easements. It was noted that a consolidated permit process would be a great help to communities.

In planning for increased tourism in lakefront communities, it was stressed that these communities should not lose sight of many quality of life issues. Many different organizations are available that can help communities, some of which, such as Sea Grant and the St. Lawrence-Eastern Ontario Commission, have been helping communities for years. We have the Great Lakes Advisory Board, the Department of State, and now a Governor's Task Force on Coastal Resources. All organizations need to address what their missions are and how coordination can take place.

## HABITAT PROTECTION

Panelists:

Philip Weller, Executive Director
Great Lakes United

Michael Corey, Senior Environmental Analyst
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Moderator:

William Barton, Chief
Project Review Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Michael Corey

Mr. Corey provided a brief description of the Department's significant coastal fish and wildlife habitat activities under the State's Coastal Management Program. He indicated that: (1) 46 significant habitats along the shores of Lake Erie, the Niagara River, and Lake Ontario were designated by Secretary of State Gail Shaffer in October, 1987; (2) habitats along the Saint Lawrence River will be designated following the completion of research on muskellunge spawning areas in that coastal region; (3) State and federal consistency requirements are the principal means for ensuring protection to these designated habitats; and (4) the laws and regulations adopted by coastal communities for their approved Local Waterfront Revitalization Programs offer additional protection to those designated habitats which are within their municipal jurisdictions. Programs administered by the Department of Environmental Conservation under existing wetland and endangered species laws were also cited by Mr. Corey as providing protection to coastal habitats, but such protection is often incidental to the principal aims of those regulatory programs.

To achieve improved protection for the State's coastal habitat resources, Mr. Corey suggested that: (1) we need to incorporate the cumulative effects of development activities into all of our current regulatory review processes; (2) local governments must be given greater encouragement to use their land use controls towards this end; (3) management plans should be developed for each significant habitat; (4) coordination among the regulatory agencies must be improved; and (5) education efforts should be increased to reach the regulators, the regulated and the general public.

Philip Weller

Mr. Weller briefly discussed the principal aims of his organization which are to focus the public's attention and action on water quality and water quantity issues in the Great Lakes. In addressing these issues, Mr. Weller indicated that Great Lakes United advocates an ecological approach. He stated that shoreline development has resulted in the loss and degradation of many habitats along the Great Lakes and is placing considerable pressure on our efforts to protect the remaining habitat resources. Further, he indicated that habitat areas are very important for moral, ecological and economic (e.g. sports fishery) reasons.

Mr. Weller identified and briefly discussed a number of habitat-related issues, problems and suggestions which, among others, included: (1) the lack of sufficient information on all Great Lakes species and their habitats; (2) protection efforts are focused on game species; (3) the data base of the Natural Heritage program is not adequately funded; (4) the need to improve the general public's understanding of the "common" elements of the Great Lakes ecosystem; (5) more funding is needed for habitat protection efforts which involve the acquisition of land or conservation easements; (6) a priority ranking system should be established for habitats in need of protection; (7) find ways to protect habitats which would supplement existing acquisition and regulatory efforts, e.g. habitat recognition programs with landowners; (8) the Coastal Zone Management Act must be reauthorized in 1990 to enable states to continue their habitat protection activities; (9) public and private programs need to gain "better vision"; and (10) volunteer organizations can, and should be encouraged to, play important roles in our efforts to protect habitat resources.

Discussion:

Additional habitat protection concerns and suggestions were raised during the open discussion portion of this workshop. The disposal of dredged materials, even those containing acceptable levels of toxicants, into and next to the waters of the Great Lakes, has to be reduced in order to avoid their cumulative effects. Protection of freshwater wetlands not now covered by State regulation was thought to be essential for increasing public habitat protection efforts. Stormwater runoff in urban and other areas was cited as a major threat to habitats in the Great Lakes, and steps should be taken to control this non-point source of water pollution.

Local governments were seen as important players in the public sector's efforts to protect the critical habitats of fish and wildlife species in the Great Lakes region. But given the diversity of local governments in the region, it was thought that assistance from the State level in the form of development guidelines, good sources of technical information, and, possibly,

stronger encouragement for, or insistence upon, adopting laws and regulations which address development activities next to coastal waters and environmentally sensitive locations.

With respect to existing habitat protection programs, improved decisionmaking could be achieved by the sharing of available data and by increased coordination among the various regulatory agencies. The focus of these programs also should be re-directed by placing greater attention on the protection of the habitat rather than on protection of the individual species. Our goal for protecting significant habitats should also be broadened to one which includes those species possessing less than statewide importance.

## HARBOR MANAGEMENT

Panelists:

Jeff Steadman
L. R. Johnston Associates

Timothy Horanburg, Supervisor
Town of Newfane

Paul Johnson
Monroe County Department of Planning

Moderator:

George Stafford, Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Jeff Steadman

There is a need for harbor management planning. Coves and embayments are included as areas in need of this type of planning. The harbor management planning process includes: (1) appointing an advisory group; (2) doing an inventory of what you have; (3) determining jurisdictional framework and agency roles; (4) identifying problems/issues; (5) developing responses to problems/issues; (6) formulating policy proposals; and (7) establishing implementation mechanisms and responsibilities.

Tim Horanburg

Various harbor users have different sets of needs and problems (motor boats, sail boats, charter boats, anglers - both land and water needs).

Municipal marinas have a responsibility to provide public services that are not within the realm of responsibility of private marinas. Out-of-state charter boats use municipal marinas. Such charters should be registered. There is a need to make users pay for services.

Other problems include: insufficient pumpout services; a lack of intergovernmental coordination; and incompatibility between water and adjacent upland uses.

Paul Johnson

Mr. Johnson offered a detailed discussion of development pressure around Irondequoit Bay (opening of navigation channel was completed in 1986).

The Irondequoit Bay Coordination Committee was formed to harmonize planning and regulation among communities surrounding the Bay, including harmonization of waterfront development controls, environmental controls, development overlay districts, and erosion/sedimentation controls.

Management of development should include uses, construction, and stormwater flows (best management practices). Related issues include: (1) water surface use, speed limits, wake controls, winter use, carrying capacity; (2) water quality management (basin runoff control, sewers, guidelines for best management practices); (3) monitoring (development review, coordination with municipalities, water quality).

Discussion:

Where can boats be stored? On individual sites. No dry-dock facilities are located on the Bay.

How is the stirring up of sediments controlled? Testing is conducted prior to issuing permits.

Since New York State is the biggest beneficiary of harbor development, why can't it share more fees and taxes with municipalities? Most fees go into the State General Fund. Boat registrations generate only $1 million annually.

Local officials often do not know State statutes regarding regulations and enforcement (Town Law, Navigation Law, etc.). Cooperation is needed between communities to achieve uniformity. A higher level of authority may be needed if this does not work. Existing enabling legislation is too confusing and complex. Local control is acceptable, but municipal officials do not always know what to do. A harbor management program can provide answers, and must precede issuing of permits. Local governments should use the harbor management program as the basis for action. It should be viewed as an extension of the Local Waterfront Revitalization Program.

There could be funding for harbor management programs from a number of sources, including boat registration fees, and Office of General Services underwater land lease fees. Underwater lands is an issue of private versus public rights. It must remain a State function. The Office of General Services is not a cooperative player in coordinated reviews, however, the Office of General Services says that it no longer sells underwater lands. New York State has no right to give up underwater lands.

What about a direct State role in dock permitting? This should be a joint State-local role. There is a need for technical expertise from both the State and the county, and a need for input from the State for guidelines and standards to govern use of the water surface.

## PUBLIC ACCESS AND RECREATION

Panelists:

Richard White-Smith, Executive Director
New York Parks and Recreation Conservation Association

Thomas Dearing, Community Planning Coordinator
Erie County Department of Environment and Planning

Moderator:

Bryan P. Cullen, Associate Counsel
New York State Department of State

Presentations:

Richard White-Smith

Mr. White-Smith began his presentation by stating that the New York State Parks and Recreation Conservation Association is affiliated with the National Parks and Recreation Conservation Association and is involved in developing a variety of strategies to preserve the fast-disappearing landscape.

Mr. White-Smith indicated that in terms of preservation of open space, it's now or never. In the last 5 to 7 years, there has been unprecedented development. Our waterways are being "condo-ized". By the year 2000, few opportunities for the public to acquire land will remain. Already the Environmental Quality Board Act II funds have been largely spent. A new coalition, the Heritage 2000 Alliance, is exploring ways to raise funds for acquisition. At present, the State has identified $5 to 6 billion worth of sites to be acquired.

In terms of immediate response to acquisition opportunities, Mr. White-Smith also stated that land trusts play a critical role. They can act much more rapidly than State government can. Counties also play an important role through such mechanisms as sales taxes devoted to land preservation efforts.

Mr. White-Smith made the following recommendations: 1) the budget for acquisition projects by the Office of Parks, Recreation and Historic Preservation to achieve and preserve public access for present and future generations needs to be increased for staff, facility maintenance and improvement, and acquisition and development of new facilities; 2) the State needs to do more basic data collection and planning (At the moment, the State is being reactive rather than proactive); and 3) scenic landscape legislation should be supported because it complements land acquisition efforts and supports regional planning which, in turn, would lead to an effective blending of resource protection and development for tourism. Seventeen regions in the State have been preliminarily identified as scenic

areas needing protection at the local level, but this should be done in a coordinated fashion.

Thomas Dearing

Mr. Dearing accompanied his remarks with a slide presentation which demonstrated public access opportunities and limitations in Erie County. He noted that the county is changing from an industrial to a service economy, leaving what were once thriving waterfronts with heavy industrial uses abandoned and underutilized. However, these sites now present opportunities for redevelopment which include public access, something which historically has not been available to the public because of the nature of the industrial development. Obtaining public access will require more State and federal funding. To illustrate his point, Mr. Dearing estimated that implementation of public access and recreation projects identified in Local Waterfront Revitalization Programs would require something in the neighborhood of $600 million dollars.

Mr. Dearing mentioned public and private projects in which public access has been considered and implemented. The Town of Tonawanda in its LWRP and waterfront master plan addressed the formerly industrialized waterfront. The area has been re-zoned as a waterfront district. A portion of the Erie County Riverwalk runs along the north end of the waterfront.

In the City of Tonawanda, a townhouse project is backed up by a 50 foot waterfront easement for public access which has worked to the developer's advantage, since buyers consider the walkway as an asset to their property. Mr. Dearing indicated that there are ways to design public access facilities so they don't interfere with private property, but there is still a lot of educating of developers necessary.

In the Town of Tonawanda, the waterfront zone is not as strong as it might be, but it still promotes water dependent and enhanced uses and public access. Developers are asked, through site plan review, to incorporate public access provisions in their projects.

To conclude, Mr. Dearing identified some problems with waterfront revitalization. First he indicated that State health officials are requiring overtesting of potential public access and recreation sites, because they have no standards for what constitutes a health threat. This potentially conflicts with the State's public access policies. Next, he stated that greater consideration needs to be given to the effects of high rise development on visual access to the waterfront. Finally, Mr. Dearing related his experience with the City of Buffalo which is now in a position to seek concessions from developers, but needs advice on zoning standards to protect views.

Bryan P. Cullen

Mr. Cullen outlined the federal and State statutes and policies which underscore the importance of public access to the coastal zone. He also described the scope of the State's public trust lands and explained that under the common law public trust doctrine, the State, as sovereign, holds submerged and tide lands in trust for the people of the State who have certain recognized rights to these lands including fishing, navigation, commerce and recreation.

The State consistency review process and its limitations were discussed along with coastal management programs of other states which have greater control over all actions within their coastal zone.

Mr. Cullen then provided further illumination on the proposed responses to public access issues outlined in the discussion papers provided to workshop participants. Highlights are included here. He explained that the site plan and subdivision review response is intended to provide municipalities with a source of revenues to be used with greater latitude to purchase recreational access. He mentioned that a bill for these purposes was pending in the Legislature as S. 6471. Mr. Cullen explained that current law provides landowners with limited liability for injury when the public is invited to use the land for certain recreational activities. Swimming and beach-related recreation, however, are not within the scope of the statute. An amendment including these activities would protect State and local government from litigation and would hopefully cause landowners to open their property for beach-related recreation.

While the State and local governments are precluded from taking private property without just compensation, Mr. Cullen explained that when a public entity conditions the receipt of public funds on the provision of access, there is no constitutional violation. Rather, the situation becomes one of a bargain for exchange: a publicly-subsidized improvement for public access.

In the case of codification of the public trust doctrine, extreme caution was urged because of the fluid nature of the doctrine and the inevitable give and take of the legislative process.

Mr. Cullen also discussed the importance of education programs for local governments and how harbor management plans can be a very good tool to insure continued public access for a variety of water dependent activities.

Finally, the use of financial incentives by the State and local governments to encourage public access were considered. Incentives include tax credits and preferential assessments when an owner grants on access easements.

Discussion:

It was stated that public access responsibilities are spread out among a number of State agencies and sometimes opportunities for access are not fully realized due to lack of coordination. Better education of agencies and better coordination and cooperation among agencies is needed. A single agency having permitting authority in the coastal area would also be good.

In response, it was noted that the coordination and cooperation envisioned in the Waterfront Revitalization and Coastal Resources Act has not worked successfully in many instances. Some strong oversight is needed.

A comment was made that more State funds for access are needed. A discussion of bond act funds ensued, during which the process was described whereby communities are advised of the availability of funds and guidelines for awarding monies. Communities have difficulty in coming up with matching funds and should, therefore, change their tax levels to insure match availability.

NEW YORK CITY

Regional Coastal Conference

October 27, 1989

New York, New York

**NEW YORK CITY**
**COASTAL CONFERENCE**

**October 27, 1989**

**Agenda**

| | |
|---|---|
| **8:30 - 9:00 a.m.** | **Registration** |
| **9:00 - 10:00 a.m.** | **Opening Session**<br>. Welcome by Secretary of State Gail S. Shaffer<br>. Remarks by Secretary Shaffer<br>. Remarks by Guest Speaker Lieutenant Governor Stan Lundine |
| **10:00 - 10:15 a.m.** | **Coffee Break** |
| **10:15 - 12:30 p.m.** | **Workshop Sessions** |
| | **Coastal Hazards**<br>. Dewitt Davies - Long Island Regional Planning Board<br>. Nicholas K. Coch - Queens College |
| | **Harbor Management**<br>. Lt. Commander Michael Kearney - U.S. Coast Guard<br>. Stephen Sloan - Sloan Marine Associates<br>. Joseph Birgeles - Port Authority of New York and New Jersey |
| | **Water Dependent Uses**<br>. Linda O'Leary - Towboat and Harbor Carriers Association<br>. Edmond Harrison - Universal Maritime Service<br>. Edward Panarello - Coastal Program Advisory Committee on the New York Harbor Maritime Industry |
| **12:45 - 1:30 p.m.** | **Lunch** |
| **1:30 - 2:30 p.m.** | **Guest Speakers**<br>. Orin Lehman - Commissioner of the State Office of Parks, Recreation and Historic Preservation<br>. Tony Hiss - <u>The New Yorker</u> |

**2:30 - 4:45 p.m.** **Workshop Sessions**

**Growth Management**
- Sylvia Deutsch - NYC Department of City Planning
- Richard Rosan - Silverstein Properties
- Robert Funicello - Federated Conservationists of Westchester County

**In/Over Water Development**
- David Paget - Sive, Paget, and Riesel
- Mitchell Bernard - Natural Resources Defense Council
- Thomas Creamer - U.S. Army Corps of Engineers

**Public Access and Recreation**
- Linda Davidoff - Parks Council
- Brian Smith - Robinson and Cole
- Barbara Weisberg - NYC Department of Planning

# PLENARY SESSIONS

## OPENING SESSION

### Welcome by Secretary of State Gail S. Shaffer

Secretary of State, Gail S. Shaffer welcomed the participants to the conference, one of five regional conferences sponsored by the Department of State. She noted the purpose of the conference, which is to bring together leaders in coastal affairs, technical experts, government officials, knowledgeable citizens, and members of public interest groups in order to facilitate an exchange of opinions and ideas and to seek a consensus for needed changes in the way New York's coast is managed.

### Remarks of Secretary of State Gail S. Shaffer

To begin today's program, I am going to describe where the New York Coastal Program has been and where it might be going.

The national coastal effort began in 1972 with the passage of the federal Coastal Zone Management Act. The Coastal Zone Management Act set in place a management scheme that encouraged the United State's 30 coastal states and 5 territories to undertake the arduous task of protecting and wisely developing 95,000 miles of shoreline. With federal financial assistance and the promise of a new concept called "consistency", states and territories began planning for the coast.

In New York, the effort began in 1975 and with the passage of the Waterfront Revitalization and Coastal Resources Act and federal approval of the State's Coastal Program, implementation of new management approaches for the State's 3,200 miles of coastline began in 1982.

What the New York Coastal Program created, in concept, is a "trinity" -- an intricate partnership of federal, State, and local governments, working towards a common goal--preservation, revitalization, and the wise development of one of the State's greatest resources -- your coasts.

After seven years of program implementation, I am pleased to say that the basic ingredients for accomplishing this laudable objective are in place, and have had results. Working together, governments are advancing improvements of water, the land, and the overall quality of New York's coast. In New York City, Congress has designated New York Harbor as an estuary in the National Estuary Program. And, in 1990, Congress will be considering sweeping changes to the Coastal Zone Management Act, in an effort to respond to the current crises facing the coast.

The State has made precedent setting consistency decisions--it has ruled against building non-water dependent uses on new docks over the coastal waters of the State. It has ruled against permanent mooring of prison barges, and as a result of the

consistency provisions of the Coastal Program and New York City's Local Waterfront Revitalization Program, access by the public to the waterfront is now considered a requirement for new projects on the shoreline.

With funding from the Department of State and the United Nations Development Corporation, and in cooperation with the Port Authority of New York and New Jersey, the Department of City Planning is now preparing waterfront plans for each of the boroughs. The plans, to be completed next year, will, among other action, provide a framework and planning context for land use and investment decisions, identify opportunities for public access and waterfront recreation, and propose necessary rezoning of the waterfront.

Once completed and approved by the Department of State, development of the waterfront will be guided by clearer and more concise requirements. Even before completion of these new waterfront plans, the New York City Planning Commission is to be applauded for advancing the objectives of the national coastal management effort more vigorously than any other major city in the country.

After seven years, this "trinity" has made a difference. But, despite these advances, in New York and around the nation, the coast remains under siege by a multitude of threats documented daily by the media. Shellfish beds are closed due to continued pollution, wetlands are continually lost, houses are falling into the ocean, and a cadence of development along the shores, precludes public access, denigrates barrier islands, and mars the scenic beauty of the coast. The coast has experienced a gruesome array of medical wastes, sewage closing beaches, and oil spills -- not only in Prince William Sound, but in New York Harbor.

Given the severity of today's coastal problems, it is clear that enough has not been done; but with the existing legal authority restricting certain government actions, and with the level of existing financial resources devoted to management of coastal areas, you must question how much more can realistically be done.

There is a complex set of factors that may account for the public and private sectors' inability or unwillingness to respond more effectively to the challenges of managing coastal areas. A partial list includes: the diffused public interest; skewed national, Statewide, regional and local priorities; inadequate legislation; special interest politics; and fragmentation of responsibilities within and among levels of government.

Moreover, governments are not, and cannot, be the only sector to carry the coastal burden. A private sector code of coastal conduct must also be developed. Markets must begin to reflect and absorb the true costs of development in coastal areas and exploitation of coastal resources. The public, as consumers, must express their concern for the coast to business, with the

same zeal they express these concerns to government.

Nearly two decades into the national task of managing our coastal environment. There are accomplishments, and there are shortcomings. That is why we are here today. Your ideas and commitment are essential to the formation of a more effective coastal management effort. As the theme of this conference implies, the reality of coastal management is that this is your coast; the choices are your choices; and its future is your future.

During this conference a number of issues facing the New York City waterfront, and the State's coastal area as a whole will be covered. These include managing the growth and development of our shoreline, which affects not only coastal resources, but the quality of life in this City. The competing demands and conflicting activities which affect harbors, water-dependent industries and the accessibility of the coast for recreational activities will be addressed. The condition of the resource base including habitats, water quality, fisheries, and aesthetics, as well as the hazards and costs of living in a coastal area will also be discussed.

Each of you have been given brief papers on the topics to be covered. Do not look at these as an authoritative treatise on the topic. Their purpose is to provide a groundwork for discussion in today's workshops. Our distinguished panelists will offer their own thoughts on the topic at hand; and most of all, we need you to ask questions, make comments, and present your own ideas and proposals for improving management of the coast.

Over the past few weeks, we have held similar conferences in Long Island, the Hudson River Valley, and the Great Lakes. We have also sought the advice and counsel of people in those regions. On February 28 and March 1, 1990, we will convene a statewide conference in Albany to air what we have heard, and reach a consensus on a number of options for future action.

In New York State, we have reached the point at which the integrity and future of the coast must take its rightful place in the arena of public issues. Residents, interest groups, and businesses on the coast must increase pressure on public and private decisionmakers, to defend coastal values that have been given lesser priority.

I urge you to work together, and with us, to meet the challenge that faces us all. Unless, or until, the requisite will for fundamental change emerges, progress towards our goals in managing coastal areas will only progress as it has, which has been too slow, if not nearly too late.

Thank you.

Introduction of Lieutenant Governor Lundine by Secretary Shaffer

Lieutenant Governor Stan Lundine is Governor Mario M. Cuomo's partner in running New York State government. He has also taken on special assignments addressing drug and alcohol abuse, housing, job training, and high-technology research.

The Lieutenant Governor is the presiding officer of the State Senate and in that role serves as a principal advocate for the Governor's program in the Legislature.

Lieutenant Governor Lundine serves as chairman of the Statewide Anti-Drug Abuse Council. The Council, made up of state commissioners and division directors, is developing an action plan to fight drug abuse throughout New York State. It will submit its proposals to the Governor in October.

Lieutenant Governor Lundine also chairs New York State's Housing Subcabinet, working to increase the supply of affordable housing around the state.

Lieutenant Governor Lundine is a former Congressman from New York's Southern Tier, which includes part of the Lake Erie coastline. The Lieutenant Governor's first elective office was as Mayor of his home town of Jamestown, from 1970-1976. He was elected to Congress in 1976 and to his current post in 1986. He has earned a reputation as a hardworking and effective advocate for New York's interests. Moreover, his breadth of experience at all levels of government has given him a keen appreciation of intergovernmental relationships.

Lieutenant Governor Lundine has used his recognized expertise in economic development, science and technology, housing, and the federal government to aid the State in a broad range of responsibilities.

It is with great pleasure that I ask Lieutenant Governor Stan Lundine to address this conference.

Remarks of Lieutenant Governor Lundine

Governor Cuomo and I believe that a broad cross-section of the people of New York should focus concentrated attention on an extremely important region of New York State -- the coastal region.

Major coastal crises have made headline news in the last few years, from PCB contamination and medical waste washing ashore, to oil spills in the East River and the Hudson last month.

These crises served to raise our consciousness about the problems that plague our coastal zone. Now we're looking for some permanent solutions to these problems.

New York's 3,200 miles of coastline comprise a distinct region of the state. Thirteen million people live in coastal communities on Long Island, in New York City, in the Hudson Valley, and along the Great Lakes and St. Lawrence River.

Our coastal resources are invaluable. The scenic areas are a retreat for millions of visitors each year. The harbors are hubs of recreational and economic vitality. And the coastal zone is home to numerous species of fish and wildlife.

In order to ensure the stability and enhance the beauty of these areas and their resources, we must begin to address the problems facing our coast.

New York City's coastline is magnificent. New York Harbor, Jamaica Bay, Raritan and Eastchester Bays -- to name just a few -- are critical to the economy of the state and the nation. The 578 miles of coastline in the City are ecologically rich as well. Yet, as we all know, these areas are far from problem-free.

First, there is a crucial issue of access. This city's residents deserve to use and enjoy the beaches and other waterfront areas. For recreation or for simply a beautiful view, the coast should be accessible to the communities in all five boroughs.

There are problems associated with development along the shoreline. The ongoing issue is trying to strike a balance between the need for economic development and the need for preservation of our coastal resources.

The key to the best management and use of New York's coastal zone is the development of cooperation between all the players, especially between the state and local governments and the communities. The state is involved in several such collaborative efforts, including the West Side Waterfront Panel, which is bringing all sides together in an effort to reach a consensus.

In order to improve the work of the State's Coastal Management Program, we need your input to bring clear focus to the issues. This series of coastal conferences provides an excellent opportunity for you, the leaders of your communities, to sit down and discuss our coastal resources. Your experience in the City of New York brings valuable perspective to the effort to chart the course of the State's Coastal Management Program. The work you do together today will shape the future of New York City's coastal zone.

Most of you are familiar with the work of the Department of State which administers the Coastal Management Program and the Department of Environmental Conservation which is integrally involved in decisions regarding the coastal zone.

The work of these and other state agencies is extensive. But in recent years, as the problems of the coast have become larger and

more complex, the need for greater coordination of the state's coastal policy has grown as well.

Recognizing this, Governor Cuomo has formed a new Task Force on Coastal Resources. The Task Force, which has not yet been formally announced, will be charged with plotting a planning and conservation course for the coastal zone.

The Governor has asked me to chair this Task Force. Taking care of our coastal resources is crucial to overall environmental improvement and to the quality of life of millions of New Yorkers.

The work before us is important. Many of these issues are extremely complicated. We will need to make tough choices along the way as we strive for a balanced policy.

We look forward to working with you to develop a broad consensus for the future of New York's coast.

## LUNCHEON SESSION

Remarks of State Commissioner of Parks and Recreation Orin Lehman

This is a very special time in the history of New York City's waterfront. It is a time of change -- of opportunity -- and of decision. In all likelihood, the things we do -- or fail to do -- especially on the Hudson's shoreline -- will have a profound effect far into the future.

But before discussing this -- let me congratulate Gail Shaffer for scheduling such an important series of conferences on the total problem of Coastal Management throughout New York. We in State Parks have good reason to appreciate the relevance of this effort because we have major park and recreation responsibilities from the Great Lakes to the tip of Long Island -- and indeed in all the regions she has scheduled these conferences.

Here in New York City -- of course -- with its concentration of people -- and with its unyielding pressure for change -- many of the problems are of a dimension beyond anything we encounter elsewhere in the State.

To most Parks people concerned with New York City -- the problem of public access and recreation along the waterfront is one of primary interest. It is this special problem on which I would like to concentrate my attention today.

To be sure -- the city already has an incredibly rich legacy of parks along its shorelines. In the late 19th century, its park leaders developed Riverside Park. The public has traditionally enjoyed access to Atlantic Beaches -- in areas removed from the intensive industrial and commercial development of the main harbor. Robert Moses increased the open space system substantially. Many of his waterfront parks -- of course -- were built in conjunction with his roads.

It's my opinion that if Moses had stuck to parks instead of roads, he may well have remained as highly regarded in our day as he was in his own.

Unfortunately, the waterfront parks in the city are not evenly distributed. Populations -- too -- have grown and shifted, and in most sections of town -- we have yet to make the great scenic and recreational resources of the City's waterfront accessible to all who could benefit from them.

The problem has roots deep in our history. For many years -- while the City's incomparable harbor served as the maritime center of the nation -- roads and railroads -- intensive waterfront development and dreadfully polluted waters -- effectively discouraged most New Yorkers from using what should have been their choicest recreational and esthetic outlet.

Now -- of course -- the great harbor -- has fallen into disuse. Many of the old finger piers that once fringed lower Manhattan have stood rotting and abandoned for more than a quarter century. After years of debate -- the fate of the shoreline and these piers is still an open question.

But one way or another -- at least on the west side of Manhattan -- we must soon resolve the debate. Much of the area between the river and the old West Side right-of-way continues to deteriorate. And as we fiddle, inflation drives the costs of acceptable projects ever higher -- and, worst of all, the public is no closer to enjoying the River.

When you analyze the current situation along the Hudson, it is possible to discover remarkable parallels with the situation faced by New Yorkers a hundred years ago when the Adirondacks -- stripped of their virgin forests by the lumber barons -- stood abandoned and desolate.

I am pleased to say, however, that it was at the insistence of the people of this City that the State finally moved during the 1880's to reestablish the Adirondack forests, and to protect them as a resource of great value for all citizens.

The situation is also not too different from the one in the early part of this century when the magnificent Palisades nearly succumbed to the quarrymen's blasts. Again -- New Yorkers -- concerned about the view from their city -- worked to establish an Interstate Park Commission and stopped the removal of the trap rock before the cliffs disappeared entirely.

I must say, it seems so unfortunate that at a later date -- no one made a comparable interstate effort to prevent the wall of luxury high-rises now spreading so sadly along the top of the Palisades south of the George Washington Bridge.

Personally -- I believe that our generation can and will do a better job protecting <u>this side</u> of the Hudson.

To be sure -- there has been no lack of concern over New York's West Side -- which includes what very well may be some of the nation's most enticing real estate. For some time now -- officials and agencies at all levels of government -- an assortment of private developers -- and a growing number of public interest groups -- have all come forward with studies and proposals.

Unfortunately -- after all these years -- we still don't have an agreed upon plan. But the picture is not totally bleak.

Now -- for example -- I think we are moving in the right direction with the West Side Waterfront Panel. The Panel, under the able direction of Michael Del Giudice, consists of seven members. Three -- including the chairman -- receive their

appointments from the Governor, three from the Mayor, and one from the Borough President.

It was created in response to a recommendation of a task force established after the demise of Westway. This earlier task force -- in addition to recommending a commission to plan for change along the route of a new roadway -- also made a strong pitch that an esplanade line the outboard side of the road.

As a Governor's appointment, I serve on the new West Side Waterfront Panel. As many of you -- I am sure are aware -- there was an hiatus in the Panel's activities -- primarily because of a conflict with the New York City Comptroller. But the conflict is now resolved.

As you might expect, the Panel members do not march in locked step on every issue. There are several things -- however -- that we all have agreed upon. Whatever else is done -- there will be no land fill in the River. Secondly, we have agreed to pursue the use of scenic easements to protect vistas of the river and retain some of the trade-in dollars for esplanade developments. And third, we have already made some progress in efforts to get the Port Authority to at least redesign two large ventilation towers it proposed to build for its PATH system.

Beyond this, my own personal feeling is that New York City has enough of a built environment -- particularly in lower Manhattan. What we lack most of all is green space, open space and breathing room. Also, I would like to see the Hudson River's edges preserved as scenic open space with a pastoral esplanade, bike trails and walkways.

And whatever development takes place upon the aging piers, and whatever new facilities we invest in along the river should meet the recreational and esthetic needs of the public.

Finally -- I would hope that as the new road progresses, we will be able to develop parks or at least green spaces right along with it.

The West Side Waterfront Panel -- of course -- is only one part of the effort to beautify and preserve New York's shoreline. Governor Cuomo -- in fact -- is looking toward the development of a regional Greenway extending along the Hudson from Albany all the way to Battery Park.

I must admit that an unbroken greenway all along the Hudson from Albany will be difficult to accomplish. There are, of course, a good many existing State, Federal and local parks and historic sites as well as farms and large estates along the route.

But there are also a good many industrial sites and heavily populated urban areas. Furthermore, many important stretches of the shoreline remain in private hands. As you might imagine --

there is considerable competition for whatever green space still exists along the River between those of us who wish to preserve the land and those who wish to develop it.

However, I don't believe it is too much to expect that if we could build a trail from Georgia to Maine -- we can also build a far shorter one all along the Hudson.

Now, there is no way we can stop all development -- and we really shouldn't want to. But at the very least, we should be able to have a strong influence on the type and placement of new development.

Another City State Program definitely affecting the waterfront of New York -- and one that I am particularly enthusiastic about -- is Harbor Park. Harbor Park is a beautiful part of the statewide system of Urban Cultural Parks.

The 14 Urban Cultural Parks throughout the State have already demonstrated considerable popular appeal. Each one focuses on both the important historical and the unique natural features of participating communities. By combining the benefits of whatever State and local aid and private investment might be available, the Urban Cultural Parks seek to realize the full recreational, educational, economic and preservation potential of the places selected.

Each community in the program works to portray a separate theme of the State's history. Quite naturally -- the historic theme of Harbor Park is maritime trade and immigration. It ties together numerous spots in New York Harbor including the South Street Seaport, the Empire/Fulton Ferry State Park, Battery Park, Ellis Island, the Statue of Liberty and the Sailors Snug Harbor Cultural Center on Staten Island. Obviously -- all these places are readily connected by water.

Recently, using Urban Cultural Park funds as the State's share of a cooperative program, we turned over a $4,000,000 check to the City for the renovation of Pier A near Battery Park right here in lower Manhattan. The total project, undertaken together with the City's Public Development Corporation and a private developer, will cost $18 million.

To me this project is an illustration of the positive results we can enjoy when the public and private sectors work closely together. One of the many new uses of the historic Hudson River pier will be as a restaurant. It will also serve as an orientation center providing visitors and New Yorkers alike direct access to one of the most exciting spots on the River.

Can you imagine what a wonderful tourist attraction Harbor Park is going to be when we tie all the individual parts of it together and realize the tremendous educational, recreational and historic preservation benefits.

The State's Urban Cultural Park funding -- which helped make this project possible -- came through the Environmental Quality Bond Act of 1986. This past year, we have also used two other important Environmental Quality Bond Act grants to fill gaps in the greenway in northern sections of the City. The State has provided the City with a matching grant of $1.4 million for the acquisition of U Thant Park, a beautiful natural area overlooking the place where the Harlem River empties into the Hudson.

A second important link in the Hudson River Greenway came with the grant of $2 million that enabled the City to make available for trails, fishing and passive recreation the twelve acres connecting Fort Washington and Riverside Parks. Unfortunately, we won't be able to go on much longer supporting such purchases. After this year's spending, there will be only $35 million of the original $250 million that the Environmental Quality Bond Act provided for this type of project.

However, we have been able to use different types of funding for Riverbank State Park which sits atop North River Wastewater Treatment plant a little bit to the south of the two purchases I just mentioned.

The project dates back to the Rockefeller/Lindsay days when special emphasis was on the need to clean America's Rivers. New York City had so much pollution running into the Hudson that it would require a huge facility nearly ten-blocks long to remove only a part of it.

This too would be a park born in conflict and my office would enter the picture only after a bitter debate over the plant's location.

While everyone recognized the need -- nobody wanted a plant of this sort right in their own backyard. Finally the community between 135th and 145th Streets agreed to take it -- but only if a park were developed on top of it.

What they wanted, I might add, was not just an esthetic park consisting of fountains and greenery. They wanted a place for all manner of recreational and community activity. Producing it -- some 60 feet in the air -- posed some gargantuan problems and led to some very real headaches, but I am very pleased to announce that we are now actually developing all twenty-eight acres on top of the roof.

A project of this magnitude does not come cheap, but I sincerely think that Riverbank will transform into a major community asset of what otherwise would have been a demoralizing eyesore. Certainly it will receive intensive use, and it will provide a magnificent view of the River -- both to the north and to the south.

Manhattan's West Side. We are concerned about shoreline access in all the boroughs. But one last project that I really find exciting and that I would like to mention involves piers one through six in Brooklyn.

This spot -- just south of Brooklyn Bridge -- provides one of the finest views of the New York skyline and harbor. The Port Authority which owns the property talked of building an apartment complex with some parkland interspersed. But a coalition of protesting community groups has come forward with alternative plans for a park with recreation facilities and a marina. The coalition has planned this to be built in conjunction with the Empire/Fulton Ferry State Park just to the north, and we are lending our support to its efforts.

A New York Times article commenting on the controversy between the community groups and the Port Authority suggested that anything could happen in Brooklyn -- or nothing.

One thing that I think is clear -- success for this or any other major project depends -- in the end -- upon cooperation between all levels of government and the involved community. Good things happen when well meaning people find ways to work together. But if we remain unbending and at odds with one another most of the time nothing happens but delay and frustration.

It is doubtful -- of course -- that we will ever get total agreement. Few among us are ever fully satisfied. In a democracy -- however -- we need not yield on basic principals -- but -- if we desire concrete achievement -- we have to learn the ways of give and take.

Finally, I'd like to talk about a crass -- but all important -- subject -- money. Where will it come from?

How can we pay for all our critical needs?

I certainly don't have the answers, but I will briefly give you some of my ideas:

First -- we should do everything within our power to urge Congress to support the American Heritage Trust Act. This -- as I am sure you all realize -- could be terribly helpful.

Second -- we could urge the Governor and the Legislature to put forth another Environmental Bond Act which would sustain the momentum of the Environmental Quailty Bond Act of 1986.

Third -- there is the less popular possiblilty of taxes to support municipal parks and historic preservation and to provide for the purchase of green space. Some States have passed taxes to support such programs -- but not really on the scale that we would need in New York State. There have been other ideas put

forth, but I think these three sources of funds are the most promising.

We have a proud tradition of conservation in New York -- and never before in our history has there been so much interest in environmental concerns and the preservation of our natural and cultural heritage. We must sustain this interest with imaginative and constructive thinking -- and the necessary wherewithal.

There is really no time to waste. The time is now and the stakes are high. As I said at the outset -- the things we do -- or fail to do right now -- will have a profound effect far into the future.

Remarks and slides from Tony Hiss, writer for The New Yorker

Mr. Hiss presented, in verbal and visual form, many of his ideas and concepts about the landscape extracted from his recent two part article in The New Yorker entitled "Encountering the Countryside" ( August 21 and 28, 1989 issues).

WORKSHOPS

- Coastal Hazards
- Harbor Management
- Water Dependent Uses
- Growth Management
- In/Over Water Development
- Public Access

## COASTAL HAZARDS

Panelists:

Nicholas K. Coch, Professor of Geology
Queens College, City Queens College
City University of New York

DeWitt Davies, Chief Environmental Analyst
Long Island Regional Planning Board

Moderator:
Charles McCaffrey, Chief
Bureau of Local Waterfront Revitalization Programs
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Nicholas K. Coch

Professor Coch, illustrating his presentation with slides of the recent hurricane damage in South Carolina, described how and where that storm inflicted its damage. Additionally he compared the Carolina coast to New York's and indicated the devastating effects such a storm would have on comparable stretches of the New York coast. His account of the destruction was properly alarming -- the storm not only inflicted extensive property damage, but significant damage to natural resources. In addition to the loss of life, destruction of homes, and public facilities, forests were destroyed, beaches lost, wetlands damaged, wildlife and shellfish were lost, and the water was contaminated by damaged sewage facilities.

Professor Coch indicated that, while buildings constructed to stringent flood insurance codes fared better than older buildings, these standards did not help when the new buildings were battered by wind and waterborne debris from destroyed structures. It was apparent that erosion control structures such as groins and seawalls afforded little protection, in fact they often made the damage worse. A wide beach and a dune system afforded the greatest protection.

Better planning and more stringent controls for barrier island development are needed both before and after storms.

DeWitt Davies

Mr. Davies after describing the vulnerability of the south shore of Long Island to severe storms, outlined a soon to be completed comprehensive hazards management plan that the regional planning board is undertaking in cooperation with the Department of State. The purpose of the study is to identify means to minimize loss of

life and property damage and to reduce the public cost of hazards management.

Mr. Davies described a series of workshops at which nationally renowned coastal scientists identified the data needed to prepare a hazards management plan, the adequacy of available data for the purpose, and, in light of public policy regarding the use of barrier islands, feasible hazards management strategies for each section of the south shore. The workshops also identified the type and method of data collection the State should undertake on a regular basis.

Mr. Davies noted that one of the general conclusions of the effort is that inlet formation and maintenance play a major role in erosion problems; and the littoral drift must be maintained through sand bypassing at all inlets. The study, Mr. Davies said, will identify where there is sufficient public interest in the use or development of the south shore to warrant public investment in flooding and erosion management strategies and what the appropriate strategies are, and areas where there is insufficient public benefit from protection. In the latter areas, private protection efforts should be closely regulated and the development ultimately induced to retreat or relocate.

Discussion:

There was a consensus that the State, particularly the Coastal Management Program, must take a more proactive role in development decisions affecting hazard areas. The example of a proposed 10,000 unit development on the Rockaway barrier island, for which the State's review authority was limited to, perhaps, wetland considerations, was referred to continually throughout the session. It was stated that the Coastal Management Program should be in a position to review all coastal area projects. Several individuals opined that increased State authority should not be at the expense of local authority.

The issue of accelerated sea level rise was raised. It was noted that determination of sea level rise must be done in conjunction with a determination of the rise and fall of the shoreland. Much discussion focused on management practices to mitigate storm damage and to prevent recurring damage. It was reemphasized that a wide beach and dune system provided the greatest protection against storms, and that buildings constructed to flood insurance code standards fared better than those not constructed to such standards. It was pointed out that shore hardening structures, particularly tend to accelerate storm surge, and therefore cause increased damage. At least one State, South Carolina, prohibits the rebuilding of shore hardening structures after they are destroyed.

Some audience participants believed that State and federal laws should be passed to regulate the reconstruction of buildings in hazard areas which are destroyed by storms. The hazards

management plan described by Mr. Davies, which it is hoped will form a basis for a State consensus and federal cooperation, will recommend strict control of post storm reconstruction. Given the plan's objective, it was felt that the study should be extended to incorporate the barrier islands in New York City.

## HARBOR MANAGEMENT

Panelists:

Stephen Sloan, Chairman of the Board
Sloan Marine Associates

Lieutenant Commander Michael Kearney
United States Coast Guard
Assistant Port Safety Officer
Governors Island

Joseph J. Birgeles, Supervisor
Harbor Planning, Port Department
Port Authority of New York and New Jersey

Moderator:

Neil MacCormick, Assistant Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Moderator's Preface. As compared with the small harbor focus of workshops held at the other regional conferences, this workshop takes into account the special character of New York Harbor and its mix of recreational, coastwise and ocean-going traffic. The presentations and discussion reflect this difference. The Department of State is very much aware of the special problems of the true small harbor areas in New York City such as City Island, Sheepshead Bay and Flushing Bay. However, due to time constraints, they were not dealt with here. Readers are referred to the proceedings of the other conferences where Harbor Management workshops were held.

Stephen Sloan

Mr. Sloan indicated that public access and use of the waterfront is severely hampered and affected by pollution, the biggest problem in New York City. It is ironic, he noted, that while the lack of complete physical access to the waterfront in New York Harbor is readily apparent, the public in fact gains "access" to the water everyday by flushing toilets and otherwise adding to the sewage flow. The annual volume of sewage dumped at the present 106 mile ocean dump site would fill the space of two World Trade Centers. Mr. Sloan felt that this amount of sewage must be taken care of, but not by allowing it to dissipate into the water column.

Describing another aspect of harbor management, Mr. Sloan cited the $105,000,000 multiplier effect which a 250-slip salt water marina with 25 - 60 foot boats can contribute to the local economy over a five year period. He also indicated some concern

for insurance liability issues associated with public access, especially at marinas. Nevertheless, he felt that public access could be incorporated into marina plans and designs.

Mr. Sloan recognizes that revenues are necessary to conduct fishery, harbor and coastal management programs, and should come from users of the resources. Funds from specific groups utilizing coastal resources should be placed in a separate account or "earmarked" fund for specific coastal management programs. Possible sources of revenue for coastal management programs include: (1) offshore saltwater fishing license; (2) near-shore (coastal) fishing license; (3) port and harbor departure taxes, similar to those used in Europe; (4) coastal boat stamp added to registration fee; (5) marine fuel taxes ($.01 per gallon tax earmarked for special fund); (6) window tax for windows overlooking waterfront in waterfront area ($1.00 per window); (7) $1.00 carton tax for fish delivered and landed in New York (such as Fulton Fish Market) by truck (90% of landings are handled by truck); (8) $1.00 tourist tax for Statue of Liberty visitors (presently $3.25); (9) Commercial fish landing tax; (10) state-level wholesale fishing tackle tax (similar to Dingle-Johnson tax at federal level); and (11) consumer-oriented agency taxes within New York City.

All of the above are simply examples of the types of revenues that could be raised to help do the things necessary to improve harbor and coastal management.

Mr. Sloan also pointed out that a gap exists in the public's awareness of the many types of ferry services now available in New York City. One example is the Pan Am Water Shuttle which he operates from La Guardia Airport to Manhattan. Many potential users of the ferry are not aware of its existence. He feels the City should promote ferries through major media such as television and radio and establish inland bus routes to ferries.

Atlantic City has drawn recreational boating away from New York City by developing new marinas with the amenities he feels recreational boaters want most - quiet, calm, protected areas. There is a need to require the installation of wave attenuators at recreational marinas. The expense and regulatory hurdles involved are almost prohibitive (for example, no "breakwaters" may rest on underwater lands so as to interfere with migratory fish in New York City).

Joseph J. Birgeles

Mr. Birgeles begin by saying that port activities account for over 3 percent of gross regional product, roughly $14 billion in economic activity, 200,000 jobs, $4 billion in payroll, and $500 million in regional taxes. The Port Authority, like many public agencies across the county, is directly affected by the changing nature of today's urban waterfront. The Port Authority is intimately involved with the economic revitalization of

underutilized waterfront areas along with sister agencies in State and local government. The agency has significant responsibilities for marine terminal operations and marine commerce. The waterfront redevelopment envisioned by the Port Authority includes, among other projects, mixed use developments at selected locations, a trans-Hudson ferry system, and their latest development, the auto import and handling facility at Port Jersey.

He said the Port Authority stands ready to do its part. In 1987, the Port Authority embarked on an ambitious five-year $6 billion capital program to modernize and expand its facilities to meet the demands of the next century. An integral part of that plan is the development of the waterfront for marine and other economic uses. A cornerstone of these efforts is a commitment to enhancing the region's port commerce.

Over the past year, a number of studies have been begun or completed that address port development, such as: the recently-issued New York City Council report, "The Future of New York City's Waterfront"; the Maritime Support Services Location Study; the Frederick R. Harris Associates study of the Brooklyn and East River Marine Terminals; and the soon-to-commence New York-New Jersey Harbor Estuary Water Use Management Plan Study. These studies document the vitality of our port and its potential to further contribute to the economic health of the region.

Mr. Birgeles noted that it hasn't all been smooth sailing. The port is now faced with several very critical challenges. The competition for cargo and market share is intense as we face increasingly aggressive efforts by other ports to capture and retain cargo. Our regional transportation infrastructure is at or over capacity and in various states of disrepair. The fundamental need to maintain deep water channels, anchorages, and berths to accommodate modern shipping requires ongoing dredging and disposal programs. In pursuit of opportunities to increase the flow of cargo through our port, the use of fill or decking may be required to expand our facilities. Yet, we now find the disposal of dredged material along with platforming and decking coming under increasingly close environmental scrutiny. It is essential for the continuing success of our port that resolution of these difficult issues be given first priority.

In recognition of the value of our waterfront resources beyond traditional uses, an abundance of proposals have been advanced in recent years. As a result of increasing interest in and actual development of our region's waterfront, there are a growing number of initiatives and players seeking to define and preserve the waterfront for "the best uses." Obviously, the problem that is surfacing is that each entity sees the definition of best use in a different manner. There are not very many impartial referees available.

Our experience has been that the current regulatory review of projects, on a project by project basis, at the federal, State, and local levels provides an adequate environmental and developmental review arena. However, the existing process can always be made better. The addition of all these players and issues has exponentially increased the complexity of trying to achieve a balance between the demands for development, the needs of the community, and the preservation of traditional maritime activity. Therefore, it is timely to be discussing these issues and identifying ways to make the existing process even better. The regulatory situation in New York City, for example, differs greatly from that in small upstate harbors in that there are already many competent and experienced city and State agencies in place responsible for harbor planning.

Turning to harbor management more specifically, Mr. Birgeles said that the harbor has had a high usage level of ferries, recreational, tour, concert, and restaurant boats in the past few years. But the harbor is vast and not congested. In addition, the harbor waterways are more than adequate to accommodate an even larger number of vessels. Any potential conflicts between commercial shipping and other vessels can be avoided by the proper use of rules of the roads as issued by the Coast Guard and the re-establishment of the New York Harbor Vessel Traffic System. However, what may be required, depending on the location, is the building of wake protection structures at waterfront facilities to prevent possible ship wake damage to recreational craft when moored at a marina.

Mr Birgeles closed by citing the following issues for consideration: (1) in an increasingly competitive environment, regulatory processes must be streamlined wherever possible to enable quick decision making so that opportunities are not lost; (2) an overall master plan for the harbor is somewhat unworkable given the dynamic nature of our society, our economy, and our business environment; (3) more standing should be given to sold scientific and testing data that clearly demonstrate a project's environmental acceptability; (4) on-going projects that currently require the duplication of environmental studies is an unnecessary burden on the permit applicant.

It is the Port Authority's belief that solutions can be found to these various issues without impeding responsible development.

Lieutenant Commander Kearney

Lieutenant Commander Kearney described the Coast Guard's overall mission in the Port of New York. These include: search and rescue activities; aids to navigation; marine law enforcement; marine events coordination, etc.; ice breaking; vessel inspection; facilities inspection; and oil and chemical spill. They also monitor spending of Superfund monies for cleanups.

In addition and of special interest to the issue of harbor

management is the division of Waterways Management in which bridge operations are included. Activities include: regulation of vessel arrivals in Port; anchorage use and management in the Upper and Lower Bay areas (anchorage areas are small and experience high traffic volumes); unusual activities such as dead ship movements and LPG transits; and maintenance of the Vessel Traffic Service (VTS). VTS has been an on-again/off-again voluntary program which will become mandatory for vessels in the future. Through VTS, the Coast Guard advises incoming vessels of traffic they will meet in the Harbor. Due to the possibility of budget cuts, local agencies should be prepared to take over the maintenance of the service so that there is not a loss of essential coverage and of necessary equipment for its operation. Under this heading, the Coast Guard also supervises waterborne fireworks and explosives loading, as well as bridge demolitions. In order to protect the general public from miscellaneous dangers on the water, the Coast Guard also maintains safety zones for specific activities and occurrences.

Port security is another activity of the U.S.Coast Guard. Port national defense and military facilities provide national security, counterterrorism, military readiness and coastal harbor defense services.

The Coast Guard's harbor management duties include harbor traffic management, involving the movement and operations of 6,000 ocean-going vessels, 70 bulk oil barges, unloadings, 250 special events, and the transportation of approximately 10,000 public and private ferry passengers per day.

Vessel traffic control includes the control of traffic confluence "choke points." These areas are, according to Lieutenant Commander Kearney, extensions of the metropolitan area land-based traffic patterns. There must be intimate knowledge of all port activities in order to manage traffic patterns. Passive control of traffic is accomplished through marine safety voice broadcasts and Notices to Mariners. Active controls include the VTS and active Coast Guard vessel patrols.

Lieutenant Commander Kearney enumerated many of the forums that exist for users of the Port. He then listed a number of harbor management issues and concerns which he sees evolving: (1) high speed ferries capable of traveling in excess of 30 knots -- a plan must be developed to address the safe operation of these vessels (He feels each vessel should have a qualified licensed radar operator on board); (2) the decrease in affordable dock or pier space requires that barges and other vessels be placed on permanent or semi-permanent moorings (a one-half year federal permit is required for such moorings in federal anchorage areas. There is a need to provide more affordable moorings); (3) problems associated with the increases in recreational vessels and vessel operation -- there are speed limits in certain areas, such as the intercoastal waterway and for vessel waste pumpout facilities (The Coast Guard regulates pumpout facilities but does

not enforce their use); (4) Pier maintenance -- decrepit piers and docks result in obstructions to navigation from breakaways and debris, and vessels breaking loose from degenerating docks and piers (The Coast Guard is not mandated to develop pier maintenance programs. Such programs should be developed, however, at some level of government, according to Lieutenant Commander Kierney.)

Discussion:

New York City has been doing small harbor management on the landside. As an example, special zoning districts in City Island and Sheepshead Bay which support harbor activities were cited. The City is beginning to look at harbor management on the larger scale covered in the presentations. There is new life in the harbor, such as private ferry operations and a projected increase of 5,000 new slips at marinas along the Hudson River. New tours and excursions are developing, which will at some time conflict with commercial port operations. Choke points will have to be managed. The role of the Coast Guard should be examined to see what more is needed regarding revenues and regulations.

The City's Local Waterfront Revitalization Program is shore-based, rather than addressing water-based needs. But the City is beginning to look at water-based activities and needs and the interface of these issues with land-based issues. Land-side development for residential uses in industrial and commercial areas are being proposed, which will lead to conflicts among uses. Land uses should not conflict with or infringe on the operation of water-dependent uses in these areas.

Pollution response times for spills are different for rivers than oceans. In a river and in New York City, an oil spill will hit the shore within minutes, instead of days or hours. The Coast Guard is ready to respond to such spills in New York City. Senator Lautenburgh was paraphrased as saying "If an oil spill hits the shore, we have failed." On-site prevention is the "best" response. There is a risk to transporting oil by water, which should be minimized to the greatest extent possible. The lack of communications and command posts up the Hudson river are weaknesses that must be corrected.

The suggestion was made that much needed sewage treatment plants could be placed on abandoned federal lands such as those at Wright Bennett Field or on islands such a Hoffman, Swinburne and Rikers.

In regard to funding for harbor and coastal management, it was suggested that additional funds could be obtained from pleasure boaters.

It was also suggested that the exercise of "riparian" rights be subject to a fee. Although marinas indicate they are having problems upgrading and staying in business, they should be able to accept reasonable taxes or surcharges for the use of public

waterfront areas. It was recommended that we not confront or approach the industry or individual yards directly to raise such funds except in a modest way. Most yards haven't any large pools of capital. Banks do not look at marinas as real estate ventures; therefore, marina owners cannot borrow on their assets.

Large high powered private vessels are a major problem. There is no requirement for a vessel operator/safety license for the use of private recreational vessels. New York State should take a strong position to require such licensing. New Jersey records vessel violations on an individual's driver's license. There should be mandatory training for vessel operation, safety and "rules of the road." Container and cargo vessels have problems navigating among recreational vessels, especially during the summer, due to large numbers of lobster vessels, recreational vessels, sailboats, and increasing numbers of marinas. There may be a need to require right-angle crossings of channels.

The Vessel Traffic Systems doesn't regulate or control small vessels. Small vessels create the problems among large vessels.

It was indicated that Philadelphia uses City marine patrols as "traffic cops" at major channel crossings to direct vessel traffic, and restricts commercial and recreational vessels to certain time zones to resolve these conflicts. Small communities on Long Island do the same. It was suggested that New York City do the same. In addition, the water surface itself might be "zoned" for specific uses.

In fact, this approach is being discussed in the City Island area. The City is thinking of designating recreational and commercial vessel use channels.

It was pointed out that large vessels have time constraints due to changing tides and depths, and must get by on rising tides. There is a problem meeting schedules in the summer because sailing vessel obstruct their passage.

As to a future use of the harbor by additional cargo vessels, the recycling business is recognized as a growth industry. There are a number of underutilized manufacturing areas, especially in Brooklyn, that could be used for shipping recyclable waste.

The New York City Committee on the Year 2000 is doing more long-term strategic planning. Their first mission (of 14 critical issues) is to address the solid waste problem. In addition, the Port Authority has just formed a task force on that subject.

The discussion became even more lively during a further exchange on the conflict between recreation and commercial craft. There are 72 waterfront parks in New York City. Public access is important to harbor areas, and the harbor itself is an important

open space resource. It was suggested that a "Blueway" equivalent to the Greenway concept should be established for recreational uses. There are conflicts between small sailing vessels, canoes and kayaks, and larger vessels such as tankers and their wakes and "prop" wash; and it is difficult to find sites for sailing lessons. The question was asked as to where might these activities take place, and how might the conflicts be avoided?

It was pointed out that a kayak launching area in certain parts of the harbor where large vessel traffic passes through is ludicrous. If such sites are located near major shipping channels, small vessels such as kayaks would be sucked into a propeller. It was argued that the commercial waterfront is an "endangered species" that must be protected, and that the establishment of a new launching ramp in such areas is an encroachment on traditional maritime waterways.

It was further argued that there are simply certain places where canoes and kayaks shouldn't go. The Hudson River is not a "gentle place" in New York City. Safe areas for such activities should be selected as small craft activities cannot occur everywhere. The physical characteristics and geography at the port make it inappropriate for such small vessels.

On the other hand, it was argued in rebuttal that there is an equity issue at stake, wherein only power vessels will get access and that power vessels must be kept out of areas where hand-powered vessels are located.

It was suggested that certain areas should be set aside for certain uses, but factors such as tides and currents must be accounted for when determining what areas are appropriate for certain uses. The proximity of conflicting operations are also important to consider as at the Battery where canoes almost get run over by the ferries operating in the area.

It was suggested that cleared creeks and similar areas could be used by hand-powered vessels.

## WATER DEPENDENT USES

Panelists:

Edmond Harrison, Director of Public Affairs
Universal Maritime Service

Linda O'Leary, President
Towboat and Harbor Carriers Association of New York/New Jersey

Edward Panarello, Chairperson
New York Coastal Management Program Advisory Committee on the New York Harbor Maritime Industry

Moderator:

Alan Lillyquist, Chief
Project Development Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Edmond Harrison

Mr. Harrison noted that Universal Maritime Service has been operating in the Red Hook Terminal in Brooklyn. Universal had operated piers on the west side of Manhattan, and at Bush Terminal, Erie Basin, Furman Basin, and Green Dock in Brooklyn, All of these facilities are now closed. At its peak, Universal employed 15,000 longshoremen; only 700 are now employed.

The decline in the number of pier locations and employment can be traced to changes in shipping from breakbulk to container cargo, resulting in a need for larger land areas to accommodate containers. New York City did not anticipate this change and was unable to expand its container capacity due to dense waterside development. Thus, a 2,000 acre container port was developed in Port Newark - Elizabeth, New Jersey where land was available and affordable, and where development regulations were more streamlined. When cargo facilities closed in New York, the cargo industry was slow to react, particularly since the longshoremen could journey a short distance to new jobs in New Jersey.

Lack of investment by the Port Authority and New York City in container facilities and infrastructure contributed to industry flight. In 1981, the Port Authority and the City cooperated to develop the Red Hook Terminal to create container capacity and retain some business in Brooklyn. In 1981, 6,000 containers were unloaded; by 1989, the Terminal was serving 20 steamship lines, and unloading 90,000 containers and 200,000 tons of breakbulk cargo.

The Terminal has had two expansions since opening in 1981. It is currently operating above capacity, and a "retooling" of the

facility will be announced in early November to accommodate new demands.

Mr. Harrison credited the new director of the Port Authority's Port Department, Lillian C. Liburdi, with improvements in responding to changing industry needs. An example of the Port Authority's new response, and interest on the part of the Governor, was a grant for Cocoa Port in South Brooklyn. Cocoa Port is expected to handle more than one million bags of cocoa annually by taking business from Philadelphia.

Universal has made a $20 million investment in the Red Hook Terminal. A primary asset of that facility is the Buttermilk Basin which has the deep water (40 feet) that Newark lacks. There is also no need for maintenance dredging. As a result, Red Hook is benefitting from partial unloading of Newark-bound ships that cannot enter Newark fully loaded.

Mr. Harrison closed by citing a primary problem facing water dependent industries: that the public does not realize how much the health of New York is tied to the health of the Port. The public no longer sees New York City's economy as tied to the Port. That perception must change.

Linda O'Leary

Ms. O'Leary stated that the Port is one of the best resources that New York City has. Shallow draft tugs and barges account for 75% of all vessel movement in the Port, and transport bulk goods in a highly efficient and environmentally sound manner. Ms. O'Leary noted that the industry is facing many challenges. It currently has no facilities where vessels can tie up. Piers have been lost due to increased waterfront competition by non-water dependent uses. Property values have escalated wildly because the waterfront is highly desirable for housing and marina uses. This puts much pressure on an industry without a high profit ratio. In addition, relocation is costly.

Recreational boating, which is becoming more prominent in New York City's waters, often conflicts with commercial traffic. Problems develop because recreational boaters often do not know water traffic rules -- they are not licensed mariners. Marinas sited in commercial waters also face problems from the wakes left by large vessels, and may require appropriate breakwater protection.

The industry is also facing financial problems. It is highly regulated and over-taxed. Examples are the petroleum transportation tax, the sales and use tax, and licenses and surcharges. New Jersey does not have a naval transport tax, nor is there a tax on equipment improvements. New York's tax structure does not adequately recognize the contribution of the industry. As a result, New York boats are at a competitive

disadvantage to New Jersey. A blue ribbon panel studied this issue and showed that the taxes on fuel, equipment, etc., do not generate enough revenue to justify the administrative burden.

There are other problems facing the shallow draft industry. Smaller channels and infrastructure are often not well maintained. As a result, vessels must wait for high tides so they can pass through shallow, silted channels. Due to repair problems or lack of owner responsiveness, some bridges don't open, forcing vessels to turn back, thus failing to deliver goods in a timely manner.

Ms. O'Leary noted several other issues facing the shallow draft industry in New York City. These include: (1) a lack of coordination among federal, State, and local governments; (2) a failure to appreciate the contribution of the port to New York City's economy; and (3) a mix of industrial and residential uses on the waterfront, which cannot co-exist because the conflicts are too great. Ms. O'Leary suggested that a nuisance provision to protect water-dependent uses, similar to right-to-farm laws, should be added to the Tort Law.

In summary, there are problems and challenges facing the industry, although industry projections look good into the next century. Tax relief and increased public awareness are important needs.

Edward Panarello

Mr. Panarello opened his remarks by asking, "What is the role of the labor movement in New York Harbor?" Shipping has declined over the last 10-12 years. While some displaced workers from other industries are retrained, seafarers and longshoremen are a different breed. They work with their muscles and find training for job fields, such as computers and retail, difficult. The concern, therefore, is to safeguard remaining water-based industry jobs. The Secretary of State has always recognized this and has created the Coastal Management Program Advisory Committee on the New York Harbor Maritime Industry, which meets often to address the problems of the industry. Mr. Panarello proposed expanding the 1981 Coastal Management Program mandate to give the Secretary of State a stronger role in regulating water dependent uses.

Mr. Panarello noted that the public and private sectors must work together to preserve water related jobs. Examples of cooperative efforts include the AFL-CIO and Department of State collaboration in which the labor organization is providing volunteer help on waterfront revitalization projects. This could develop into a Statewide effort.

Universal Maritime Service's expansion at Red Hook was made a priority by the Maritime Committee which encouraged the Port Authority to move on Universal's needs.

Labor is working with Kingsborough College to develop a unique training program for the children of longshoremen to develop new skills for the industry.

In New York City, efforts should be continued to improve Holland Hook Marine Terminal, Pier 42 on the East River, and the Navy Home Port.

Mr. Panarello then offered recommendations for improving water-dependent industries: water-dependent uses must be protected from nuisance claims; specific areas for the location of water dependent uses should be designated; water dependent uses must be clearly defined to prevent uses like platforming; Local Waterfront Revitalization Programs should be mandatory; and, the the Secretary of State should control and coordinate regulations and dollars that go into the waterfront.

The labor movement can live with recreation and housing on the waterfront, but the base of employment must be maintained. The Coastal Program Advisory Committee should continue to expand its interests and concerns into other parts of New York City. The AFL-CIO would welcome future opportunities to work with the Department of State on new waterfront efforts.

Discussion:

The point was made that any expansion of industry, including the maritime industry, brings with it threats to environmental quality particularly water quality around the harbor. A balance of waterfront uses should ensure that environmental quality is protected. In response, it was stated that industry alone does not bear the sole responsibility for environmental problems - that there is a collective responsibility.

In waterfront areas where the visual quality of industrial areas is poor, buffer areas and other means to screen adverse visual intrusions should be required.

Bringing more cargo and other activities to the Port of New York is important. Another new industry for the waterfront is repair services for recreational boats. As new uses for the waterfront are considered, however, there is the potential for conflicts to develop among residential, recreational, and traditional waterfront uses.

The point of encouraging water dependent industries was contrasted with the Public Development Corporation's plan to locate a truck terminal on Jamaica Bay -- a non-water dependent use. The City is also looking at proposals to use Pier 42 and the South Brooklyn Marine Terminal for non-water dependent uses. Tax incentives were suggested as one way of keeping water dependent industries. Other suggestions included: identify and map suitable areas for water dependent uses; provide a moratorium in identified areas while plans for such areas are

developed; provide greater authority to the State Coastal Management Program to enforce water dependent uses; prepare legislation to address water dependent use concerns for the next State legislature; consider extending the State Environmental Quality Review's designation of Areas of Concern to include water dependent use areas, thereby adding a greater level of review; identify and evaluate economic benefits of water dependent uses for public relations purposes; and give the authority to the Department of State to monitor and coordinate the actions of all governments dealing with water dependent uses and to reject certain uses that are not water dependent.

The State Environmental Quality Review Act procedures were cited as providing a strong opportunity for ensuring compliance with desired waterfront uses. These procedures were said to clearly call for the Coastal Management Program to examine and comment on the consistency of a project -- a strong tool. Further discussion centered on the need to prevent the weakening of the home rule concept which would occur by giving more power to State agency decision making with respect to water dependent uses. It was stated that some communities may need economic development, even if it is non-water dependent.

In response, it was emphasized that while home rule is an important concept, there are State coastal policies covering the coast -- a State resource -- that are delegated to local governments who sometimes ignore them. Changes are needed in both Article 42 and in the State Environmental Quality Review Act to address this problem.

## GROWTH MANAGEMENT

Panelists:

Sylvia Deutsch, Chair
New York City Planning Commission

Richard Rosan, Vice President
Silverstein Properties

Robert Funicello, President
Federated Conservationists of Westchester County

Moderator:

George Stafford, Director
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

Sylvia Deutsch

Ms. Deutsch stated that New York City was proud of its Local Waterfront Revitalization Program. The Program has been largely successful, though there had been lost opportunities due to inadequate resources.

Ms. Deutsch stated that the Koch Administration policy has been to promote a balance between recreation, commerce, housing, industry, and shipping, while planning for new uses. To this end, the City has secured funding, including funds from the Department of State, for a comprehensive land use plan for the waterfront which should be complete in two years.

Ms. Deutsch described five recently completed coastal studies. These are: the Brooklyn-Queens (East River) Waterfront Study, addressing reuse; Water Dependent and Maritime Uses Studies, addressing how much waterfront is needed for uses; Harlem River Study, addressing recreational and residential opportunities in the Bronx area; Manhattan-West Side Land Use Study, encompassing Route 9A (Hudson Drive) from Battery Park to 42nd Street and two to three blocks inland from the river; and the Jamaica Bay Wetland Study, addressing needs for preservation and ecologically sound development of City-owned properties along the Bay.

The strengths of the New York City Local Waterfront Revitalization Program are evident, but more financial support is needed if the program is to remain sensitive to local needs. Without adequate support, it becomes just a paper program.

Under the New York City Local Waterfront Revitalization Program, public access has been mandated on all waterfront projects. The public land use and environmental review processes are mechanisms

used by the City, in addition to the Local Waterfront Revitalization Program, to ensure that local expertise and local review is given adequate expression. Enforcement is a continuing concern, and legislation has been submitted by Mayor Koch which provides greater penalties.

Ms. Deutsch stated that sometimes non-water dependent uses essential for City services can be appropriate for the waterfront. There should be waterfront opportunities for all uses, including residential -- to ensure the dynamism of the urban waterfront environment.

Richard Rosan

Mr. Rosan stressed the need to move quickly to complete the waterfront plan. The private sector, which is going to have to implement much of the plan in a partnership with the public sector, needs predictability. Realistic goals must be set in the plan. Many opportunities for improvements to the waterfront have been lost due to the unpredictable decision-making processes.

The environmental impact statement process must be clarified and time limits put on the review period. The length of time required before construction can begin, includes 3-4 years for rezoning, and 3-4 years for the lawsuits which usually follow. This process scares off potential investors. Developers find it easier to work in New Jersey because New Jersey has streamlined the decision-making process.

Robert Funicello

Mr. Funicello stated that the problems related to waterfront development are well-framed in the report Coastal Waters in Jeopardy, prepared in 1988 by the House of Representatives, Oceanography Subcommittee. The positive view is that the Coastal Zone Management Act can provide the needed long-term planning. The negative view is that the Coastal Zone Management Act doesn't carry sufficient weight.

The Village of Mamaroneck in Westchester County found the following regulatory uncertainties: State agencies such as the Department of Transportation and the Department of Environmental Conservation do not appear to adhere to the Coastal Management Program; there is no evidence of cooperation among State agencies, charged with often conflicting and overlapping goals - when there are disputes, it appears that the agencies are not talking to each other; the State has no cohesive understanding of how the regulatory review operates - in the case of the David's Island development off New Rochelle, there is no time line; and the process is not defined. Public pressure has forced agencies to rethink their positions.

Mr. Funicello stated that the Department of State is considered a fairly responsive agency. The Department of Environmental

Conservation, on the other hand, is narrowly focused and consequently can't see the big picture. Adequate coordination doesn't necessarily require additional money.

Mr. Funicello suggested that enforcement actions be relegated to the Department of Environmental Conservation, then pointed out that several permits in New York City are being challenged, and asked why the Department of Environmental Conservation is issuing such permits without reference to the Long Island Sound Study. He pointed out that Connecticut is requiring reservation of extra land that may be required in the future for nutrient removal.

Mr. Funicello suggested that the Department of Environmental Conservation should be coordinating with the Department of State and considering for acquisition, land such as significant habitats identified by the Coastal Management Program.

Regarding the responses in the conference discussion paper, Mr. Funicello doesn't advocate an added level of government. He suggested instead that the Freshwater Wetlands Law provides a model for regulation. Following that scheme, he suggested that if local government doesn't implement the Local Waterfront Revitalization Program, the authority for the program reverts to the State. A plan is needed at the local level because the State coastal program is not specific enough. However, if no plan is prepared at the local level, the Department of State should prepare the plan.

Mr. Funicello stated that more money is needed to increase local participation. He stated that the coastal resources should be seen as comparable to the Adirondacks, a resource of statewide importance.

Discussion:

There is a need to set aside waterfront areas for open space and recreational use in the future.

Regarding implementation of the New York City waterfront program, as a policy program, the difficulty is often in making a professional judgment based on the policies.

The problem is finding a balance to meet citywide and site specific concerns. To implement the City's Local Waterfront Revitalization Program, the State policies were used and local methodologies developed and then applied to a given site. The State could help develop these methodologies and to help municipalities make judgments, thus avoiding political decisions.

One problem is coordination. The whole review process is not known. There are multiple levels of government involved. The Local Waterfront Revitalization Program can't sufficiently influence the decisions of other agencies, but it can serve as a clearinghouse and provide the needed coordination.

Coordination of approval processes is critical. Trying to schedule the reviews and procedures to get all types of input into a project review can be difficult. Decisions on individual permits should await the availability of data being generated in other forums.

Developers are sometimes faced with ill-informed opposition because the public isn't fully involved in the review process. Some developers are doing outreach to avoid this. The charette is an example of a public involvement process in conjunction with environmental review, used before a project decision is final.

When the word "balance" is used, does that have a connotation that endless development in the coastal zone will occur? There should be reservations about the ability of the coastal zone to absorb all development. Can we recognize that there are limits in the coastal area?

Growth management includes limits, dictated by environmental concerns. In New York City, community boards are used for public involvement, but this can also result in confrontation rather than cohesive planning.

In the review of waterfront development, no one talks about sewage, garbage or power problems. Why do developers have so little regard for infrastructure? How can we work together to avoid lawsuits? Citizens have to intervene to get a project that won't destroy the environment.

Developers have to respond to the public agenda which is infrastructure needs and land use policy.

The costs of running the City are borne by development. The government should be forced to make a decision on where development should go. Planners have a big impact on the face of the City. If you're not happy, deal with the government. The City needs tax dollars. Revenue comes from office and commercial buildings.

What about sea level rise? Is this being considered in planning now?

It was pointed out that Maine and San Francisco require consideration of sea level rise. There is uncertainty as to the speed at which the sea is rising.

Are there any suggestions for improving the predictability and speed of the review process? Has the public or private sector done a model development project?

Developers used to think in three-month time spans. The average review time in the United States is 6-12 months. In New York City, it's 2-5 years. In Japan it's 15 years. If developers know there is a finite process, they can make decisions in an

informed way.

The best projects are those where the rules are clear. Examples are Boston, Baltimore, and Battery Park City. The Battery Park Authority wouldn't have had a plan without private dollars. The energy and money comes from the private sector, but the decisions rest with the public authority.

It was noted that the California Coastal Act requires locals to plan for the coast. Originally, planning was tried on a Statewide level, but it could not be done, so the locals were brought in to do the plans. It is a 3-step process that does not involve a uniform application of State policy, but rather one that addresses local needs within a statewide framework.

The Coastal Commission retained permit authority until the local government had zoning in place. This provided an incentive for locals to take the program seriously.

In California, it was found that changes in tax laws were needed to spur public access donations.

Further, the Coastal Commission only does regulation; it does not take care of existing problems. The Coastal Conservancy was set up to create improved conditions.

Strong legislation that lays down regulatory controls is important for New York. Working through Local Waterfront Revitalization Programs we can avoid California's problems.

In Maryland, there is State legislation requiring one residence per 20 acres as maximum density, without an approved local plan. This forced locals to do planning to save open space. The concept is at the state level, the planning is at the local level.

We need a system of State goals, leaving the locals to work out the details. One problem with the Coastal Management Program is that at the State level, agencies don't recognize the pre-eminence of the program. We need a system to make judgements on whether we can limit growth.

## IN AND OVER WATER DEVELOPMENT

Panelists:

David Paget, Partner
Sive, Paget and Riesel, Professional Corporation

Mitchell Bernard, Counsel
National Resources Defense Council

Thomas Creamer, Chief, Operations Division
United States Army Corps of Engineers, New York District

Moderator:

William Barton, Chief
Project Review Bureau
Division of Coastal Resources and Waterfront Revitalization
New York State Department of State

Presentations:

David Paget

Mr. Paget briefly expressed his concerns over the existing regulatory processes and in particular their lack of specific project review standards. With respect to in and over water development, he thought that these processes are operating on the presumption that projects occurring in water will create adverse environmental effects. He indicated that this presumption, when coupled with statements in opposition to such development, hinders the effectiveness of the processes. In and over water development can, he thought, result in different and profound issues, but the attention which has been paid to the cumulative effects of small projects is being exaggerated for in and over water development projects.

He suggested that opponents to development projects base their objections on the information available and not other premises. Mr. Paget disagreed with the position that equates platforming projects with fill projects, especially when this position is based on the agreement that fill will eventually be needed to support the platform. He claimed that here is no scientific evidence or data to support this argument. Mr. Paget advocated that we should acknowledge a lack of understanding and the uncertainties which may be associated with decision-making on difficult projects.

He expressed his view about the difficulty of organizing a scoping session under current environmental review regulations, and of getting the involved agencies to agree on what is "sufficient information" for decision-making purposes. Mr. Paget suggested that to overcome the present concern over platforming, the following steps should be taken: (1) issue a

permit for a project; (2) assess the data during preconstruction and construction periods; (3) study the project's effects following completion; and (4) apply these results to future projects.

Mr. Paget concluded his remarks indicating that: (1) regulatory agencies should make decisions on the best available information and not require applicants to undertake new data-producing studies; (2) the assessment of cumulative effects should be based upon a hard and reasonable look at reality and not visions of the future; and (3) the Department of State must, as the Coastal Management Program policies reflect, take a balanced approach in its evaluation of waterfront projects.

Mitchell Bernard

Mr. Bernard agreed with Mr. Paget that the issues surrounding in and over water development activities are difficult ones. He indicated, however, that the environmental philosophy supports a radically different approach to the regulatory process. In and over water development, he indicated, must be carefully evaluated, and only after determining that this development will not result in adverse effects on the environment should it proceed.

Mr. Bernard stated that water dependency is a critical factor in deciding on the merits of a project. He indicated that coastal waters should not be treated like a piece of upland real estate. He recommended that at the very least, there should be a presumption against non-water dependent uses which would be sited in and over water. He thought public use and access to the water must be a major factor in the evaluation of such development. He claimed that the waterfront belongs to the public. Mr. Bernard indicated that this position is supported by case and common law. He warned that privatizing open space on the waterfront should be avoided, as well as any projects which will result in the destruction of aquatic habitats. He stated that there is no basis in science which would support the position that habitat losses can be offset by mitigation.

As for studies and other data collecting efforts, he suggested that government be responsible for such activities in order to minimize biases. He claimed that studies conducted by consultants hired by developers often have built-in biases. He also recommended that waterfront plans for New York City are necessary. Finally, Mr. Bernard indicated that the State's coastal policies must be clearly articulated, for many of them are vague and contradictory.

Thomas Creamer

Mr. Creamer indicated that the Coastal Zone Management Act was enacted to address problems in the coastal areas of the nation. Prior to its enactment, he said no one was paying attention to

all aspects of the activities occurring in these areas. He believed the Coastal Management Program sets the tone for what the Corps of Engineers may do by providing guidelines. He claimed that this has made the Corps' job easier when it comes to civil works projects and permit decision-making.

Mr. Creamer expressed his view that regulations do need facts upon which decisions can be made. In some instances, he indicated that public funding is and will be necessary to undertake studies, obtain data, etc. which will be helpful to the decision-making process. The New York State Coastal Program, according to Mr. Creamer, does need more information and data to make its consistency decisions and to better articulate the coastal policies. The Program, he believes, has been given the responsibility to set the tone for future direction in the coastal area.

Discussion:

The discussion portion of this workshop focused mainly upon the panelists' remarks. The views of Mr. Paget and Mr. Bernard pertaining to the regulatory process generated comments on both sides of the issue. The concerns over and need for data also sparked exchange among several participants; all agreed, however, that decisions should be based on good data.

Some comments were directed at the Department of State in terms of: (1) its consistency decision-making responsibility and the apparent "higher authority" note which this responsibility seems to imply; (2) the need to clarify its policies relating to waterfront development so as to provide its "vision" of the waterfront; (3) the need to develop policies which clearly reflect in-water and waterfront needs, issues and standards; and (4) the possibility of overseeing local decision-making, because no one municipality should be vested with the sole authority to decide the fate of its waterfront.

## Public Access and Recreation

Panelists:

Brian R. Smith, Esquire
Associate, Robinson & Cole
Hartford, Connecticut

Barbara Weisberg, Director
Planning, Management and Support
New York City Department of City Planning

Linda Davidoff, Executive Director
The Parks Council

Moderator:

Bryan P. Cullen, Associate Counsel
New York State Department of State

Presentations:

Brian R. Smith

Mr. Smith discussed the Public Trust Doctrine and how it was used by the highest court in New Jersey to define the public rights in the foreshore, including the right of access. As a result, New Jersey municipal beaches were required by the court to be available to all members of the public, regardless of residence. It was indicated that while the New York courts have recognized the Doctrine, they have not been as liberal in declaring open access to municipal beaches.

The United States Supreme Court case of Nollan v. California Coastal Commission was also highlighted. In this case, the Nollans were owners of a dilapidated beach cottage which they sought to tear down and replace with a larger, more modern structure which would block existing views of the ocean from the nearby road. The Coastal Commission granted the necessary permit, but only on condition that the Nollan's grant permanent public access across the dry sand on the ocean side of their property. The Nollans refused, arguing that this was an unconstitutional taking of private property for a public purpose without payment of just compensation. The Court agreed, holding that there must be a substantial rational relationship between the condition imposed in the permit as a result of the landowner's activity and the public purpose sought to be advanced by the condition. Here the court could not find a nexus because the construction in no way affected public access. Significantly, the court would have allowed a permanent public viewing spot on the Nollan property. Mr. Smith cautioned that municipalities should not be terrified into submission when a

developer or permit applicant raises Nollan because the case is actually very narrow, and is not the death knell to regulatory authority it was originally feared to be.

Mr. Smith also discussed codification of the Public Trust Doctrine. He stressed that, as with most common law doctrines, the best route is for the courts to decide cases on an individual basis and to avoid codification. When a common law doctrine is codified, there is a risk that the spirit and history of the law will be lost in the legislative process. Codification could also restrict the court's ability to weigh the full and developing scope of the Doctrine by limiting its review solely to the legislation.

Mr. Smith also discussed General Obligations Law S. 9-103 which limits landowner liability for listed recreational pursuits. He encouraged changes in the statute to limit liability of private owners for injury to members of the public using the land for water related recreation.

Barbara Weisberg

Ms. Weisberg commenced with background information, stating that the New York City Local Waterfront Revitalization Program, adopted in 1982, contains 56 policies, ten of which deal with public access. In fact, many of the recently acquired public access sites were provided in conjunction with the Local Waterfront Revitalization Program consistency review process. The Department of City Planning's land use plans, public policy studies, including a waterfront zoning study underway, technical feasibility studies, and, finally, the recently initiated comprehensive waterfront plan were cited as additional means of expanding waterfront access and recreational opportunities.

Ms. Weisberg stated that, unlike most other jurisdictions, much of the City's waterfront is already publicly owned parklands and natural areas. Because there are insufficient public funds for all desired waterfront acquisitions, the City also employs land use controls to guide private development of open space. She noted that, in an intense urban environment like New York City, the most successful and inviting waterfront public spaces are usually those that integrate residential or commercial uses. Examples from Brooklyn were cited in which the City intervened in public and private developments to insure that public access and recreation facilities were included in the project. She also discussed some of the City's plans to further increase public access and recreation in the Bronx, Brooklyn, and Queens.

Liability issues were among the concerns for which the City would welcome State assistance and guidance. However, requiring public access at all sites receiving erosion control aid would not be relevant in New York City since eligible areas here are already accessible; the problem instead is the lack of sufficient funds to provide erosion control and storm protection.

Linda Davidoff

Ms. Davidoff stated that the Department of State, under Secretary Gail Shaffer, is doing an excellent job of safeguarding the coastal zone. She applauded the Department's determination that the mooring of the prison barge, Bibby Venture, at Pier 54 in Manhattan, was inconsistent with the State's Coastal Management Program, but expressed the opinion that not even the temporary mooring should have been allowed.

She indicated that although New York City's budget is greater than that of India, there are still not enough funds allocated for increasing and maintaining public access and recreation in the City. It is her belief that the only way to retain and attract top quality workers and businesses in the City is to provide superb public open space to compete with what is available to their suburban counterparts. She quoted observers, including Felix Rohatyn, who feel that taxes should be raised to finance the increased open space needs of the City. She commended Governor Cuomo and Office of Parks, Recreation, and Historic Preservation Commissioner Orin Lehman on their respective efforts to increase parklands in New York City.

Ms. Davidoff referred to two excellent articles appearing recently in New Yorker magazine about landscape preservation and the efforts of community groups to create a new waterfront park in Brooklyn Heights. She indicated that there are many existing unused landscapes in the City which could and should be opened to the public. She deplored the construction of high rises which cause perpetual shade in many areas, and recommended more stringent regulatory controls to preserve and create open space. Also recommended was the establishment of trust funds for public land acquisition, gifts of lands, and even the sale of underutilized public lands to generate funds to develop and maintain present open space. To illustrate the level of commitment necessary to preserve and protect open space, Ms. Davidoff noted that a substantial portion of New York City's budget for one year was allocated to the construction of Central Park. She concluded her remarks by asking if we can afford not to invest in amenities at the waterfront which make New York City an attractive and livable place.

Discussion:

Concerns were expressed that the 300 acre public facility at Rockaway Beach was not being used because City schools don't teach swimming; and constant commercial traffic, including oil tankers, discourages use. It was acknowledged that this facility is underused and that there needs to be a greater mesh between creation of parks and pressures to create parks.

Several members of the audience referred to other residential developments in the Rockaways and questioned the lack of review by the Coastal Management Program. These individuals stated that

the Department of State should have more clout and review all projects affecting the coast. They also stated that the Department should have enforcement powers to be effective in coastal management. The weak authority the Department has over communities with approved Local Waterfront Revitalization Programs to merely revoke approval for non-compliance was also mentioned. One commentator indicated that the public must assume some risk in development, especially for public access and recreation. Another stated that municipalities should have control over development and should not be liable for mishaps in public parks and recreation areas. Comments were also made that the City should sell some parklands to the highest bidder who is willing and able to accommodate environmental constraints and imposed conditions. A final point was that publicly funded or aided projects should make adequate provision for public access and recreation.

DISCUSSION PAPERS

## INTRODUCTION TO DISCUSSION PAPERS

The following discussion papers address nine issues facing part or all of the State's coastal areas. They were prepared in advance of the five conferences and made available to conference participants. Their purpose was to provide groundwork for discussion in the workshop sessions by presenting some ideas and proposals for improving the management of our coastal resources. The discussion papers are:

- Growth Management
- Public Access and Recreation
- Coastal Hazards
- Water Dependent Uses
- Scenic Areas
- Coastal Non-point Source Pollution
- Harbor Management
- In/Over Water Development
- Significant Coastal Habitats

## GROWTH MANAGEMENT

### I. Problems

Growth and development of coastal areas in New York State is increasing, paralleling a nationwide trend. Over 65 percent of the State's 17 million residents live in coastal communities and, despite a declining or steady State population growth rate, population and development in the coastal regions has increased substantially. In 1986, over 11,500 new residential units were proposed in the coastal area of the Hudson Valley. The expansion of Fort Drum in Jefferson County is expected to add over 14,000 people to the Eastern Lake Ontario and St. Lawrence region. Development on Long Island is proceeding at an unpredecented rate.

The pressures on coastal resources of these growth and development trends are potentially damaging. In New York Harbor and other densely developed waterfronts, new developments are proposed to encroach on and extend over coastal waters with possibly serious effects on local aquatic environments. Water dependent industries are being forced by development pressures to relocate--in some instances, out of state. New development is also increasing degradation of coastal resources--resources which provide the ecological, recreational, and aesthetic base for our State's commercial and sports fishing economies and the increasingly important tourism economy. In addition to direct physical and environmental impacts, these trends adversely impact the quality of life in coastal communities and for all New Yorkers who use and enjoy coastal areas.

To reject out of hand all growth and development in New York's coastal area is not a valid alternative. There appears to be an increasing recognition among government policy makers, developers, and environmental interests that accommodations can be made to satisfy each group's objectives for coastal areas and, in the process, maintain the integrity of coastal resources without their depletion or degradation. The challenge is to find the right mixture of techniques for managing growth and development to ensure that this takes place.

### II. Existing Management

In passing the Waterfront Revitalization and Coastal Resources Act (WRCRA) in 1981, amended in 1987 to include inland waterways, the State Legislature found that: it is in the interest of the people of the state that coordinated, comprehensive policy and planning for preservation, enhancement, protection, development, and use of the State's coastal resources take place to insure the proper balance between natural resources and the need to accommodate the needs of population growth and economic development.

To achieve this purpose, the WRCRA set forth coastal policies, reflecting the diversity and interrelationships of the State's interests in the coastal area, that required State agency actions within the coastal area to be "consistent" with the State's coastal policies. Together with federal consistency requirements of the U.S. Coastal Zone Management Act and provisions for local government participation through the preparation of Local Waterfront Revitalization Programs (LWRP), it was believed that the State consistency process would eliminate the need for additional statutory authority, while ensuring that any major action affecting the use and development of the State's coastal resources would comply with the intent of the WRCRA.

After seven years' experience, however, major development activities are undertaken in the coastal area that escape the existing regulatory/consistency net entirely or that are subject to only a limited review of a minor project component, thus seriously undermining the intent of the WRCRA and the effectiveness and credibility of the coastal program. Contrary to the assumptions of the WRCRA, major development activities are occurring in the coastal area without any, or only partial, State or federal regulatory approval and/or coastal consistency review--a loophole increasing in size as developers design projects and undertake activities, such as land subdivisions, in ways that avoid or at least limit the applicability of coastal management requirements.

When development is regulated by the State, often the jurisdiction is limited by the purpose of the regulatory program or to a component of the proposed development or activity. For example, a residential condominium project may be situated or intentionally designed so that while it must be reviewed for potential impacts upon an adjacent wetland, its effects upon the visual environment, adjacent historic property, nearby public recreational facility or abutting water dependent activity are not factored into the regulatory decision.

The State's approach to implementing its coastal policies to manage growth is reactive. Whether a major development in the coastal area needs to comply depends not on the potential of the proposed activity to hinder or advance the State's coastal policies but on the chance that it requires an approval from a state or federal agency. LWRPs provide the only means of ensuring that major development activities in the coastal area comply fully with the state coastal policies. However, local government adoption of LWRPs is voluntary.

Moreover, should a local government approve or undertake a project that is clearly inconsistent with its LWRP, the State's only recourse is to withdraw approval of the LWRP, resulting in no penalties on the locality and none upon the proposed project.

From a regional perspective, there is little opportunity for the State to encourage or discourage coastal growth and development

to accommodate the needs of neighboring communities. Effects of municipal or statewide decisions often adversely affect other interests in a region. Where a decision affects people or resources in more than one locality, regional action is necessary. The Coastal Program has no mechanism to establish regional priorities. Similarly, local government, like one small property owner, has only so much waterfront to oversee and protect; there is little opportunity to plan for its use within a regional context.

## III. Responses

The following provide possible responses to foster improved growth management in coastal areas:

Mandate coastal communities to prepare LWRPs as a means of ensuring that land use standards will be complied with in all coastal developments.

Create greater fiscal incentives for local governments to prepare LWRPs by conditioning State infrastructure investment on the existence of approvable LWRPs.

Develop additional minimum standards for coastal development and activities that can be incorporated into State coastal policies.

Establish regional priorities through intermunicipal cooperation to provide a more detailed basis for regulating coastal development and to develop a more rational public and private capital investment strategy.

Increase State regulatory authority over major coastal development.

Increase compliance with existing coastal policies by requiring the State coastal agency to certify all State actions in the coastal area.

## PUBLIC ACCESS AND RECREATION

### I. Problems

The underlying concept of the public's right to gain access to the shoreline is founded in the Public Trust Doctrine. This doctrine dictates that open tidal waters, underwater lands, and the lands immediately adjacent are held by the State in trust for the benefit of the public. The Doctrine, based on Roman and English common law, has been repeatedly upheld by the U. S. Supreme Court, protecting the public's use of the highways of the sea and adjacent land. The State's shorelines provide an invaluable natural resource which should, to the greatest extent possible, be made available to all Americans.

Demand has been increasing for public shoreline recreational facilities across the State's coast. An increasing number of waterside communities have economies based, in part, on a seasonal tourist trade because greater affluence and more leisure time are attracting ever-greater numbers of people to New York's coast. Yet, much of the State's shoreline is devoted to private residential, commercial, and industrial uses which block access to the shore. Where public rights of way to the shore do exist, the shore itself is often restricted by private beach or "no trespassing" signs.

While there are numerous State and local facilities for access, many State parks that are located in urban areas suffer from over-crowding while many other facilities are open only to local residents. Furthermore, many public parks are not conveniently served by public transportation, preventing them from being fully used by those without private transportation.

Although there are coastal lands available for public access and recreation, increased development pressures have caused land values to escalate to a point where government has difficulties funding the purchase of additional waterfront recreational lands. Pollution of coastal waters also affects public access and recreation uses. While water quality has improved significantly in many areas in recent years, pollution from uncontrolled non-point sources still adversely affects recreational fishing, boating, and swimming.

Several other factors may limit public access to the shore: (1) along the State's urban waterfronts, decaying, deteriorated and abandoned commercial and industrial structures and facilities present opportunities for developing safe and enjoyable public access and recreation facilities but lack of funding limits implementation, and (2) the increasing residential and commercial development of coastal areas is often accompanied by the efforts of developers and existing residents to prohibit public access to the shore.

## II. Existing Management

A number of federal and State programs operated through the Departments of State; Environmental Conservation; Transportation; and the Office of Parks, Recreation and Historic Preservation provide for the purchase of lands and the implementation of a variety of public access projects in coastal areas. However, funding for additional recreational and public access facilities is limited and has been for the past decade. Furthermore, no statewide or regional plans exist to ensure that these limited funds are spent in such a way as to maximize the achievement of State coastal policies.

Current efforts to increase public access through regulatory means are focused on the Department of State's Coastal Management Program. This program is responsible for implementing coastal policies which call for protecting, maintaining, and increasing coastal public access and recreation. Implementation is primarily accomplished through the Coastal Management Program's federal and State consistency review authorities to prevent actions, including a variety of types of development, that would thwart the intent of the policies.

## III. Responses

Given the many limitations on increasing public access and recreation there are only two alternatives to pursue to improve public access to coastal lands. One is through regulation of coastal lands and waters in order to require public access as development occurs. The second is by creating a source of revenue for the public purchase of coastal lands and development of facilities.

Amend the site plan review and subdivision review statutes to allow for the establishment of local trust funds to acquire lands, easements, or other interests in lands for public access purposes.

Broaden the limitation on liability for injury and damage for those who allow public access on their property for coastal or waterfront related recreation.

Amend the scope of eligible users and uses under a conservation easement.

Require the dedication of public access as a condition of public funding for shoreline stabilization and nourishment projects.

Codify the common law Public Trust doctrine to recognize, protect, and expand the scope of public rights in public trust lands.

Prepare statewide and regional coastal public access plans. This proposal would provide for improved interagency coordination and

comprehensive planning in order to maximize the use of available funds from a variety of sources to ensure that projects: (1) are not duplicative of existing or other planned projects; (2) are based on user-demand and regional demands; (3) are of appropriate size and scale; (4) are compatible with surrounding uses and appropriately sited; and (5) reflect statewide and regional priorities.

Increase public access and recreation by establishing a Trust which has the power to receive gifts, bequests, or devises of real or personal property; to transfer real property to state or local agencies or non-profit organizations; and to dispose of real or personal property. This proposal would enable the State, for example, to respond quickly and efficiently in negotiations with developers regarding mitigation of the development's impact on coastal resources that might involve transfers of interests in natural areas under threat, public accessways to the water, or in some instances, cash that could be used to increase public access in a nearby area.

Establish a program of limited technical and financial assistance to encourage property owners to grant easements for public access.

Educate local officials regarding the opportunities and limitations on the conditions of requiring public access in conjunction with development.

## COASTAL HAZARDS

### I. Problems

The beaches, dunes, barrier islands, bluffs, wetlands and floodplains of New York's coastal area provide critical recreation, economic and environmental benefits. In addition, they protect coastal development from flood and erosion hazards. All too often, however, these natural areas are improperly developed or altered so they can no longer effectively protect upland areas, thus endangering not only poorly sited buildings but also inland development. The danger to structures built in these areas will only increase as global warming accelerates sea level rise. The need for improved management of these areas is critical as development pressures build. Although there is an understanding of the general nature of the dangers of flooding, erosion, storm surges and sea level rise, there is a lack of data as to how severe the impact of these future events will be at specific locations.

Development pressures continue to build in these areas as: (1) coastal areas grow faster, with sixty-five percent of New York's residents now living in coastal cities and towns and coastal tourism increasing; (2) more people choose to live in hazard areas because these are sites of great beauty; and (3) government continues to subsidize and encourage development through insurance subsidies, extensions of infrastructure and services, and tax laws which allow deduction for property losses which are inevitable. While there have been some programs designed to discourage development in hazard areas (for example, the opportunity for buyouts under the Flood Insurance Program and prohibition of federal infrastructure expenditures in undeveloped coastal barriers), these efforts are inconsequential compared to the problems.

On Long Island's South Shore alone, over $10 billion in private structures is estimated to be at risk, a threefold increase since 1980; there is a parallel increase in public financial liability for post-storm relief, clean-up, and shoreline stabilization; natural protective features are lost or seriously weakened due to disturbances of coastal processes; and costly development continues to occur in inappropriate locations.

### II. Existing Management

Six major State programs implement New York's core coastal flooding and erosion policies. The Department of State, through the New York Coastal Program, reviews federal actions for consistency with the State's coastal policies, including hazard policies. DOS also administers the Local Waterfront Revitalization Programs which coastal communities can opt to prepare and which must include coastal hazard policies. The Department of Environmental Conservation has responsibility for

the State's Floodplain Management Program, and the Coastal Erosion Hazards Areas Act and also assists in the construction of erosion and flood control projects. The Disaster Preparedness Commission is responsible for coordinating the State response to coastal disasters such as hurricanes.

Municipal governments have key roles in the management of hazard areas by virtue of their power to control land use and manage development. They can develop regulations to reduce or eliminate the exposure to hazards through: limits on densities and uses, subdivision controls, transfer of development rights, special low impact zoning designations, overlay district performance standards, and similar devices. Many of these tools have been employed by local governments to implement the hazard area policies of their LWRPs.

The Department of State is also undertaking two projects which address this issue. One is an analysis of government costs and revenues caused by development in hazard areas, and the impact on those costs and revenues of optional responses to erosion and flooding, given various levels of sea level rise. The second is the development of a comprehensive plan for the management of development in the hazard areas of the South Shore of Long Island. This project is examining the most appropriate land uses and determining the most realistic strategies for responding to the hazard conditions. A major purpose of the latter is to establish a basis for a coordinated strategy among all levels of government to cope with the hazards.

In managing development in hazazd areas, governments have a range of management tools at their disposal. Among these are regulation of development, expenditure of public funds on structural solutions, hazard areas land acquisition, and financial subsidies or taxation to encourage or discourage development in hazard areas. In employing any of these tools, careful consideration must be given to: (1) public costs and benefits, (2) effects on nearby coastal areas, (3) coordination with adjacent or other levels of government, and (4) knowledge of those implementation strategies most appropriate for the coastal processes occurring in a given area of the coast.

**III. Responses**

To improve the management of the hazardous areas along the State's coast, a series of responses are proposed for consideration:

Reduce the financial liability of the public sector for storm damage costs, increase the public's knowledge of the risks of owning property in hazard areas, toughen construction standards, limit public subsidies, and change tax policies which promote inappropriate development in coastal areas.

Improve control of government investment which leads to increased development in coastal hazard areas. For example, changes in current approaches could be formulated which would prevent government from virtually inviting developers to build in hazard areas by providing water and sewer lines and other infrastructure. Similarly, the funding by government of erosion control structures could be banned unless comprehensive management plans are in place to guide how the protected area is to be used in the future.

Discourage the repeated rebuilding of structures destroyed or damaged because of their location in coastal hazard areas, by providing incentives or disincentives to the owners to ensure the removal or relocation of these structures.

Determine which land in coastal hazard areas is appropriate for no development, limited development or fortification, taking into account existing natural systems and environmental and man-made resources. Consider establishing acceptable uses for coastal hazard areas so that, for example, public recreational and water dependent activities such as commercial fishing facilities would be allowed, but residential and non-water dependent commercial and industrial uses would not be permitted, thus ensuring the possibility of economic and social use of certain areas.

Determine under what circumstances government might obtain wholely, or through easements, interests in coastal hazard areas to prevent their development in inappropriate ways, how lands should be given priority for purchase, and what types of management plans should be formulated for such acquisitions.

Improve data collection on the nature and extent of risk in coastal hazard areas. Although the general processes are known, little data have been collected on a continuous and uniform basis for the entire shore. Such data are necessary for determining and designing the most cost effective strategies.

Eliminate all public subsidies for development in hazard areas. Subsidized insurance, tax write-offs for loss, and public infrastructure investment would need to be eliminated if those choosing to develop in hazard areas are to assume the risks associated with their decision.

## WATER DEPENDENT USES

### I. Problems

New York State's shoreline is increasingly subject to competing demands for limited waterfront space. This has had the effect of placing great pressure on water-dependent users, such as the commercial fishing, water-borne cargo, and ship repair industries, to yield to residential and other non-water dependent activities. Water dependent uses cannot function when geographically removed from the waterfront.

Communities are making complex judgments about whether to give higher priority to commercial or recreational water-dependent industries, whether to encourage uses that will expand employment, or whether to cater to higher income residents and tourists who are attracted by waterfront amenities. Most communities have not as yet developed an adequate understanding of the economic forces at work and do not have a clear strategy for dealing with these forces so that water-dependent uses are preserved and the best advantage is taken of local waterfront circumstances.

Water-dependent uses are, in general, economically viable and capable of continuing, although certain types of these uses face different pressures. Marinas are surviving and growing while commercial fishing, fish processing, and boat repair operations are struggling more against pressures from developers of non-water dependent-uses.

It has become clear that relying on market forces will not ensure continuation of water-dependent industries. The private market is not designed to take into account unanticipated demand by and for water-dependent activities not presently located in the community; it responds only to demand by current users. Once waterfront land is turned over for water-enhanced or non-water-dependent uses, the loss of land for water-dependent uses is irreversible, or nearly so.

### II. Existing Management

Federal, State, and local laws and programs interact to affect the continuation of water-dependent uses along New York's coastline. Each level of government differs in its activities and priorities, thus creating imbalances in the public framework which supports water-dependent uses.

The federal government enacted the Coastal Zone Management Act of 1972 to encourage and assist the states in developing management programs to "preserve, protect, develop, and, where possible, to restore or enhance the resources of the nation's coastal zone." The Act established goals to be addressed by state coastal management programs. One of the goals was that the states should

give priority consideration to "coastal dependent uses." In addition, the states are to develop orderly processes for siting major facilities such as those for fisheries development, recreation, ports, and transportation.

The federal government also attempts to protect water-dependent uses through the U.S. Army Corps of Engineers (COE). The COE regulates dredging of privately maintained channels and anchorages, the construction of structures and discharge of fill in the coastal area, and other work in coastal or tidal wetlands.

At the State level, the New York Coastal Program is implemented by Article 42 of the Executive Law and accompanying regulations. The Act is the only State law which directly attempts to address the issue of protecting and encouraging water dependent uses.

The Coastal Program also incorporates other State laws and programs affecting water-dependent uses. These include the State Environmental Quality Review Act, Protection of Waters Act, Tidal Wetlands Law, Freshwater Wetlands Law, Water Pollution Law, and Marine Resources Law. Unfortunately, at present there is no coordinated regional assessment of the existing range and location of water-dependent uses, no indication of projected need on a regional basis and no subregional analysis of locational considerations. As a result, there is no base of information to use in resolving conflicts which can arise between environmental laws and development proposals.

In the end, the federal and State governments are restricted in their ability to promote water-dependent uses because of their limited influence on local government decision making. Nonetheless, they do have some indirect influence. One method involves the use of available funding as an incentive or a disincentive for particular projects. Another is the granting of rights to underwater lands. This can be particularly effective in waterfront areas because the State owns underwater lands which private developers often need for in-water structures like docks, aquaculture platforms, oil transshipment piping, and similar uses.

Local Waterfront Revitalization Programs (LWRPs) were established because of local government's superior capacity to implement land use objectives, primarily through enforcement of zoning and other related land use laws. In addition to regulation, local governments can invest in waterfront property or impose taxes which act in various ways as incentives to continue certain water-dependent uses or as disincentives to discourage conversion to non-water-dependent uses. More specifically, with regard to land use regulation, cities, towns, and villages in New York are given the power through various pieces of State authorizing legislation to adopt zoning laws, subdivision regulations, and site plan review procedures which promote orderly development.

Zoning is an extremely flexible tool which can be tailored to respond to various local circumstances. Communities can institute local waterfront districts which are either exclusive for water-dependent uses or non-exclusive with certain criteria to promote water-dependent uses. A variety of other zoning techniques, including waterfront setbacks, height and bulk limitations, and development exactions, can be used in conjunction with exclusive or non-exclusive zones. Other regulatory techniques, such as overlay zones, floating zones, and mixed use development review standards, can also be employed. These regulations, which are enforced on the upland, provide critical support to water-dependent uses because they can be effectively used to reduce competition among uses, eliminate or reduce land use conflicts, and ensure adequate land and support services for new or expanding uses.

Local governments prepare Local Waterfront Revitalization Programs on a voluntary basis, and this leads to uneven protection of water-dependent uses. In those communities preparing LWRPs, there is also variation in land use sophistication, political will, and enforcement capacity so that there is no consistent protection for water-dependent uses across jurisdictions. In some communities, there is a reluctance to provide for more industrial water-dependent uses; in others, no recognition is given at all to these uses.

**III. Responses**

Protect water dependent uses against claims that they are incompatible with non-water-dependent uses.

Designate specific areas of the coast as water-dependent use districts and give priority to such uses in these sectors.

Address new development trends, such as platforming, by more clearly defining the characteristics of a water-dependent use.

Provide greater technical assistance to local officials on the economic value of water-dependent uses and the legal techniques available to protect them.

Establish a State program similar to that which allows for the real property taxation of agricultural land to be based on value of the land for agricultural use only to allow property tax assessments on water-dependent use to be based on their value as water-dependent uses.

Make LWRPs mandatory, thus assuring that each local government will establish appropriate provisions for water-dependent uses.

Maintain existing locations and determine new locations for developing additional fish and seafood processing facilities on Long Island.

Ensure the sufficiency of local infrastructure support for the fish and seafood industry by taking steps to make better use of existing infrastructure and developing new infrastructure.

## SCENIC AREAS

### I. Problems

The scenery of New York's coastal areas is a prime reason why so many people choose to live, work, and visit there. But threats to the quality of this scenery are coming from the increasing pace of commercial, industrial, and residential development activity. For example, in the Hudson River Valley, between 1984 and 1987 there has been a significant increase in projects proposed or constructed in the six counties north of New York City in a narrow band on both sides of the river. The majority of these projects were high density townhouses and high rise units which produced an increase in housing units proposed or constructed from 4,000 in 1984 to over 11,500 in 1986. From 1984 to 1987, requests to construct high rise residences of 10 stories or more were made in nine communities.

The pace of development has also increased in the east end of Long Island. For the five east end towns, the annual number of building permits issued for single family homes jumped over 80% from 1980 to 1988. Likewise, the Great Lakes and St. Lawrence River shorelines are faced with increases in intensive strip residential development and facilities to accommodate tourism.

The problem of development pressures is exacerbated by the absence of documented knowledge of scenic values. While the most spectacular coastal scenic areas are familiar, there are other dramatic vistas of the State's shores. Yet, until recently, virtually none of these areas had been formally analyzed in a comprehensive fashion in terms of scenic values, and impacts of development.

There is also a lack of knowledge of proper siting and design techniques and their application by both government and the development community for various types of projects. Often, what might be an inappropriate project as originally proposed, may be made acceptable through changes in location, site, scale, or design. Without knowledge of the relevant methods and of the means to apply them, scenic resources will continue to be at risk from insensitive development.

Government may find it desirable to buy scenic coastal areas to give them maximum protection. However, public funds are limited and land prices are escalating. With limited funds, it is essential to determine priorities for purchasing scenic coastal lands. Innovative acquisition techniques also must be exercised that would allow for protection of scenic resources at a lower cost than traditional full purchase of land.

## II. Existing Management

As required by the Executive Law, Article 42, the Department of State has begun the process to identify, evaluate, and designate Scenic Areas of Statewide Significance (SASS), the most scenic coastal areas in the State. With limited federal funds, the Department of State has developed a methodology to identify and evaluate these scenic areas and is applying it in the Hudson River Valley coastal area, where areas will be proposed for designation as SASS.

Once these areas are designated as SASS by the Secretary of State, they will receive the full benefit of the Coastal Management Program's federal and State consistency review powers to prevent actions that may impair the integrity of the area. Also, where State designated scenic areas are located fully or partly within the boundaries of an approved Local Waterfront Revitalization Program, additional protection will be available from the municipality's local laws and ordinances.

The Department of Environmental Conservation is authorized under Article 49, Protection of Natural and Man-Made Beauty, to designate scenic sites, areas and highways in the State and to develop programs, policies and activities for their preservation and enhancement. Thus far, three coastal sites in the Hudson River Valley have been so designated. There are no regulatory requirements in the Act and it depends for its enforcement on laws which local governments may choose to adopt.

## III. Responses

Complete the identification and designation of Scenic Areas of Statewide Significance in the remaining coastal areas outside of the Hudson River Valley.

Establish a technical advisory program to advise local governments on development siting and design considerations for Scenic Areas of Statewide Significance and in locally important scenic areas.

Prepare a plan to determine priorities for purchase of the most scenic coastal areas. With limited public funds available for purchase of lands to protect scenic resources, it is essential to determine priorities for purchase of identified scenic resources. It is proposed, therefore, to prepare a plan to determine these priorities

## COASTAL NON-POINT SOURCE WATER POLLUTION

### I. Problems

A primary concern in coastal areas is to manage land and water uses so that no activity, or combination of activities, lowers water quality to the degree that other uses are preempted or important natural resources are degraded. There are two general sources of water pollutants--point and non-point. A point source is defined as a discharge from a discrete, identifiable location, such as a pipe. By contrast, non-point sources are diffuse and often hard to trace to their origins, such as pollution from surface water runoff.

As point source discharges have been reduced, an increasing percentage of coastal water quality degradation can be recognized as emanating from non-point sources. According to the U. S. Environmental Protection Agency, non-point source pollution is now the cause of impairment of coastal estuaries more often than point sources. On Long Island, stormwater runoff is the predominant cause of fecal coliform bacteria contamination and results in the closure of shellfishing and bathing areas. Failing and inadequate individual sewage disposal facilities in homes along the St. Lawrence River is a major component of water quality deterioration.

Non-point source pollution is pervasive in New York's coastal area, and the levels of such pollutants come, in part, with accelerating population growth and development. Non-point sources include stormwater runoff, agricultural runoff, leaching from individual septic systems and solid and hazardous waste disposal sites, construction activities, and mining. In addition to land activities, water use sources such as vessel wastes, marinas, mooring areas, and dredging, contribute significantly to water quality degradation. While research on this issue is difficult, State, regional, and local officials generally agree that, without additional control of non-point pollution sources, water quality problems in coastal and nearshore waters will increase.

### II. Existing Management

For several decades, New York has addressed the need to protect and improve water quality. Such efforts have emphasized the regulation of pollution, primarily point sources, through the State Pollution Discharge Elimination System (SPDES), bulk storage regulations, sewerage adequacy regulations, and regulations of waste disposal facilities. The State also provides funds for the construction and operation of sewage treatment facilities, the clean up of spills in coastal waters, and the remediation of hazardous sites.

Unlike point source discharge problems, non-point pollution is intimately tied to land use and can be largely corrected through changes in land management activities. While the federal and State governments operate several regulatory and assistance programs to address non-point pollution, the regulation of land use activity in New York State is vested at the local level. While municipalities can evaluate non-point sources of pollution and develop land use and development regulations to reduce water quality degradation, most do not enact laws and/or lack expertise in their implementation. Regulations to address non-point pollution may include zoning to minimize densities and establish setbacks, subdivision regulation, overlay districts along particular waterbody upland areas, site plan review, construction standards to minimize on-site erosion, on-site sewage disposal standards, regulation of certain water use activities and similar measures.

In addition to provisions for regulating new non-point sources of water pollution, communities can regulate existing activities to reduce pollutants. Such regulations may apply to lawn care related instructions, road de-icing, litter control, and the maintenance of stormwater collection devices.

Governments' exercise of their powers to spend for public purposes can also affect non-point source pollution. For example, the acquisition of coastal wetlands, and substandard lots, and investment in small construction projects such as retention ponds, can alleviate non-point pollution impacts.

One of the more significant roles for State government is to support and reinforce local governments as they make decisions that affect water quality. The Department of State administers the Local Waterfront Revitalization Program under which coastal communities have the option of preparing and implementing waterfront programs to address coastal issues, including water quality. Using Coastal Program funds, the Department of State (DOS) is also sponsoring two regional projects regarding non-point source pollution. A pilot project on two streams flowing into the Great South Bay, Long Island, is focusing on relationships between the water quality of the streams and Bay and the specific land uses in the stream corridors. On the St. Lawrence River, DOS in conjunction with Save the River, Inc., is undertaking a project to address the effects of failing or inadequate individual septic systems on riverine water quality. Through such efforts, State and local governments can develop the understanding of relationships between land and water uses and water quality upon which they can base public policy decisions, improve land use practices, and integrate approaches to solve complex non-point source pollution problems.

## III. Responses

The complexity of non-point source pollution, in terms of the number of polluters and types of activities that cause pollution,

requires an approach fundamentally different from the top-down regulatory dominated and large scale construction programs to control point source pollution in the coastal area. The following present possible responses to non-point source water quality problems:

Integrate the experience and management tools of the State's Coastal Program and Local Waterfront Revitalization Programs with the State's water quality programs to alleviate non-point pollution in coastal waters.

Provide technical and financial assistance to encourage local governments to establish and implement management practices to prevent or reduce pollution of coastal waters by land and water uses.

Develop more stringent standards for State coastal policies to reduce non-point pollution in coastal waters, with specific legal authority, regulations, and strategies to implement them at the State and local government levels.

Provide financial assistance for the construction of small scale capital projects to reduce non-point pollution.

Encourage public and private land acquisition as a means to meet water quality objectives in the State and local coastal management efforts.

Expand local government regulatory capabilities over land and water use activities to better enable them to control non-point sources (e.g. regulation of vessel discharges and impact fees).

Expand coastal program project review jurisdiction to enable government review of projects outside the coastal area that affect coastal waters.

Undertake projects and develop non-point source monitoring capabilities to more clearly establish the relationship between specific land and water uses and water quality problems.

## HARBOR MANAGEMENT

### I. Problems

Small traditional harbors enliven New York's coastal area from Long Island to Lake Erie. These harbor areas developed as a result of certain natural conditions which were conducive to a rich mixture of uses, such as commercial fishing, boat building and repair, ferry services and marinas. This combination of natural and cultural features has given small harbors their distinctive character and contributes much to the economic strength and attractiveness of harbor communities.

Unfortunately, in recent years the balance among uses in small harbors has been shaken. These areas have become the center of intense development interest which is tending to push out the more traditional uses. Recreational boating activity, in particular, has risen dramatically. The result is conflict--conflict between recreational boating and commercial shipping; recreational and commercial fishing and shellfishing; and recreational boating and certain shorefront recreational activities such as swimming. The conflict and congestion has led to demands for better control of navigation and more rational allocation of space in harbor areas.

The rapid growth of development in small harbor areas also threatens to impact and degrade the very resources upon which this development depends. The water quality in these harbors is deteriorating and fish and wildlife habitats are being threatened. The historic resources which give harbor areas their distinctive maritime character are also being lost. Ultimately, the degradation and loss could be so severe as to jeopardize the economic benefits which harbor communities have long enjoyed.

Up to now, those responsible for managing harbor areas have simply reacted to demands for space and safe navigation. For years, communities have been developing and enforcing comprehensive land use plans but equivalent attention has not been given to the water surface, water column, underwater lands and foreshore of harbor areas.

Local government is in some ways limited in its ability to rectify harbor management problems. Despite extensive governmental authority over water bodies, there is a great deal of jurisdictional and regulatory overlap and confusion as well as gaps in the authority exercised by local, county, State and federal government.

### II. Existing Management

At the State level, several agencies are involved in activities related to harbor management. The Department of State provides technical assistance and funds to local governments for the

preparation of Local Waterfront Revitalization Programs and has recently supported preparation of several harbor management plans. The Office of Parks, Recreational and Historic Preservation (OPRHP) reviews and approves local vessel regulation laws to ensure that local requirements for speed, vessel operation, mooring and anchoring are in accord with the State Navigation Law. OPRHP also administers funds for local enforcement of the Navigation Law. The Department of Environmental Conservation is responsible for approving permits to place buoys in coastal waters and has some authority to regulate docks and other in-water structures as part of its enforcement of the Tidal and Freshwater Wetlands Laws and the Stream Protection Law. The Office of General Services controls and disposes of underwater lands held in the public trust.

**III. Responses**

Provide greater educational and technical assistance to local officials on existing local authority to regulate and manage harbor activities.

Through appropriate State legislation, clarify and strengthen local government powers to regulate harbor activities including docks and water surface uses, so that their level of authority is comparable to their authority to regulate land use. Since there is substantial state interest in the management of water bodies, the exercise of any new local government authority should be subject to State approval.

Authorize local governments, through State legislation, to develop and implement comprehensive harbor management plans. As with land use plans and regulations, harbor management plans would begin by documenting and analyzing existing conditions. What are the patterns of underwater land ownership? Are there unique habitat or shellfishing areas which could be endangered by harbor activity? Where does the harbor channel need dredging? Is there a shortage of public dock space? Are there adequate pump-out facilities for recreational boats? Are there adequate upland parking facilities for marinas? Is there a demand for shorefront recreation facilities such as swimming beaches and hiking trails? What local laws are on the books to govern harbor activities? Who is attempting to enforce harbor regulations?

Harbor management plans would go on to set long-range objectives for harbor use. Such local plans would elaborate on key objectives already outlined in the State's Waterfront Revitalization and Coastal Resources Act and in the New York State Coastal Management Program. These objectives include: protecting environmental resources, supporting water dependent enterprises, preserving the public trust in and access to the foreshore and underwater lands, and retaining the traditional character of small harbors. The plans would establish the basis for reaching these objectives by: allocating desired uses; making specific recommendations for such matters as future

dredging activities and development of public recreation facilities; and setting standards and design guidelines for a variety of facilities including docks, piles, floats, navigation aids, walkways and upland parking. The plans might include suggested zoning revisions, a new harbor management law and/or a law creating a harbor management commission or similar entity to oversee implementation of the plan.

Establish a reliable Statewide funding mechanism, through an appropriate user fee, for the preparation of harbor management plans and for their enforcement and administration.

Codify the common law Public Trust doctrine to recognize, protect and expand the scope of public rights in public trust lands to increase the availability of harbor resources to the general public.

Provide for direct State regulation of all major in-water structures.

## IN/OVER WATER DEVELOPMENT

### I. Problems

For many people, a location at the water's edge is the most favored. The high price of shoreline real estate and the mounting number of proposals for developing the waterfront testify to this popular appeal.

In urban areas of the State, however, most of the waterfront is already developed. To maintain the link to the water's edge, property owners and developers are seeking alternative methods to "create" new buildable waterfront land. One method has been to place fill in the adjacent waterbody. The Battery Park City development in New York City represents one version of this method. More common representations of this approach are the filling in of waterbodies to create building lots that will meet zoning standards and to expand the usable space of existing waterfront properties.

Over the years, regulatory agencies have become less receptive to development proposals involving the placement of fill in nearshore waters. In response, developers have sought other construction techniques that have a number of social, economic and environmental consequences that were not anticipated when existing regulatory programs were devised.

One proposed alternative is to construct new development on top of platforms which extend out and over adjacent waterbodies. Several platform developments have been proposed in New York City. Elsewhere in the State, the proposals are of smaller proportions. Often, waterfront property owners seek approval to construct decks of varying dimensions over coastal waters for a variety of water and non-water related purposes.

Another alternative to gain space for additional waterfront activities is to use a floating vessel moored to a pier or dock. Houseboats are the most common form of this method, but, over time, other uses have adapted their activities to a floating facility, including restaurants, museums, prisons, and heliports.

A third alternative is the use of existing piers to house new residential and other land related activities. In some areas of the country, developers are allowed to reconfigure existing piers or decks to meet their needs, as long as the total reconfigured deck size does not exceed that which originally existed.

These methods for creating new or adding to existing waterfront areas raise several concerns. One objective of New York's Coastal Program is to facilitate the siting of water dependent uses. Many waterfront developments which propose to use fill, platforms, or floating structures are not of a water dependent nature and, therefore, may limit the achievement of this

objective. These methods of waterfront development result in encroachments upon coastal waterbodies which in turn may have negative effects: the loss or impairment of nearshore habitats; the loss of tidal and freshwater wetlands; the alteration of water flows which may cause increased flooding, erosion, and sedimentation; interference with the public use of the water surface; possible limits of access to and along the shoreline; blocking or limiting views of the waterfront from the existing shoreline and structures; and water quality impacts caused by stormwater runoff and other pollutants emanating from the development activities. Finally, as with any new development, there may be effects of in/over water development on existing public facilities and services, such as increased traffic congestion and other demands upon the existing infrastructure.

## II. Existing State Management

The Department of State, through the consistency provisions of the Coastal Zone Management Act of 1972, has authority to review proposals involving fill, platforms, or floating structures, which will be undertaken, approved, or funded, by a federal agency, and to review certain State actions. Generally, in reviewing these actions, the Department of State recommends that alternative upland locations be sought for non-water dependent uses in or over water. Further, a problem potentially exists regarding floating structures depending on whether or not the mooring of the structure is deemed by the U. S. Army Corps of Engineers to be permanent or temporary. If the latter, the Corps may decide that the mooring is not subject to its authority, in which instance, the federal consistency requirements would not apply.

The Department of Environmental Conservation may have regulatory control over such projects through the Tidal and Freshwater Wetlands Acts, the Protection of Waters Act, and the Section 401 provisions of the federal Clean Water Act. These tools, however, are not applicable in all situations or may have limited applicability to a proposed development.

The Office of General Services may also play a role, because it has jurisdiction over much of the underwater lands in the State. The use of these lands often requires an easement or lease from OGS.

## III. Responses

The following provide possible responses to improve regulation of in/over water development in order to minimize possible social, environmental, and economic impacts:

State policy on the use of coastal waters and lands adjacent to such waters should be more clearly articulated. Only water related activities should as a rule, be sited in or over coastal waters.

Determine the generic impacts of platform structures upon aquatic environments and the uses of coastal waters. Based on this information, require all in/over water structures above a certain size to obtain a State permit, regardless of the type of activities for which they are necessary.

Determine under what circumstances, if any, non-water dependent activities could be appropriate when sited in or over coastal waters.

Determine under what circumstances in-water structures are acceptable (whether or not for water dependent uses) and when they are beneficial or detrimental, both from environmental and use concerns. Based on this information, identify additional regulatory requirements, as needed.

## SIGNIFICANT COASTAL HABITATS

### I. Problems

Significant habitats for fish and wildlife are located in the highest number and greatest diversity at the interface of land and water. Along the state's coastal area, they include discrete nesting sites, freshwater and tidal wetlands, large embayments and tributary streams, and unique ecological sites, such as Lake Ontario's freshwater dunes, the deepwater trenches of the Hudson River, and forested coastal uplands on eastern Long Island. 190 areas have been formally designated as Significant Coastal Fish and Wildlife Habitats. Damage to these habitats would result in the loss of fish and wildlife and a further degradation of the ecological value and health of the State's and nation's coastal resources.

Fish and wildlife habitats face problems of considerable proportions. They continue to be threatened by encroachment, fill, dredging, point and non-point source pollution, sedimentation associated with development and use of all-terrain vehicles, and loss of productivity in shallows and flats as the result of heavy boat traffic. Further problems arise because of the failure to treat the most important habitats as sanctuaries, but rather as opportunities for development by public as well as private entities.

Finally, consistent habitat protection standards are not generally available, making it difficult to avoid making arbitrary regulatory decisions. In addition, biologists from and even within various resource agencies may not agree on appropriate measures for protection of a species or a specific area. Many times disagreements seem to be based not on biological principals, but on the perceived need to use the resource or on extreme and unnecessary protection measures. This state of confusion and diffuse responsibility makes the protection of designated habitats difficult at best.

### II. Existing Management

The Department of State provides a strong regulatory program which is well suited to provide habitat protection. Currently, the Department has the ability to deny actions that would harm or alter a designated significant fish and wildlife habitat through the review of federal actions.

In addition to the Department's already functional review process of private development and federal actions, the New York Coastal Program addresses another source of habitat destruction -- inappropriate public use. Through the Department's advisory role to State agencies, and more importantly, through the Department's Local Waterfront Revitalization Program efforts, public use of these sensitive areas can be controlled. Local governments, with

local zoning control and ownership of many sensitive areas, are critical components of the Department's effort to achieve habitat protection. Local Waterfront Revitalization Programs, prepared at the Department's direction, must address use of significant coastal fish and wildlife habitats.

The Department of Environmental Conservation implements a number of environmental laws that indirectly provide some protection for important habitats. Wetland laws, both tidal and freshwater, protect designated wetland areas and their associated values. These laws are, however, largely directed towards protection of wetland vegetation. Protection of fish and wildlife within vegetated wetlands is many times only an incidental benefit of protection of the wetland itself. Since many important species are not wetland dependent, no protection of these species or their habitats results from wetlands laws. Endangered species law protects the individuals of a listed species. Direct harm and harassment of listed species are actions prohibited under this law. Once the species is not present in the habitat, perhaps due to seasonal migration or life stage requirements, no protection is afforded the habitat even though its need for the species' existence clearly remains essential.

**III. Responses**

Indirect impacts of development should be better addressed by regulatory agencies. For example, marina proposals should take into account the increase in boat traffic which might be induced in a nearby aquatic habitat. This type of problem could be accomplished through the preparation and use of guidelines.

Local governments should be encouraged to use their land use management powers to deal with indirect impacts on habitats.

Protection and management plans for coastal fish and wildlife habitats should be prepared and implemented at all appropriate levels of government.

A mechanism should be developed to provide for coordination of the currently fragmented actions of agencies' habitat ownership and regulatory responsibilities.

Major educational efforts should be directed at resource managers and regulatory decision makers at all levels of government.

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