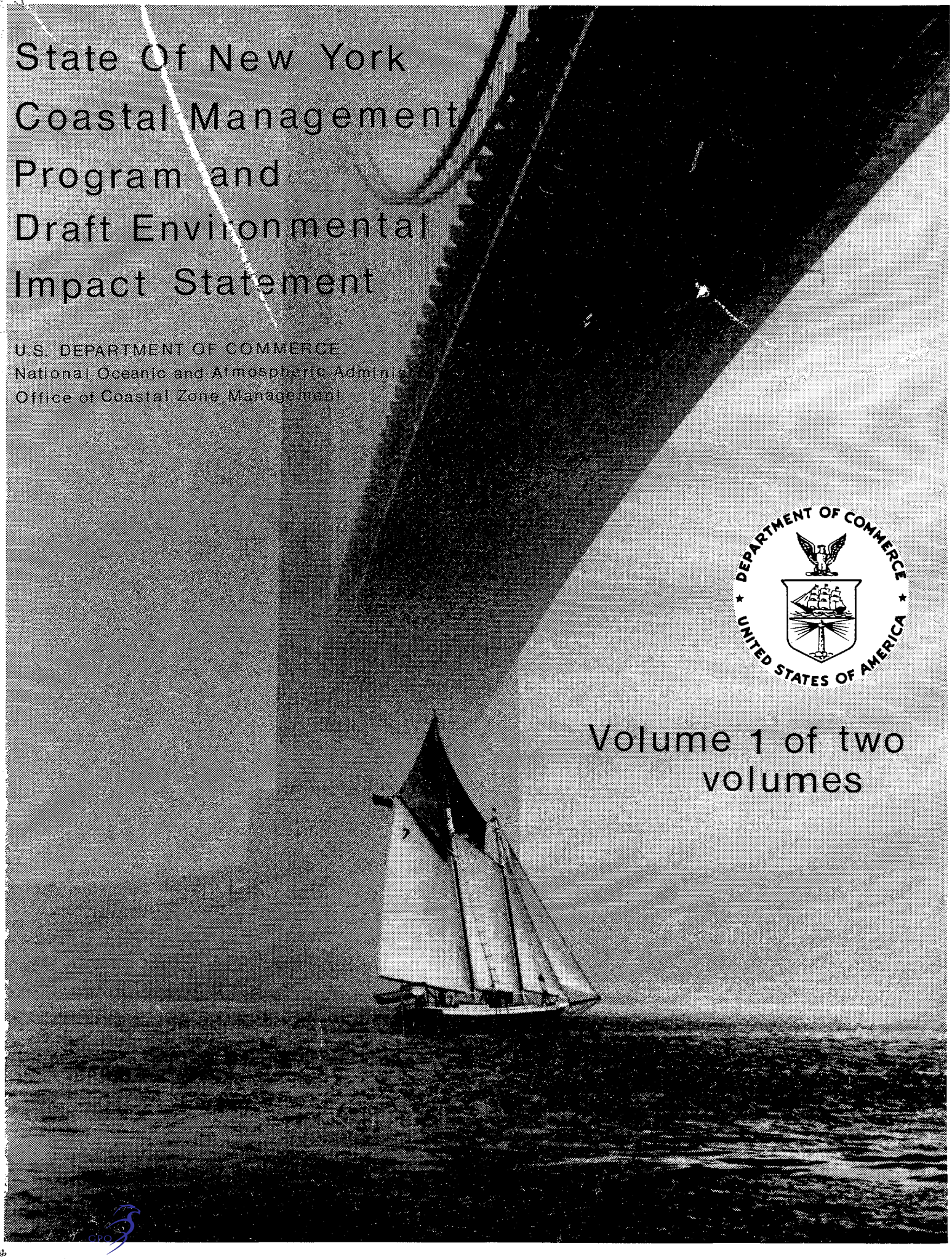
State Of New York Coastal Management Program and Draft Environmental Impact Statement

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



Volume 1 of two volumes

UNITED STATES DEPARTMENT OF COMMERCE

DRAFT ENVIRONMENTAL IMPACT STATEMENT

AND THE

PROPOSED NEW YORK COASTAL MANAGEMENT PROGRAM

JUNE 1982

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
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Prepared by:

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DESIGNATION: Draft Environmental Impact Statement

TITLE: Proposed Federal Approval of the New York Coastal Program

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

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

APPLICANT: State of New York, Secretary of State

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

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Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235 (202/634-4126)

STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, N. Y. 12231

BASIL A. PATERSON
SECRETARY OF STATE

April 30, 1982

Mr. William Matuszeski
Assistant Administrator
Office of Coastal Zone Management
United States Department of Commerce
Washington, D.C. 20235

Dear Mr. Matuszeski:

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

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

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

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

Sincerely,

Basil A. Paterson

Basil A. Paterson

Enclosure

APPENDICES

VOLUME ONE
NEW YORK STATE LEGAL AUTHORITIES - DRAFT REGULATIONS AND GUIDELINES

Page

APPENDIX A - DRAFT REGULATIONS AND AMENDMENTS

Department of State draft Consistency Regulations. . . . 613

Department of Environmental Conservation draft State Environmental Quality Review Act amendments for Purposes of Executive Law, Article 42 627

Department of Environmental Conservation draft regulations to implement the Shoreowner's Protection Act . . 629

Department of State draft Local Waterfront Revitalization Development and Approval Regulations. 657

APPENDIX B - GUIDELINES FOR LOCAL WATERFRONT REVITALIZATION PROGRAMS 661

APPENDIX C - FEDERAL-STATE CONSULTATION AND PLAN COORDINATION 735

APPENDIX D - EXCLUDED FEDERAL LANDS 737

VOLUME TWO
NEW YORK STATE LEGAL AUTHORITIES - EXISTING LAWS AND REGULATIONS

APPENDIX E - EXISTING LAWS PURSUANT TO WHICH REGULATIONS HAVE BEEN DRAFTED AND EXISTING REGULATIONS WHICH ARE PROPOSED TO BE AMENDED

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

State Environmental Quality Review Act, and existing Department of Environmental Conservation Regulations . . 7

Shoreowner's Protection Act. 37

Page

Section 9 - Special Federal Program Requirements. 325

. National Interest 326
. Uses of Regional Benefit. 331
. Federal Consistency . . . . . 335.
. Public Participation. 350

Section 10 - Management Program for New York City. 357

. Introduction. 359
. Boundaries. 363
. Organization and Implementation 372
. Waterfront Policies 380
- Issues. 381
- Policies. 427
. Special Revitalization Areas. 489
. Appendix A: Major Statutory and Regulatory Provisions 503
. Appendix B: Future Approaches. 541

PART III - ALTERNATIVES TO THE PROPOSED ACTION 551

PART IV - AFFECTED ENVIRONMENT 575

PART V - ENVIRONMENTAL CONSEQUENCES. 581

. Environmental Effects 581
. Institutional Effects. 586
. Economic Effects. 587
. Development Effects 590
. Energy Effects. 590
. Social Effects. 591
. Effects in New York City. 592

PART VI - AGENCIES CONSULTED 597

PART VII - LIST OF AGENCIES AND ORGANIZATIONS RECEIVING COPIES OF THE DEIS 601

PART VIII - DOCUMENT PREPARERS 605

TABLE OF CONTENTS

Page

PART I - OVERVIEW

Section 1 - Summary of the New York State Coastal Management Program 3

Section 2 - Changes the Program Will Make. 5

Section 3 - Federal Coastal Zone Management Act. 6

Section 4 - Cross Reference to 306 Program Requirements 10

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

Section 1 - Introduction 13

Section 2 - Coastal Regions, Resources and Problems of New York. 17

. Marine Coast of Long Island and New York City. 17

. Hudson River Estuary 24

. Great Lakes and St. Lawrence River 26

Section 3 - Coastal Boundaries 31

. Boundary Criteria. 32

. Special Accommodations 34

. New York State Coastal Area. 35

Section 4 - Program Management 43

Section 5 - Coastal Issues 63

Section 6 - Coastal Policies 114

Section 7 - Planning Processes 301

Section 8 - Special Management Areas 315

. Identification and Selection 315

. State Parks. 316

. Local Waterfront Revitalization Programs . . 319

APPENDIX F - ADDITIONAL NEW YORK STATE LEGAL AUTHORITIES

Tidal and Freshwater Wetlands Acts and regulations. . . . 47

Energy Law. 109

Public Service Law, Articles VII and VIII. 117

Summary of Other Legal Authorities. 205

Miracle Mile Associates, v. DEC.
430 F. Supp 2nd 440 (July 10, 1980) 223

NOTE TO REVIEWERS: Volume Two, Appendices E and F, will not reprinted for review with the Final Environmental Impact Statement (FEIS) and therefore should be retained as reference.

Individuals receiving copies of the Draft Environmental Impact Statement (DEIS) will receive copies of the FEIS only if specifically requested, or if they have comments on the DEIS.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

June 4, 1982

Dear Reviewer:

In accordance with the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969, we are enclosing for your review and consideration the draft environmental impact statement prepared by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce, on the proposed New York Coastal Zone Management Program.

Any written comments or questions you may have should be submitted to the contact person identified below by July 26, 1982. Also, one copy of your comments should be sent to me in Room 5813, U.S. Department of Commerce, Washington, D.C. 20230.

CONTACT PERSON

Kathryn Cousins
North Atlantic Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Telephone: 202/634-4126

Thank you for your cooperation in this matter.

Sincerely,

Joyce Wood

Joyce M. T. Wood
Director
Office of Ecology and Conservation

Enclosures

NOTICE TO READERS

1. Joint Federal, State public hearings will be held on the New York Coastal Management Program and Draft Environmental Impact Statement (DEIS) on:

   Monday, July 12, 1982, at 2:00 p.m.

   General Donovan State Office Building
   Hearing Room 1
   125 Main St.
   Buffalo, New York

   Tuesday, July 13, 1982, at 2:00 p.m.

   Legislative Office Building
   Hearing Room A
   State Street
   Albany, New York

   Wednesday, July 14, 1982, at 5:30 p.m.

   Hearing Room G
   6th Floor
   270 Broadway
   New York, New York

   Comments or presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five minutes. No verbatim transcript of the hearings will be prepared, but the hearings staff will record and summarize the comments. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS).

2. Section 1506.2 of the Council on Environmental Quality Regulations for Implementing the National Environmental Quality Act (40 CFR Parts 1500-1508) requires Federal agencies to cooperate with State and local agencies to reduce duplication between NEPA and comparable State and local requirements. This proposed action and DEIS has been jointly prepared with the assistance of the Office of Coastal Zone Management, the New York Department of State, and the New York City Department of City Planning. Therefore, this DEIS has been written and widely distributed to meet the requirements and purposes of the New York State Environmental Quality Review and the New York City Environmental Quality Review procedures.

3. This two volume DEIS is lengthy but it could not be avoided because it contains the New York Coastal Management Program and the New York City Waterfront Revitalization Program along with relevant laws and regulations. The actual alternatives and environmental consequences sections are not lengthy so readers are encouraged to review these two sections and use the Table of Contents to review other parts which are of interest or concern to them. Volume II, which consists of laws and regulations will not be duplicated and distributed in the FEIS so readers are urged to retain Volume II if interested.

4. Individuals and organizations receiving copies of the DEIS will NOT automatically receive copies of the FEIS unless specifically requested, or unless they have commented on the DEIS.

ILLUSTRATIONS

LIST OF TABLES

Table		Page
1	Legal Authorities Essential to the Implementation of New York State's Coastal Management Program . . .	56
2	Federal Activities and Development Projects Likely to Directly Affect New York State's Coastal Area . .	342
3	Toxic Problems Areas in New York City.	412
4	Solid Waste Disposal Facilities (Landfills) in New York City.	419
5	Shorefront Access in New York City	494

LIST OF FIGURES

Figure		Page
1	Application of Boundary Criteria	38
2	Application of Boundary Criteria	39
3	Application of Boundary Criteria	40
4	Application of Boundary Criteria	41
5	Map of New York State Coastal Area	42
6	Map of New York City Waterfront Revitalization Area.	370
7	Jurisdiction Chart	371
8	Consolidated Edison Power Plants in New York City . .	402
9	Oil Company Pipeline Routes.	404
10	Bulk Oil Storage Facilities in New York City/Map . .	405
11	Bulk Oil Storage Facilities in New York City/List. .	406
12	New York City: Erosion and Flood Hazard Areas . . .	492
13	Areas of Particular Waterfront Significance.	502

PART I - OVERVIEW

I. OVERVIEW

1. Summary of the New York State Coastal Management Program

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

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

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

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

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

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

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

New York City has already been developing a local program. The proposed program can be found in Part II, Section 10 of this document.

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

2. Changes the Program Will Make

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Federal Coastal Zone Management Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. CROSS REFERENCE TO PROGRAM REQUIREMENTS (306)

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

Requirements	Regulations	New York Coastal Program
Sec. 306(a), which includes the requirements of Sec. 305:		
305(b)(1): Boundaries	923.21-923.34	Part II. Section 3
305(b)(2): Uses subject to management	923.11	Part II, Sections 4,6,8
305(b)(3): Areas of particular concern	923.21-923.23	Part II, Section 8
305(b)(4): Means of control	923.41	Part II, Sections 4,6,7.8;Appendix A
305(b)(5): Guidelines on priorities of uses	923.21	Part II, Sections 6,8
305(b)(6): Organizational structure	923.46	Part II, Section 4
305(b)(7): Shorefront planning process	923.24	Part II, Section 7
305(b)(8): Energy facility planning process	923.13	Part II, Section 7
305(b)(9): Erosion planning process	923.25	Part II, Section 7
Sec. 306(c), which includes:		
306(c)(1): Notice; full participation; consistent with Sec. 303	923.3, 923.51 923.55, 923.58	Part II, Section 9; Part VI; Appendix D
306(c)(2)(A): Plan coordination	923.56	Appendix D
306(c)(2)(B): Continuing consultation mechanisms	923.57	Part II, Section 4
306(c)(3): Public hearings	923.58	Part II, Sections 1,9
306(c)(4): Gubernatorial review and approval	923.48	
306(c)(5): Designation of recipient agency.	923.47	Part II, Section 4
306(c)(6): Organization	923.46	Part II, Section 4
306(c)(7): Authorities	923.41	Part II, Sections 4,6; Appendix A
306(c)(8): Adequate consideration of national interest	923.52	Part II, Section 9
306(c)(9): Areas for preservation/restoration	923.22	Part II, Section 8
Sec. 306(d), which includes:		
306(d)(1): Administer regulation, control development; resolve conflicts	923.41	Part II, Section 4
306(d)(2): Powers of acquisition, if necessary	923.41	Part II, Sections 4,6; Appendix A
Sec. 306(e), which includes:		
306(e)(1): Technique of control	923.42 -923.44	Part II, Sections 4,5,8; Appendix A
306(e)(2): Uses of regional benefit	923.12	Part II, Section 9
Sec. 307, which includes:		
307(b): Adequate consideration of federal agency views	923.51	Part VI; Appendix D
307(f): Incorporation of air and water quality requirements	923.45	Part II, Section 6

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

SECTION 1

INTRODUCTION

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

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

The first establishes the boundaries of the Coastal Area within which the Program applies.

The second describes the organizational structure to implement the Program.

The third provides a set of statewide policies enforceable on all State and Federal agencies which manage resources along the State's coastline.

New York State's Coastal Management Program

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

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

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

Optional Local Waterfront Revitalization Programs

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

Public Participation

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

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

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

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

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

Program Development

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

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

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

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

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

Hudson River Valley - prepared by the New York State Department of State.

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

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

SECTION 2

COASTAL REGIONS OF NEW YORK: RESOURCES AND CONCERNS

Introduction

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

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

Marine Coast of Long Island and New York City

Long Island

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Offshore, a potential for additional pollution exists with Outer Continental Shelf oil exploration and related activities. Based on United States Geological Survey estimates, there is an 81% chance of one to four spills of greater than 100 barrels over the life of North Atlantic field operations. Tankers using the Nantucket to Ambrose traffic lanes could endanger the Island's barrier beaches as well.

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

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

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

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

New York City

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hudson River Estuary

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

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

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

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

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

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

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

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

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

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

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

Great Lakes - St. Lawrence Region

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3

COASTAL BOUNDARIES

Introduction

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

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

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

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

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

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

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

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

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

Boundary Criteria

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

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

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

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

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

4. Include any specially designated management areas. These comprise all identified and designated tidal and fresh-water wetlands, State parks along the shore, and areas for which a local waterfront revitalization program has been approved by the Secretary of State.

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

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

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

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

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

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

Special Accommodations

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

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

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

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

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

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

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

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

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

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

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

New York State Coastal Area

Landward Boundary

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

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

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

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

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

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

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

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

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

Seaward Boundary

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

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

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

Mapping

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

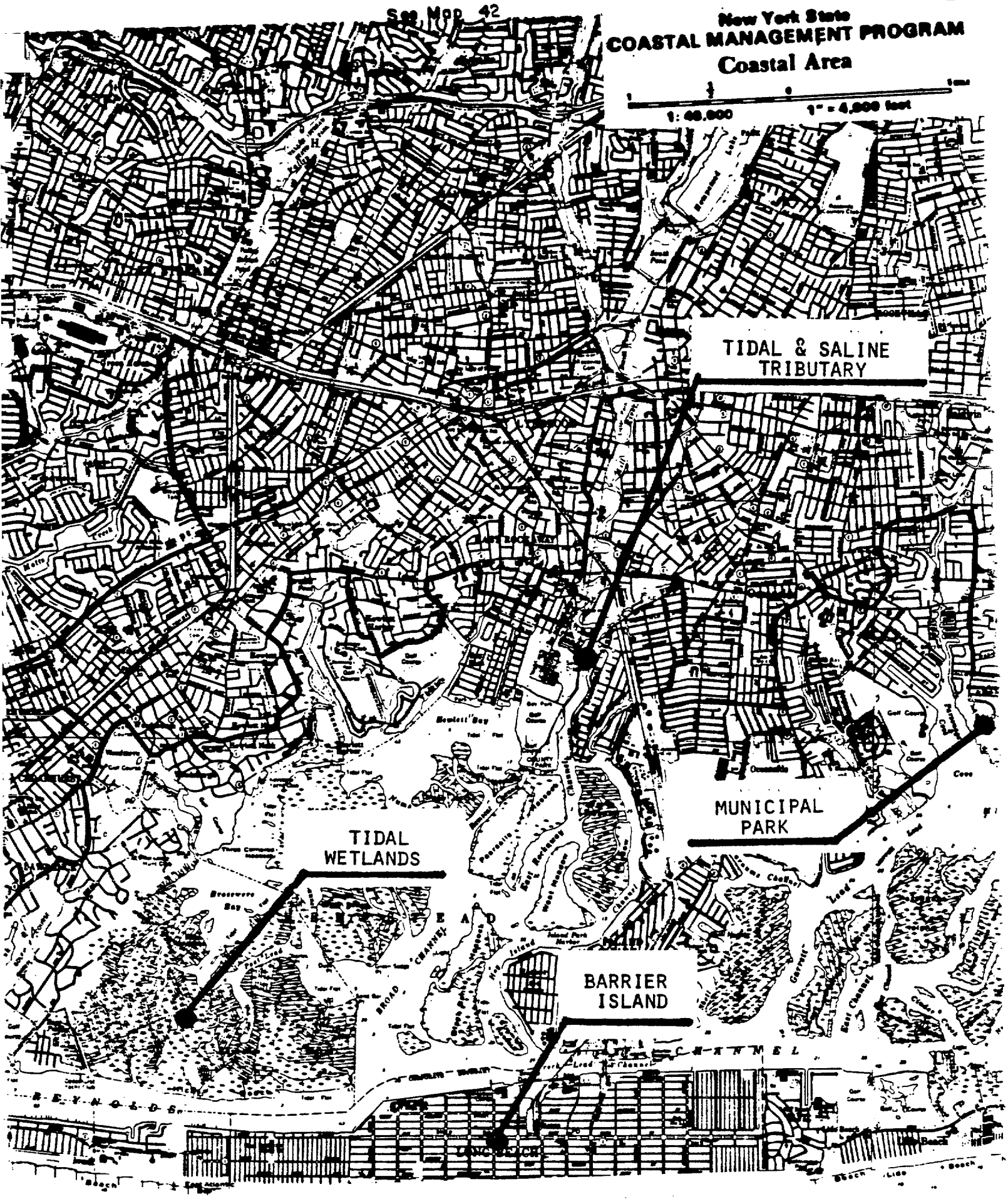

FIGURE 1 APPLICATION OF BOUNDARY CRITERIA

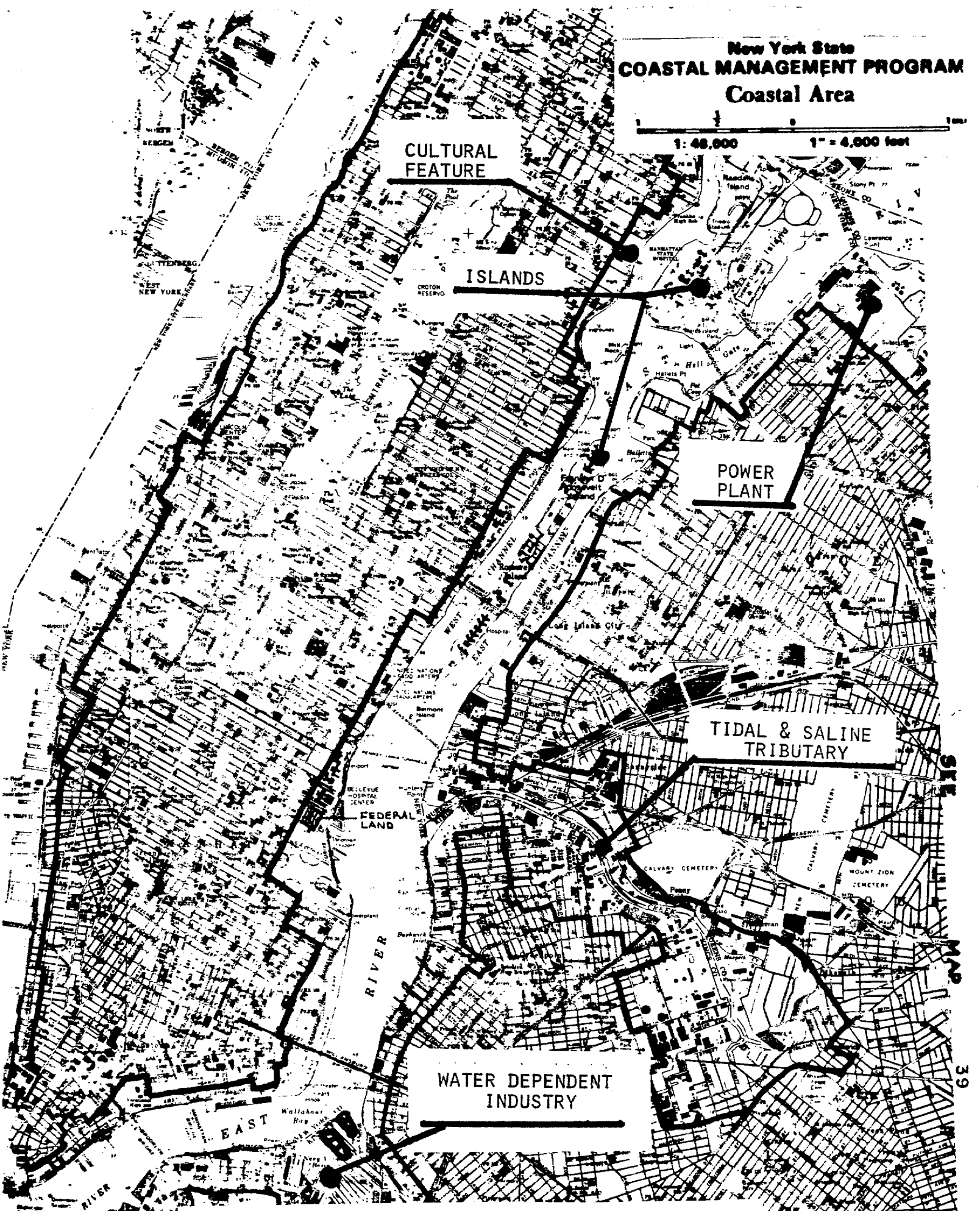

FIGURE 2 APPLICATION OF BOUNDARY CRITERIA

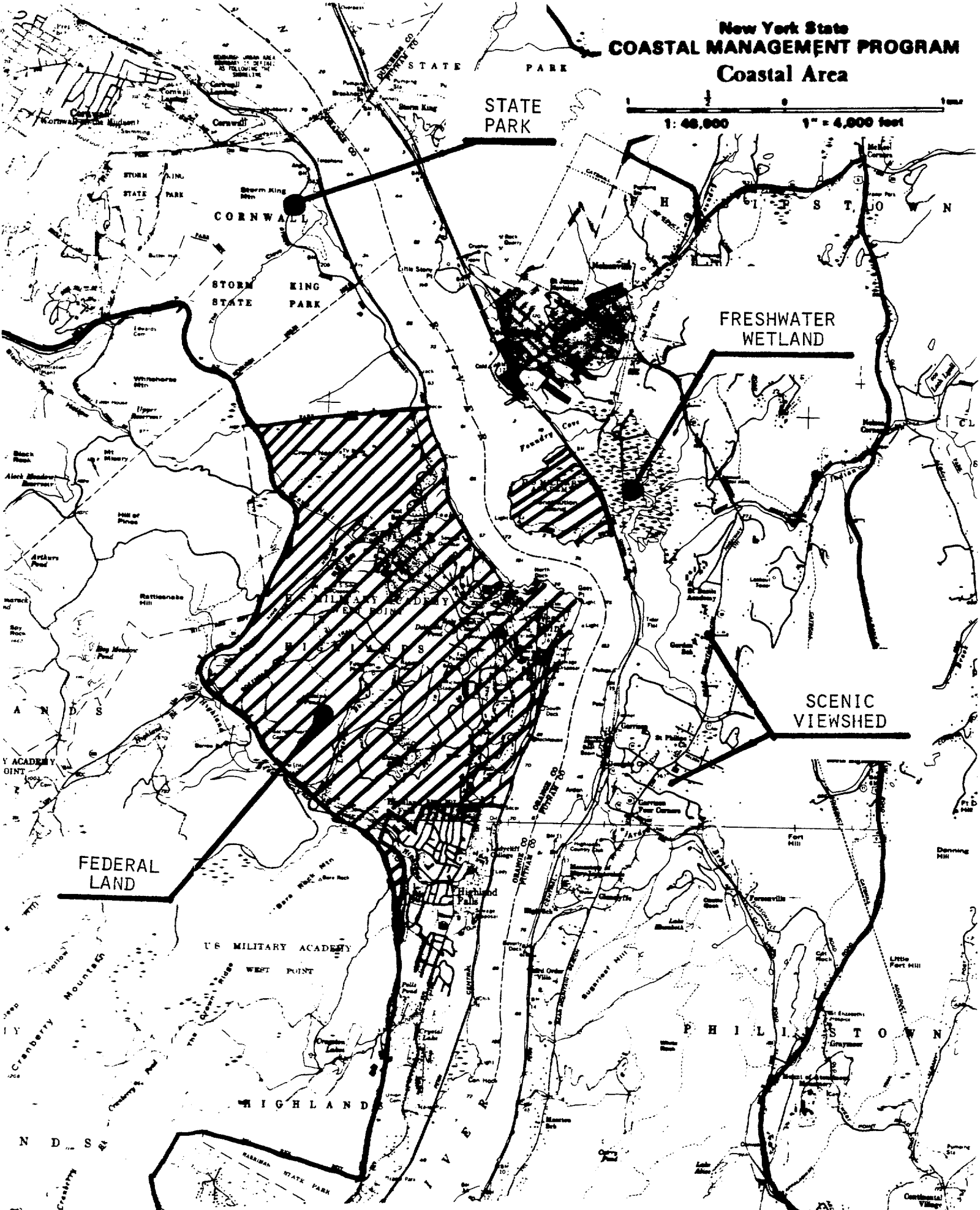

FIGURE 3 APPLICATION OF BOUNDARY CRITERIA

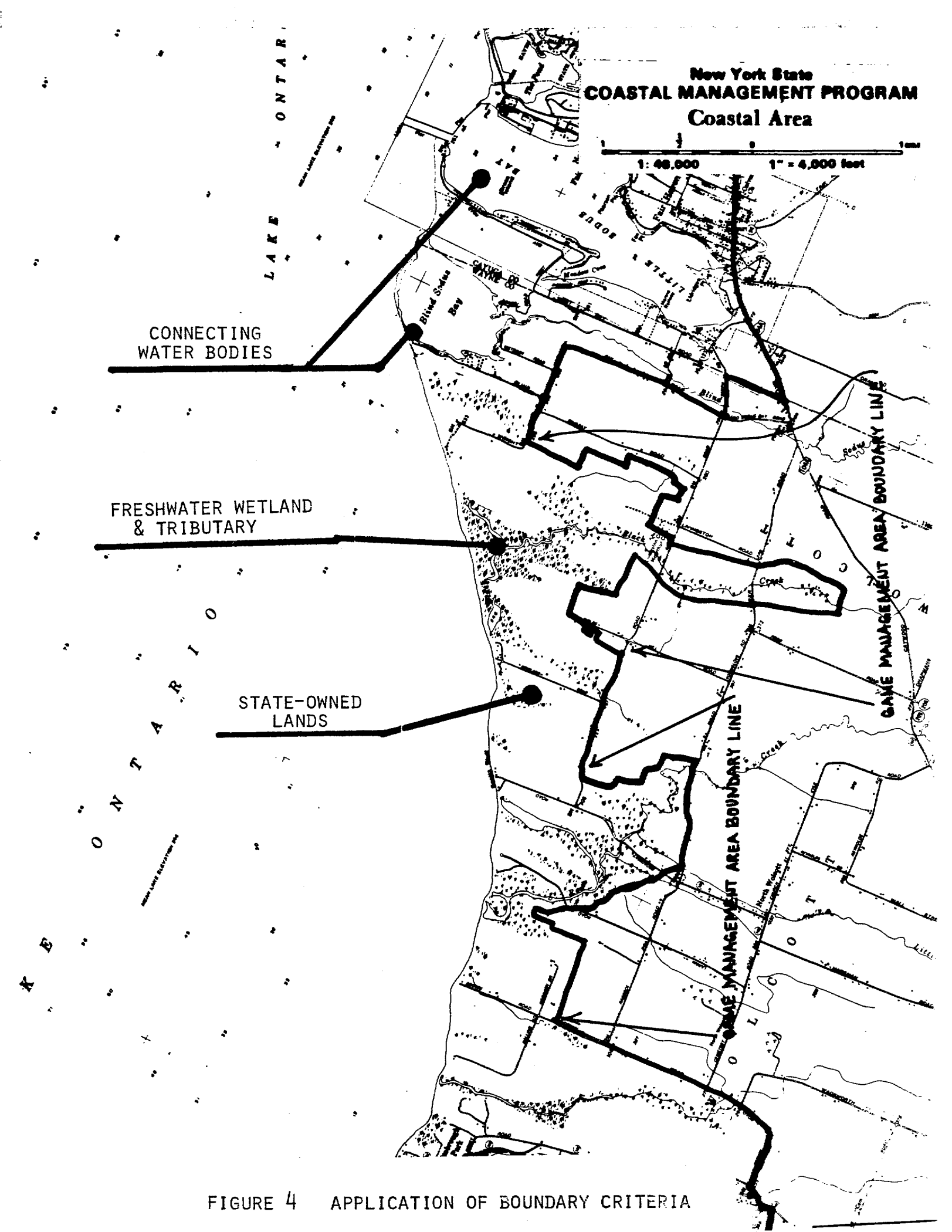

FIGURE 4 APPLICATION OF BOUNDARY CRITERIA

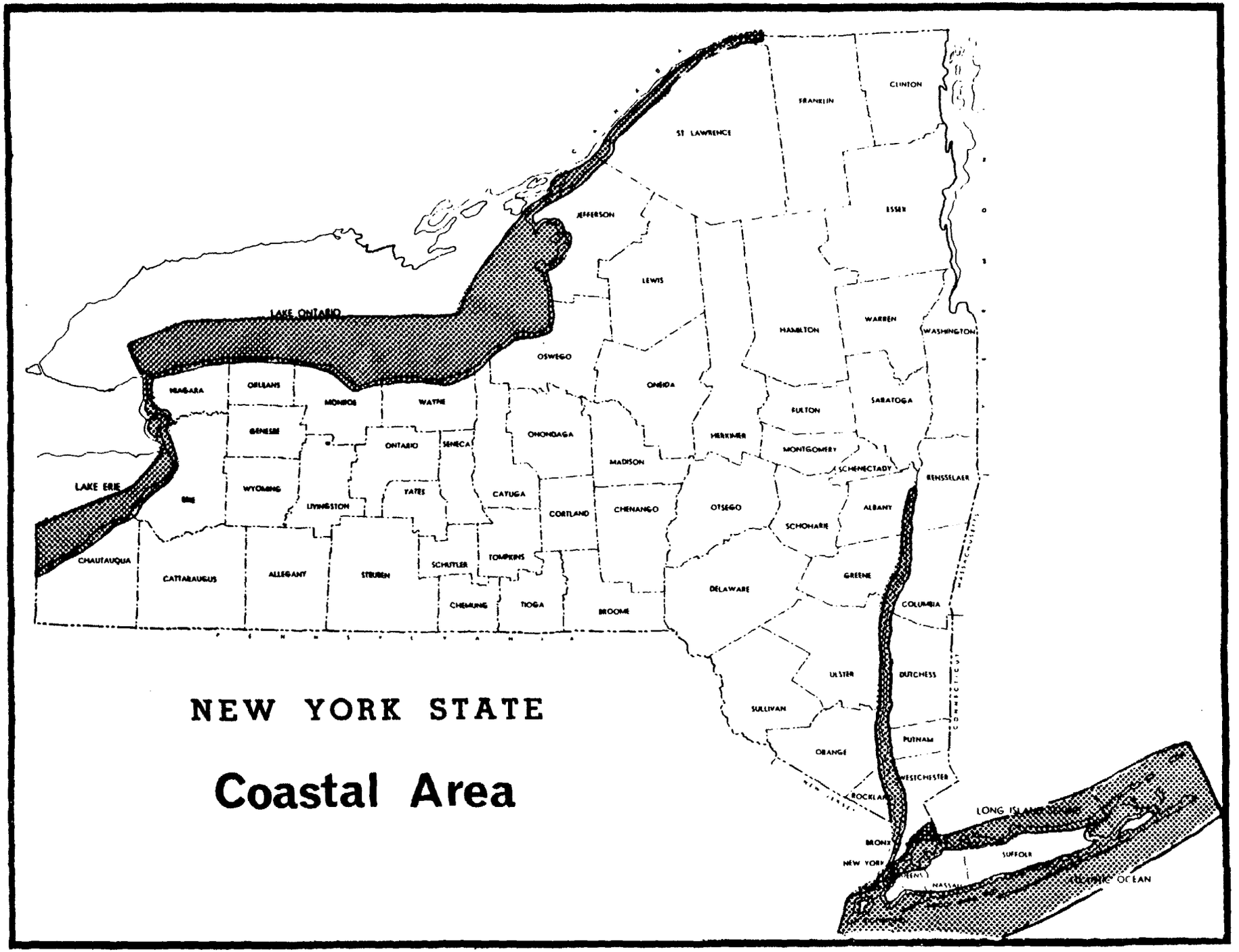
NEW YORK STATE
Coastal Area
LAKE ONTARIO
LAKE ERIE
ST LAWRENCE
FRANKLIN
CLINTON
ESSEX
JEFFERSON
LEWIS
HAMILTON
WARREN
WASHINGTON
OSWEGO
ONEIDA
FULTON
SARATOGA
NIAGARA
ORLEANS
MONROE
WAYNE
GENESEE
ONTARIO
SENECA
ONONDAGA
HERKIMER
MONTGOMERY
SCHENECTADY
RENSSELAER
MADISON
WYOMING
LIVINGSTON
YATES
CAYUGA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

Figure 5

SECTION 4

PROGRAM MANAGEMENT

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Management Role of State Agencies

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

Coastal Management Agency

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

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

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

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

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

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

Departmental of Environmental Conservation (DEC)

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

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

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

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

Other State Agencies

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

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

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

Advocacy Role of State Agencies

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

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

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

- Assisting State agencies in establishing priorities for waterfront projects.

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

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

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

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

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

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

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

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

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

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

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

The Department of State has collected and mapped basic coastal resources data. This information will be made available to all State agencies and any local government preparing and/or implementing a local program. The Department will maintain its coastal resources inventory of significant natural resources areas, historic sites, agricultural lands, and areas suitable for water dependent uses. This information will assist State and Federal agencies in ensuring consistency of their actions with the policies. It will also serve as a valuable tool to the private sector and government agencies in their development efforts. The Department of State maintains a clearinghouse of existing and potential Federal and State funding programs available for waterfront revitalization and a compendium of various approaches suitable for waterfront revitalization.

The Department will work with Sea Grant to assist in determining research priorities which will serve the purposes of both programs. It will also work with State research and development agencies to establish alternative means of effectuating waterfront revitalization, and protecting significant coastal resources.

The Coastal Management Program will continue providing information to raise the level of public awareness of coastal issues and opportunities, and will continue seeking advice from affected interests and government agencies in the decision-making process. The Department of State will periodically conduct workshops with State and Federal agencies to review the performance of the Program, resolve differences, and make improvements. Workshops will also be held with environmental, development and other interests to ensure the Program is meeting its objectives and addressing the problems of concern to these interests.

The voluntary waterfront revitalization programs are based on building a consensus between all affected interests, users and regulators of the waterfront. This undertaking demands extensive participation resulting in broad based support of the Program.

Consistency of State Agencies' Actions

The basic thrust of New York State's Coastal Management Program is to have State agencies carry out their respective programs consistent with the policies contained in Section 6 of this document. All of the Program's policies are derived from existing laws and regulations administered by State agencies. Table 1 identifies the various laws that provide the basis for and are essential to the enforcement and implementation of the coastal policies. Many of the Program's policies are carried out by programs administered by the Department of Environmental Conservation. For example, the Department operates regulatory programs which provide protection to tidal and freshwater wetlands (Policy 44), restrict development and other activities in flood and erosion hazard areas (Polices 11-17), and protect

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

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

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

State Environmental Quality Review Process

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

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

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

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

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

Department of State Regulations

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

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

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

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

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

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

Judicial Review of Agencies' Decisions

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

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

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

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

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

TABLE 1

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

1. Agriculture and Markets Law

. Article 25AA - Agriculture District Program

2. Energy Law

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

3. Environmental Conservation Law

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

4. Executive Law

. Article 42 - Waterfront Revitalization and Coastal Resources Act

5. Highway Law

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

6. Navigation Law

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

7. Parks, Recreation and Historic Preservation Law

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

8. Public Buildings Law

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

9. Public Health Law

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

10. Public Lands Law

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

11. Public Service Law

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

Local Government Involvement

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

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

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

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

Local Program Approval Process

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

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

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

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

1. Its consistency with the Act's policies.

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

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

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

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

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

Program Funding

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

State Agencies' Activities

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

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

Local Government Activities

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

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

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

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

Funding Priorities

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

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

Program funds for local government activities will be used for:

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

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

SECTION 5

COASTAL ISSUES

DEVELOPMENT

Introduction

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

Deteriorated and Underutilized Waterfront Space

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

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

Competition for Space

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

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

Incompatible Adjacent Uses

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

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

Transportation Issues

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

A. Consequences of Major Transportation Improvements

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

B. Access to the Waterfront

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

C. Competition Between Transportation Modes

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

D. Water Transportation Issues

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

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

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

Navigation on the Hudson River, in New York Harbor and in commercial boat harbors is severely constrained by floating debris. The debris comes from sources such as decaying piers and bulkheads, abandoned barges and ships, and vegetation such as large tree trunks. (It is estimated that approximately 14,130 cubic feet of debris enter the Hudson River annually.) The debris poses a serious threat to commercial shipping and recreational craft.

The Barge Canal is in poor structural condition and is failing to fulfill its role as a transportation, flood control, water supply,and recreational facility. Three options open to the State are (1) to continue the present level of maintenance and minimal operation, (2) to increase funding of the system so that a more economic level of service can be attained, or (3) to make a major capital investment in the system with the objective of opening the waterway to ocean going vessels.

Concentration of Development

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

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

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

Permitting Procedures

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

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

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

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

FISH AND WILDLIFE

INTRODUCTION

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

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

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

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

Habitat Protection

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

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

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

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

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

Toxic Substances and Other Pollutants

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

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

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

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

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

Recreational Use of Fish and Wildlife Resources

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

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

Commercial Fisheries Development

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

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

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

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

FLOOD AND EROSION HAZARDS

Introduction

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

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

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

Dunes are formed from sand blown by onshore winds from adjacent beaches and, except for the Deer Creek Marsh and Sandy Pond Marsh area on Lake Ontario, are found only on Long Island. They are constantly changing form, reaching a degree of stability only as vegetation establishes itself. Dunes are fragile and very susceptible to damage by man's activities. They have a high value as a second tier of defense against the powerful actions of storm-driven waters and as part of the shore system.

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

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

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

Damages Resulting from Flooding and Erosion

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

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

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

Responses to Coastal Hazards

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

The "Structural" Response

The most common type of structural response is the installation parallel to the shoreline of frontal protective devices against erosion or flooding. There are several difficulties associated with those widely used devices. Because of the great force generated by coastal processes, the structures must be soundly designed and constructed in order to be effective. However, one study showed that along the eastern end of Lake Ontario and the shores of the St. Lawrence River, less than half of the frontal structures inventoried were of more than limited effectiveness.[9] In addition, improperly designed frontal structures such as bulkheads, revetments and seawalls may accelerate the loss of beach materials as storm wave energy is focused on the beach. Thus, a natural shield may be lost. Difficulty also arises from attempts to protect a house located on a narrow stretch of shoreland. Because erosion may continue on the unprotected sides of the structure which are vulnerable to lateral wave attack, the useful life of an otherwise sound structure could be shortened considerably and erosion conditions on adjacent lands exacerbated.

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

One group of structural responses takes advantage of natural materials. Dune-building and the replenishment of beaches require sand in great quantities and care must be taken to ensure that these materials are not obtained from sites, onshore or offshore, which are parts of the delicately-balanced coastal process. The particle sizes of the beach-building materials must also be compatible with the local beach environment or the investment will be lost.

The high cost of protective devices is another problem of the structural response. Because the cost of the most appropriate structure will vary with specific site conditions, the following estimates for a 100-foot stretch of shoreline are only illustrative: stone revetment, eight feet high - $23,000; steel bulkhead, ten feet high - $58,000; timber crib bulkhead, seven feet high - $8,500.[10] A further cost often overlooked by riparian property owners is that necessary to implement a program of maintenance for protective devices. Most structures, although built to reasonable standards and design, will succumb over time to the powerful forces of the sea or lakes and must be inspected and repaired to preserve their effectiveness. The long-term protective capacity design of devices, and thus their original cost may be reduced if property owners follow a prudent maintenance program.

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

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

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

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

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

Although many of the Corps' projects are single purpose (beach erosion, or hurricane protection), some are multi-purpose. On Lake Erie, a new project at Cattaraugus Creek is expected to reduce flooding upstream by preventing ice jams and longshore transport sedimentation at the mouth of the stream. The primary purpose of the project, however, is to create a harbor of refuge to protect recreation craft from storm driven waters. The Corps also has completed, or is investigating a few small projects which do not require Congressional approval: examples include the St. Columbans-on-the-Lake Emergency Bank Protection and Wendt Beach Park Shoreline Erosion projects.[11]

The "Non-Structural" Response

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

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

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

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

The "Insurance" Response

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

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

Lake Levels

A further coastal hazard issue pertains to high water levels on Lake Ontario and Lake Erie.[12]

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

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

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

At least partial satisfaction of the first criticism was achieved in 1981 when an official of the State's St. Lawrence-Eastern Ontario Commission was appointed to the SLRBC, replacing a representative of the Federal Power Commission.[13]

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

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

Shoreline residents of Lake Erie have also been concerned about high water as, during the past decade, the mean monthly lake levels have rarely been below the long term average. As a result, flooding and erosion have caused damage along the coasts of Erie and Chautauqua counties although, because of their more erosion-resistant shorelands, the magnitude of erosion is not as great as that on the Lake Ontario coast. The IJC's Lake Erie Regulation Study Board recently completed an investigation of the feasibility of limited regulation of the lake and found that: "the magnitude of the losses as compared to the benefits is such that no reasonable changes in assumptions or evaluative techniques could result in net benefits approaching the cost of the Niagara regulatory works" necessary to implement regulation.[14]

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

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

Evacuation Needs

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

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

FOOTNOTES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUBLIC ACCESS

Introduction

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

Access to the Coast at Large

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

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

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

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

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

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

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

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

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

Access to Coastal Recreation Resources

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

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

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

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

RECREATION

Introduction

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

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

Use Conflicts

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

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

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

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

Excessive Use

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

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

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

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

Urban Area Needs

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

Historic and Cultural Resources

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

Recreational Boating and Fishing

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

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

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

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

Public vs. Private Ownership

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

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

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

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

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

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

SCENIC QUALITY

Introduction

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

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

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

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

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

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

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

Degradation of Scenic Resources

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

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

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

Protection of Scenic Quality

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

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

AGRICULTURE

Introduction

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

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

Loss of Agricultural Lands

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

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

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

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

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

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

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

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

Definition of Important and Valuable Farmland

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

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

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

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

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

ENERGY

Introduction

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

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

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

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

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

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

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

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

- Explosions and fires associated with petroleum or LNG facilities;

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

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

New Energy Sources

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

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

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

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

WATER RESOURCES

Introduction

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

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

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

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

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

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

Industrial Wastes and Toxic Substances

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

Municipal Sewage Treatment

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

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

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

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

Urban Stormwater Runoff and Combined Sewer Overflows

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

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

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

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

Agricultural Runoff and Wastes

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

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

Vessel Wastes

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

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

Dredging and Dredge Spoil Disposal

Dredging is a useful management tool serving a variety of purposes such as navigation channel maintenance, marina and shoreline development, beach nourishment, and pollutant removal. Unfortunately, many adverse environmental impacts have been associated with the processes of dredging and dredge spoil disposal, particularly when the sediments are polluted.

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

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

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

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

Oil and Other Hazardous Substances Spills

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

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

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

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

Nutrients

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

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

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

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

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

Groundwater

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

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

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

Solid Wastes

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

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

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

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

Thermal Discharges

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

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

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

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

AIR QUALITY

Introduction

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

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

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

Attainment and Maintenance of National Air Quality Standards

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

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

TABLE 2

Coastal Areas Designated as Nonattainment Areas for Health-Related Pollutants

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

*AQCR - Air Quailty Control Region

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

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

Protection of Clean Air Areas from Significant Deterioration

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

Air Pollution Control Problems in Rural Areas

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

Control of Toxic Discharges into the Air

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

SECTION 6

COASTAL POLICIES AND IMPLEMENTATION

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

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

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

Coordination

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

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

Policies

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

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

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

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

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

- agricultural land (Policy 26)

- dunes, beaches, barrier islands and other natural protective features (Policy 12)

- water and air resources (Policies 31, 32, 33, 26-28, 40-43)

- wetlands (Policy 44)

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

- siting energy facilities (Policy 17)

- dredging for navigation, mining, and excavation in coastal waters (Policy 15)

- managing solid water (Policy 39)

- ice management practices (Policy 28)

- siting and building structures in erosion hazard areas (Policies 11, 13, 14, 16, 17)

- adequate consideration of State and public interests for all major coastal activities (Policy 18)

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

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

of coastal resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to 2 ecological systems" (Executive Law, §912(1)). Executive Law, Article 42, requires that actions directly undertaken by State agencies within the State's coastal area be undertaken in a manner consistent with this new, second group of policies. In addition, the procedures of the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) will insure that all State agency actions will be consistent with these policies.

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

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

A. Explanation of Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

3. Public Building Law (Article 4-B)

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

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

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

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

A. Explanation of Policy

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

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

The following uses and facilities are considered as water dependent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

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

4. Capital Construction

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

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

A. Explanation of Policy

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

1. In assessing proposed projects within or abutting a major port, the overriding consideration is the maintenance and enhancement of port activity which will have precedence over other, non-port related activities.

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

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

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

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

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

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

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

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

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

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

4. Council of Upstate Ports

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

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

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

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

A. Explanation of Policy

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

The following guidelines shall be used in determining consistency:

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

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

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

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

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

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

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

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

A. Explanation of Policy

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

The above policy is intended to accomplish the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Water dependent uses.

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

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

7. Rehabilitation or restoration of existing structures and facilities.

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

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

3. New York State Land Use Element[2]

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

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

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

A. Explanation of Policy

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

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

2. Article 39 of the Executive Law

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

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

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

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

A. Explanation of Policy

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

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

(b) support populations of rare and endangered species;

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

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

(e) would be difficult or impossible to replace.

In cooperation with the State's Coastal Management Program, the Department of Environmental Conservation has developed a rating system incorporating these five parameters.[1] This rating system is being used to evaluate each habitat identified in the inventory to assess its relative importance. Results of this evaluation will provide the basis for determining whether a habitat should or should not be designated a "significant habitat."

Once a habitat area is identified as significant, it will be mapped on the coastal area map. A narrative will be prepared detailing information on that particular habitat; e.g., description of the community of organisms; and a list of the types of actions that most likely would affect the habitat.

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[1] The Development and Evaluation of a System for Rating Fish and Wildlife Habitats in the Coastal Zone of New York State Final Report, January, 1981. (15 pp.)

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

B. State Means for Policy Implementation

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

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

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

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

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

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

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

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

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

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

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

Freshwater wetlands also function as important fish and wildlife habitat. The program established under this Act regulates activities such as draining, dredging, and filling, thus protecting many significant habitats. This program can be administered by local governments pursuant to State guidelines and after official filing of wetland maps by the State. Counties, or the State, may administer the program in municipalities where local governments fail to exercise this responsibility. Until the maps are filed with the communities, the Department of Environmental Conservation regulates freshwater wetlands through its interim permit program. Before granting or denying a permit, the municipality must determine if the activity will have an adverse impact on the habitat value of the wetland.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Explanation of Policy

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

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

Other pollutants are those conventional wastes not identified as hazardous wastes but controlled through other State laws cited below.

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Explanation of Policy

Such efforts will be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them. Therefore, any efforts to increase recreational use of fish and wildlife, whether through private or public sector initiatives, must be done in accordance with existing State law and in keeping with sound resource management considerations. Such considerations include: biology of the species, carrying capacity of the habitat, public demand, costs, and available technology.

B. State Means for Implementing the Policy

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

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

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

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

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

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

DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the following policy: "Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks and developing new resources." Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

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

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

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

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

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

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

   This law authorizes the Office of Parks, Recreation, and Historic Preservation to acquire, establish, and operate facilities for recreational purposes, including valuable fishing and hunting areas. For further information on the Office of Parks, Recreation, and Historic Preservation's powers, see the RECREATION policies contained in this report.

6. Urban Fisheries Program, Environmental Conservation Law (Article 11)

   The Department of Environmental Conservation has elected to increase fishing activity in several metropolitan areas of the State, including Buffalo, Albany, Troy, and New York City, through its Urban Fisheries Program. Public education, eliminating problems of access to existing, under-utilized fisheries, and creation of new fisheries through stocking of ponds or establishing suitable habitat are specific means by which the objectives of this program will be accomplished. In most cases, these fishing areas are accessible by public transportation. However, in some instances, inadequate mass transportation constrains public use of these resources.

7. Urban Wildlife Program, Environmental Conservation Law (Article 11)

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

POLICY 10 Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities.

A. Explanation of Policy

Commercial fishery development activities must occur within the context of sound fishery management principals developed and enforced within the State's waters by the New York State Department of Environmental Conservation and the Management plans developed by the Regional Fisheries Management Councils (Mid-Atlantic and New England) and enforced by the U.S. National Marine Fisheries Service within the Fishery Conservation Zone.* Sound resource management considerations would include optimum sustained yield levels developed for specific commercial fish species, harvest restrictions imposed by State and Federal governments, and the economic, political (uses conflicts) and technological constraints to utilizing these resources.

B. State Means for Implementing the Policy

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

Section 915 of this law authorizes the Department of State to encourage municipalities which choose to develop local waterfront revitalization programs to implement commercial fishing port development projects. Such facilities might include the construction or rehabilitation of piers; facilities for catch transfer, freezer storage, fishing processing and packaging; or acquaculture facilities.

*The Fishery Conservation Zone is the area of coastal waters extending from the three mile State waters boundary to the 200 mile offshore boundary of U.S. Waters. The Conservation Zone is authorized by the U.S. Fishery Conservation and Management Act of 1976.

Section 919, of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which is: Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities. This provision of law is implemented by amendments to SEQR (of 2 below) and by DOS regulations.

DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the following policy: "Further develop commercial finfish, shellfish and crustacean resources in the coastal area by: (i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of the State's seafood products; (iii) maintaining adequate stocks and (iv) expanding aquaculture facilities. Such efforts shall be made in a manner which insures the protection of such renewable fish resources and considers other activities dependent on them.

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

Environmental impact as defined in this law include not only impact on the State's natural resources but also the State's economy.

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

2. "Further develop commercial finfish, shellfish and crustacean resources in the coastal area by: (i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of New York seafood products; (iii) maintaining adequate stocks and (iv) expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them."

POLICY 11 Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.

A. Explanation of Policy

On coastal lands identified as coastal erosion hazard areas, buildings and similar structures shall be set back from the shoreline a distance sufficient to minimize damage from erosion unless no reasonable prudent alternative site is available as in the case of piers, docks and other structures necessary to gain access to coastal waters to be able to function. The extent of the setback will be calculated, taking into account the rate at which land is receding due to erosion, and the protection provided by existing erosion protection structures as well as by natural protective features such as beaches, sandbars, spits, shoals, barrier islands, bay barriers, nearshore areas, bluffs and wetlands. The only new structure allowed in coastal erosion hazard areas is a moveable structure as defined in Section 505.3(u) of the regulations for ECL, Article 34. Prior to its construction, an erosion hazard areas permit must be approved for the structure. Existing, non-conforming structures located in coastal erosion hazard areas may be only minimally enlarged.

In coastal lands identified as being subject to high velocity waters caused by hurricane or other storm wave wash - a coastal high hazard area - walled or roofed buildings or fuel storage tanks shall be sited landward of mean high tide; and no mobile home shall be sited in such area. In coastal lands identified as floodways, no mobile homes shall be sited other than in existing mobile home parks.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including natural protective features such as beaches and dunes. The law also requires the calculation of rates of recession of coastal lands. Standards and criteria are also prescribed for the regulation of the siting of buildings and other structures in relation to those defined areas.

2. Flood Plain Management Act, Environmental Conservation Law (Article 36)

This law ensures that, if a community fails to qualify for the Federal flood insurance program, the State will develop flood hazard regulations for that community to make it eligible for participation in the program. The regulations are, at a minimum, those specified by the Federal Emergency Management Agency, and are implemented where coastal high hazard areas and floodways have been delineated.

State agencies are also constrained by this law through regulation of such activities as the financing of projects, or the authorization of implementation of projects, on State lands. The regulations are, at a minimum, those specified by the Federal flood insurance program.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires the use of non-structural measures whenever possible to minimize damage from flooding and erosion. This provision of law is implemented by amendments to SEQR (see 4 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings of their elevation above the base flood level." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the use of set backs as a non-structural measure.

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

4. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings of their elevation above the base flood level."

POLICY 12 Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs.

A. Explanation of Policy

Beaches, dunes, barrier islands, bluffs, and other natural protective features help safeguard coastal lands and property from damage, as well as reduce the danger to human life, resulting from flooding and erosion. Excavation of coastal features, improperly designed structures, inadequate site planning, or other similar actions which fail to recognize their fragile nature and high protective values, lead to the weakening or destruction of those landforms. Activities or development in, or in proximity to, natural protective features must ensure that all such adverse effects are minimized. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law requires the identification of coastal erosion hazard areas, including natural protective features such as beaches, dunes, bluffs and barrier islands. Standards and criteria are also authorized for the promulgation of regulations which will require that activities and development will have minimal adverse effects on such natural protective features.

2. Flood Plain Management Act, Environmental Conservation Law (Article 36)

(See also Policy 11, B, 2 above)

Regulations promulgated under this law include a prohibition on the alteration of sand dunes in coastal high hazard areas so as to prevent an increase in potential flood damage to lands and property.

3. Water Resources Act, Environmental Conservation Law (Article 15)

Sections 15-0503 and 15-0505 regulate the placement of permanent docks, piers and similar structures, as well as the placement of fill, in the waters of the State. The law also recognizes the adverse effect of such activities on soil erosion and will be used to implement this policy.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage to natural resources from flooding and erosion be minimized, including the protection of beaches, dunes, barrier islands, bluffs and other natural protective features. This provision of law is implemented by amendments to SEQR (see 5 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of activities or development on natural protective features.

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

5. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity."

POLICY 13 The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

A. Explanation of Policy

Erosion protection structures are widely used throughout the State's coastal area. However, because of improper design, construction and maintenance standards, many fail to give the protection which they were presumed to provide. As a result, development is sited in areas where it is subject to damage or loss due to erosion. This policy will help ensure the reduction of such damage or loss.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

Within coastal erosion hazard areas identified by this law, standards and criteria required by the Act will be used to regulate the construction or reconstruction and maintenance of erosion protection structures.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which states that it is State policy to minimize damage to property from erosion. This provision of law is implemented by amendments to SEQR (see 3 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs."

(2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of improperly designed, constructed or maintained erosion protection structures.

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

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs."

POLICY 14 Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.

A. Explanation of Policy

Erosion and flooding are processes which occur naturally. However, by his actions, man can increase the severity and adverse effects of those processes, causing damage to, or loss of property, and endangering human lives. Those actions include: the use of erosion protection structures such as groins, or the use of impermeable docks which block the littoral transport of sediment to adjacent shorelands, thus increasing their rate of recession; the failure to observe proper drainage or land restoration practices, thereby causing run-off and the erosion and weakening of shorelands; and the placing of structures in identified floodways so that the base flood level is increased causing damage in otherwise hazard-free areas.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

Within coastal erosion hazard areas identified pursuant to this law, standards and criteria will be established to regulate activities and development, including the construction or reconstruction of erosion control structures, so that on-site erosion, and erosion of other lands, will not measurably increase.

2. Water Resources Act, Environmental Conservation Law (Article 15)

Subsections 15-0503 and 15-0505 regulate the placement of permanent docks, piers and similar structures, as well as the placement of fill, in the waters of the State. The law also recognizes the adverse effect of such activities on soil erosion and will be used to implement this policy.

3. Flood Plain Management Act, Environmental Conservation Law (Article 36)

(See also Policy 11, B, 2 above)

This law regulates encroachments in floodways identified under the federal flood insurance program so as to prevent increases in flood-water levels.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which states that it is State policy to minimize damage to natural resources and property from flooding and erosion. This provision of law is implemented by amendments to SEQR (see 5 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of activities or development upon coastal lands.

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

5. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations."

POLICY 15 Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

A. Explanation of Policy

Coastal processes, including the movement of beach materials by water, and any mining, excavation or dredging in nearshore or offshore waters which changes the supply and net flow of such materials can deprive shorelands of their natural regenerative powers. Such mining, excavation and dredging should be accomplished in a manner so as not to cause a reduction of supply, and thus an increase of erosion, to such shorelands. Offshore mining is a future alternative option to land mining for sand and gravel deposits which are needed to support building and other industries.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage to natural resources from erosion is minimized. This provision of law is implemented by amendments to SEQR (see 2 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of mining, excavation and dredging upon coastal lands.

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

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

   Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. The environment is broadly defined to include land and minerals: hence, sand, gravel, and other materials in coastal waters are viewed as environmental resources. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land."

3. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   This law provides for the identification of coastal erosion hazard areas, including nearshore natural protective features such as shoals, bars and spits, which if altered might lower the reserves of sand or other natural materials available to replenish storm losses through natural processes. The law requires also that excavation or other alteration of land will be regulated to minimize adverse effects on those natural protective features as well as to prevent erosion of other lands.

4. Public Lands Law (Article 2)

New York State owns the underwater lands in the State's coastal area, except where its rights have been sold, leased or otherwise transferred, or where they have been reserved to other interests. This law provides for the leasing of certain underwater lands for the mining of sand and gravel. Such mining activities must be implemented consistent with the policies of Executive Law, Article 34.

5. Protection of Waters Act, Environmental Conservation Law (Article 15)

This law recognizes the adverse effects on soil erosion of activities such as excavation in the State's navigable waters, or in marshes, estuaries, tidal marshes and wetlands adjacent thereto, and requires the regulation of such activity by permit.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The regulatory jurisdiction of this law in the State's tidal waters includes: (1) coastal shoals, bars and flats, as well as other lands no more than 6 feet underwater at low mean water, and adjacent areas; and (2) the dredging, excavation or removal of sand, or other aggregate. To protect the contribution which those lands make to flood, hurricane and storm control, those uses are presumed incompatible and a permit must be obtained from the Department of Environmental Conservation, upon demonstration that those values will not be adversely affected.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This law provides for the identification of freshwater wetlands and for the regulation of activities therein, including dredging, mining and excavation.

POLICY 16 Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

A. Explanation of Policy

Public funds are used for a variety of purposes on the State's shorelines. This policy recognizes the public need for the protection of human life and existing investment in development or new development which requires a location in proximity to the coastal area or in adjacent waters to be able to function. However, it also recognizes the adverse impacts of such activities and development on the rate of erosion and on natural protective features and requires that careful analysis be made of such benefits and long-term costs prior to expending public funds.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   This law contains a provision that, within identified coastal erosion hazard areas, consideration be given to both the public benefits and long range adverse effects of proposed activities and development which use public funds.

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

   Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage from erosion to natural resources and property is minimized by proper location of new development, protection of critical coastal features and the use of non-structural measures whenever possible. This provision of law is implemented by amendments to SEQR (see 3 below) and by Department of State regulations.

Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features." (2) The the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the costs and benefits of publicly funded erosion protective structures.

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

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features."

POLICY 17 Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible.

A. Explanation of Policy

1. This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the coastal area as well as the costs of protection against those hazards which structural measures entail.

2. "Non-structural measures" shall include, but not be limited to: (1) within coastal erosion hazard areas identified under Section 34-104, Coastal Erosion Hazard Areas Act (Article 34, Environmental Conservation Law), and subject to the permit requirements on all regulated activities and development established under that Law, (a) the use of minimum setbacks as provided for in Section 34-108; and (b) the strengthening of coastal landforms by the planting of appropriate vegetation on dunes and bluffs, the installation of sand fencing on dunes, the reshaping of bluffs to achieve an appropriate angle of repose so as to reduce the potential for slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce runoff and internal seepage of waters which erode or weaken the landforms; and (2) within identified flood hazard areas, (a) the avoidance of risk or damage from flooding by the siting of buildings outside the hazard area, and (b) the flood-proofing of buildings or their elevation above the base flood level.

3. This policy shall apply to the planning, siting and design of proposed activities and development, including measures to protect existing activities and development. To ascertain consistency with the policy, it must be determined if any one, or a combination of, non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development, and to the hazard. If non-structural measures are determined to offer sufficient protection, then consistency with the policy would require the use of such measures, whenever possible.

4. In determining whether or not non-structural measures to protect against erosion or flooding will afford the degree of protection appropriate, an analysis, and if necessary, other materials such as plans or sketches of the activity or development, of the site and of the alternative protection measures should be prepared to allow an assessment to be made.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls for minimizing damage to natural resources and property from flooding and erosion by the use of non-structural measures whenever possible. This provision of law is implemented by amendments to SEQR (See 2 below) and by the Department of State regulations. The Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of the use of non-structural measures to minimize damage from flooding and erosion.

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

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level."

3. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   Within coastal erosion hazard areas identified pursuant to this law, standards and criteria will be established to regulate activities and development as well as to protect natural protective features such as dunes, bluffs, beaches and barrier islands through a permit system.

POLICY 18 To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

A. Explanation of Policy

Proposed major actions may be undertaken in the coastal area if they will not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the purposes of the safeguards which the State has established to protect those waters and resources. Proposed actions must take into account the social, economic and environmental interests of the State and its citizens in such matters that would affect natural resouces, water levels and flows, shoreline damage, hydro-electric power generation, and recreation.

B. State Means for Implementing the Policy

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

In part, Article 42 declares that it is the public policy of the State within its coastal area: to conserve and protect fish and wildlife and their habitats; achieve a balance between economic development and preservation needs that will permit the beneficial use of coastal resources while preventing permanent adverse changes to ecological systems; and minimize damage to natural resources and property from flooding and erosion. The Act's policies also call for the assurance of consistency of State actions and Federal actions with policies within the coastal area and cooperation and coordination with other states, the Federal government and Canada "to attain a consistent policy towards coastal management". Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of the Act. This provision of law is implemented by amendments to SEQR (See 2 below) and by the Department of State regulations. The Department of State

regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of this policy.

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

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas."

3. Water Resources Act, Environmental Conservation Law (Article 15)

Section 15-0101 states in part that "... the sovereign power to regulate and control the water resources of this State ever since its establishment has been and now is vested exclusively in the State of New York except to the extent of any delegation of powers to the United States..."

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

   Along stretches of rivers designated by the State as "wild", "scenic", or "recreational", the State Department of Enviromental Conservation is authorized by this law to exercise land use controls in order to protect the outstanding natural, scenic, historic, ecological and recreational resources of these rivers.

5. Protection of Waters, Environmental Conservation Law (Article 15, Title 5)

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

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   This Act requires that a permit be issued for activities or development in identified tidal wetlands. It must be demonstrated that proposed activities or development will not adversely affect water quality, flood and storm control, marine food production, wildlife habitat, open space, and aesthetically significant areas.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   This law recognizes the value of freshwater wetlands in providing flood protection, wildlife habitats, open space and water resources. The program established under this Act regulates activities such as draining, dredging, and filling. It is administered by local governments pursuant to state guidelines and after official filing of wetland maps by the State. The Department of Environmental Conservation regulates fresh-

water wetlands through its interim permit program in communities where maps have yet to be filed. Before granting or denying a permit, the municipality or DEC must determine if the activity will have an adverse impact on the value of the wetland.

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

   The Department of Environmental Conservation is empowered by this law to manage the State's fish and wildlife resources. The Department propagates fish and wildlife to supplement existing stocks, regulates their harvest through restricted seasons, bag limits, gear restrictions, and develops new or improves existing habitats with such devices as stream improvement structures.

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

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

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

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

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

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

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

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

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

The Department of Environmental Conservation (DEC) regulates the handling of hazardous wastes generation, storage, transportation, treatment and disposal in a manner consistent with the Federal Resource Conservation and Recovery Act of 1976 (RCRA). This state law mandates DEC to identify and list hazardous wastes, to develop and implement a manifest system for tracking the wastes "from cradle to grave", to regulate all phases of handling hazardous wastes. Enforcement of this law will minimize new introductions of hazardous wastes into the environment, thereby protecting coastal resources.

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

Unregulated discharge of petroleum or oil spills associated with the transport and storage of such products can damage the State's coastal fish, shellfish, wildlife, beaches and other resources. This law

authorizes the Department of Transportation and the Department of Environmental Conservation to control the methods of petroleum storage and transfer and to require prompt cleanup and compensation to damaged parties when spills or discharges occur.

15. Public Health Law (Article 11)

This law provides for the Department of Health to make rules and regulations for the protection from contamination of public supplies of potable waters.

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

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

17. Transportation Law (Article 2, Section 14-F)

This law authorizes the Commissioner of Transportation to regulate the transportation of hazardous materials.

18. Flood Plain Management Act, Environmental Conservation Law (Article 36)

This law ensures that, if a community fails to qualify for the federal national flood insurance program, the State will develop flood hazard regulations for that community to make it eligible for participation in the program. The regulations are, at a minimum, those specified by the federal program, administered by the Federal Emergency Management Agency.

State agencies are also constrained by this law through regulation of such activities as the financing of projects, or the authorization of implementation of projects on state lands. The regulations are, at a minimum, those specified by the federal national flood insurance program.

19. Coastal Erosion Hazards Area Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including natural protective features such as beaches, dunes, barrier islands and nearshore areas, and coastal lands subject to significant erosion. Standards and criteria are also prescribed for the regulation of activities and development in relation to those defined areas so as to minimize damage to natural resources and property from erosion.

20. Protection of Natural and Man-Made Beauty, Environmental Conservation Law (Article 49)

Under this law, DEC has the power and duty to: (1) "develop policies and programs to preserve and enhance the natural and man-made beauty of the State" and (2) "designate scenic sites, areas and highways in the State and develop programs for their preservation and enhancement".

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

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

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

This law enables the Department of Environmental Conservation to acquire access rights (fee-simple or less-than-fee simple) on quality streams guaranteeing fishermen access to various stretches of streams and rivers.

27. New York State Historic Preservation Act of 1980, Parks & Recreation Law (Section 11.03, 11.09, 14); Public Building Law (Article 4-B); General Municipal Law (Article 5-K)

The New York State Historic Preservation Act greatly expands the responsibilities of New York State agencies and municipalities with regard to historic preservation. Specifically the Act provides several means for preserving the historic architectural, archeological, and cultural resources of the State (including resources under water). Each State agency must designate a historic preservation officer to coordinate and implement state historic preservation programs. A State Register of historic places is created and an inventory of properties which may qualify for the Register is established. A Statewide Preservation Plan is to be prepared and updated annually. A review process has been established, to be undertaken concurrently with existing environmental reviews; this process requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if a state-funded project will have an adverse effect upon a historic property. The review process requires consideration of alternatives and that adverse effects be avoided or mitigated. The Secretary of State is added to State Board of Historic Preservation, and the Commissioner of the Office of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

28. Parks and Recreation Law (Section 3.09)

This statute authorizes the NYS Office of Parks, Recreation and Historic Preservation to acquire, establish, operate, and maintain state parks, parkways, historic sites, and state recreational facilities.

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

This program provides for acquisition, when authorized by act of the Legislature, of real property (including less than fee interests) and administration of lands, outside the Forest Preserve counties, "... of special natural beauty, wilderness character or geological, ecological, or historical signficance."

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

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

31. Harbors of Refuge, Navigation Law (Article 11, Section 141)

This law authorizes the Office of Parks, Recreation and Historic Preservation to enter into agreement with the federal government and with municipalities to construct, operate, and maintain such harbors. Priorities for locating harbors of refuge are determined by the State Comprehensive Recreation Plan Priority System.

32. State Marina Facilities, Navigation Law (Article 11, Section 143)

This section of the Navigation Law authorizes the State to construct, operate, and maintain State marina facilities, including those incidental to a harbor of refuge. Priorities for location of these facilities are also determined by the State Comprehensive Recreation Plan Priority System.

33. Local Marina Facilities, Navigation Law (Article 11, Section 142)

Municipalities can help meet the demand for marinas by participating in this program which authorizes state financial assistance to municipalities in the construction of local marina facilities, including those incidental to a harbor of refuge. Priorities for giving financial assistance to municipalities are determined by the State Comprehensive Recreation Plan Priority System.

POLICY 19 Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities.

A. Explanation of Policy

This policy calls for achieving balance among the following factors: the level of access to a resource or facility, the capacity of a resource or facility, and the protection of natural resources. The imbalance among these factors is the most significant in the State's urban areas. Because this is often due to access-related problems, priority will be given to improving physical access to existing and potential coastal recreation sites within the heavily populated urban coastal areas of the State and to increasing the ability of urban residents to get to coastal recreation areas by improved public transportation. The particular water related recreation resources and facilities which will receive priority for improved access are public beaches, boating facilities, fishing areas and waterfront parks. In addition, because of the greater competition for waterfront locations within urban areas, the Coastal Management Program will encourage mixed use areas and multiple use of facilities to improve access. Specific sites requiring access improvements and the relative priority the program will accord to each will be identified in the Public Access Planning Process.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access.

   The following is an explanation of the terms used in the above guidelines:

a. Access - the ability and right of the public to reach and use public coastal lands and waters.

b. Public water-related recreation resources or facilities - all public lands or facilities that are suitable for passive or active recreation that requires either water or a waterfront location or is enhanced by a waterfront location.

c. Public lands or facilities - lands or facilities held by State or local government in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands and the foreshore.

d. A reduction in the existing level of public access - includes but is not limited to the following:

(1) The number of parking spaces at a public water-related recreation resource or facility is significantly reduced.

(2) The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use.

(3) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

(4) There are increases in the following: fares of public transportation to a public water-related recreation resource or facility; and/or admission fees to such a resource or facility, and an analysis shows that such increases will significantly reduce usage by individuals or families with incomes below the State government established poverty level.

e. An elimination of the possibility of increasing public access in the future includes, but is not limited to the following:

(1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.

(2) Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility.

(3) Construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.

2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:

a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource or facility. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

3. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.

4. In their plans and programs for increasing public access to public water-related resources and facilities, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area but

not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies' actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing diminution of public access to the waterfront and another for encouraging and facilitating public access for recreational purposes. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, among which are the following:

-- Protect, maintain, and increase the levels and types of access to public water related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas, and waterfront parks;

-- Expand recreational use of fish and wildlife resources by increasing access to existing resources (19 NYCRR 600.5); and

-- Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast provided it is consistent with the preservation and enhancement of other coastal resources taking into account demand for such facilities. In facilitating such activities, priority shall

be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development (19 NYCRR 600.5);

2) that the Secretary of State review actions of State agencies that may affect achievement of the policies; and

3) that SEQR regulations be amended to reflect consideration of coastal resources that can accommodate public access needs.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have an impact upon the environment. Such actions include those contiguous to any publicly-owned or operated park land, recreation area or designated open space. Since actions deal with the provision of access, under this policy, to public water-related recreation resources and facilities, any action would require an environmental impact statement to be prepared if it exceeded 25 percent of any threshold specified for a Type I action (6 NYCRR Part 617). In addition, Article 42 of the Executive Law requires that SEQR regulations be amended to require that environmental impact statements address coastal policies whenever a proposed action would affect achievement of a coastal policy. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8).

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

-- Expand recreational use of fish and wildlife resources by increasing access to existing resources (19 NYCRR 600.5);

-- Protect, maintain, and increase the levels and types of access to public water related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority will be given to public beaches, boating facilities, fishing areas, and waterfront parks (19 NYCRR 600.5); and

-- Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast provided it is consistent with the preservation and enhancement of other coastal resources, taking into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development (19 NYCRR 600.5).

3. Acquisition-Parks and Recreation Law (3.09); Environmental Conservation Law (3-0305); Highway Law §22.

One of the most effective means of providing access to public beaches and other public areas of the type listed above is acquisition of real property, including either the full fee interest in real property or some lesser interest therein, such as an easement, or contractual right to use the real property. There are presently a number of specific

statutory acquisition powers which could be used to implement this public access policy. The cited Parks and Recreation Law and the Environmental Conservation Law provided broad acquisition powers to the Office of Parks, Recreation and Historic Preservation and the Department of Environmental Conservation respectively.

The State Department of Transportation is authorized to acquire land for highway and specific transportation purposes, but these acquisition powers could be used to achieve their intended purposes as well as to implement coastal access policies. In addition to the basic power to acquire property for transportation facilities per se, such powers include "Acquisition of Property...in order to provide multi-use areas adjacent to state highways and recreational, natural and scenic areas along, but not necessarily contiguous to, state highways..." (Highway Law §22). This is a power which could be used to carry out a number of coastal policies involving actual physical access. The "multi-use areas" are to complement highway facilities. The statute provides that multi-use areas may include, but are not limited to walking, hiking, bicycle, and recreational vehicle trails, and there is express power to acquire less than fee interest.

Acquisitions for this program must be reviewed by the Department of State, the Office of Parks, Recreation and Historic Preservation, and the Department of Environmental Conservation. The Secretary of State will review such acquisitions which are located within the coastal area.

Pursuant to its general acquisition powers (see above), the Department of Environmental Conservation has instituted a program to acquire public fishing access to lakes, rivers and streams, including provision of boat launching sites. Substantial access has been provided through acquisition of easements on private lands. The Parks and Recreation Bond Act of 1960 and the Environmental Quality Bond Act of 1972 have provided a source of funds for such acquisition. (See Environmental Conservation Law, §51-0701). Within the coastal area acquisition will be made in accordance with

the priorities established by the "access planning process."

Acquisition for improved coastal access made by these agencies or other funds must be consistent with the priorities described in Policy 20.

4. Access Road, Highway Law §10 (37)

This section of the Highway Law gives the Commissioner of Transportation the authority, upon request of any head of a State agency, to construct an access road from a State highway to an agency facility (the agency would, however, be required to reimburse DOT for all incurred costs). Thus, access to coastal recreational facilities may be increased at those facilities where road access has been identified as deficient.

5. Abandoned Railway Acquistion, Transportation Law (§18)

Railroads are a common feature of much of New York's coast and often restrict access to it. This section of the Transportation Law gives the Commissioner of the Department of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. Where such abandoned property would improve access to existing or proposed public recreation areas and there is no viable transportation use for it, the Commissioner should give priority to the public agency that has jurisdiction over such coastal lands. This Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to right-of-way, where a conflict over use exists between one or more government agencies, shall take action consistent with the effectuation of State plans and policies. This provision plus the State consistency provisions of the Coastal Management Program indicate coastal management policies will influence the decision where a conflict exists.

6. Siting of Energy Facilities, Public Service Laws (Article VII and VIII)

Many transmission lines are located in the coastal area. Use of their rights-of-way can provide a suitable means of assuring additional access to water-related recreation opportunities. Under this Law a utility company is required to allocate an amount equal to two percent of the total construction cost of the transmission facilities to a fund to be used for recreational development of the right-of-way. Where the right-of-way could be used for needed additional access, this provision of the Law will be employed to provide that access.

Because power plants generally locate along the coast and a large land area around the facility is often owned by the utility, these sites present significant opportunities for multiple use. At a minimum they can provide additional access to water-related recreation opportunities such as fishing.

7. Fish and Wildlife Management Act, Environmental Conservation Law, (Article II, Title 5)

The Environmental Conservation Law provides for a "Fish and Wildlife Management Practices Cooperative Program", the purpose of which is to: "...obtain on the privately owned or leased lands and waters of the state practices of fish and wildlife management which will preserve and develop the fish and wildlife resources of the state and improve access to them for recreational purposes by the people of the state." The program is used to provide, by agreement with landowners, public rights to access to such lands for hunting and fishing purposes. Within coastal areas, efforts to obtain agreements will reflect coastal management policies.

8. State Comprehensive Recreation Plan, Parks and Recreation Law (§3.15)

The State Comprehensive Recreation Plan has a priority system for allocating funds available for outdoor recreation acquisition and development projects under State and Federal grant programs and the State Environmental Quality Bond Act. One of the positive-rated allocation factors is the degree to which the

project contributes to the implementation of State plans such as that for Coastal Management. In addition, consistency between the Coastal Management Program and the State Comprehensive Recreation Plan will be assured by the Secretary of State's review of such plan, and by the State Waterfront Revitalization and Coastal Resources Act which requires State agencies to act consistent with the Act's policies.

9. Parks and Recreation Law, §3.09 (7-a)

The Office of Parks, Recreation and Historic Preservation is required to promulgate a comprehensvie plan for the establishment of a statewide trails system. Trails are to include footpaths, bike ways, snowmobile trails, horse trails, cross-country ski trails, roads and other rights-of-way suitable for hiking, strolling, cycling, horseback riding, skiing, and other means of motorized and non-motorized travel for recreational purposes. Included are to be combinations and systems of trails leading to scenic and recreational areas, such as those in coastal areas.

POLICY 20 Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses.

A. Explanation of Policy

In coastal areas where there are little or no recreation facilities providing specific water-related recreational activities, access to the publicly-owned lands of the coast at large should be provided for numerous activities and pursuits which require only minimal facilities for their enjoyment. Such access would provide for walking along a beach or a city waterfront or to a vantage point from which to view the seashore. Similar activities requiring access would include bicycling, birdwatching, photography, nature study, beachcombing, fishing and hunting.

For those activities, there are several methods of providing access which will receive priority attention of the Coastal Management Program. These include: the development of a coastal trails system; the provision of access across transportation facilities to the coast; the improvement of access to waterfronts in urban areas; and the promotion of mixed and multi-use development.

While such publicly-owned lands referenced in the policy shall be retained in public ownership, traditional sales of easements on lands underwater to adjacent onshore property owners are consistent with this policy, provided such easements do not substantially interfere with continued public use of the public lands on which the easement is granted. Also, public use of such publicly-owned underwater lands and lands immediately adjacent to the shore shall be discouraged where such use would be inappropriate for reasons of public safety, military security, or the protection of fragile coastal resources.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. Existing access from adjacent or proximate public lands or facilities to existing public coastal lands and/or waters shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or nearby public lands or facilities to public coastal lands and/or waters be

eliminated, unless such actions are demonstrated to be of overriding regional or statewide public benefit, or in the latter case, estimates of future use of these lands and waters are too low to justify maintaining or providing increased access.

The following is an explanation of the terms used in the above guidelines:

a. (See definitions under first policy of "access", and "public lands or facilities").

b. A reduction in the existing level of public access - includes but is not limited to the following:

   (1) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

   (2) Pedestrian access is diminished or blocked completely by public or private development.

c. An elimination of the possibility of increasing public access in the future - includes but is not limited to, the following:

   (1) Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public coastal lands and/or waters.

   (2) Sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters.

   (3) Construction of private facilities which physically prevent the provision of convenient public access to public coastal lands and/or waters from public lands and facilities.

2. The existing level of public access within public coastal lands or waters shall not be reduced or eliminated.

   a. A reduction or elimination in the existing level of public access - includes but is not limited to the following:

      (1) Access is reduced or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

      (2) Access is reduced or blocked completely by any public development.

3. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new land use or development except where (a) it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; (b) adequate access exists within one-half mile; or (c) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

4. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.

5. In their plans and programs for increasing public access, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

6. Proposals for increased public access to coastal lands and waters shall be analyzed according to the following factors:

a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.

b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the coastal lands or waters. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing diminution of public access to the waterfront and another for encouraging and facilitating public access for recreational purposes. This provision of law is implemented by amendments to SEQR (of 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided and it shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership"; 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations be amended to reflect consideration of the use of coastal resources for including accommodation of public access needs.

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

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

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership."

3. Acquisition of Property for Construction of Bikeways, Highway Law (§22)

An important component of coastal trails systems would be the inclusion of bikeways, which are particularly desirable for providing access because they create few disturbances of the natural environment and are compatible with the protection of private property rights. This section of the Highway Law could be the principal means to acquire land for bikeways, since it authorizes the Commissioner of Transportation to acquire property for the purpose of constructing such facilities.

4. Abandoned Railway Acquisition, Transportation Law (§18)

Where railroad transportation property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to a coastal trails system that will increase access to the coast. This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. The Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict

over use exists between one or more government agencies, shall take action consistent with the effectuation of State plans and policies. This provision plus the State consistency provisions of the Coastal Management Program indicate coastal management policies will influence the decision where a conflict exists.

5. Statewide Trails System, Parks and Recreation Law §3.09 (7-a)

This provision of the Parks and Recreation Law could be used in conjunction with the above provision, since it requires the Commissioner of the Office of Parks, Recreation and Historic Preservation to promulgate a comprehensive plan for the establishment of a statewide trails system which may be implemented by the purchase and improvement of abandoned railroad rights-of-way. Through coordination with the Office of Parks, Recreation and Historic Preservation, the Coastal Management Program will ensure that development of trails in coastal areas receives a high priority, and within the coastal area the Secretary of State will identify areas where trail development should receive priority.

6. Highway Law (Article II, §22)

Recreational, scenic and natural areas adjacent to coastal highways enhance not only the setting of the highway, but can provide access to coastal areas that, for example, would otherwise be cut off by the highway. This applies to both rural and urban areas. This section of the Highway Law could be used to provide for such areas because it authorizes the Commissioner of Transportation to acquire property in order to provide multi-use areas adjacent to State highways, and recreational, natural, and scenic areas along but not necessarily contiguous to State highways. Multi-use areas can be used for such facilities as walking, hiking, bicycle, trail-bike, recreational vehicle, and snowmobile trails. Plans for any acquisitions will be submitted to the Secretary of State for his review and recommendation.

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

Because power plants generally locate along the coast and a large land area around the facility is often owned by the utility, these sites present significant opportunities for multiple use, including access. Recognizing this, the law specifically provides for consideration of recreational use of power plant sites, which could, of course, include access to the shore. The law requires utilities to state "why the primary proposed location and source is best suited to promote the public health and welfare, including the recreational and other concerned uses which the site may serve." The Secretary of State will participate in the proceedings and will formally present to the Siting Board his recommendations on access.

8. Development of Transportation Corridors; Multiple Use Outside the Counties of Kings and Queens of Rights-of-Way, Transportation Law (Article 14-e)

All transportation facilities, especially those in coastal areas, have the potential for development and multiple-use activities, including recreation and its necessary component access, in their rights-of-way. This article of the Transportation Law could be used for general access purposes to coastal areas, since it gives the Commissioner of Transportation the power to provide for the multiple-use of transportation facility rights-of-way in connection with the construction of such facilities. This applies throughout the State with the exception of Kings and Queens Counties (New York City).

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

This statute empowers the Department of Environmental Conservation to promulgate regulations for the control of land use and development within an area up to one half mile from the banks of designated rivers. While this statute provides for police power regulations, not acquisition, the Commissioner of Environmental Conservation is authorized to order discontinuance of land uses, with payment of compensation.

Along designated rivers in coastal areas where development patterns deter access, this power could be indirectly used to facilitate the provision of access.

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

This program provides for acquisition, when authorized by act of the Legislature, of real property (including less than fee interests) and administration of lands, outside the Forest Preserve counties, "... of special natural beauty, wilderness character or geological, ecological, or historical significance." Wherever properties are purchased in coastal areas, an indirect benefit of the program could be the improvement of access to the coast for a variety of passive activities, provided physical access would not conflict with preservation of the resource.

11. Tidal and Freshwater Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

These acts contain authority for programs applying both performance standards and land use regulations for the protection of wetlands. The exercise of the police power in relation to wetlands is to be accomplished within the context of the broadly stated purpose of these acts. While public access is not specifically listed, several listed purposes relate to access, including recreational benefits ("provision of areas for hunting, fishing, boating, hiking, birdwatching, photography, and other uses"); "...education and scientific research by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources"; and "...open space and aesthetic appreciation by providing often the only remaining open areas along crowded river fronts and coastal Great Lakes regions..."

POLICY 21 Water dependent and water enhanced recreation will be encouraged and facilitated, and will be given priority over non-water related uses along the coast.

A. Explanation of Policy

Water-related recreation includes such obviously water-dependent activities as boating, swimming, and fishing as well as certain activities which are enhanced by a coastal location and increase the general public's access to the coast such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of coastal scenery.

Provided the development of water-related recreation is consistent with the preservation and enhancement of such important coastal resources as fish and wildlife habitats, aesthetically significant areas, historic and cultural resources, agriculture and significant mineral and fossil deposits, and provided demand exists, water-related recreation development is to be increased and such uses shall have a higher priority than any non-coastal dependent uses, including non-water-related recreation uses. Determining a priority among coastal dependent uses will require a case by case analysis.

Among priority areas for increasing water-related recreation opportunities are those areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and those areas where the use of the shore is severely restricted by highways, railroads, industry, or other forms of existing intensive land use or development. The DOS, working with the Office of Parks, Recreation, and Historic Preservation and with local governments, will identify communities whose use of the shore has been so restricted and those sites shoreward of such developments which are suitable for recreation and can be made accessible. Priority shall be given to recreational development of such lands.

2. State Comprehensive Recreation Plan, Parks and Recreation Law (Section 3.15)

The State Comprehensive Recreation Plan has a priority system to allocate funding for public parks and outdoor recreation acquisition, development and rehabilitation projects under available State and Federal grant assistance funds and State Environmental Quality Bond Act monies. One of the positive rated allocation factors is the degree to which the project contributes to the implementation of the State Comprehensive Recreation Plan or other State, national or regional plans. Thus, the Coastal Management program would require that projects proposed for coastal areas be evaluated positively under this Priority System if they are water-related or negatively if they are not water-related. The DOS will work with the OPR & HP in a review of the State Comprehensive Recreation Plan to ensure that it assigns priority to water-related recreational facilities and activities within the coastal area.

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

Article 42, Section 919 provides: (1) that all State agency actions, including funding, planning, land transaction, as well as direct development activities must be consistent with the policies of this Act which call for the encouragement and facilitation of public access to the shore for recreation, recreational fishing, maintaining open space, and in general, the beneficial use of coastal resources, particularly for recreation whenever appropriate. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Water dependent and water enhanced recreational activities shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas

where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development." (2) that the Secretary of State review actions of State agencies that would affect achievement of the policies of the Act; and (3) that SEQR regulations be amended to require consideration of impacts on the use of coastal resources for recreation.

Section 2 of the Act requires State agencies to analyze their programs' consistency with coastal policies and that the Secretary of State review such analyses and make recommendations to the Governor and Legislature for any needed changes. The formula for allocating funding to localities and the State Comprehensive Recreation Plan are among the programs that will be analyzed.

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. In assessing the significance of an action's impact on the environment, the impacts on open space and future recreational opportunities are among those considered. The SEQR regulations (NYCRR 617.12) set a much lower threshold for triggering an environmental assessment for an action in or near a recreation area. In addition, as Article 42 of the Executive Law, requires SEQR regulations are being amended to require the consideration of impacts on the use of coastal resources, such as potential recreational use of coastal resources. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent

with the coastal policies, one of which is: "Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non water-related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development."

5. Plan for an Urban Cultural Park System; Parks and Recreation Law (Section 3.21)

   This Law has resulted in the formulation of a plan for the creation of a statewide system of urban cultural parks, many located within the coastal boundary and which include, among other areas of concern, consideration or urban waterways and other natural areas that offer active and passive recreational opportunities.

6. Parks and Recreation Law (Section 3.09 (7-a))

   Where railroad property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to recreational use and for increasing access to the land shoreward from the railroad. This provision of the Parks and Recreation Law gives the Commissioner of the Office of Parks, Recreation and Historic Preservation the power to purchase and improve such abandoned railroad rights-of-way as can be used to implement a comprehensive plan for the establishment of a statewide trails system.

7. Abandoned Railroad Acquisition, Transportation Law (Section 18)

   This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies; metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such

abandoned property. The Department of Transporation is required to notify all interested State agencies of the availability of abandoned railway rights-of-way. This Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict over use exists between one or more government agencies, shall be consistent to the extent practicable with the effectuation of all State plans, policies, and objectives. This provision fits well with the State consistency provisions of the Executive Article 42.

8. Highway Law (Article II, Section 22)

Recreational, scenic, and natural areas located adjacent to coastal highways enhance not only the setting of a highway, but can provide access to coastal areas that would otherwise be cut off by the highway. This section of the Highway Law can provide for such areas because the Commissioner of the State Department of Transportation is authorized to acquire property for multi-use areas adjacent to State highways, as well as recreational, natural, and scenic areas along, but not necessarily contiguous to, such highways. Multi-use areas can be used for such purposes as walking, hiking, bicycling, trail biking, and for snowmobile trails. Acquisition and development of such areas must be consistent with the coastal policies of Article 42, Executive Law.

9. Harbors of Refuge, Navigation Law (Article 11, Section 141)

This law authorizes the Office of Parks, Recreation and Historic Preservation to enter into agreement with the Federal government and with municipalities to construct, operate, and maintain such harbors. Priorities for locating harbors of refuge are determined by the State Comprehensive Recreation Plan Priority System. It is particularly important that the location of such harbors be consistent with the preservation and enhancement of coastal resources so that resource use conflicts are avoided.

10. Local Marina Facilities, Navigation Law (Article 11, Section 142)

Municipalities can help meet the demand for marinas by participating in this program which authorizes State financial assistance to municipalities in the construction of local marina facilities, including those incidental to a harbor of refuge. Priorities for giving financial assistance to municipalities are determined by the State Comprehensive Recreation Plan Priority System.

11. State Marina Facilities, Navigation Law (Article 11, Section 143)

This section of the Navigation Law authorizes the State to construct, operate, and maintain State marina facilities, including those incidental to a harbor of refuge. Priorities for location of these facilities are also determined by the State Comprehensive Recreation Plan Priority System.

POLICY 22 Development when located adjacent to the shore will provide for water-related recreation whenever such use is compatible with reasonably anticipated demand for such activities, and is compatible with the primary purpose of the development.

A. Explanation of Policy

Many developments present practical opportunities for providing recreation facilities as an additional use of the site or facility. Therefore whenever developments are located adjacent to the shore they should to the fullest extent permitted by existing law provide for some form of water-related recreation use unless there are compelling reasons why any form of such recreation would not be compatible with the development, or a reasonable demand for public use cannot be foreseen.

The types of development which can generally provide water-related recreation as a multiple use include but are not limited to:

- o parks
- o highways
- o power plants
- o utility transmission rights of way
- o sewage treatment facilities
- o mental health facilities*
- o hospitals*
- o prisons*
- o schools, universities*
- o military facilities*
- o nature preserves*
- o large residential subdivisions (50 units)
- o shopping centers
- o office buildings

Prior to taking action relative to any development, State agencies should consult with the State Office of Parks, Recreation, and Historic Preservation, and if there is an approved local waterfront program, with the municipality in which the development is to locate, to determine appropriate recreation uses. The agency should provide OPRHP and the municipality with the opportunity to participate in project planning.

* the types of recreation uses likely to be compatible with these facilities are limited to the more passive forms, such as trails or fishing access. In some cases, land areas not directly or immediately needed by the facility could be used for recreation.

Appropriate recreation uses which do not require any substantial additional construction shall be provided at the expense of the project sponsor provided the cost does not exceed 2% of total project cost.

In determining whether compelling reasons exist which would make inadvisable recreation as a multiple use, safety considerations should reflect a recognition that some risk is acceptable in the use of recreational facilities.

Whenever a proposed development would be consistent with CMP policies and the development could, through the provision of recreation and other multiple uses, significantly increase public use of the shore, then such development should be encouraged to locate adjacent to the shore (this situation would generally only apply within the more developed portions of urban areas).

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act. These policies call for increased public access to the shore for recreation purposes. The Act therefore makes it incumbent on all State agencies to promote water-related recreation whenever there is an opportunity to do so. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the enviroment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Developments when located adjacent to the shore shall provide for water-related recreation whenever appropriate in light of reasonably anticipated demand for such activities and the primary use of such land." Further, this Act requires review by the Secretary of State of State agency actions which may affect achievement of coastal policies. In addition SEQR regulations will be amended to require consideration of impacts on the use of coastal resources for such purposes as recreation.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant effect on the environment. In assessing the significance of an action's impact on the environment, the impacts on open space and future recreational opportunities are considered. Article 42 of the Executive Law requires that SEQR regulations be amended to require the consideration of impacts on the use of coastal resources for such activities as recreation. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable the adverse environmental effects revealed in the impact statement (ECL S 8-0109-S). In addition, pursuant to Article 42 of the Executive Law SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Developments when located adjacent to the shore shall provide for water-related recreation whenever appropriate in light of reasonably anticipated demand for such activities and the primary use of such land."

3. Utility Transmission Facility Siting (Commission Opinion 72-3, Case #26108)

Transmission line rights-of-way are often suitable for recreational activities such as hiking, cycling, cross-country skiing or horseback riding. Many transmission lines are located in coastal areas. Under this Commission opinion, a utility company is required to allocate an amount equal to two percent of the total construction cost of the

transmission facility to a fund for the recreational development of the right-of-way. The program applies to electric transmission lines of 115KV ten miles or more in length, or for higher voltage lines of one mile or more. Municipalities traversed by any part of the right-of-way, as well as State and Federal agencies, are eligible to use the fund, which provides fifty percent of the cost of any particular recreational development. The sponsor must pay the rest of the cost.

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

   Because power plants tend to locate along the coast and require a large land area around the facility, these sites present significant opportunities for multiple use. Recognizing this, this Law specifically provides for consideration of recreational use of power plant sites. It requires utilities to state "why the primary proposed location and source is best suited to promote the public health and welfare including the recreational and other concurrent uses which the site may serve."

5. Multi-use Areas Adjacent to Recreational, Natural, and Scenic Areas Along State Highways, Highway Law (Article 22)

   Areas adjacent to highways in the coastal area can provide numerous opportunities for multi-use recreation. This part of the Highway Law authorizes the Department of Transportation to acquire property adjacent to State highways for multi-use recreational purposes and along, but not necessary contiguous to, State highways for recreational, natural and scenic purposes. Multi-use areas may be utilized for, but not limited to, hiking, bicycle, trailbike, recreational vehicle and snowmobile trails.

6. Development of Transportation Corridors; Multi-Use Outside the Counties of Kings and Queens of Right-of-Way, Transportation Law (Article 14-e)

   All transportation facilities, especially those in coastal areas, have the potential for development of multi-use activities, including recreation, in their rights-of-way.

This article of the Transportation Law gives the Commissioner of the Department of Transportation the power to provide for the multi-use of transporation facility rights-of-way in conjunction with the construction of such facilities. This applies everywhere in the state except in Kings and Queens Counties.

7. Acquisition of Reforestation Areas, Environmental Conservation Law (9-0501)

Numerous coastal recreational activities are compatible with reforestation and forest management. This law gives the Department of Environmental Conservation the power to acquire lands for reforestation and for establishment and maintenance of forests for watershed protection, timber production and other forest products, and for recreation and other purposes. The reforestation areas must consist of at least five hundred acres of contiguous lands.

POLICY 23 Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation.

A. Explanation of Policy

Among the most valuable of the State's man-made resources are those structures on areas which are of historic, archeological, or cultural significance. The protection of these structures must involve a recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites but with areas of significance, and with the area around specific sites. The policy is not to be construed as a passive mandate but must include active efforts when appropriate to restore or revitalize through adaptive reuse. While the program is concerned with the preservation of all such resources within the coastal boundary, it will actively promote the preservation of historic and cultural resources which have a coastal relationship.

The structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation comprise the following resources:

(a) A resource which is in a Federal or State park established, among other reasons, to protect and preserve the resource.

(b) A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.

(c) A resource on or nominated to be on the State Nature and Historic Preserve Trust.

(d) An archeological resource which is on the State Department of Education's inventory of archeological sites.

(e) A local landmark, park, or locally designated historic district that is located within the boundary of an approved local waterfront revitalization program.

(f) A resource that is a significant component of an Urban Cultural Park.

All practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities or the Nation shall be deemed to include the consideration and adoption of any techniques, measures, or controls to prevent a significant adverse change to such significant structures, districts, areas or sites. A significant adverse change includes but is no limited to:

(a) Alteration of or addition to one or more of the architectural, structural, ornamental or functional features of a building, structure, or site that is a recognized historic, cultural, or archeological resource, or component thereof. Such features are defined as encompassing the style and general arrangement of the exterior of a structure and any original or historically significant interior features including type, color and texture of building materials; entry ways and doors; fenestration; lighting fixtures; roofing; sculpture and carving; steps; rails; fencing; windows; vents and other openings; grillwork; signs; canopies; and other appurtenant fixures and, in addition, all buildings, structures, outbuildings, walks, fences, steps, topographical features, earthworks, paving and signs located on the designated resource property. (To the extent they are relevant, the Secretary of the Interior's "Standards For Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be adhered to.)

(b) Demolition or removal in full or part of a building, structure, or earthworks that is a recognized historic, cultural, or archeological resource or component thereof, to include all those features described in (a) above plus any other appurtenant fixture associated with a building structure or earthwork.

(c) All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archeological resource and all actions within an

historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgement about compatibility should focus on the visual and locational relationship between the proposed action and the special character of the historic, cultural, or archeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the proposed actions. With historic districts this would include infrastructure improvements or changes, such as, street and sidewalk paving, street furniture and lighting.

This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthwork, or component thereof of a recognized historic, cultural or archeological resource which has been officially certified as being imminently dangerous to life or public health. Nor shall the policy be construed to prevent the ordinary maintenance, repair, or proper restoration according to the U.S. Department of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings of any building, structure, site or earthwork, or component thereof of a recognized historic, cultural or archeological resource which does not involve a significant adverse change to the resource, as defined above.

B. State Means for Implementing Policy

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

Article 42 §919 requires: 1) that all State agency actions including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act. One of these policies calls for "restoration and revitalization of natural and man-made resources"; elsewhere the Legislature has determined that among most important man-made resources of the State are its historical, architectural, archeological, and cultural assets[1]; this

[1] Park & Recreation Law §14.01

provision of the Act will be implemented through amendments to SEQR regulations (see 2 below) and the regulations issued pursuant to Article 14 of the Parks and Recreation Law (see 3 below), and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities, or the Nation." 2) that the Secretary of State may review actions of State agencies that may affect achievement of the policies of the Act; and 3) that SEQR regulations be amended to, among other things, require consideration of the effects of an action on the use and conservation of coastal resources, such as the historical, architectural, archeological, and cultural resources of the coastal area.

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

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. In determining whether an action may have a significant effect on the environment, impairment of the character or quality of important historical, archeological, architectural, or of community or neighborhood character are to be considered as indicators of such significant effects. The SEQR regulations set a very low threshold for triggering an environmental assessment -- "any action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to any facility or site listed on the National Register of Historic Places, or any historic building, structure, or site, or prehistoric site that has been proposed by the Committee on the Registers for consideration by the NYS Board on Historic Preservation for a recommendation to the State Historic Officer for nomination for inclusion in said National Register". Actions which have been subject to an environmental impact statement must, consistent with social,

economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement. In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Protect, enhance and restore structures, districts, areas, or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities, or the Nation."

3. New York State Historic Preservation Act of 1980, Parks & Recreation Law (Sections 11.03, 11.09, 14); Public Building Law (Article 4-B); General Municipal Law (Article 5-K)

The New York State Historic Preservation Act greatly expands the responsibilities of New York State agencies and municipalities with regard to historic preservation. Specifically, the Act provides several means for preserving the historic architectural, archeological, and cultural resources of the State (including resources under water). Each State agency must designate a historic preservation officer to coordinate and implement State historic preservation programs. A State Register of Historic Places is created and an inventory of properties which may qualify for the Register is established. A Statewide Preservation Plan is to be prepared and updated annually. A review process has been established, to be undertaken concurrently with existing environmental reviews; this process requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if a State-funded project will have an adverse effect upon a historic property. The review process requires consideration of alternatives and that adverse effects be avoided or mitigated. The Secretary of State is added to State Board for Historic Preservation, and the Commissioner of the Office of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

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

This program provides for the acquisition and administration of lands and waters which should be preserved for their historical significance, among other purposes. The Environmental Quality Bond Act of 1972 (ECL, Article 51, Section 51-0701) is the current source of State funds to acquire lands under this program.

POLICY 24 Prevent impairment of scenic resources of statewide significance.

A. Explanation of Policy

The Coastal Management Program will identify on the coastal area map scenic resources of statewide significance. A list of preliminarily identified resources appears in the Appendix. The following general criteria will be combined to determine significance:

Quality. The basic elements of design (i.e., two-dimensional line, three-dimensional form, texture and color) combine to create all high quality landscapes. The water, landforms, and man-made components of scenic coastal landscapes exhibit variety of line, form, texture and color. This variety is not, however, so great as to be chaotic. Scenic coastal landscapes also exhibit unity of components. This unity is not, however, so complete as to be monotonous. Example: the Thousand Islands where the mix of water, land, vegetative and man-made components creates interesting variety, while the organization of these same components creates satisfying unity.

Often, high quality landscapes contain striking contrasts between lines, forms, textures and colors. Example: A waterfall where horizontal and vertical lines and smooth and turbulent textures meet in dramatic juxtaposition.

Finally, high quality landscapes are generally free of discordant features, such as structures or other elements which are inappropriate in terms of siting, form, scale, and/or materials.

Uniqueness. The uniqueness of high quality landscapes is determined by the frequency of occurence of similar resources in a region of the State or beyond.

Public Accessibility. A scenic resource of significance must be visually and, where appropriate, physically accessible to the public.

Public Recognition. Widespread recognition of a scenic resource is not a characteristic intrinsic to the resource. It does, however, demonstrate people's appreciation of the resource for its visual, as well as evocative, qualities. Public recognition serves to reinforce analytic conclusions about the significance of a resource.

When considering a proposed action, agencies shall first determine whether the action could affect a scenic resource of statewide significance. This determination would involve: 1.) a review of the coastal area map to ascertain if it shows an identified scenic resource which could be affected by the proposed action, and 2.) a review of the types of activities proposed to determine if they would be likely to impair the scenic beauty of an identified resource. Impairment will include: (i) the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction, or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

The following siting and facility-related guidelines are to be used to achieve this policy, recognizing that each development situation is unique and that the guidelines will have to be applied accordingly. Guidelines include:

-- siting structures and other development such as highways, power lines, and signs, back from shorelines or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore;

-- clustering or orienting structures to retain views, save open space and provide visual organizaton to a development;

-- incorporating sound, existing structures (especially historic buildings) into the overall development scheme;

-- removing deteriorated and/or degrading elements;

-- maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest;

-- maintaining or adding vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters;

-- using appropriate materials, in addition to vegetation, to screen unattractive elements;

-- using appropriate scales, forms and materials to ensure that buildings and other structures are compatible with and add interest to the landscape.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing impairment of scenic beauty. This provison of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600), provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Prevent impairment of scenic resources of statewide signficance, as identified on the coastal area map. Impairment shall include: (i) the irreversible modification of geological forms; destruction or removal of vegetation; modification, destruction or removal of structures, whenever the geologic forms, vegetation, or structures are significant to the scenic quality of an identified resource and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource." 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to relect consideration of coastal resources such as scenic resources.

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development and land resources; hence scenic areas are viewed as an environmental resource. The SEQR regulations (6 NYCRR Part 617) require that

actions which have been subject to an environmental impact statement must, consistent with social, economic and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse effects revealed in the impact statement (ECL §8-0109-8).

In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include: (i) the irreversible modification of geological forms; destruction or removal of vegetation; modification, destruction or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource."

3. Protection of Natural and Man-Made Beauty, Environmental Conservation Law (Article 49-0103.1 and 0.0314)

Under these two parts of the law, DEC has the power and duty to: (1) "develop policies and programs to preserve and enhance the natural and man-made beauty of the State" and (2) "designate scenic sites, areas and highways in the State and develop programs for their preservation and enhancement". Where such programs exist for areas in the coastal zone, they can be used as a guide for determining the consistency of proposed actions with coastal policy. The Coastal Management Program will work closely with DEC to designate additional sites and develop programs for their protection.

4. State Nature and Historic Preserve Trust, Environmental Conservation Law (Article 45)

The Trust provides for the acquisition and administration of lands and waters which should be preserved for their natural beauty. Scenic resources of particular significance in the coastal area would, thus, be eligible for acquisition. The Environmental Quality Bond Act of

1972 (ECL, Article 51, Section 51-0701) is the major state funding mechanism to implement this acquisition program.

5. Utility Transmission Facility Siting Act and Power Plant Siting Act, Public Service Law, (Article VII and VIII)

   Transmission lines and power plants are highly visible and sometimes unwelcome intrusions upon scenic landscapes. These two legislative devices require that Certificates of Environmental Compability and Public Need be issued for major utility transmission facilities and steam-electric generating facilities. Aesthetic factors in utility planning and development are incorporated into Article VII and VIII deliberations.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   The issuance of permits for regulated uses or activities in tidal wetlands requires that the preservation and protection of aesthetic resources be considered. 6 NYCRR, Part GG 1.10, specifically includes aesthetic considerations among the permit issuing standards.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   The preservation and protection of aesthetic resources is one of the objectives of this act. The regulations require the consideration of aesthetics in the issuance of a permit.

8. Coastal Erosion Hazards Area Act, Environmental Conservation Law, (Article 34)

   While the purpose of this law is not to protect the quality of coastal scenery, those natural protective features (dunes, beaches, spits, barrier islands, bluffs) which the act protects are major components of coastal scenery.

POLICY 25 Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area.

A. Explanation of Policy

When considering a proposed action, which would not affect a scenic resource of statewide significance, agencies shall undertake to ensure that the action would be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. Activities which could impair or further degrade scenic quality are the same as those cited under the previous policy, i.e., modification of natural landforms, removal of vegetation, etc. However, the effects of these activities would not be considered as serious for the general coastal area as for significant scenic areas.

The siting and design guidelines listed under the previous policy should be considered for proposed actions in the general coastal area. More emphasis may need to be placed on removal of existing elements, especially those which degrade, and on addition of new elements or other changes which enhance. Removal of vegetation at key points to improve visual access to coastal waters is one such change which might be expected to enhance scenic quality.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing impairment of scenic beauty. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area." 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources such as scenic resources.

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

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

   Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development and land resources; hence actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area."

3. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   See Policy 24.

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

   See Policy 24.

5. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   See Policy 24.

POLICY 26 Conserve and protect agricultural lands in the State's coastal area.

A. Explanation of Policy

The first step in conserving agricultural lands is the identification of such lands. The Department of State is mapping all important agricultural lands within the State's coastal area. The following criteria have been used to prepare the maps, and the mapped information will be incorporated in the New York State Coastal Resources Inventory and on the Coastal Area Map.

Land meeting any of the following criterial is being mapped.[1]

1. Land which meets the definition of the U.S. Department of Agriculture as being prime farmland, unique farmland, or farmland of statewide importance.

    a. Prime farmland is defined by USDA Soil Conservation Service in CRF #7 Agriculture Part 657.5(a), January, 1979. A list of the soil associations that meet this definition has been prepared for each coastal county.[2]

[1] After mapping according to this definition was substantially completed, the NYS Department of Agriculture and Markets completed development of a new agricultural land classification system. As soon as is practical the following definition will be the basis for revising the maps of coastal agricultural and: Important agricultural land shall include all land within an agricultural district or subject to an eight-year commitment which has been farmed within at least two of the last five years, or any land farmed within at least two of the last of the last five years in soil groups 1-4 as classified by the Land Classification System established by the NYS Department of Agriculture and Markets, or any land farmed within at least two of the last five years which is influenced by climate conditions which support the growth of high value crops. Additionally, agricultural land not meeting the above criteria but located adjacent to any such land and forming part of an on-going agricultural enterprise shall be considered important agricultural land.

[2] For the purposes of this map the urban areas which are to be excluded are all cities, the counties of Nassau, Westchester, Rockland, Putnam and Erie, and any built up area (this applies to c. also).

b. Unique farmland is defined by USDASCS in CRF #7 Agriculture Part 657.5(b). In the coastal area of New York all fruit and vegetable farming meets the terms of the definition.

c. Farmland of Statewide importance is defined by USDASCS in CRF #7 Agriculture Part 656.5(c). Lists of soil associations which constitute farmland of Statewide importance have been prepared for each coastal county.

2. Active farmland within Agricultural Districts. The maps of each Agricultural District shows land committed by farmers. This is the land that will be mapped as active farmland. The district boundary will also be shown.

3. Areas identified as having high economic viability for farming. Any farm not identified under 1 and/or 2 above and which is located in an area identified as having "high viability" on the map entitled "Economic Viability of Farm Areas" prepared by the Office of Planning Coordination in May, 1969. This would be the basis for initial identification of areas having high economic viability for farming. Areas will be added and/or deleted based on comments from the agricultural community.

4. Areas adjacent to land identified under 1 above if these areas are being farmed and are part of a farm with identified important agricultural lands.

5. Prime farmland, unique farmland, and farmland of Statewide significance will not be identified as important agricultural land whenever it occurs as parcels of land less than 25 acres in size and these small parcels are not within a mile of areas of active farming.

Given the Program's application to a narrow strip of land, implementing a policy of promoting agricultural use of land must, to be practical, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use as the result of some public action. The many other factors such as markets, taxes, and regulations, which influence the viability of agriculture in a given area, can only be addressed on a Statewide or national basis.

The Program policy requires a concern for the loss of any important agricultural land. However, the primary concern must be with the loss of agricultural land when that loss would have a significant effect on an agricultural area's ability to continue to exist, to prosper, and even to expand. A series of determinations are necessary to establish whether a public action is consistent with the conservation and protection of agricultural lands or whether it is likely to be harmful to the health of an agricultural area. In brief these determinations are as follows: First, it must be determined whether a proposed public action would result in the loss of important agricultural lands as mapped on the Coastal Inventory. If it would not result, either directly or indirectly, in the loss of identified important agricultural lands, then the action is consistent with the policy on agriculture. If it is determined that the action would result in a loss of identified important agricultural lands but that loss would not have an adverse effect on the viability of agriculture in the surrounding area, then the action may also be consistent with the agriculture policy. However, in that case the action must be undertaken in a manner that would minimize the loss of important farmland. If the action is determined to result in a significant loss of important agricultural land, that is if the loss is to a degree sufficient to adversely affect surrounding agriculture's viability, - its ability to continue to exist, to prosper, and even to expand - then the action is not consistent with this agriculture policy.

The following guidelines define more fully what must be considered in making the above determinations:

A. A public action would be likely to significantly impair the viability of an agricultural area in which identified important agricultural lands are located if:

1. the action would occur on identified important agricultural lands and would:

   a. consume more than 10% of the land of an active farm[3] containing such identified important agricultural lands

   b. consume a total of 100 acres or more of identified important agricultural land, or

   c. divide an active farm with identified important agricultural land into one or more parts thus impeding efficient farm operation

2. the action would result in environmental changes which may reduce the productivity or adversely affect the quality of the product of any identified important agricultural lands.

3. the action would create real estate market conditions favorable to the conversion of large areas of identified important agricultural lands to non- agricultural uses. Such conditions may be created by:

   a. public water or sewer facilities to serve non-farm structures

   b. transportation improvements, except for maintenance of, and safety improvements to, existing facilities, that serve non-farm or non-farm related development

   c. major non-agribusiness commercial development adjacent to identified agricultural lands

   d. major public institutions

[3]A farm is defined as an area of at least 10 acres devoted to agricultural production as defined in the Agricultural District Law and from which agricultural products have yielded gross receipts of $10,000 in the past year.

e. any change in land use regulations applying to agricultural land which would encourage or allow uses incompatible with the agricultural use of the land

B. The following types of facilities and activities should not be construed as having adverse effects on the preservation of agricultural land:

1. Farm dwellings, barns, silos, and other accessory uses and structures incidental to agricultural production or necessary for farm family supplemental income

2. Agribusiness development which includes the entire structure of local support services and commercial enterprises necessary to maintain an agricultural operation, e.g., milk hauler, grain dealer, farm machinery dealer, veterinarian, food processing plants

C. In determining whether an action that would result in the loss of farmland is of overriding regional or Statewide benefit, the following factors should be considered:

1. For an action to be considered overriding it must be shown to provide significantly greater benefits to the region or State than are provided by the affected agricultural area (not merely the land directly affected by the action). In determining the benefits of the affected agriculture to the region or State, consideration must be given to its social and cultural value, its economic viability, its environmental benefits, its existing and potential contribution to food or fiber production in the State and any State food policy, as well as its direct economic benefits.

a. An agricultural area is an area predominantly in farming and in which the farms produce similar products and/or rely on the same agribusiness support services and are to a significant degree economically inter-dependent. At a minimum this area should consist of at least 500 acres of identified important agriculture land. For the purpose of analyzing impacts of any action on agriculture, the boundary of such area need not be restricted to land within the coastal boundary. If the affected

agricultural lands lie within an agricultural district then, at a minimum, the agricultural area should include the entire agricultural district.

b. In determining the benefits of an agricultural area, its relationship to agricultural lands outside the area should also be considered.

c. The estimate of the economic viability of the affected agricultural area should be based on an assessment of

   i. soil resources, topography, conditions of climate and water resources

   ii. availability of agribusiness and other support services, and the level and condition of investments in farm real estate, livestock and equipment

   iii. the level of farming skills as evidenced by income obtained, yield estimates for crops, and costs being experienced with the present types and conditions of buildings, equipment, and cropland

   iv. use of new technology and the rates at which new technology is adopted

   v. competition from substitute products and other farming regions and trends in total demand for given products

   vi. patterns of farm ownership for their effect on farm efficiency and the likelihood that farms will remain in use

d. The estimate of the social and cultural value of farming in the area should be based on an analysis of:

   i. the history of farming in the area

   ii. the length of time farms have remained in one family

iii. the degree to which farmers in the area share a cultural or ethnic heritage

iv. the extent to which products are sold and consumed locally

v. the degree to which a specific crop(s) has become identified with a community

e. An estimate of the environmental benefits of the affected agriculture should be based on analysis of:

i. the extent to which the affected agriculture as currently practiced provides a habitat or food for wildlife

ii. the extent to which a farm landscape adds to the visual quality of an area

iii. any regional or local open space plans, and degree to which the open space contributes to air quality

iv. the degree to which the affected agriculture does, or could, contribute to the establishment of a clear edge between rural and urban development

D. Whenever a proposed action is determined to have an insignificant adverse effect on identified important agricultural land or whenever it is permitted to substantially hinder the acheivement of the policy according to DOS regulations, Part 600, or as a result of the findings of an EIS, then the required minimization should be undertaken in the following manner:

1. The proposed action shall, to the extent practicable, be sited on any land not identified as important agricultural, or, if it must be sited on identified important agricultural land, sited to avoid classes of agricultural land according to the following priority:

a. prime farmland in orchards or vineyards

b. unique farmland in orchard or vineyards

c. other prime farmland in active farming

d. other unique farmland

e. farmland of statewide importance in active farming

f. active farmland identified as having high economic viability

g. prime farmland not being farmed

h. farmland of statewide importance not being farmed

2. To the extent practicable, agricultural use of identified important agricultural land not directly necessary for the operation of the proposed non-agricultural action should be provided for through such means as lease arrangements with farmers, direct undertaking of agriculture, or sale of surplus land to farmers. Agricultural use of such land shall have priority over any other proposed multiple use of the land.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for the conservation and protection of agricultural lands. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies one of which is: To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss or impair the productivity of important agricultural land, as identified on the coastal area map,

if that loss or impairment would adversely affect the valuability of agriculture in an agricultural district or, in the area surrounding such lands, if there is no agriculture district. Secretary of State may review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources such as agricultural lands.

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

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development, and land resources; hence farming and important agricultural lands are viewed as an environmental resource. The SEQR regulation (6 NYCRR Part 617) set a very low threshold for triggering an environmental assessment for actions within agricultural districts. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law SEQR regulations are amended to require that for actions by a state agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss or impair the the productivity of important agricultural land, as identified on the coastal area map, if that loss or impairment would adversely affect the valuability of agriculture in an agricultural district or, in the area surrounding such lands, if there is no agriculture district.

3. Agricultural District Program, Agriculture and Markets Law (Article 25AA)

The Agricultural District Law provides the primary means for the State to directly pursue a policy of conserving important agricultural lands. Most of the important coastal agricultural land is already included in agricultural districts. The provisions of the act which lead to the conservation of farmland include 1) farm value assessments, (recent amendments improve this provision); 2) limitations on the exercise of eminent domain; 3) a requirement that State agencies' regulations encourage maintenance of farming; 4) limitations on local ordinances that adversely affect farming and 5) limitations on the power of public service districts to impose taxes. These provisions, plus the power given the State to create such districts where it would further state environmental plans, policies or objectives, constitute the basic state program for conserving all important farmland.

4. Transportation Law (§14-a)

This law requires that the Commissioner of Transportation cooperate with the Commissioner of Agriculture and Markets to assure that measures to preserve farmland and the natural characteristics of the land traversed by transportation facilities are included in all stages of such projects.

POLICY 27 Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

A. Explanation of Policy

Demand for energy in New York will increase, although at a rate slower than previously predicted. The State expects to meet these energy demands through a combination of conservation measures; traditional and alternative technologies; and use of various fuels including coal in greater proportion.

A determination of public need for energy is the first step in the process for siting any new facilities. The directives for determining this need are contained primarily in Article 5 of the New York State Energy Law. That Article requires the preparation of a State Energy Master Plan. With respect to transmission lines and steam electric generating facilities, Articles VII and VIII of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for a shorefront location. The policies derived from the siting regulations under these Articles are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization and Coastal Resources Act. That Act is used for the purposes of ensuring consistency with the Coastal Management Program.

The Department of State will comment on the State Energy Master Plan; present testimony for the record during relevant certification proceedings under Articles VII and VIII of the PSL; and use the State SEQR and DOS regulations to ensure that decisions on other proposed energy facilities (other than transmission facilities and steam electric generating plants) which would impact the coastal area are made consistent with coastal policies.

B. State Means for Implementing the Policy

1. Energy Law (Article 5)

Under this law an Energy Planning Board was established. As required, the Board prepared and adopted the first State Energy Master Plan which is currently in effect. The Board is now considering an updated plan. See Section 7 of this document for a more detailed discussion of this plan.

2. Public Service Law (Article VIII) - Siting of Major Steam Electric Generating Facilities

Before preparation of a site or the construction of a major steam electric generating facility can commence, a Certificate of Environmental Compatibility and Public Need must be issued by the New York State Board on Electric Generation Siting and the Environment. This process is described in detail in Section 7. In granting this certificate, the Board must determine that the facility:

- Represents the minimum adverse environmental impact, considering the state of available technology; the nature and economics of the various alternatives; and the interests of the state with respect to aesthetics, preservation of historic sites, forests and parks, fish and wildlife, and viable agricultural lands;

- Complies with applicable State laws concerning, among other matters, the environment and public health and safety;

- Serves the public interest, convenience and necessity.

The regulations which implement Article VIII and govern the Board's decision (see Appendix A, #7) assure that this decision will be compatible with the policies articulated in this document, both those relating to environmental protection and to economic development.

To further ensure compatibility, the Department of State will review applications and may present testimony during proceedings

involving facilities proposed to be sited in coastal areas. When reviewing applications, the Department will examine the required description of reasonable alternate locations as well as the rationale for the preferred site, particularly with respect to potential land uses on or near the proposed site, and the justification for the amount of shorefront land to be used. Proposed uses which are likely to be regarded by the Department as requiring a shorefront location include:

- o Uses involved in sea/land transfer of goods (docks, pipelines, short term storage facilities);
- o Uses requiring large quantities of water (hydroelectric power plants, pumped storage power plants); and,
- o Uses that rely heavily on waterborne transportation of raw materials or products which are difficult to transport on land.

3. Public Service Law (Article VII) - Siting of Major Utility Transmission Facilities

Prior to the construction of a major electric or fuel gas transmission facility, a Certificate of Environmental Compatibility and Public Need must be granted by the Public Service Commission. See Section 7 of this document for a detailed description of this process. In issuing a certificate, the Commission must determine that the facility:

- o Represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- o Conforms with applicable State laws;
- o Serves the public interest, convenience and necessity.

As with steam electric generating plants, the Department of State will review applications and may present testimony during proceedings involving transmission facilities proposed to be sited in the coastal area. The Department will examine the same matters as under Article VIII. It will also use the same

criteria to determine the need for a shorefront location and the consistency of the proposal with coastal policies.

Interstate transmission facilities, such as gas and petroleum pipelines, coal slurry pipelines and electric transmission lines associated with hydroelectric facilities, are regulated by Federal agencies. Through Federal consistency provisions, such facilities will be sited in a manner that is consistent with the Program's policies.

4. Environmental Conservation Law (Article 23, Title 17) - Liquefied Natural and Petroleum Gas

All liquefied natural gas (LNG) and liquefied petroleum gas (LPG) facilities, must obtain an environmental safety permit before construction and operation. For a permit to be granted, it must be shown that such facilities would not endanger residential areas and contiguous populations and would otherwise conform to siting criteria established by the Department of Environmental Conservation. During the review of proposed projects, consideration is given to: the location of the proposed facility; the design and capacity of the facility; expected sources of the gas; methods of transporting gas to and from the facility and transportation routes; the public need for the facility; its environmental impacts; and, descriptions of reasonable alternate locations for the facility.

5. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies' actions, including direct energy development activities such as those undertaken by the Power Authority of the State of New York, must be consistent with the environmental protection and development policies of this act. This provision of law is implemented by amendments to SEQR (below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, 2) that the Secretary of State shall review actions

of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

6. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. This requirement applies to large scale energy facilities other than transmission lines and steam electric generating plants as described above. The environment is broadly defined to include existing patterns of development and land resources. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies.

7. Water Resources Law, Environmental Conservation Law (Article 15)

Proposals, including those to construct all pipelines, which would excavate or deposit fill in any navigable waters and adjacent marshes and estuaries of the State require permits issued by the Department of Environmental Conservation.

8. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The Tidal Wetlands Act requires that a permit be issued for uses, including oil piplines, in identified tidal wetlands. It must be demonstrated that proposed facilities will

not adversely affect water quality, flood and storm control, marine food production, wildlife habitats, open space, and aesthetically significant areas.

9. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   The Freshwater Wetlands Act requires that a permit be issued for uses, including oil pipelines, in identified freshwater wetlands. It must be demonstrated that proposed facilities will not adversely affect water quality, flood and storm control, erosion control, subsurface water resources, wildlife habitats, freshwater fish sanctuaries, open space, and aesthetically significant areas.

10. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, Section 170 et. seq.)

    This Article provides for the protection of the State's environment and economy by preventing unregulated discharge of petroleum from major facilities; by authorizing the Departments of Environmental Conservation and Transportation to respond quickly to remove any discharges; and by establishing liability for any damages sustained within the State as a result of such discharges.

    The Article also creates a fund for clean-up, restoration and compensation for damages caused by oil spills. Before a license to construct a major oil facility can be issued by the Department of Transportation, an applicant must pay the required fee to help maintain the fund and must show that the necessary equipment to prevent, contain and remove petroleum discharges will be provided. The Department will issue licenses for major onshore facilities only after the Department of Environmental Conservation has certified that the applicant has the necessary equipment to control oil discharges.

11. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 27)

    This Article requires permits for construction of new outlets or new disposal systems to discharge industrial and other wastes into State waters, including wastes from nuclear power plants, other steam electric generating

plants, and petroleum facilities. This permit procedure ensures that established water quality standards are met.

12. Air Pollution Control, Environmental Conservation Law (Article 19, Title 3)

This Article gives the Department of Environmental Conservation the authority to promulgate and enforce regulations controlling air emissions, including those released by energy facilities. These regulations appear in the State Implementation Plan which details State strategies for meeting Federal air quality standards under the Clean Air Act.

POLICY 28 Ice management practices shall not interfere with the production of hydroelectric power, damage significant fish and wildlife and their habitats, or increase shoreline erosion or flooding.

A. Explanation of Policy

Prior to undertaking actions required for ice management, an assessment must be made of the potential effects of such actions upon the production of hydroelectric power, fish and wildlife and their habitats as will be identified in the Coastal Area Maps, flood levels and damage, rates of shoreline erosion damage, and upon natural protective features.

Following such an examination, adequate methods of avoidance or mitigation of such potential effects must be utilized if the proposed action is to be implemented.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act, which, among others, call for preventing the loss of fish and wildlife resources, minimizing damage to natural resources and property from flooding and erosion, and achieving the beneficial use of coastal resources. Those provisions of law are implemented by amendments to SEQR and by the Department of State regulations. In addition, the Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Ice management practices shall not interfere with the production of hydro-electric power, damage significant fish and wildlife and their habitats, nor increase shoreline erosion or flooding." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of this policy.

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

   Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Ice management practices shall not interfere with the production of hydro-electric power, damage significant fish and wildlife and their habitats, nor increase shoreline erosion or flooding."

3. Energy Law (Article 5)

   See description under Policy 27.

4. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   See description under Policy 27.

5. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

   See description under Policy 27.

6. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, §170 et. seq.)

   See description under Policy 27.

7. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

   See description under Policy 27.

POLICY 29 Encourage the development of energy resources on the Outer Continental Shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities.

A. Explanation of Policy

The State recognizes the need to develop new indigenous energy sources. It also recognizes that such development may endanger the environment. Among the various energy sources being examined are those which may be found on the Outer Continental Shelf (OCS) or in Lake Erie. The State has been encouraging the wise development of both.

The Department of Environmental Conservation conducted a study to identify potential sites for on-shore OCS facilities and continues to participate in the OCS planning process by reviewing and representing the State's concerns about OCS lease sales.

The Department of Environmental Conservation has also examined the potential dangers of Lake Erie gas drilling and is instituting reasonable guidelines so that activities can proceed without damage to public water supplies and other valuable coastalresources. State law prohibits development of wells nearer than one-half mile from the shoreline, two miles from public water supply intakes, and one thousand feet from any other structure or installation in or on Lake Erie. Further, State law prohibits production of liquid hydrocarbons in Lake Erie, either alone or in association with natural gas.

B. State Means for Implementing the Policy

1. Environmental Conservation Law (Section 23-1101)

The Department of Environmental Conservation may lease the lands beneath Lake Erie according to specific siting, operation, and liability requirements. Thus the State's environmental agency will retain control over the prccess and ensure appropriate environmental safeguards.

2. Environmental Conservation Law (Section 23-0305)

   This law provides that the Department of Environmental Conservation, in cooperation with the Public Service Commission, will retain jurisdiction over any active or abandoned wells and wellheads and may limit production. The Department may act to terminate hazardous discharges which threaten natural resources. Under this law, producers and handlers must maintain accurate records of quantities of gas handled.

3. Siting of Major Utility Transmission Facilities, Public Service Law (Article VII)

   This law establishes procedures to be followed by developers of natural gas in the construction of any gathering pipelines from wellheads and any master collecting pipelines in accordance with the environmental considerations of this Article as discussed under the previous policy.

4. Public Service Law (Article 4, Section 66)

   Under this law, the Public Service Commission regulates the safe construction and operation of natural gas pipelines from the wellhead to any onshore connection.

5. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

   See description under Policy 27.

6. State Environmental Quality Review Act, Environmental Conservation Law (Section 8-0113)

   See description under Policy 27.

7. Water Resources Law, Environmental Conservation Law (Article 15)

   See description under Policy 27.

8. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

   See description under Policy 27.

9. Freshwater Wetlands Act, Environmental Conservation Act (Article 24)

   See description under Policy 27.

10. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, Section 170 et. seq.)

See description under Policy 27.

11. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17)

See description under Policy 27.

12. In a Memorandum of Understanding between DEC and PSC, procedures affecting construction and operation have been established, including the above, for the regulation of natural gas recovery and transportation from beneath Lake Erie. This Memorandum further states that "any system for the development of natural gas resources shall be based on efficiency, economy, conservation and environmental compatibility, including plans and policies developed under the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et. seq.".

POLICY 30 Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to State and National water quality standards.

A. Explanation of Policy

Municipal, industrial and commercial discharges include not only "end-of-the pipe" discharges into surface and groundwater but also plant site runoff, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving coastal waters and those which pass through municipal treatment systems before reaching the State's waterways.

B. State Means for Implementing the Policy

1. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)

2. Industrial Hazardous Waste Management, Environmental Conservation Law (Article 27, Title 9)

3. Substances Hazardous to the Environment, Environmental Conservation Law (Article 37)

4. State Certification of Public Sewage Treatment Plant Operators, Environmental Conservation Law, (Article 3-0301), Public Health Law (Section 225)

POLICY 31 State coastal area policies and management objectives of approved local Waterfront Revitalization Programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over-burdened with contaminants will be recognized as being a development constraint.

A. Explanation of Policy

The State has classified its coastal and other waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. Local Waterfront Revitalization Programs and State coastal management policies shall be factored into the review process for coastal waters.

The State has identified certain stream segments as being either "water quality limiting" or "effluent limiting." Waters not meeting State standards and which would not be expected to meet these standards even after applying "best practicable treatment" to effluent discharges are classified as "water quality limiting." Those segments meeting standards or are expected to meet them after application of "best practicable treatment" are classified as "effluent limiting," and all new waste discharges must receive "best practicable treatment." However, along stream segments classified as "water quality limiting," waste treatment beyond "best practicable treatment" would be required, and costs of applying such additional treatment may be prohibitive for new development.

B. State Means for Implementing the Policy

1. Waterfront Revitalization and Coastal Resources Act, Executive Law, (Article 42)

2. Classification of Waters and Adoption of Standards, Environmental Conservation Law (Article 17, Title 3)

POLICY 32 Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high, given the size of the existing tax base of these communities.

A. Explanation of Policy

Alternative systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost effective in smaller less densely populated communities and for which conventional facilities are too expensive.

B. State Means for Implementing the Policy

1. Construction and Operation Grants, Environmental Conservation Law (Article 17, Title 9)

2. Appalachian Regional Commission, Executive Law (Article 60)

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

   Approval of local waterfront revitalization programs authorized under Section 915 of this law would be contingent in part on the community's demonstrated effort to provide necessary treatment of any sanitary wastes being generated at waterfront properties. When hookup to the municipal sewage collection and treatment facilities is neither economically or technically feasible, installation of alternative treatment systems will be required as needed and practical.

POLICY 33 Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

A. Explanation of Policy

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of storm water runoff and combined sewer overflows. At present, structural approaches to controlling stormwater runoff (e.g., construction of retention basins) and combined sewer overflows (e.g., replacement of combined system with separate sanitary and stormwater collection systems) are not economically feasible. Proposed amendments to the Clean Water Act, however, will authorize funding to address combined sewer overflows in areas where they create severe water quality impacts. Until funding for such projects becomes available, non-structural approaches (e.g., improved street cleaning, reduced use of road salt) will be encouraged.

B. State Means for Implementing the Policy

1. Agreement of a Five Year Water Quality Management Program.

2. State "208" Water Quality Management Progam

3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

POLICY 34 Discharge of waste materials into coastal waters from vessels subject to State jurisdiction into coastal waters will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

A. Explanation of Policy

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the State's waters is regulated. Priority will be given to the enforcement of this Law in areas such as shellfish beds and other significant habitats, beaches, and public water supply intakes, which need protection from contamination by vessel wastes. Also, specific effluent standards for marine toilets have been promulgated by the Department of Environmental Conservation (6 NYCRR, Part 657).

B. State Means for Implementing the Policy

1. Disposal of Sewage and Litter in Waterways, Navigation Law (Section 33-c)

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

POLICY 35 Dredging and dredge spoil disposal in coastal waters will be undertaken in a manner that meets existing State dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands.

A. Explanation of Policy

Dredging often proves to be essential for waterfront revitalization and development, maintaining navigation channels at sufficient depths, pollutant removal and meeting other coastal management needs. Such dredging projects, however, may adversely affect water quality, fish and wildlife habitats, wetlands and other important coastal resources. These adverse effects can be minimized through careful design and timing of the dredging operation and proper siting of the dredge spoil disposal site. Dredging permits will be granted after it has been satisfactorily demonstrated that these anticipated adverse effects have been reduced to a level considered acceptable by the permitting agency.

B. State Means for Implementing the Policy

1. Protection of Waters, Environmental Conservation Law (Article 15, Title 5)

2. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

4. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

5. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

POLICY 36 Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

A. Explanation of Policy

See Policy 39 for definition of hazardous materials.

B. State Means for Implementing the Policy

1. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12)

2. Penalties and Liabilities for Spills of Bulk Liquids, Environmental Conservation Law (Article 71-1941)

3. Transportation Law (Article 2, Section 14-F)

POLICY 37 Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.

A. Explanation of Policy

Best management practices used to reduce these sources of pollution could include but are not limited to, encouraging organic farming and pest management principles, soil erosion control practices, and surface drainage control techniques.

B. State Means for Implementing the Policy

1. Phosphate Limits, Environmental Conservation Law (Article 35)

2. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)

3. Realty Subdivision Approval, Environmental Conservation Law (Article 17, Title 15)

4. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

5. Public Health Law (Section 228)

6. State Water Quality Management (108) Program

7. Soil and Water Conservation District Law (Section 9)

POLICY 38 The quality and quantity of surface water and groundwater supplies, will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

A. Explanation of Policy

Surface and groundwater are the principle sources of drinking water in the State, and therefore must be protected. Since Long Island's groundwater supply has been designated a "primary source aquifer," all actions must be reviewed relative to their impacts on Long Island's groundwater aquifers.

B. State Means for Implementing the Policy

1. Well Drilling Regulation in Long Island, Environmental Conservation Law (151525 and 15-1527)

2. Realty Subdivision Approval, Environmental Conservation Law (Article 17, Title 15)

3. Solid Waste Management Act, Environmental Conservation Law, (Article 27)

4. Industrial Hazardous Wastes Management Act, Environmental Conservation Law (Article 27, Title 9)

5. Water Supply Approval, Environmental Conservation Law (Article 15)

6. Public Health Law (Article 11)

7. Phosphate Limits, Environmental Conservation Law (Article 35)

8. Public Health Law (Article 228)

POLICY 39 The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural lands and scenic resources.

A. Explanation of Policy

The definitions of terms "solid wastes" and "solid wastes management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludges from air or water pollution control facilities, demolition and construction debris and industrial and commercial wastes.

Hazardous wastes are unwanted by-products of manufacturing processes generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, waste is defined in Environmental Conservation Law (Section 27-0901 (3)) as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment which improperly treated, stored, transported or otherwise managed." A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include: filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

B. State Means for Implementing the Policy

1. Solid Waste Management Act, Environmental Conservation Law (Article 27)

2. Registration of Septic Tank Cleaners, Environmental Conservation Law (Article 27, Title 3)

3. Industrial Hazardous Waste Management Act of 1978, Environmental Conservation Law (Article 17, Title 9)

4. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

5. Protection of Waters Law, Environmental Conservation Law (Article 15, Title 5)

6. Coastal Erosion Hazard Areas, Environmental Conservation Law (Article 34)

7. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

POLICY 40 Effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to State water quality standards.

A. Explanation of Policy

The State Board on Electric Generation Siting and the Environment must consider a number of factors when reviewing a proposed site for facility construction. One of these factors is that the facility "not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the State, the public health, and public enjoyment of the receiving waters." The effects of thermal discharges on water quality and aquatic organisms will be considered by the siting board when evaluating an applicant's request to construct a new steam electric generating facility.

B. State Means for Implementing the Policy

1. Siting of Major Steam Electric Generation Facilities, Public Service Law (Article VIII)

2. Thermal Discharge Regulation, Environmental Conservation Law (Article 17, Title 3, 6 NYCRR, Part 704)

POLICY 41 Land use or development in the coastal area will not cause National or State air quality standards to be violated.

A. Explanation of Policy

New York's Coastal Management Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation. Coordination of the coastal management and air pollution programs will focus on ensuring the required consistency. Mutual program review will concentrate on identification of the effect of each program upon the other. Any adjustments that are required will reflect the primacy of National Ambient Air Quality Standards.

To the extent possible, the State Implementation Plan will be consistent with coastal lands and water use policies. Conversely, coastal management guidelines and program decisions with regard to land and water use and any recommendations with regard to specific sites for major new or expanded industrial, energy, transportation, or commercial facilities will reflect an assessment of their compliance with the air quality requirements of the State Implementation Plan.

The Department of Environmental Conservation will allocate substantial resources to develop a regulatory and management program to identify and eliminate toxic discharges into the atmoshere. The State's Coastal Management Program will assist in coordinating major toxic control programming efforts in the coastal regions and in supporting research on the multi-media nature of toxics and their economic and environmental effects on coastal resources.

B. State Means for Implementing the Policy

1. Air Pollution Control Act, Environmental Conservation Law (Article 19), Environmental Quality Bond Act, Environmental Conservation Law (Article 15, Title 5) and Hazardous Substance Act, Environmental Conservation Law (Article 37).

POLICY 42 Coastal Management policies will be considered if the State reclassifies land areas pursuant to the prevention of significant deterioration regulations of the Federal Clean Air Act.

A. Explanation of Policy

The policies of the State and local coastal management programs concerning proposed land and water uses and the protection and preservation of special management areas will be taken into account prior to any action to change prevention of significant deterioration land classifications in coastal regions or adjacent areas. In addition, the Department of State will provide the Department of Environmental Conservation with recommendations for proposed prevention of significant deterioration land classification designations based upon State and local coastal management programs.

B. State Means for Implementing the Policy

1. Air Pollution Control Act, Environmental Conservation Law (Article 19)

This law provides the Department of Environmental Conservation with the authority to designate areas of the State based upon degree of pollution that may be permitted. It allows the Department to consider that what may be proper for a residential area, for example, may not be proper for a highly developed industrial area.

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration and impacts on the use and conservation of coastal resources.

Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

POLICY 43 Land use or development in the coastal area must not cause the generation of significant amounts of the acid rain precursors: nitrates and sulfates.

A. Explanation of Policy

The New York Coastal Management Program incorporates the State's policies on acid rain. As such, the Coastal Management Program will assist in the State's efforts to control acid rain. These efforts to control acid rain will enhance the continued viability of coastal fisheries, wildlife, agricultural, scenic and water resources.

B. State Means for Implementing the Policy

1. Air Pollution Control Act, Environmental Conservation Law (Article 19).

2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42).

   Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of impacts on the use and conservation of coastal resources.

   Section 2 of the Act requires that State agencies analyze their programs' consistency with coastal policies and that the Secretary of State recommend any needed modifications to the Governor and the Legislature.

POLICY 44 Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

A. Explanation of Policy

Tidal wetlands include the following ecological zones: coastal fresh marsh; intertidal marsh; coastal shoals, bars and flats; littoral zone; high marsh or salt meadow; and formerly connected tidal wetlands. These tidal wetland areas are officially delineated on the Department of Environmental Conservation's Tidal Wetlands Inventory Map.

Freshwater wetlands include marshes, swamps, bogs, and flats supporting aquatic and semi-aquatic vegetation and other wetlands so defined in the N.Y.S. Freshwater Wetlands Act and the N.Y.S. Protection of Waters Act.

The benefits derived from the preservation of tidal and freshwater wetlands include but are not limited to:

-- habitat for wildlife and fish, including a substantial portion of the State's commercial fin and shellfish varieties; and contribution to associated aquatic food chains;

-- erosion, flood and storm control;

-- natural pollution treatment;

-- groundwater protection;

-- recreational opportunities;

-- educational and scientific opportunities; and

-- aesthetic open space in many otherwise densely developed areas.

B. State Means for Implementing the Policy

1. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

This act is designed to "preserve and protect tidal wetlands, and to prevent their despoilation and destruction, giving due consideration to the reasonable economic and social development of the State". The regulatory program associated with the act is contained in the NYCRR, Title 6, Parts 660 and 661. Part 660 describes a moratorium regulatory program, while Part 661 details a permanent regulatory program.

The moratorium program provided interim protection to wetlands while the tidal wetlands inventory was being completed. Once maps were filed with the appropriate local governments, the moratorium on development in the majority of wetlands was lifted and permanent land use regulations went into effect.

For the purposes of the Tidal Wetlands Act, the permanent regulations apply to the six tidal wetland types and divide land uses into four categories: uses not requiring a permit; generally compatible uses; presumptively incompatible uses; and incompatible uses. All but the first category are subject to permit restrictions. More specifically, regulated uses include draining, dredging, excavation, filling, construction of facilities, pollution, and land subdivision.

Each application for a permit is subject to a hearing. A notice of public hearing is sent to affected parties. If no objections are received, the hearing may be cancelled. The application is then reviewed and denied or granted with conditions to minimize impact. Permits may be suspended or revoked upon grounds stated in the regulations.

2. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This act authorizes the regulation of the use and development of the State's freshwater wetlands of 12.4 or more acres or of unusual local significance as determined by the Commissioner of DEC. The regulatory program is divided into two phases: the interim permit program and the permanent permit programs.

The interim permit program is described in the NYCRR, Title 6, Part 662. It is in effect in each locality until final county wetlands maps have been filed with the clerk of each local government and prior to implementation of a local freshwater wetlands protection law or ordinance.

Application for an interim permit must be made for certain alterations of regulated freshwater wetlands and adjacent areas within 100 feet of the wetland. Draining, dredging, filling, erecting structures and discharging pollutants are some of the activities which may substantially alter and impair the functions of a wetland. A public hearing may or may not be deemed necessary depending on the number of objections filed or the

nature of the alteration. DEC will finally decide to issue, deny or condition an interim permit depending on the effect a proposed activity would produce on the benefits of a wetland.

The permanent program is fully described in NYCRR, Title 6, Parts 663 and 664. The permanent program takes effect in a particular county after DEC files its official regulatory maps with all of the local governments in that county. These maps depict freshwater wetlands of 12.4 acres or more plus certain smaller freshwater wetlands of special local concerns. These maps are filed after public hearings are held. At this writing only certain counties (and their constituent municipalities) have received these maps. Once these maps are completed, reviewed, and filed wetland laws adopted by communities become operative. These laws must be at least as restrictive as DEC's regulations. If a city, town or village fails to adopt and implement a local law, the county may take responsibility. If the county fails to participate, DEC will regulate the wetlands. Any city, town or village which defaults or transfers its authority may recover it at any time.

Regulations for the permanent program contain standards for issuing permits to undertake specified activities. The standards are applied for four classes of wetlands granted according to their abilities to perform wetland functions and provide wetland benefits. DEC retains authority over Class I (highest quality) wetlands and certain other wetlands for reasons of size or other special characteristics. Where a local government has authority over a wetland associated with a major international or interstate river or lake (i.e., the Hudson, Niagara and St. Lawrence Rivers, and Lakes Erie and Ontario), it must consult with DEC before taking any regulatory action concerning that wetland.

3. Protection of Water Laws Act, Environmental Conservation Law (Article 15, Title 5)

This law effectively affords State regulatory protection to any remaining wetland areas not being protected under the Freshwater Wetlands Act. This law require that a permit be obtained from the Department of Environmental Conservation for any activities which require excavation or filling of all wetlands that are adjacent to and contiguous with navigable waters of the State, and that are inundated at mean high water level. Furthermore, wetlands associated with protected waters (streams and rivers classified C(t) or higher) tributary to navigable waters are also protected by this law.

SECTION 7

PLANNING PROCESSES

Introduction

Three planning processes are incorporated into the State Coastal Management Program. They are: the Energy Facility Planning Process, the Shorefront Erosion/Mitigation Planning Process, and the Shorefront Access and Protection Process. These processes, which are described below, comply with federal regulations for the Coastal Zone Management Program.

Energy Facility Planning Process

Section 305 (b) (8) of the Coastal Zone Management Act of 1972, as amended, requires the management program of each State to include "a planning process for energy facilities likely to be located in, or which may significantly affect the coastal zone, including but not limited to, a process anticipating and managing the impacts from such facilities".

I. Identification of Energy Facilities Likely to Locate In, or Significantly Affect a State's Coastal Area

Energy facilities likely to locate in, or significantly affect New York's coastal area include electric generating facilities (oil, coal, nuclear, hydropowered); electric and gas transmission facilities; oil and gas exploration, development, transfer and storage facilities (including LNG facilities); and alternative energy facilities (e.g. wind).

II. Procedures for Assessing the Suitability of Sites for Such Facilities

1. General Planning

For all such facilities, the planning process begins with the preparation of the State Energy Master Plan, as required by Article 5 of the Energy Law; determines State energy needs; and identifies proposed new, expanding or converting facilities and their locations. It contains:

a. A forecast of the State's energy requirements for periods of five, ten and fifteen years, together with the bases for such forecasts;

b. A summary of the plans of the State's major energy suppliers for meeting forecasted energy requirements, including descriptions of new energy sources;

c. An identification and analysis of emerging trends related to energy supply, price and demand;

d. A statement and justification for specific energy policies, as well as recommendations for administrative and legislative actions that the State Energy Office has determined are desirable to implement the State's energy policy; and

e. Such additional information as the State Energy Office deems appropriate.

2. Activity Specific Processes

More specific procedures for siting individual facilities depend on the facility involved.

a. Steam Electric Generating Facilities and Electric and Gas Transmission Facilities

i) Additional Planning Requirements

Prior to any amendment of the State Energy Master Plan, members of the New York Power Pool and New York Gas Group must submit comprehensive long-range plans for future operations (including energy demands for the next five, ten and fifteen year period) to the State Energy Office and other State agencies. Public hearings must be held before the Board's adoption of a revision to the Master Plan. Once adopted, specific findings of projected electric and gas "requirements" for the forecast periods are binding, with respect to any determination of need for a facility, on those agencies having powers to issue certificates under Article VII and VIII of the Public Service Law.

The Coastal Management Program will review the Master Plan and present its comments to the Energy Planning Board if any inconsistencies with the Coastal Management policies are found.

ii) Permitting Processes

The State's review process for individual facilities is set forth in Articles VII and VIII of the Public Service Law and regulations promulgated thereunder (see Appendix F). The procedure involves the following steps:

1) Application to Commission (Board)

2) Review for completeness

3) Establishment of dates for hearing -- within 60 days for an electric generating facility, 60-90 days for an electric transmission line, 20-60 days for a gas line

4) Pre-hearing (Electric generating)

5) Hearing (can be joint)

6) Examiner's decision (Electric generating)

7) Decision

8) Re-hearing procedures -- up to 3 months (Electric generating only)

In making its application for a proposed electric generation facility, the "applicant in its direct testimony and as part of the exhibit information required to be submitted by Parts 72 through 80 of NYCRR, Title 16, shall explain the extent to which the location, design, construction, operation and maintenance of a proposed electric generation facility at a proposed site is designed to comply with each Federal and State law, rule, regulation or standard, interstate compact, and international requirement relevant and material to a determination of the application". If a proposed facility will not be in full compliance with the above, the applicant must describe any limitation or procedure it proposes to assure compliance or justify nonconforming aspects. (see Appendix F of this document, NYCRR, Title 16, Subchapter E, Section 71.9.)

In making its application, the applicant must provide an analysis of the need for the facility. It must also provide information about the existing condition of and potential impacts on air quality, aquatic ecology, environmental noise, regional and site geology, land use and aesthetic characteristics, terrestrial ecology, and water quality and quantity, in addition to the waste characteristics of the proposed facility (see Appendix F of this document, NYCRR, Title 16, Subchapter E, Sections 72-80.)

The Board, in granting a certificate for construction, must find and determine:

(a) the public need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, is compatible with public health and safety, and will not discharge any effluent that will be in contravention of the standards adopted by the department of environmental conservation;

(d) that the facility is designed to operate in compliance with applicable state and local laws and regulations;

(e) that the facility is consistent with long-range planning objectives for electric power supply in the state;

(e) that the facility is in the public interest, concerning the environmental impact, the total cost to society, the possible available sites or alternative available sources of energy. (See Appendix F of this document, Article VIII of the Public Service Law, Section 146.)

In making its application for a major electric or gas utility transmission facility, "the applicant shall state whether it has pending or knows of others who have pending, with this commission or with any other governmental department or agency (State or Federal), an application or filing which concerns the subject matter of the proceeding before the commission. If one or more such applications or filings is pending, the applicant shall state, for each application or filing pending, whether the granting of any such other application or filing will have any effect on the grant or denial of a certificate, and whether the granting of a certificate will have any effect upon the grant or denial of any such other application or filing." (See Appendix F of this document, NYCRR, Title 16, Subchapter G, Part 86.9.)

In making its application, the applicant must submit a statement describing any study which has been made of the impact of the proposed facility on the environment. The applicant must also state what changes, if any, the construction and operation of the proposed facility might induce in the physical or biological processes of plant life or wildlife through any permanent or significant temporary change in the hydrology, topography, or soil of the area.

The applicant must also state what efforts have been made to assure that the transmission line right-of-way avoids scenic, recreational and historic areas; minimizes visibility from public areas; avoids heavily timbered, high points, ridge lines and

steep slopes; preserves the natural landscape and minimizes conflict with any present or future planned land use. In addition, the applicant must indicate plans to protect natural vegetation, topsoil, wildlife habitat, and aquatic life. (See Appendix F of this document, NYCRR, Title 16, Subchapter G, Part 86.4.)

The Commission in granting the certificate for construction or operation of the major transmission facility must find and determine:

(a) the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact;

(d) in the case of an electric transmission line, (1) what part, if any, of the line shall be located underground; (2) that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability;

(e) in the case of a gas transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder;

(g) that the facility will serve the public interest, convenience and necessity. (See Appendix F of this document, Article VII of the Public Service Law, Section 126.)

b. LNG Facilities

Article 23 of the Environmental Conservation Law (Liquified Natural and Petroleum Gas) requires a certificate of environmental safety prior to construction, reconstruction, enlargement, or initiation of operation of LNG and LPG facilities. Procedures allow for complete consideration of the facility, the proposed site and alternate locations prior to the decision on granting a certificate. The procedures involve the following:

1) Application for certificate to the Department of Environmental Conservation

2) Public hearings

3) Department decision

4) Renewals, modifications

5) Suspensions, revocations

c. Other Energy Facilities

The procedures for assessing the suitability of a site for other facilities likely to locate in the coastal zone are essentially the same as for assessing the suitability of any other type of project in the coastal zone.

If a direct State action is involved, the Waterfront Revitalization and Coastal Resources Act requires consistency with the coastal policies. If no such direct or funding action is involved, suitability of significant facilities will be assessed in the context of State permitting actions subject to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act) which requires an environmental impact statement to be prepared for all actions (except actions subject to Article VII and VIII of the Public Service Law) which may have a significant effect upon the environment.

As amended, the SEQR regulations require that, a state agency's action be consistent with the coastal policies. Such a determination is made in addition to any requirements under one or more permitting programs. (See permitting programs described under Policy 27 in Part II, Section 6 of this document.)

III. Articulation and Identification of Enforceable State Policies, Authorities and Techniques for Managing Energy Facilities and Their Impacts

State energy policies are contained in the Energy Law and State Energy Master Plan (see Appendix F for the Energy Law). In general, the policies deal with maintaining a dependable, economic supply of energy, promoting economic development and protecting the environment. State energy policies are as follows:

1. The State's consumption of petroleum products must be reduced. The economic cost and vulnerability to disruption resulting from the State's continued disproportionate reliance on oil strongly support actions to shift to less costly and/or more secure energy sources.

2. Conservation and renewable resources must make a greater contribution to energy supply and will require substantial additional government support to do so, at least in the near-term. In many applications, conservation and renewables appear to be the least costly, most economically productive and environmentally benign means to satisfy a significant portion of the State's current and anticipated energy requirements. Government action must enhance the respective contributions to be made by conservation and renewables in meeting those requirements.

3. The State of New York and its agencies should encourage the efficient use of natural gas and stimulate efforts to secure additional supplies of natural gas from sources that are economic and compatible with environmental, public health, and safety standards in order to reduce New York's dependence on oil. Natural gas is and will likely remain an economic and environmentally compatible alternative to oil. This policy will help insure that supply and demand remain balanced throughout the planning period.

4. The increased use of coal must be promoted where economically feasible and consistent with applicable environmental standards. Compared to continued use of oil, particularly in the utility sector, use of coal will result in economic advantages, given current and forecast cost differentials between coal and oil, and significant improvement in certainty of supply over the forecast period. Increased utilization of eastern coal is likely to stabilize regional energy costs and will stimulate regional economic development.

5. Regional cooperation, coordination, and action must be promoted to enhance the region's energy supply prospects. Interconnection of New York's electric and natural gas supply systems with Canada should be pursued as a vehicle for reducing costs and oil dependence to the extent economic and feasible. Interconnection may also lessen the adverse impacts on the State's environment from construction and operation of energy supply facilities.

6. Because of the need to develop a fully adequate national nuclear waste disposal program, and a need to clarify substantial uncertainties associated with economic, safety and regulatory issues related to the nuclear option, new nuclear power plants should not be included in the State's electricity supply plan at this time.

7. All consuming sectors must be given increased choice among competing energy forms, including conventional fuels, conservation, and renewable resources. Increased choice will benefit consumers by increasing price competition among energy forms, and will benefit the State by stimulating innovation and efficiency improvements.

8. Government must act to remove any existing legislative and administrative barriers inhibiting the development of energy sources, competition among fuel forms and energy conservation, except where such action would clearly compromise public health, safety or environmental quality. Justification for any such institutional barriers must be reexamined in light of compelling State energy needs.

9. The State's electric and gas utilities, as well as PASNY, should encourage and stimulate conservation and efficient use of energy by their customers. Electric and gas utilities should become more active purveyors of conservation and renewable resource technologies.

10. No person should be without adequate heat or should be forced to forego conservation improvements by reason of inability to pay. A commitment to protect public health and safety requires no less.

11. The energy research, development and demonstration programs being pursued in New York must be expanded and must emphasize those technologies that will, over the mid- to long-term, mitigate energy cost increases and energy supply interruption. Formal and informal coordination of the numerous energy RD&D programs throughout the State is essential to assure that these activities support and complement State energy policy.

12. In view of the extensive reliance on oil in the transportation sector, the State should continue to take action to maximize the efficient use of energy in this sector. Moreover, the relatively energy efficient mass transit and railroad systems throughout the State must be maintained to prevent shifts of mass transit and railroad riders to less efficient automobiles.

13. Comprehensive energy emergency preparedness activities, directed at mitigating the adverse economic and social impacts of an interruption in petroleum supplies, must be continued and increased in order to protect public health and safety.

IV. Identification of How Interested and Affected Public and Private Parties May Be Involved in the Planning Process

The Department of State, as the agency responsible for the Coastal Management Program, will ensure that coastal concerns are part of energy facility deliberations by continuing to review the State Energy Plan and any amendments thereto. It also by law receives proposals for review under Articles VII and VIII of the Public Service Law and will particpate in hearings under Article VII (as an automatic party) and Article VIII (as a party upon request).

In addition, pursuant to the Waterfront Revitalization and Coastal Resources Act, Department of State regulations and amendments to SEQRA regulations provide the procedural opportunities for the Department of State to undertake its requried review of all actions, including energy faciltiies, which may affect the achievement of the coastal policies.

Before the State Energy Master Plan is amended, major private sector energy suppliers (NY Power Pool and NY Gas Group) are required to submit comprehensive long-range plans for future operations to the State Energy Office and other State agencies. These plans are reviewed and approved by the Energy Board.

Local governments and the general public are provided the opportunity to participate as parties in Article VII and VIII proceedings and other hearings conducted pursuant to the various permitting and environmental review procedures cited above. The Department of State will also encourage local governments which develop waterfront revitalization programs to consider future energy development activities, to identify appropriate sites, and to prepare local laws or other mechanisms for dealing with new or expanding energy development.

The national interest in the planning for and siting of energy facilities was determined from the National Energy Plan and through direct communication with appropriate Federal agencies. For a more complete discussion of the national interest in energy production and transmission facilities, see Part II, Section 9, Special Program Requirements, of this document.

Shoreline Erosion/Mitigation Planning

Section 305 (b) (9) of the Coastal Zone Management Act of 1972, as amended, requires that state coastal management programs must include a shoreline erosion/mitigation planning process, the regulations for which are presented in 15 CFR 923.25:

> "(1) The management program must include a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion."
>
> "(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion as the State's planning process indicates is necessary."

As evidenced in the Flood and Erosion Hazards issue discussion (Part II, Section 5), which is incorporated by reference as part of this response, the effects of shoreline erosion and the techniques for dealing with it are of major concern to New York State. However, the State lacked a systematic basis for dealing with that concern until 1981 when the Coastal Erosion Hazard Areas legislation was enacted. The law (Environmental Conservation Law, Article 34) recognizes: the extensive damage caused by erosion in the State's coastal area; man's contribution to the problem by activities which exacerbate the erosion process or by placing property where it is exposed to damage; and, that many measures taken to control erosion are costly, often ineffective, and may be harmful to other lands. The law has three principal components: delineation of the hazard areas; promulgation of regulations; and implementation.

Procedures established by the law require the Department of Environmental Conservation, in full cooperation with affected local governments, to complete a preliminary identification of erosion hazard areas of the State's coastline. Coastal erosion hazard areas are defined by Article 34 in two ways. In the first, a requisite period of protection of structures is set at 40 years. That number is then multiplied by the annual land recession rate on lands where it is at least one foot, to define the inland extent of the hazard area. The recession rate will be measured using comparable maps and aerial photography, including 1979 photographs of the State's Great Lakes coast which were flown specifically for this purpose, and funded under the federal Coastal Zone Management Act. The second definition of erosion hazard area encompasses dunes, beaches, shoals and other features which offer natural protection to shorelands. After required public hearings and consultations, final identification of coastal erosion hazard areas will be made. Priority is being given by DEC to identifying first those areas of the coastline which are eroding at a rate of 4 feet or more annually.

Within those identified erosion hazard areas, the regulatory provisions of the legislation will apply. For activities and development in such areas, regulations promulgated under Article 34 are required to establish minimum standards and criteria including: the use of setbacks; prevention of increase in erosion; minimizing of adverse effects on natural protective features; and measures to ensure the effectiveness of control structures. The law also specifies that, when public funds are to be used for activities and developmnet, the public benefits must clearly outweigh the long-range adverse effects. Policies 11, 12, 13, 14, 15, 16, and 17 are based on those regulatory provisions.

Article 34 is designed to give, first, each affected local government the opportunity to implement its provisions with the adoption of a local coastal erosion hazard areas law or ordinance. If a local government fails to exercise its right, the county, or finally, DEC must issue regulations for that community.

In summary, the effects of full implementation of the Coastal Erosion Hazard Areas Act are: all erosion hazard areas of the State's coastline will be identified and mapped; a regulatory framework govern activities and development in those areas; and all government as well as private actions and programs will be constrained by the Act.

Shorefront Access and Protection Planning Process

Several State, regional, and local agencies participating in development of the Coastal Management Program identified specific sites in need of improved access for their functional or geographic areas of concern. Access sites for fishing, boating and other waterfront related activities have been identified by the Department of Environmental Conservation; the Office of Parks, Recreation and Historic Preservation; New York City Planning Commission; the Long Island Regional Planning Board; the Erie and Niagara Counties Regional Planning Board; the St. Lawrence-Eastern Ontario Commission; and individual counties participating in the program.

While most of the access site recommendations may reflect knowledge of the local area or specific functional plans, they are not based on a single coordinated statewide access planning process. The New York City Department of Planning has developed a methodology for identifying shorefront areas appropriate for improved access. The Department tabulated the nature of the access issues for 33 areas. For three of these, detailed studies were undertaken consisting of: an examination of the study area in terms of current modes of access to the shore; identification of specific shorefront access concerns based on the above investigations; and recommended actions necessary to mitigate these concerns. The remaining identified areas will also be evaluated in this manner in the immediate future.

The Office of Parks, Recreation and Historic Preservation has also inventoried recreational facility capacity and undertaken supply and demand studies which can be applied to determination of access roads.

A single procedure for identifying, on a statewide basis, public shorefront areas appropriate for access has been developed as part of the Coastal Management Program and is outlined below. This procedure utilizes, in part, various methodologies and inventories already developed by State and local agencies and the lists of specific sites needing access improvements. This procedure satisfies the shorefront access and protection planning requirements of the Coastal Zone Management Act. Its application will result in a list of the specific access improvements to which the State will give priority within financial and legal limits. An interagency advisory committee will be established to oversee operation of the procedure.

1. Identify the types of public areas to which new or increased public access is desirable and a single planning process is appropriate for determining needed additional access.

    a. Beaches - definition of beach is as follows: A beach is a zone of unconsolidated material that extends landward from the level of lowest water to the place where there is a marked change in natural or physiographic form (first line of terrestrial vegetation) or to the upper limit reached by the highest storm waves, which is the area subject to alternate erosion and deposition of beach material. The offshore limit of a beach is the mean low water line. A beach consists of both foreshore and backshore zones. Beach elements include dry sand areas, sand dunes, and areas of reasonably graduated slope to the water. Beaches are composed of a variety of materials, including sand, gravel, or pebbles. Areas composed of other materials may function as beaches when they are used for traditional beach activities.

    b. Fishing and hunting areas

    c. Boat launching sites and marinas

    d. Scenic areas of statewide significance - as defined in the scenic quality issue discussion (Part II, Section 5) of this document

    e. Waterfront parks

    f. The coast at large, to include other non-Federal publicly-owned land

2. Inventory existing public areas to which public access is provided and/or desirable.

   a. Beaches - inventory and map those areas which meet the definition of beach above, including identification of those in public ownership. Sources are as follows:

      (1) Office of Parks, Recreation, and Historic Preservation Inventory of Recreation Sites

      (2) Land Use and Natural Resource Inventory (LUNR)

      (3) Office of General Services State Land Inventory

      (4) New York City Coastal Management Program Report

      (5) Nassau-Suffolk Regional Planning Board Coastal Management Program Report

      (6) St. Lawrence-Eastern Ontario Commission Coastal Management Program Report

      (7) State Coastal Management Program Coastal Atlas (will map all beaches)

   b. Fishing areas - an inventory and map of sites to which the public has access for fishing purposes within the coastal area. Sources are as follows:

      (1) Office of Parks, Recreation, and Historic Preservation Inventory of Recreation Sites

      (2) Department of Environmental Conservation's Fish and Wildlife Management Program

      (3) Office of General Services' State Lands Inventory

      (4) New York City Coastal Management Program Report

      (5) Nassau-Suffolk Regional Planning Board Coastal Management Program Report

      (6) St. Lawrence-Eastern Ontario Commission Coastal Management Program Report

      (7) Sea Grant

c. Boat launching sites and marinas - an inventory of all marinas and boat launching sites open to the public. Sources include all those listed under "a" above plus the Corps of Engineers, Sea Grant, and the Department of Transportation.

d. Scenic areas of statewide significance - an inventory and map. Principal source is the Coastal Management Program Coastal Atlas, plus information from the Department of Environmental Conservation and the Office of Parks, Recreation, and Historic Preservation.

e. Waterfront parks - an inventory and map. Sources are as follows:

   (1) Office of Parks, Recreation, and Historic Preservation's Inventory of Recreation Sites

   (2) Coastal Management Program Coastal Atlas

f. Coast at large - a map and inventory of areas with general access to the shore. Sources include:

   (1) Office of General Services Inventory of State Lands

   (2) County tax maps

3. Describe the level and type of existing access at each site identified in terms of mode, capacity, and condition. Major source is the Office of Parks, Recreation, and Historic Preservation's Inventory of Recreation Sites.

4. Assess the appropriateness of the above access relative to the capacity (physical and environmental) of the site to accommodate increased access and the present and future demand for use of the site.

5. Where increased access is appropriate, indicate the appropriate means for improving access and the agency's responsibility.

6. Establish a priority system for areas where increased access is appropriate.

SECTION 8

SPECIAL MANAGEMENT AREAS

Identification and Selection

The New York State Coastal Management Program has identified two categories of uses and activities which, because of their particular coastal related values, development pressures, or site specific circumstances, require detailed attention beyond the general planning and management system that constitutes the State's coastal program. The two categories of special management areas are: 1) State parks, and 2) local waterfront revitalization areas.

The Draft NYS Coastal Management Program Report dated March 1979[1] detailed identification and selection criteria for geographical areas of particular concern. The application of these criteria resulted in the proposed designation of 97 site specific geographic areas of particular concern and four categories of generic areas. Under the management program as presented in this final Coastal Management Program most of the areas that were identified can be adequately managed through the policies and various implementation measures of the program, notably the Waterfront Revitalization and Coastal Resources Act, the State Environmental Quality Review Act, Shoreowners Protection Act, State Historic Preservation Act, Articles VII and VIII of the Public Service Law and the Tidal and Freshwater Wetlands Act. Only the two areas mentioned above continue to require detailed and/or individual attention beyond the basic management program. State parks in the coastal area differ considerably in size, uses, and other circumstances and may require specific management programs which should be made part of the coastal management program. And each local revitalization waterfront area will have a program that, though it will adhere to common criteria, will be designed to meet the specific needs of each community.

A more complete description of the management of these two areas follows. Additional information including detailed regulations and guidelines are contained in appendices to this document.

[1]New York State Coastal Management Program, Appendix to Draft Report, March 1979, pp. F-1 to F-6.

State Parks

Shorefront access and recreation are two of the major issues in New York State's coastal area. Public access to the coastline for recreational purposes is determined to a great extent by land ownership and land use patterns. Where coastal lands are privately owned, as is the case with most coastal lands in New York, public access is usually prohibited. In addition, the existing patterns of residential, commercial, industrial, and transportation land uses make large portions of New York's coast inaccessible or at the least severely limit access. For example, access to the Hudson River is substantially reduced because railroad lines run parallel to both shores.

While leisure time and the associated interest in recreation are increasing, physical barriers to public access persist and interest in buying coastal land for private purposes increases. Therefore, it is imperative that existing public access be preserved, maintained, and managed and where feasible, new access areas provided so that as many people as possible can take advantage of recreational opportunities.

State parks are the public facilities that provide coastal access and water-based recreational opportunities for the largest number of New York State residents. There are 90 State parks within New York's coastal boundary that represent probably the most important link between the people and the shore. The New York State Office of Parks, Recreation, and Historic Preservation (OPRHP), as part of its comprehensive outdoor recreation program, administers these 90 State parks which are grouped into four distinct categories: linear systems, boating facilities, parks and land preserves, and historic areas. Within each of these categories are subcategories of facilities to serve all types of users.

Management Objectives

The overall management objective for State parks is to preserve and maintain these facilities so that the residents of New York State are guaranteed recreational access to the coastal area. However, four other management objectives are important, and should be considered in any specific management program for a State park:

1. Ensure first that water-dependent uses and then water-enhanced uses are accomodated within coastal State parks.

2. Manage land immediately adjacent to State parks so that incompatible development does not take place or is, at least, minimized.

3. Provide the appropriate level of public access to presently undeveloped or underutilized State parks.

4. Encourage the attainment of carrying capacities in underutilized State parks.

Priority Uses

Highest priority uses within coastal State parks are those recreational activities that are water-dependent or water-enhanced. The lowest priority uses are those that would be environmentally incompatible. The extent of this incompatibility will vary, of course, from park to park depending on the amount of existing development and the character of the parkland.

Priority uses of land immediately adjacent to State parks will also vary according to the types and intensity of both existing and proposed development and the nature and character of the State park. For example, in a park that has primarily been left in an undeveloped State, the highest priority development on adjacent land should be that which affords maximum protection to the natural character of the park. In a more highly developed park, adjacent land development should vary with the nature of the park.

Existing Management Authorities

1. Office of Parks, Recreation, and Historic Preservation - It is legislated policy of New York State (Title B, Article 3, Section 3.01 of the Parks, Recreation and Historic Preservation Law) to establish and maintain a system of State parks. State parks are administered bythe New York State Office of Parks, Recreation, and Historic Preservation (OPRHP). The Office of Parks, Recreation, and Historic Preservation is presently in the final stages of developing a State Park Land Classification System. This system would examine the land capabilities of each State park area so that the type and level of appropriate development can be determined. When completed, this should give OPRHP increased capability for decision-making concerning desirable development at each of its coastal State parks.

2. Office of General Services - There is a great deal of unappropriated State land throughout New York State. It could be made available for parks through a transfer of jurisdiction from the Office of General Services to the Office of Parks, Recreation, and Historic Preservation.

3. Local Zoning - The Office of Parks, Recreation, and Historic Preservation's ownership, administration, and policy planning powers provide adequate management authority to meet management objectives within State parks. However, OPRHP does not have power to ensure that compatible development takes place in lands adjacent to State parks. Section 13.07 of the Parks, Recreation, and Historic Preservation Law prohibits any person from erecting or maintaining any advertising sign or structure within 500 feet of the border of any State park. Other than that, control of adjacent lands is left to the local government. The individual municipalities can, through zoning and other land use controls, regulate the use of these lands.

4. General Municipal Law - Section 239-m of the General Municipal Law does require, however, that any proposed zoning regulation or amendment to a zoning regulation which would change the regulations applying to real property within 500 feet of the boundary of a State park must be submitted to a county planning agency (or the appropriate regional planning agency if no county agency exists) for review. If the county planning agency disapproves the zoning proposal, the municipal agency having jurisdiction in local zoning matters may proceed with the disapproved regulation only after a vote of a majority plus one in favor. In addition, a resolution must be adopted setting forth the reasons for going counter to the county recommendation.

Local Waterfront Revitalization Programs

As part of the State's Coastal Management Program, coastal localities are encouraged to use their resources and authorities to develop detailed programs for the revitalization of their waterfronts and the protection of coastal resources. While the State can promote development and provide for protection of critical resources and environments, the Waterfront Revitalization and Coastal Resources Act recognizes that local governments, with the assistance and cooperation of the State, are in the best position to determine what specific activities will take the best advantage of their local circumstances. To do this, the Act provides incentives for local governments to develop waterfront revitalization programs. It also sets up a process for cooperation between all levels of government. The objective is a detailed local program to which all levels of government are committed.

The general requirements for development and the content of an approved local waterfront revitalization program are described below. The more detailed guidelines that will be used by the Department of State in approving a local program are contained, in draft form, in an appendix to this document. These requirements are based on the Waterfront Revitalization and Coastal Resources Act which describes in some detail both the process for development and the content of a local waterfront revitalization program.

Procedure for Program Development and Implementation

As to process, the Act provides that any local government or two or more local governments acting jointly may prepare a waterfront revitalization program and seek its approval by the Secretary of State. The Department of State will provide technical and financial assistance to local governments wishing to prepare waterfront revitalization programs. Guidelines have been prepared by the Department to aid localities in the preparation of their waterfront programs. More importantly, as required by the Act, the Department will actively work with each locality to facilitate the necessary consultation and coordination among local, county, regional, State, and Federal agencies and with community organizations in connection with the preparation of a local waterfront program. In addition, the Department of State will provide, as appropriate, to each participating locality, maps, data, model implementation mechanisms and technical advice.

Local programs are to include procedural as well as substantive elements. Among these are requirements that the program be long range, that the local government have adequate authority and the ability to implement the program, and that the program identify specific State actions including permit, funding, construction, and planning programs necessary for its implementation. The program must be approved by the legislative body and the chief executive officer of the municipality before it is submitted to the Secretary of State.

Program Approval

Before approving a local waterfront revitalization program, the Secretary of State will consult with affected State and Federal agencies. The Secretary cannot approve a local program if he finds it conflicts with an existing State or Federal policy. When a conflict is found, the Secretary will attempt to resolve the differences.

Within sixty days of approving a local waterfront revitalization program, the Secretary will identify specific State permit, financial assistance, acquisition and capital construction programs likely to affect the achievement of the local program.

State agency programs so identified will, to the maximum extent practicable, be undertaken in a manner consistent with the approved local waterfront program. To assure the consistency of State actions with a local program, existing review and notification procedures, particularly SEQR and A-95, will be utilized. Using these and other procedures if necessary, State agencies will provide local government with adequate information on a proposed action. The municipality is expected to evaluate proposed actions and identify conflicts with its approved local program. Once notified by the locality of the potential conflicts, the Secretary will confer with the State agency and the local government to modify the action so that it will be consistent with the approved waterfront revitalization program.

The Secretary is also required by the Act to work with State agencies and seek additional means of implementing approved local waterfront programs. Where a local government has identified program elements which depend upon other than local funds and actions, the Secretary will consult with the appropriate State and Federal agencies to explore the possibilities or programming of additional assistance that would further the implementation of the local program.

Program Content

As to the content of a local waterfront revitalization program, the Department of State guidelines are based on Sections 912, 915.4 and 915.5 of the Act. First, all local programs must be consistent with and work towards the achievement of the policies contained in Section 912. These policies are:

1. To achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources, while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems.

2. To encourage the development and use of existing ports and small harbors including use and maintenance of viable existing infrastructures, and to reinforce their role as valuable components within the State's transportation and industrial network.

3. To conserve, protect and where appropriate promote commercial and recreational use of fish and wildlife resources and to conserve and protect fish and wildlife habitats identified by the Department of Environmental Conservation as critical to the maintenance or re-establishment of species of fish or wildlife. Such protection shall include mitigation of the potential impact from adjacent land use or development.

4. To encourage and facilitate public access for recreational purposes.

5. To minimize damage to natural resources and property from flooding and erosion, including proper location of new land development, protection of beaches, dunes, barrier islands, bluffs and other critical coastal features and use of non-structural measures, whenever possible.

6. To encourage the restoration and revitalization of natural and man-made resources.

7. To encourage the location of land development in areas where infrastructure and public services are adequate.

8. To conserve and protect agricultural lands as valued natural and ecological resources which provide for open spaces, clean air sheds and aesthetic value as well as for agricultural use."

The guidelines for determining whether a local program is consistent with, and furthers the achievement of these policies, reflect the elaboration of these policies found in the comparable policies of the Policies Section of this document. These guidelines are to be found in Appendix B of this document.

In addition to being consistent with and furthering the policies of the Act, a local waterfront revitalization program must focus on each of the following specific activities (Section 914.5) to an extent commensurate with the particualr circumstances of that local government.

a. The facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location, such as but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture.

b. The increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking and picnicking.

c. The promotion and preservation of scenic, historic, cultural and natural resources as community amenities and tourist designations.

d. The strengthening of the economic position of the State's major ports and small harbors.

e. The reuse of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions that have negative effects upon the waterfront area and adjacent neighborhoods.

f. The application of local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites.

g. The protection of sensitive ecological areas, including but not limited to dunes, tidal and freshwater wetlands, fish and wildlife habitats, and the protective capability of coastal land features. Such protection will assure that land use or development will not affect such areas."

The guidelines for determining whether a local government has adequately incorporated these activities in its program are based on an analysis of the conditions, problems, and opportunities that exist along the community's shore, and that can in good part, be successfully addressed with the resources of that community. The community will undertake the analysis as a preliminary step to the development of a local waterfront program. Guidelines for local programs will require that these activities be undertaken in a manner that is consistent with the program policies as described in this document.

Finally, local program guidelines include the requirement that a program address the following items identified in the legislation (Section 915.4):

a. Boundaries of the waterfront area;

b. An inventory of natural and historic resources of the waterfront area to be protected;

c. A Statement of the goals and objectives of the program; and

d. Identification of the uses, public and private, to be accomodated in the waterfront area.

Areas for Preservation or Restoration

The Coastal Zone Management Act requires that "the management program make provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or aesthetic values (Section 306 (c) (9))". These same regulations further specify that standards and criteria must be developed and applied by the state in designating these areas.

The general planning and management program in Section 6 contains several policies and criteria that will result in the identification of specific areas to be preserved or restored because of their conservation, recreational, ecological, or aesthetic value. The policies on protection of significant habitats, tidal and freshwater wetlands and scenic areas contain detailed criteria for identification and mapping of these resources. State parks and wetlands have been identified as special management areas in part because of the need to preserve or restore these areas. State parks have been mapped on the Coastal Area Map.

SECTION 9

SPECIAL FEDERAL PROGRAM REQUIREMENTS

Introduction

Several Federal program requirements warrant special discussion due to their particular subject matter and role in a State's coastal management program. They are the requirements pertaining to national interest, uses of regional benefit, Federal consistency and public participation

A State must demonstrate that in the development of its program, adequate consideration was given to various types of facilities which may locate in coastal areas and are of interstate or national concern. In addition, the State's management program must ensure that consideration of such facilities will be continued throughout its implementation phases (15 CFR 923.52).

There are some types of land and water uses and facilities which are of benefit to several coastal communities, or for that matter, an entire region. Some of these uses may be subject to governmental regulations which could prevent their siting at coastal locations. A State's management program must identify uses and facilities of regional benefit and demonstrate how they would not be unreasonably restricted or excluded (15 CFR 923.12). It should be noted that these uses and facilities may be considered of national interest.

A State's coastal management program must contain the procedures that will be followed by the State and Federal agencies in order to implement the Federal consistency requirement contained in the Coastal Zone Management Act of 1972, as amended. These procedures are intended to help a State achieve its coastal policies (15 CFR 923.53).

Finally, a coastal State must ensure that State agencies, local governments, various interest groups and the general public are afforded full opportunity to participate in the development of its management program (15 CFR 923.55). The preparation and distribution of program information and public meetings and workshops are the common means for addressing this requirement.

The projects which meet one of the following two criteria have been determined to be projects for which a substantial amount of time, money and effort have been expended, and will not be subject to New York State's Coastal Management Program and therefore will not be subject to review pursuant to the Federal consistency procedures of the Federal Coastal Zone Management Act of 1972, as amended: (1) those projects identified as grandfathered pursuant to State Environmental Quality Review Act at the time of its enactment in 1976; and (2) those projects for which a final Environmental Impact Statement has been prepared prior to the effective date of the Department of State Part 600 regulations [see Appendix A, DOS Consistency Regulations, NYCRR Title 19, Part 600, §600.3(4)]. If an applicant needs assistance to determine if its proposed action meets one of these two criteria, the applicant should contact the Department of State.

National Interest

The Federal Act requires State programs, to provide "adequate consideration of the national interest involved in planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature" (Section 306 (c) (8)). In giving adequate consideration to such facilities, State programs must also assure that "natural resource considerations of a national nature enter into the assessment of the demand for the locational needs of particular types of facilities" (see 15 CFR 923.52 (c) (4)).

New York State's coast possesses natural resource, historic, scenic, recreation, defense and broad-ranging economic values which are of importance not only to the State, but to the Nation. Certain development actions which could affect these coastal values were examined during the preparation of the Coastal Management Program to ensure that sufficient attention was given to various national interests.

New York's Coastal Management Program assures continued protection of natural resources of more than State significance through existing legislation, program policies and procedures, and special management areas. The State's Program includes detailed consideration of coastal resources, including water, wetlands and adjacent areas, fish and wildlife habitats, erosion hazard areas (including barrier islands and beaches), agricultural lands, historic and cultural resources, and scenic areas. At the same time, the Program also recognizes the critical need for development of certain facilities which depend upon and affect the various coastal resources.

For the purposes of this Program, national defense, energy production and transmission, recreation, and transportation facilities are considered to be of national interest. For each type of facility, the following information is provided: (1) sources relied upon for description of national interest; (2) descriptions of national interest in above facilities; (3) description of how the CMP considers the national interest in such facilities; and (4) the process for continued consideration of the national interest.

National Defense Facilities

Through direct communications with the various branches of the U.S. Department of Defense and analyses of the policy papers issued by its agencies, it was determined that areas of national defense interest include: (1) the accurate identification of all lands owned or leased by the military; (2) the maintenance of transportation facilities within coastal areas at levels that would ensure optimum military mobility; and (3) the need to provide new or expand existing military facilities.

Military facilities in New York's Coastal Area are not substantial in size or number. Department of Defense (DOD) lands and facilities are listed in Appendix D. While the State's Coastal Management Program does not apply to Federally-owned lands, including those under the jurisdiction of DOD, it still recognizes the paramount importance of military facilities not only for national defense but also for their contributions to the economic, educational and cultural life of the Nation and State. Therefore, New York's Program contains no policy that contradicts the basic justification for new or expanded military facilities. It is also recognized that any new or expanded national defense facility can be sited at any location under the eminent domain authority of DOD.

In the future, defense needs and other coastal interests could be in conflict if: increased public access to the coast would interfere with the military functions of defense installations; new defense facilities were planned for sensitive ecological areas; or, off-site transportation improvements were necessary for the continued operation of a military facility.

New York State will seek to prevent serious conflicts between national defense interests and Coastal Management Program concerns by using the consistency procedures contained in this Section to comment on proposed military projects which affect the coastal area of the State. Through this process, the Department of State will suggest reasonable mitigation measures and/or alternative sites, if appropriate, so that DOD activities will be conducted in a manner which is consistent to the maximum extent practicable with the State's Program.

Energy Production and Transmission Facilities

The National Energy Plan was the primary source for determining the national interest in energy facilities. Direct communications with the Department of Energy, Federal Energy Administration, Bureau of Land Management, Maritime Administration, Geological Survey, Department of Transportation, Army Corps of Engineers, and Nuclear Regulatory Commission provided additional information.

The National Energy Plan sets forth three overriding objectives for the Nation: (1) reduce dependence on foreign oil and vulnerability to supply interruptions; (2) keep imports sufficiently low to weather the period when oil production approaches its capacity limitation; and, (3) have renewable and essentially inexhaustible sources of energy for sustained economic growth. The salient features of the National Energy Plan are: conservation; national pricing and production policies; reasonable certainty and stability in government policies; substitution of abundant energy resources for those in short supply; and, development of non-conventional technologies for the future.

Many energy facilities are already situated in the State's coastal area, including steam electric generating plants, transmission lines, oil storage tanks and LNG facilities. The Program's policies on energy are in accord with existing State laws and plans which address energy needs and environmental quality in a comprehensive manner.

The State has demonstrated its recognition of the national interest in energy facilities by the number and scope of facilities already located in or planned for New York's coastal area. The total 1981 capacity for New York State utilities was 30,331 megawatts. This was produced by the following types of existing facilities: (1) oil - 100 units, (2) hydro - 17 units, (3) gas - 6 units, (4) coal - 30 units, and (5) nuclear - 5 units. In addition, other facilities are in various stages of planning and development: (1) 2 nuclear - under construction, (2) 1 coal - under construction, (3) 3 coal - licensed to be constructed, and (4) 1 pumped storage - licensed to be constructed. When operating, these new facilities will produce 5,868 megawatts. Finally, 15 plants are proposed to be converted to coal and would produce 3,685 megawatts.

Article 5 of the State's Energy Law is the principal authority under which the national interest in energy is considered. This law requires the preparation and adoption of a statewide energy plan which establishes the State's future energy requirements.

In determining these requirements, consideration must be given to factors which relate to reducing the State's and the Nation's dependence on foreign oil and also to developing renewable sources of energy. Factors include: the extent to which energy conservation measures and new energy technologies may affect the State's energy requirements; the extent to which indigenous energy resources may contribute to meeting the State's requirements. Section 5-110.a (4) of Article 5 requires that one of the factors that shall be taken into consideration in preparation of the Energy Plan is "the impact of the national energy policies on the State's energy needs and on available sources of supplies".

The State Energy Master Plan must be reviewed at least once every two years; at that time the State Energy Office will prepare any amendments necessary to update the plan or issue a determination that no amendments are necessary and the reasons supporting the determination. Any interested person may seek such a review upon written application to the Energy Office for an amendment to the Master Plan. Amendments are to be adopted by the Energy Planning Board in the same manner as the plan itself; thus again the national interest will be considered.

Under Article 5 of the Energy Law, the Energy Office must also formulate and revise a State energy conservation plan to be submitted pursuant to the Federal Energy Policy and Conservation Act of 1975. In addition, any action requiring preparation of an EIS under the State Environmental Quality Review Act must be reviewed as to its effects on the use and conservation of energy.

Article 5 requires the New York Power and Gas Pools to submit to the Energy Office comprehensive long-range plans for future operations. After analysis and review of the plans, the Energy Office will project long-range electric and gas demands and supply requirements for 4, 8, 12 and 16 year forecast periods. These findings are binding under Article VII and VIII of the Public Service Law with respect to any determination of need for an electric generation or transmission facility.

Interstate and international arrangements established by the members of the New York Power Pool also serve the national interest. Interconnections with the Pennsylvania - New Jersey - Maryland power system, the New England power pool, Hydro Quebec and Ontario Hydro provide mutual reserve capability to ensure those systems' reliability. Electricity generated by the Power Authority of the State of New York (PASNY) in its coastal hydro-electric plants is sold to the State of Vermont. Finally, PASNY purchases significant quantities of power from the two Canadian systems.

In accordance with the provisions of Article 42 of the Executive Law, the Secretary of State will review the above described programs and actions for consistency with the coastal area policies. In particular, the Secretary will review the preparation of the State Energy Master Plan for assurance that there is adequate consideration of the national interest in the siting of the energy facilities which are necessary to meet requirements which are other than local in nature consistent with Article V, Section 110. a. (4). The Secretary will take particular note of Policy 27 ("Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facilities' need for a shorefront location") and Policy 29 ("Encourage the development of energy resources on the Outer Continental Shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities") in making these decisions. For a further description of the process of siting energy facilities, see Part II, Section 7.

Recreation Facilities

Various documents, legislation, and Federal agencies were consulted to determine the national interest in recreation facilities including: Nationwide Outdoor Recreation Plan; Gateway National Park Plan; Fire Island National Seashore Park Plan; Land and Water Conservation Fund Act; Historic Preservation Act - P.L. 89-665; Heritage Conservation and Recreation Service; and National Park Service.

National recreation objectives drawn from the above sources are: (1) to consider recreation as an equal among other uses competing for space along coastlines; (2) to provide high quality recreational opportunities to all people while protecting the coastal environment; (3) to increase public recreation possibilities in high density areas; (4) to protect existing recreation areas from the adverse effects of contiguous uses; (5) to improve coordination and management of recreation areas; and, (6) to accelerate the no-cost transfer of surplus Federal property for recreational uses.

New York's coast possesses many fine and varied public recreation areas, including the Fire Island National Seashore and a portion of the Gateway National Park System. The State's Coastal Management Program recognizes the multiple values of these facilities in terms of their contribution to the economy, their role in achieving more desirable land use patterns, and their immeasureable benefit to the health of residents and visitors. In support of these values and the national interest, New York's Program supports increasing the number of recreation facilities in its coastal area while protecting them from excessive use and incompatible adjacent development. For a complete discussion of recreation policies, see Part II, Section 6 of this report.

Conflicts between various national and State interests arise inevitably when activities, such as residential, transportation or energy development, compete with recreational facilities for use of limited waterfront space. Frequently, the other uses prevail because they are considered more profitable and more critical.

A number of State laws, plans and processes ensure that, among other critical concerns, the national interest in recreation will be adequately considered in New York State. First, the State Comprehensive Recreation Plan, administered by the Office of Parks, Recreation and Historic Preservation (OPRHP) contains a priority rating system for allocating funds for recreation purposes. One factor in that system gives positive weight to an activity which will contribute to the achievement of State, regional and national goals for recreation. OPRHP also administers the Urban Cultural Park Program which is intended to improve the physical, economic and recreational environments of the State's historic communities.

Under the State Environmental Quality Review Act, recreational concerns must be considered as part of the environmental assessment process; so too under Article VII and VIII of the Public Service Law which requires environmental impact analysis for proposed energy facilities. Finally, under the Parks, Recreation and Historic Preservation, Environmental Conservation, Transportation, and Highway Laws, the State may acquire land for recreational purposes. Appendices E and F contain additional information on these laws and programs.

Transportation Facilities

In determining the national interest in transportation, the following documents and Federal agencies were consulted: Department of Transportation Act (49 US 1651, et. seq.); Railway Safety Act of 1970 (45 USC 421); Coast Guard, Primary Duties (14 USC 2); Department of Transportation; Maritime Administration; Interstate Commerce Commission; and, U.S. Army Corps of Engineers.

From these sources, it was determined that the national interest in transportation is: (1) to develop a balanced national transportation system including well-integrated surface, air, water, and subsurface modes; and, (2) to provide fast, safe, efficient and convenient transportation via one or more modes for the movement of people, goods and services to, from, and through coastal regions.

The Coastal Management Program considers major ports, navigation channels, interstate highways, railroads, airports and their ancillary facilities to be in tne national interest. For these facilities, the Program supports the State's Department of Transportation policies. These policies, as presented in the Department's Transportation Master Plan, are clearly supportive of national transportation concerns.

In the development of its Coastal Management Program, the State has indicated where conflicts exist or could arise between the Program's policies and the national interest in transportation. In the Hudson River Valley and at many locations along the Great Lakes, public access to the shorefront is inhibited by rail lines and interstate highways. Expansion or improvement of existing port facilities could interfere with existing or the provision of new recreational waterfront facilities. Finally, the dredging and deepening of navigation channels may adversely affect significant fish habitat and the quality of coastal waters.

In the face of these conflicts, New York State will continue to give adequate and balanced consideration to all national and State concerns through review of A-95 notifications and environmental impact statements prepared under the State's Environmental Quality Review Act. The Department of State will suggest reasonable mitigation measures and/or alternative sites as appropriate.

Uses of Regional Benefit

As indicated previously, a State's coastal management program must ensure that local regulations applicable to land and water uses within the coastal area do not unreasonably restrict or exclude those uses which are of regional benefit. This requirement addresses the situation where a local government may oppose or place severe limitations on the siting of a needed regional serving facility or in another situation, where a municipality may fail to adequately protect natural resources which are deemed to be of areawide importance.

Identification Criteria

New York's Coastal Management Program must identify uses of regional benefit and then demonstrate how each will not be unduly restricted or excluded. Two Federal guidelines are to be followed in identifying such uses. First, the use or facility must have an effect on more than one unit of local government. Second, the use or facility must have a direct and significant impact on coastal waters.

This Program has used two additional guidelines in the identification of these regional uses. Since the overall objective of the State's Program is to implement its policies, such regional uses or facilities should then assist the State in the achievement of these policies. In particular, the need for a waterfront location should be taken into consideration, for it is the land along the shoreline where local, State and national concern is the greatest. Area-serving uses and facilities which are either publicly owned or regulated by the State is the other guideline that was used in this identification process.

Types of Regional Uses

Based upon the above Federal and State guidelines, several types of land and water uses are identified, as well as the means for assuring that such uses will not be unreasonably restricted or excluded by local regulations.

1. Recreational uses of regional benefit shall include:

   -- State parks and other recreational uses

   -- County parks and other recreational uses

   All of the above uses satisfy the identification criteria. First, they provide recreational opportunities to people who reside both within andoutside the municipality where such uses are located. Second, these uses have direct effects on coastal waters, for the recreational activities conducted on waters and the adjacent lands may impair the quality of such waters. Third, all of the uses are cited in coastal policies as possible means for increasing water-oriented recreational oportunities. Finally, these uses are in public ownership and serve many communities.

The above recreational uses are not unreasonably restricted by local laws and ordinances. The acquisition and subsequent development of land with the Coastal Area for State and county recreational purposes are not subject to local regulations. Case law, rather than statutory provision, is the basis for this determination. Several judicial decisions have declared that State and county governmental functions are not subject to local land use regulation.[1] Therefore, the siting of such recreational uses within the Coastal Area of the State cannot be unreasonably restricted or prohibited by a local government.

2. Transportation uses of regional benefit shall include:

   -- State and county highways, including necessary bridges and tunnels

   -- Intercity and commuter rail service facilities, including necessary bridges and tunnels

   -- Major cargo handling ports

   -- Navigation channels serving major ports

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[1] For general discussion on this subject, see Anderson, New York Zoning Law and Practice, Section 9.04, (2nd Edition. 1973).

Specific judicial decisions on this topic are as follows:

   -- City of Rochester v. Town of Rush, 336 NYS 2d 160, 71 Misc. 2d 451 (1972)

   -- Nehrbas v. Incorporated Village of Lloyd's Harbor, 2NY 2d 190, 159 NYS 2d 145 (1957)

   -- Village of Larchmont v. Town of Mamaroneck, 239 NY 551 (1924)

These transportation and related uses satisfy the two Federally required identification criteria and partially fulfill the State's Coastal Management Program guidelines. With respect to the required criteria, the above uses and facilities are of benefit to the residents in the locality as well as the people and businesses in the general area where such uses are located. Because of their nature, these uses may have direct and significant impacts upon coastal waters. In terms of the State's criteria, the Program's policies address either singularly or collectively the above transportation uses, for they are essential to economic activity within the coastal area and the State as a whole. Ports do require waterfront sites and navigation channels are, of course, situated in coastal waters. The other two transportation uses do not require a location in or near coastal waters, except in situations where a water body must be traversed to provide for uninterrupted service. Finally, most of the State and county highways are provided and maintained by their respective governments. There are situations, however, where this is not true for parts of New York's coastal area. For example, public authorities have been established, such as the Triborough Bridge and Tunnel Authority in New York City[2] for the purposes of constructing, operating and maintaining necessary bridges, tunnels and roadways leading to such facilities. All of the State's major port facilities and most of its rail service facilities are also constructed, operated and maintained by public authorities established under New York's Public Authority Law. Some railroad lines in New York's coastal area are still under private ownership, such as the Delaware and Hudson. As for navigation channels serving major ports, these are situated on underwater lands owned and, thus, controlled by the State of New York.

State and county highways are not subject to local regulation for the reasons discussed previously. The major ports and most of the rail facilities are not subject to local siting restrictions because of the

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[2] N.Y.S. Public Authority Law, Article 3, Title 3.

powers generally granted to public entities. The siting of such facilities are regulated by the State's Department of Transportation.[3] The U.S. Corps of Engineers, in cooperation with the State's Department of Environmental Conservation, is responsible for maintaining the navigation channels serving the State's major ports.

3. Energy uses shall include:

-- Electric generation facilities

-- Electric and gas transmission facilities

These uses and facilities fulfill several of the previously described identification guidelines. First, major electric and gas facilities are beneficial, for they supply the energy necessary for the operation of industries, transportation vehicles and services, and home heating. Second, these uses can have substantial impacts upon coastal waters. Third, if these facilities are properly sited and operated, several Coastal Management Program policies will be achieved and statewide concerns over their effects on water quality, fish and wildlife, air quality and aesthetics will be minimized. Also, some of these facilities do require locations along the waterfront or access to coastal waters in order to properly function. Finally, some major electric generation and transmission facilities are provided by the Power Authority of the State of New York (PASNY).

Steam electric generation and electric and gas transmission facilities are subject to the single comprehensive siting and permit procedures established under Article VII and VIII of the Public Service Law. These processes ensure that such facilities will not be unreasonably restricted by local regulations. Hydroelectric and nuclear-fueled generation facilities are subject to Federal review and approval.

Federal Consistency

Federal agencies are responsible for numerous programs which can further the policies and purposes of the State's Coastal Management Program. The Coastal Zone

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[3] N.Y.S. Transportation Law, Article 5.

Management Act of 1972, as amended, requires that actions of Federal agencies which impact the coastal zone must be undertaken consistently with approved State management programs. These Federal actions are:

-- Federally conducted or supported activities, including development projects;

-- Federal licenses or permits;

-- Federal financial assistance; and

-- Outer Continental Shelf (OCS) plans.

The Department of State will coordinate and review Federal actions affecting New York's Coastal Area for consistency with the State's Coastal Management Program. In carrying out this responsibility, the Department will consult with other State agencies and local governments before providing its official comment on all Federal actions. If an action, other than a Federally conducted or supported activity is determined to be inconsistent with the management program, the Federal agency proposing the action may not proceed, unless the Secretary of Commerce finds that such action is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security.

The basis for all consistency reviews are the enforceable policies in Part II, Section 6 of this document, all the guidelines developed to assist in this review, and all approved management programs for Special Management Areas, particulary local waterfront revitalization programs which have been incorporated into the State's Coastal Management Program.

The Department of State intends to meet the Federal consistency provisions without causing burdensome responsibilities on applicants and Federal agencies. This will be accomplished by first seeking an early consultation between pertinent State and Federal officials and involved private parties. Federal agencies and applicants proposing an action for which a consistency review is or may be required should consult the Department of State as early as possible in the planning of the action. This will allow the Department to advise the agency or applicant of the relevant coastal policies and provisions of the State's Coastal Management Program and will help to eliminate potential conflicts before extensive work on a particular proposal has been completed. Implementing this principle will establish more efficient coordination between State and Federal actions.

Second, whenever possible, the Department of State will base its consistency determination on documents normally required for compliance with Federal regulations or approval. Generally, these will include environmental impact statements and assessments, applications for Federal permits and licenses, Federal grant applications, and supporting information.

Third, if additional information should be needed to make a consistency determination, the Department of State will promptly notify the Federal agency or applicant of this need, specify in detail the nature of the required information, and indicate the reasons for the additional data.

Fourth, whenever both Federal and State consistency determinations are required for proposed action, the review of this action will, whenever possible, occur at the same time.

Fifth, the State, when appropriate, may enter into agreements with Federal agencies that would further define the scope, procedures to be used, and the notification process for reporting the results of that review. The primary objectives of such agreements will be to ease the burden of consistency review on applicants and Federal agencies, and to synchronize and simplify existing and new review and/or regulatory procedures and programs at both the Federal and State level.

Consistency Procedures for Federally Conducted or Supported Activities

Consistency reviews, including the necessary information outlined in the National Oceanic and Atmospheric Administration (NOAA) Federal consistency regulations will be submitted to the Department of State.

The Federal activities listed in Part I of Table 2 are likely to require a consistency determination. Activities not listed in this Table will be monitored through the A-95 review process and other relevant processess. If a consistency determination and review is needed for any unlisted activity, the Department of State will notify the Federal agency.

Federal agencies must provide the Department of State with a consistency determination at the earliest practicable time in the planning of the activity, preferably when the analysis of alternatives is still ongoing. Federal agencies will notify the Department by procedures established by any future agreement that may be sought between a Federal agency and the Department, or by any recognized means of notification.

For the present, Federal agencies are encouraged to use existing mechanisms such as OMB Circular A-95 and NEPA environmental impact statements to provide the notification. In any case, the consistency determination must be provided no later than 90 days before final approval of the activity.

If a Federal agency determines that a Federally conducted or supported activity does not directly affect the State's Coastal Area, and thus a consistency determination is not needed, the agency should notify the Department of State at least 90 days before final approval of the activity, setting forth the reasons for its negative determination.

Upon receipt of a consistency determination from a Federal agency, the Department of State will review the determination and inform the Federal agency of its agreement or disagreement with the consistency determination within 45 days. If needed, the Department may request an extension of 15 days.

In the event the Department of State is in disagreement with a Federal agency's consistency determination, the agency will be informed of the reasons for disagreement, accompanied by supporting information and alternatives, if any, which would make the activity consistent.

Consistency Procedures for Federal Licenses or Permits

Applicants for Federal licenses or permits for activities affecting the State's Coastal Area, or for certain renewals or amendments to such licenses or permits shall provide the Department of State with the application and a certification, with required supporting information, demonstrating that the proposed activity is consistent with the State's Coastal Management Program.

Federal agencies may not issue a license or permit unless the State concurs with the applicant's consistency certification, is conclusively presumed to concur, or the U.S. Secretary of Commerce finds that a proposal is consistent with the purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security. Licenses and permits subject to consistency review are listed in Part II of Table 2. In addition, the Department of State will continue to monitor other activities requiring a Federal license or permit, and, if necessary, will notify the Federal agency, the applicant, and the Assistant Administrator of Coastal Zone Management (within 30 days of receiving the notice for the license or permit) that an unlisted license or permit will be subject to a consistency review.

At the same time an application for a license or permit is submitted to a Federal agency, the applicant shall transmit a copy of the application, together with the necessary data and information, and the consistency certification to the Department of State. The Department of State shall make the consistency determination based on the State's coastal policies, regulations and procedures and will make a decision or notify the applicant within 3 months, as provided in NOAA regulations. In no case can the consistency review take more than 6 months.

With respect to Federal licenses and permits associated with those energy facilities subject to Articles VII and VIII of the Public Service Law (utility transmission facilities and steam electric generating plants, respectively), the information needed to assess their consistency will be developed during the lengthy statutory review period, particularly the required formal hearings. Consequently, the State will not consider an application of any such license or permit to be supported by the necessary information and data under 15 CFR 930.56 (b) and 930.58 (a)(2) until the hearings have been completed. Concurrence or objection will be based upon the Certification of Environmental Compatibility and Public Need which will be issued within six months from the completion of the hearings.

Public notice will be given for any license or permit being reviewed for consistency in the Environmental Notice Bulletin, and in a newspaper having general circulation within the community where the license or permit activity is proposed. For activities which are subject to a State permit, the Department of State will use the applicable agency's notification process. Should this or other reasonable forms of public notification not be available or if the nature of the permit being applied for is of sufficient interest, the Department of State will carry out the public notice.

When the Department of State objects to a consistency certification, it will notify, in writing, the applicant, the Federal agency and the Assistant Administrator of NOAA. The notification will describe how the proposed activity is inconsistent and alternatives, if any, which would make the activity consistent.

Consistency Procedures for Federal Financial Assistance

Federal assistance for projects or programs affecting the State's Coastal Area will be monitored by the Department of State. Those proposed projects or programs which are inconsistent with the Coastal Management Program may not be funded by Federal

agencies unless the U.S. Secretary of Commerce finds that such proposals are consistent with the Federal Act or are necessary for national security purposes.

The Department of State will use the A-95 Project Notification and Review Process to monitor proposed Federal assistance projects in the Coastal Area. All applications for Federal assistance which are applicable to the planning, design, construction, alteration or expansion of physical development projects or other activities which could affect the State's Coastal Area will be subject to a consistency review. The applicant must certify consistency with the policies of the Program. This certification should be contained in the A-95 Review Notification, or if not applicable, Federal agencies will notify the Department by procedures established by any future agreement which may be sought between the Federal agency and the Department, or by any recognized means of notification. The Division of the Budget, the State agency designated to administer the A-95 process, shall notify the Department of State of proposed Federal assistance projects in the Coastal Area.

Within the time limits provided for review, the Department of State will notify the appropriate Federal agencies and applicants of any objections to proposed projects. The objection will describe how the proposed project is inconsistent with specific policies and shall recommend alternative measures, if any, which would make the project consistent. Applicants will also be notified of appeal procedures under NOAA regulations.

If the Department of State identifies an application for Federal assistance to conduct an activity which affects but is not within the Coastal Area, the Department shall provide notice to that effect to the Federal agency, the applicant, the A-95 Clearinghouse and the Assistant Administrator of NOAA within the designated comment period.

The Federal financial assistance projects and programs subject to consistency review, are listed in Part III of Table 2.

Consistency Procedures for Outer Continental Shelf Plans

Plans for the exploration, development and production of Outer Continental Shelf (OCS) resources and all associated activities described in detail in such plans which affect the coastal zone area will be evaluated for consistency with the State's Coastal Management Program in accordance with the NOAA Federal consistency

regulations. The review will be coordinated by the Department of State and the public notification necessary for review of the OCS plans will be undertaken by the Department, in cooperation with the Department of Environmental Conservation. The review will be based on the enforceable policies, standards, laws, and regulations of the State's coastal program.

All OCS plans will be processed as soon as reasonably possible. The maximum review period as established by Federal regulations is three months following commencement of State review, with an additional three month period available to the State upon notification to the appropriate parties of the status of the review and the basis for the additional time. Total review period cannot exceed six months. Based on the review, should the Department of State object to a consistency certification for an OCS activity, the Federal agency may not approve the plan or issue any license or permit for activities described in detail in the plan unless the U.S. Secretary of Commerce finds that the proposal meets the purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security.

TABLE 2

FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS
LIKELY TO DIRECTLY AFFECT NEW YORK STATE'S COASTAL AREA

I. Direct Federal Activities and Development Projects

Department of Commerce, National Marine Fisheries Service:

-- Fisheries Management Plans

Department of Defense, Army Corps of Engineers:

-- Proposed authorizations for dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities, and other projects with the potential to impact coastal lands and waters.

-- Land acquisition for spoil disposal or other purposes.

-- Selection of open water disposal sites.

Department of Defense, Air Force, Army and Navy:

-- Location, design, and acquisition of new or expanded defense installations (active or reserve status, including associated housing, transportation or other facilities).

-- Plans, procedures and facilities for handling or storage use zones.

-- Establishment of impact, compatability or restricted use zones.

Department of Energy:

-- Prohibition orders.

General Services Administration:

-- Acquisition, location and design of proposed Federal government property or buildings, whether leased or owned by the Federal government.

-- Disposition of Federal surplus lands and structures.

Department of Interior, Fish and Wildlife Service:

-- Management of National Wildlife refuges and proposed acquisitions.

Department of Interior, National Park Service:

-- National Park and Seashore management and proposed acquisitions.

Department of Interior, Bureau of Land Management:

-- OCS lease sale activities including tract selection, lease sale stipulations, operating orders, etc. The State will review proposed lease sales to determine if such pre-lease activities directly affect the coastal area and thus are subject to a consistency review by the State.

Department of Transportation, Coast Guard:

-- Location and design, construction or enlargement of Coast Guard stations, bases, and lighthouses.

-- Location, placement or removal of navigation devices.

-- Expansion, abandonment, designation or anchorages, lightering areas, shipping lanes or pilot areas and ice management practices and activities.

Department of Transportation, Federal Aviation Administration:

-- Location and design, construction, maintenance, and demolition of Federal aids to air navigation.

Department of Transportation, Amtrak, Conrail:

-- Expansions, curtailments, new construction, upgradings or abandonments of railroad facilities or services, in or affecting the State's coastal area.

Department of Transportation, St. Lawrence Seaway Development Corporation

-- Acquisition, location, design, improvement and construction of new and existing facilities essential to the operation of the Seaway, including traffic safety, traffic control and length of navigation season.

II. Federal Licenses and Permits

Department of Defense, Army Corps of Engineers:

-- Construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

-- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).

-- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

-- Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).

-- Disposal of dredged spoils into the waters of the U.S., pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).

-- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972(33 U.S.C. 1413).

-- Construction of artifical islands and fixed structures in Long Island Sound pursuant to Section 4 (f) of the River and Harbors Act of 1912 (33 U.S.C.).

Department of Energy, Federal Energy Regulatory Commission:

-- Licenses and permits ordering inter-connection of electric transmission lines or issuing certificates of public convenience and necessity for interstate natural gas transmission, including approval of LNG sites pursuant to the Federal Power Act, the Energy Reorganization Act of 1974, and the Natural Gas Act.

-- Siting, construction and operation of non-nuclear power plants.

-- Abandonment of gas pipelines pursuant to Section 7, Natural Gas Act.

Department of Energy, Economic Regulatory Commission:

-- Regulation of gas pipelines, and licensing of import or export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.

-- Exemptions from prohibition orders.

Environmental Protection Agency:

-- NPDES permits and other permits for Federal installations, discharges in contiguous zones and ocean waters, sludge runoff permits and agriculture pursuant

to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

-- Permits pursuant to the Resources Recovery and Conservation Act of 1976.

-- Permits pursuant to the underground injection Control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).

-- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

Department of Interior, Fish and Wildlife Services:

-- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

Department of Interior, Mineral Management Service:

-- Permits to drill, rights of use and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures pursuant to 43 U.S.C. 1334, exploration and development plans.

Department of Interior, Bureau of Land Management:

-- Permits required for pipelines crossing federal lands, including OCS lands, and associated activities pursuant to the OCS Lands Act (43 U.S.C. 1334) and 43 U.S.C. 931 (c) and 20 U.S.C. 185.

Nuclear Regulatory Commission:

-- Licensing and certification of the siting, construction and operation of nuclear power plants pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

Department of Transportation, Coast Guard:

-- Construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455.

-- Permits for Deepwater Ports pursuant to the Deepwater Ports Act of 1974 (33 U.S.C. 1501).

Department of Transportation, Federal Aviation Administration:

-- Permits and licenses for construction, operation or alteration of airports.

III. Federal Assistance

Department of Agriculture

10.068	Rural Clean Water Program
10.409	Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410	Low to Moderate Income Housing Loans
10.411	Rural Housing Site Loans
10.413	Recreation Facility Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.422	Business and Industrial Loans
10.423	Community Facilities Loans
10.424	Industrial Development Grants
10.426	Area Development Assistance Planning Grants
10.429	Above Moderate Income Housing Loans
10.430	Energy Impacted Area Development Assistance Program
10.901	Resource Conservation and Development
10.902	Soil and Water Conservation
10.904	Watershed Protection and Flood Prevention
10.906	River Basin Surveys and Investigations

Department of Commerce

11.300	Economic Development - Grants and Loans for Public Works and Development Facilities
11.301	Economic Development - Business Development Assistance
11.302	Economic Development - Support for Planning Organizations
11.304	Economic Development - State and Local Economic Development Planning
11.305	Economic Development - State and Local Economic Development Planning
11.307	Special Economic Development and Adjustment Assistance Program - Long Term Economic Deterioration
11.308	Grants to States for Supplemental and Basic Funding of Titles I, II,III, IV, and V Activities
11.405	Anadromous and Great Lakes Fisheries Conservation
11.407	Commerical Fisheries Research and Development
11.417	Sea Grant Support

11.427	Fisheries Development and Utilization - Research and Demonstration Grants and Cooperative Agreements Program
11.501	Development and Promotion of Ports and Intermodal Transportation
11.509	Development and Promotion of Domestic Waterborne Transport Systems

Department of the Army
Office of the Chief of Engineers

12.201	Beach Erosion Control Projects
12.202	Flood Control Works and Federally Authorized Coastal Protection Works, Rehabilitation
12.106	Flood Control Projects
12.107	Navigation Projects
12.108	Snagging and Clearing and Straightening Channels
12.109	Protection, Clearing and Straightening Channels
12.110	Planning Assistance to States

Department of Housing and Urban Development

14.112	Mortgage Insurance - Construction or Substantial Rehabilitation of Condominium Projects
14.115	Mortgage Insurance - Development of Sales Type Cooperative Projects
14.117	Mortgage Insurance - Homes
14.124	Mortgage Insurance - Investor Sponsored Cooperative Housing
14.125	Mortgage Insurance - Land Development and New Communities
14.126	Mortgage Insurance - Management Type Cooperative Projects
14.127	Mortgage Insurance - Mobile Home Parks
14.218	Community Development Block Grants/Entitlement Grants
14.219	Community Development Block Grants/Small Cities Program
14.221	Urban Development Action Grants
14.223	Indian Community Development Block Grant Program

Department of the Interior

15.400	Outdoor Recreation - Acquisition, Development and Planning
15.402	Outdoor Recreation - Technical Assistance
15.403	Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments
14.411	Historic Preservation Grants-In-Aid
15.417	Urban Park and Recreation Recovery Program
15.600	Anadromous Fish Conservation
15.605	Fish Restoration
15.611	Wildlife Restoration
15.613	Marine Mammal Grant Program
15.802	Minerals Discovery Loan Program
15.950	National Water Research and Development Program
15.951	Water Resources Research and Technology - Assistance to State Institutes
15.592	Water Research and Technology-Matching Funds to State Institutes

Department of Transportation

20.102	Airport Development Aid Program
20.103	Airport Planning Grant Program
20.205	Highway Research, Planning, and Construction
20.309	Railroad Rehabilitation and Improvement - Guarantee of Obligations
20.310	Railroad Rehabilitation and Improvement - Redeemable Preference Shares
20.506	Urban Mass Transportation Demonstration Grants
20.509	Public Transportation for Rural and Small Urban Areas

General Services Administration

39.002	Disposal of Federal Surplus Real Property

Community Services Administration

49.002	Community Action
49.011	Community Economic Development
49.013	State Economic Opportunity Offices
49.017	Rural Development Loan Fund
49.018	Housing and Community Development (Rural Housing)

Small Business Administration

59.012	Small Business Loans
59.013	State and Local Development Company Loans
59.024	Water Pollution Control Loans
59.025	Air Pollution Control Loans
59.031	Small Business Pollution Control Financing Guarantee

Environmental Protection Agency

66.001	Air Pollution Control Program Grants
66.418	Construction Grants for Wastewater Treatment Works
66.426	Water Pollution Control - State and Areawide Water Quality Management Planning Agency
66.451	Solid and Hazardous Waste Management Program Support Grants
66.452	Solid Waste Management Demonstration Grants
66.600	Environmental Protection Consolidated Grants Program Support Comprehensive Environmental Response, Compensation and Liability (Super fund)

Note: Numbers refer to the Catalog of Federal Domestic Assistance Programs, 1980 and its two subsequent updates.

Public Participation

As indicated previously, governmental entities, interested parties and the general public must have the opportunity to participate in the development of a state's coastal management program. From the outset of developing New York's Program, the Department of State actively sought to inform and involve private citizens, local, regional and statewide interest groups, local governments, and regional and State agencies. The Department prepared a Coastal Management Handbook outlining the issues and explaining the purposes of the Federal program. A display and slide show were also prepared and taken to meetings to increase public awareness of coastal resources and issues.

In the first years of program development, local and regional agencies were under contract with the Department to inventory coastal resources and to make recommendations on preliminary boundaries and areas warranting special management attention. During this period, Department staff met on a one-to-one basis with local officials and conducted small workshop sessions with officials, interest groups and coastal residents. These meetings proved to be a most productive public involvement technique.

Citizens Avisory Committee

The core of the State's public involvement effort is the Coastal Management Citizens' Advisory Committee. The committee is made up of representatives from the five coastal regions of the State. It met regularly during the development of the program to review technical reports, make recommendations on the State's program and legislation, and assist in public participation activities.

Public Meetings

During June and July of 1978, the Department held a series of 16 public meetings in the coastal regions of the State from Lake Erie to Long Island. The purpose of these meetings was to receive public reaction on the general approach for developing the coastal program. In advance of these meetings, the Department widely distributed a newsletter identifying certain coastal issues and suggesting possible alternatives for program administration. The newsletter asked whether local governments should be required to participate in a coastal management program or whether State agencies alone should operate this type of program. It also asked what State agency should be responsible for the program. Maps showing the proposed boundaries of New York's Coastal Area were displayed at these meetings.

The meetings drew comments from coastal residents, community groups, universities, regional organizations, local governments and others. These participants raised excellent questions about boundaries, areas and problems of particular concern, funding potentials, adequacy of existing authorities, private property rights, regional coordination, rationale for the various local/State administrative options, approval and monitoring of local programs and more. Following these meetings a draft Coastal Management Program document was prepared which incorporated recommendations submitted earlier by regional and local agencies and also included ideas expressed at the public meeting.

Public Hearings

In April, 1979, the Department of State held 9 public hearings in the coastal regions of the State. The purpose of these hearings was to receive comments from all parties interested in implementing legislation. The Department broadly disseminated these documents prior to the hearings. A summary describing coastal policies and showing the proposed Coastal Area was also distributed.

Comments

The hearings again drew comments from a wide variety of individuals and organizations. Participants expressed major concerns about the following:

-- The proliferation of State bureaucratic structures which would be ineffective and which would infringe upon the authority of local governments.

-- The need for expanded representation on the Coastal Management Board to include members from particular fields of expertise and from various geographic regions.

-- The need to use existing review procedures to implement the coastal program.

-- The definition of coastal erosion hazard areas and the procedures for identifying these areas.

Responses

In response to the above concerns, the following actions were taken:

-- Program legislation was revised to provide that an existing agency - the Department of State - serve as the State's Coastal Management Agency. Certain additional responsibilities were given to the Secretary of State relative to determing consistency of Federal actions with the State's Program, and receipt and administration of Federal grants.

-- The concept of a Board was dropped, but an advisory committee was structured to provide specific representation from ten particular areas of expertise and eight specific geographic areas. In addition to these 18 members, the advisory committee would be comprised of six ex-officio members representing the State agencies with major responsibilities for carrying out aspects of the Coastal Management Program. The advisory committee would provide advice to the Secretary on the conduct of the Program.

-- The legislation was revised to provide for the use of the State Environmental Quality Review Act as the mechanism by which State agencies would determine the consistency of their proposed actions with the Coastal Management Program. Where two or more State agencies had jurisdiction over a particular project, and these agencies had irreconcilable differences as to the consistency of an action, the legislation was revised so that a project applicant or either agency could request the Secretary of State to resolve differences. The Secretary could consult with the advisory committee in any dispute resolution.

-- The definition of the coastal erosion hazard areas was expanded to permit identification of dunes, beaches and other natural areas providing protection against erosion to other land. In addition, this legislation was revised to provide for identification of erosion hazard areas after the Department of Environmental Conservation (DEC) had adopted program regulations. A new requirement also called for the DEC to promulgate standards and criteria for the design and construction of erosion protective structures so that they have a reasonable probability of controlling erosion for at least 30 years.

Legislative Hearings

Late in 1979, the New York State Senate and Assembly jointly sponsored hearings to solicit public views on the proposed coastal management and coastal erosion hazards areas bills. Participants were asked to address a number of concerns including: the adequacy of the bills to address environmental, economic and social impacts on New York's coastline; the appropriate role of government agencies in implementing a State coastal program; the economic benefits of State and local participation in the Federal program as well as the costs to the private sector; and modifications which should be made in the two bills.

Testimony at these hearings concerning the future of the Coastal Management Program was overwhelmingly in favor of the legislative passage of these two bills (38 statements in favor; 13 opposed). Even some of the testimony opposed to the proposed legislation was in support of the idea of coastal management and merely called for a restructuring of the management process.

Comments

The basic thrust of the supportive arguments was that: (1) a statewide management program was necessary to provide for the coordination of land use, and natural resource protection policies in the coastal regions; (2) erosion hazards areas legislation was needed since erosion has a major impact on people living along the shores of Lake Ontario and Long Island; (3) a statewide program, working in concert with local authorities, was necessary to ensure New York State's consistency with Federal guidelines and regulations concerning Coastal Zone Management; (4) a State-administered Coastal Management Program approved by the Federal government is a prerequisite for the allocation of Coastal Energy Impact Program (CEIP) funds to New York and that the State should not lose this opportunity for Federal monies.

The arguments opposed to a State Coastal Management Program basically maintained that: (1) existing legislation, if properly implemented, was good enough to protect vital coastal resources and that additional legislation would duplicate existing regulation and cause confusion over authority leading to bureaucratic entanglement; (2) the Federal government's CEIP funds were being offered to New York "like a carrot on a stick" and that in the rush to receive a Federal grant, the legislation was not being properly considered; (3) bills did not offer enough protection to the coastal environment and were too permissive and vague in allowing commercial and industrial development along

ecologically sensitive waterfronts; and, (4) the proposed legislation would infringe upon economic or recreational activities of farmers and sportsmen, respectively, through the increased governmental control of land uses.

Responses

In 1980, the legislation was again modified to reflect the comments received at the legislative hearings:

-- Water dependent activities were redefined to include other than economic activities, and specific recognition was given to the attraction of coastal areas for residential purposes.

-- Membership of the advisory committee was expanded to include expert representatives from the areas of residential construction and tourism.

-- Legislative provisions on Geographic Areas of Particular Concern were simplified and substantially revised to include certain aesthetic areas, agricultural lands, fish and wildlife habitats and water dependent use areas.

-- Coastal policies were simplified and the way in which they apply was clarified.

-- Improvements were made to better integrate the consistency review process with State Environmental Quality Review Act procedures.

-- A specific procedure was added for voluntary withdrawal of local governments from participation in the State program.

In June, 1980, the New York State Assembly passed both the program and erosion bills, but the Senate did not. In 1981, a new bill entitled the Waterfront Revitalization and Coastal Resources Act was introduced in the Legislature. This bill included a balanced approach to coastal resource protection and development; use and coordination of existing State environmental management and economic development programs; streamlining of procedures; and voluntary local programs. The bill was, however, shortened and simplified with an emphasis on local revitalization efforts. This was in response to criticism about potential negative economic impacts of a coastal program. In July, the Senate and Assembly passed the waterfront revitalization and erosion bills and the Governor signed them into law.

Year of the Coast

In 1980, Governor Carey joined in proclaiming the Year of the Coast. The Department of State then organized or participated in organizing a number of events to hightlight the importance of the State's coast. The Department brought together local government representatives from coastal areas to a workshop where they shared their experiences on a variety of local projects. In the summer, the Department worked with the Mid-Hudson League of Women Voters to organize a "See-shore Sail"; and in September, the Department held a Year of the Coast boatride in New York City to view potential revitalization sites. Finally, the Department co-sponsored a conference with the New York-New Jersey Port Authority on revitalization of the port. A number of brochures, updates and maps were prepared for distribution at these events.

SECTION 10

DRAFT

NEW YORK CITY

WATERFRONT REVITALIZATION PROGRAM

JUNE 1982

This section, which details a proposed Local Waterfront Revitalization Program for New York City, is presently undergoing review pursuant to 197-a of the New York City Charter. It is also being reviewed by the Department of State for the purposes of determining its approvability pursuant to the Waterfront Revitalization and Coastal Resources Act of 1981. The New York City Waterfront Revitalization Program, to be included as a component of the Federally approved New York State Coastal Management Program, must be formally adopted by New York City and approved by New York State prior to Federal approval.

CHAPTER I: INTRODUCTION

Throughout New York's history, its waterfront has been key to the City's growth and prosperity. The City's extensive shoreline, including fourteen bays, five rivers, two straits, and its large sound make it by far one of the best natural deep-water harbors in the world, with the potential for limitless recreational opportunities for residents and visitors alike. At one time, the fate of New York and its waterfront were inseparable: as the port grew, the City grew. In fact, by the middle of the 19th century, the port of New York was the nation's premier port; and by the end of the century, the City was the nation's leading city.

Over the past 50 years, however, a number of forces have significantly altered the relationship of City to shoreline. Yet, in most instances, the City's waterfront policies have failed to reflect the changed realities, despite the fact that they are as dramatic as the following:

- The core of the City replaced the waterfront as the provider of new jobs.

  As the City's economy shifted from a manufacturing to a service base, the focus on economic growth and development shifted inland to the midtown area. Since 1948, 282 major office buildings have been constructed adding 144 million square feet of space. By 1970, the number of jobs in midtown Manhattan had grown to 1.3 million.

- Changes in the cargo shipping industry resulted in a massive shift of maritime activities from traditional waterfront locations.

  Of the 4.8 million waterfront "hirings"* in the Port of New York in 1958, 73 percent took place on New York City piers. Manhattan alone accounted for 37 percent of all hirings. By 1978, New York City's share had fallen to 50 percent of the Port's two million hirings that year, with New Jersey piers accounting for the other 50 percent. The impact of this shift is most visible on the west side of Manhattan where, of the 36 piers owned by the City, 18 lie unused -- many in dilapidated or burnt-out condition -- and only one of the 18 still occupied is used for maritime purposes.

- Construction of a modern highway system and bridge and tunnel network severely limited water access.

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* Employment figures for dock workers are measured in hirings. Each hiring represents one 9-hour day, worked by one longshoreman.

At the turn of the century, the Brooklyn Bridge was the only major bridge traversing a New York waterway. Today, 24 major bridges span the City's waterways, and four tunnels carry vehicular traffic beneath the City's two major rivers. Their miles of access roads and the 67 miles of modern highways -- some elevated, some at grade, some depressed -- now line nearly 30 percent of the City's waterfront.

- Expansion of public waterfront parks and beaches outpaced the City's capacity and ability to maintain them.

  In 1933, New York City had only one mile of public beach. Today, there are over 14 miles of public beach and some 60 public waterfront parks. Together they cover a total of 84 miles of shoreline or 40 percent of the City's waterfront. Based on the acreage devoted to these uses, experts estimate that the City should be investing about $100 million annually to properly maintain its parkland and recreational facilities. In fiscal year 1981, only $60 million was available for capital investment in parks.

- The least desirable activities were assigned to the waterfront.

  In 1928, nearly 40 percent of the City's waterfront was undeveloped. Today, less than five percent remains undeveloped. Since 1928, the City's two major airports were constructed; together they cover 11 miles of waterfront. In addition, 11 steam turbine and nine gas turbine electric generating plants were built at waterfront locations; 12 water pollution control plants (with two under construction), nine refuse landfills, ten marine transfer stations, and four incinerators were developed along the shoreline.

- The City abused nature's capacity to cleanse itself and did not respect the function of land in its natural state.

  Many irreplaceable natural resources abounded in New York City at the turn of the century. Many have been destroyed and others damaged irreversibly. Through design, accident, and ignorance our waters have been polluted and our landscape desecrated. A vastly increased per capita use of goods and services and mismanagement of the waste they leave has severely degraded the urban environment.

Despite these major changes, the City's waterfront policies remained locked in the old realities. Costly mistakes were made. In the mid-sixties, when the Port Authority of New York and New Jersey was adapting its facilities to containerization (the modern shipping technology of moving cargo in large containers), the City's Department of Ports and Terminals continued to invest in break-bulk piers (the traditional shipping technology which required little back-up space for storing containers) along the Manhattan waterfront: $34 million was spent on the Chelsea piers, $11 million for Pier 76, and $7.3 million for Pier 36. Since they were completed in 1968, the Chelsea piers were

used for maritime purposes for only a short time and now stand vacant and vandalized. Pier 76 is a parking lot for cars impounded by the police, and Pier 36 stands vacant.

Major opportunities were lost. As maritime uses along the waterfront declined, there was great resistance to replacing them with permanent, new uses. The City pursued a policy that allowed only the least desirable, low-grade uses on the shoreline. Consequently, abandoned piers were converted to parking lots and storage facilities of every kind. Only in a few instances was the City's downgrading of pier uses halted, and then only with extraordinary effort. For example, it took the developer of the River Cafe -- a highly successful waterfront restaurant located beneath the Brooklyn Bridge -- 13 years to get the necessary permits and approvals from the City's bureaucracy, even though the pier was not being used.

The City's waterfront was taken for granted. An unwillingness to challenge traditional ways of thinking pervaded key decisions. The waterfront suffered serious neglect, to the point where an observer approaching many parts of it today would not think of it as the nation's leading port.

A new set of circumstances exists today, however, that is forcing the City to reexamine its relationship to the waterfront. Two positive forces are the Federal Coastal Zone Management Program and the New York State Waterfront Revitalizaton Program, both programs designed to improve management of the area immediately surrounding the land/water interface.

New York State has been involved in the program and has now completed a draft Coastal Management program. It is designed to achieve a balance between the need to protect the State's valuable coastal management resources and the necessity for continued development in the coastal area.

New York City has also seized the opportunity provided by the Act to reexamine its waterfront policy and developed a Waterfront Revitalization Program in support of the State program. It is the first program designed to address urban waterfront problems providing the framework for future policy direction for the City's waterfront.

The results of the planning phase led to the Waterfront Revitalization Program as detailed in this report. The Program identifies the critical problems of the New York City waterfront. The problems, however, were well known; anyone with long and concerned interests on this subject would have no trouble identifying them. But to propose solutions which balance the use, conservation and preservation of the waterfront area in order to optimize man's use through the long-term future, became a formidable task. The program contained herein lays the foundation to arrest and roll back the mistakes that have been made

in the past and provides the framework to manage waterfront resources in the public interest.

This report sets forth New York City's Waterfront Revitalization Program in response to the New York State Waterfront Revitalization and Coastal Resources Act. The report is organized to demonstrate Federal and State approvability. Chapter I provides a background and introduction to New York City's Waterfront Revitalization Program. Chapter II contains a description of the waterfront area, Chapter III contains the proposed organizational structure and means for implementing the program. Chapter IV contains New York City Program policies and techniques to further implementation of New York State policies, and Chapter V contains the proposed Special Revitalization Areas. Two appendices are also included. Appendix A includes the major statutory and regulatory provisons for program implementation. Appendix B discusses revising the New York City Zoning Resolution and Building Code to incorporate waterfront revitalization guidelines.

THE NEW YORK CITY LOCAL WATERFRONT REVITALIZATION PROGRAM

New York City has also seized the opportunity provided by the Coastal Zone Management (CZM) Act to reexamine its waterfront policy. In June 1978, the New York City Department of City P[illegible]nning published the New York City Regional Element of the New York State Coastal Zone Management Plan. For the purposes of program preparation, New York State divided its waterfront into five regions: New York City, Nassau-Suffolk, the St. Lawrence River - Eastern Lake Ontario area, the Hudson River Valley and the Great Lakes West region. Regional reports were prepared by subcontractors and the State and were used in the preparation of the New York State Coastal Management Program. Many of the recommendations included in the regional elements on policies, boundaries, and implementation techniques have been incorporated into the State Program. Other data are advisory in nature but will be used to guide the development of local programs. Subsequently, New York State offered local governments the option of submitting a Waterfront Revitalization Program for approval. The approval would be based upon consistency with New York State's program and a showing of technical capability to carry out the local program. Once a locality's program is approved, it would be eligible for a share of the funds made available, subject to Congressional appropriations to the State, to administer the program and the Federal Consistency provision of the CZM Act applicable to Federal actions would be in effect. In addition, activities of State agencies would have to be consistent with the approved local program.

It should be noted, that implementation of many of the recommendations included herein are dependent upon receipt of adequate funds as is the case with any new program. Since it is impossible to predict levels of future authorizations and in the interest of presenting a comprehensive picture of management needs, the assumption was made that adequate funds would be forthcoming.

CHAPTER II: BOUNDARIES

INTRODUCTION

The primary purpose in defining a waterfront area boundary is to assist waterfront residents and property owners, resource users and governmental entities in understanding the geographic scope of the revitalization program and to assist them in determining whether, where and how they are affected by the program.

Application of Federal regulations offered as broad guidelines for areas with diverse environmental, social and economic characteristics proved extremely complicated.

Planning and management of the often wasted waterfront resources within New York City required a special sensitivity to a range of community issues.

Typical delineation criteria emanated from concern over preservation of rural areas and intrinsic natural areas. The criteria were modified to include the area where jurisdictional overlaps and existing zoning ordinances are in conflict with sound environmental management practices. Modifications will be required as a consequence of program approval.

In other words, the New York City boundary is defined by manageable natural features, the specific person-water interface along the waterfront and the existing governmental jurisdiction which includes the waterfront. Recognition has also been given to the content and interplay of physical, biological, social, psychological, and economic values concerning use of the waterfront area and that they are not static.

The boundary defining the waterfront area in New York City extends seaward to the pierhead line or property line, whichever extends furthest seaward, and landward to the upland limit of remaining natural resources and selected Special Revitalization Areas.

The New York City Waterfront Area boundaries are coterminous with the State boundaries. A map of these boundaries is on file with the Secretary of State. This chapter of the New York City Waterfront Revitalization Program (WRP) reviews the status of Waterfront Area Boundary determinants, provides a description of the area, and discusses the relationship between the New York City and New York State Boundaries.

BOUNDARY DELINEATION

The New York City Waterfront Area extends landward from the pierhead line or property line, whichever extends furthest seaward, to the upland limit of the following natural features, vital man-made features, or selected Special Revitalization Areas:

- Flood Plains
- Steep Slopes
- High Water Table/Shallow Soils
- Significant Flora and Fauna
- Scenic Vistas
- Historic and Archeological Sites
- Parks and Beaches
- Tidal Wetlands
- Freshwater Wetlands
- Unique Flora and Fauna
- Special Revitalization Areas
  - . Areas of Particular Waterfront Significance
  - . Erosion/Floor Hazard Areas
  - . Shorefront Access Areas
  - . Special Zoning Districts

or:

- 300' landward of the Mean High Tide Line in areas devoid of those natural or vital features or Special Revitalization Areas listed above and characterized as developed.

- Landward to the first major man-made physical barrier in areas devoid of those natural or vital features or Special Revitalization Areas listed above and characterized as undeveloped.

After following the above guidelines, the area was adjusted landward to the nearest legally mapped street as set forth in the Sectional Maps of New York City, City of New York, New York City Planning Commission, January 1975.

Exceptions

The Rockaway Peninsula, west from the Queens/Nassau borderline, Broad Channel and City Island are included in their entirety in this zone since only a narrow area running through their central spine would be excluded if the rules above were strictly followed.

NOTE: Tidal and Freshwater Wetlands, historic structures and sites on the National Register of Historic Places, State parks and existing and potential power plant sites have been designated Statewide Generic Geographic Areas of Particular Concern. Therefore, the New York City Waterfront Area Boundary was adjusted to insure their inclusion.

FUTURE CHANGES

The boundary determinants for the Waterfront Revitalization Act have been established. Changes in the delineations may occur in the future based on variations to specific delineation criteria as described below. It is our opinion that few boundary changes will occur since the preliminary data were conservatively interpreted. However, the boundary is not intended or expected to remain static during the implementation phase of the program. Changes can be effected at any time by the New York State Secretary of State, as prescribed by rule or regulation.

Status of New York City Waterfront Area Boundary Determinants

Flood Plains:

Flood plains information has been mapped by the Federal Insurance Administration of the Department of Housing and Urban Development to aid localities in implementing the Federal Flood Insurance Program. These data, the 100-year floor level datum, as revised through negotiations with New York City, were adopted for the purposes of the Waterfront Revitalization Program (WRP). These maps are being refined which may necessitate boundary adjustments.

Steep Slopes:

New York City Department of City Planning has mapped steep slopes, slopes with a gradient greater than 15%, from the most accurate available topographic data for New York City. Information was gleaned from 1965-66 U.S. Geologic Survey Quadrangle topographic separations.

There is a serious dearth of current, accurate data defining existing topography. As part of the refinement of the Flood Hazard Area maps, the New York State Department of Environmental Conservation and the Federal Flood Insurance Administration will produce topographic maps at two-foot contours, but only within the area covered by the Federal Flood Insurance Program. These and other data will be used to verify the steep slope maps in the future.

It has become apparent that the type of soils data necessary to establish accepted erosion and sedimentation control techniques and to establish standards for temporary erosion control devices in construction areas was not available for New York City.

Gathering of baseline data necessary to develop these controls is a major function of soil scientists in the Soil Conservation Service,

U.S. Department of Agriculture. These data include soil wetness, overflow hazards, hardpans, tight layers, erodibility, clay layers that crack when dry and swell when wet, the hazard of slippage on slopes and the classification of soils according to a national classification system.

The first step in becoming eligible for this service is to be designated a Soil and Water Conservation District. New York City is the only major urban area in the country without such a district. To be designated a district involves a minor modification of the State enabling legislation to specify who in New York City shall act as the county legislative body in designating the district.

It is highly recommended that New York City be designated a Soil Conservation District to immediately take advantage of the assistance available from the Soil Conservation Service of the U.S. Department of Agriculture.

High Water Table/Shallow Soils:

An extensive investigation of available data necessary to map areas of high water table/shallow soils and to develop management strategies was undertaken by Department of City Planning. Data exists within the New York City Department of General Services, Division of Public Structures in the form of boring logs developed for individual public housing, sewer, highway, and other projects. The conversion of these data to overlays of high water table/shallow soils consistent with the WRP mapping system is possible, but was not within funding or manpower capabilities available during the development phase of the New York Waterfront Revitalization Program.

Significant Flora and Fauna:

Maps outlining various wildlife habitats throughout New York City have been developed by the New York State Department of Environmental Conservation. These maps identify the location of the different wildlife habitats indigenous to these areas.

The maps are preliminary and will require verification through field checking.

Scenic Vistas:

The Department of City Planning conducted an aesthetic survey of the waterfront area of New York City which yielded a list and evaluation of viewsheds of significance. During this process, a methodology was selected to further refine these results. This effort will continue during future program years.

Historic and Archeological Sites:

All sites and districts designated or being considered for designation by the New York City Landmarks Preservation Commission, including landmarks, interior landmarks, scenic landmarks, historic districts and linear features (bridges, parkways), were mapped. After mapping, the boundaries of the waterfront area were adjusted to include those areas specifically related to the waterfront.

Sites included on the National Historic Register, designated as generic New York State Geographic Areas of Particular Concern, were included in a similar fashion.

Extensive research was done to gather information on sites of archeological significance. However, specific site boundaries were unavailable.

Parks and Beaches:

Parks and beach maps have been completed, showing both existing and proposed sites.

Tidal Wetlands:

The New York State Department of Environmental Conservation has mapped tidal wetlands pursuant to the Tidal Wetlands Act, New York Environmental Conservation Law, Article 25 (1973).

These data were adopted for the purposes of the Waterfront Revitalization Program.

Freshwater Wetlands:

The New York State Department of Environmental Conservation has developed preliminary maps of freshwater wetlands and is in the process of field checking these results pursuant to the Freshwater Wetlands Act, New York Environmental Conservation Law, Article 24 (1975).

These data, when finalized, will be adopted for the purposes of the Waterfront Revitalization Program.

Unique Flora and Fauna:

The Department of City Planning has undertaken an extensive effort to develop an identification system for flora and fauna which relates the

concepts, nomenclature and the accepted practices of the biological disciplines to those of planners, designers and engineers who help determine land uses, and to the routine activities and capabilities of the operating agencies responsible for planning and management. Respecting these requirements, the unique flora identification system developed for the Waterfront Revitalization Program has three stages:

Stage 1: Collection, assessment and integration of existing reports on flora for New York City.

Stage 2: Development of criteria for identification of flora unique to an urban environment.

Stage 3: Development of techniques and guidelines for integrating flora into planning land uses and their management.

A consistent, comprehensive inventory of flora and fauna in New York City does not exist. Therefore, a list of species found in the City was developed from many reports written over many years by different authors. Although the data sources are not consistent, the material appears valid.

To correlate field reports, the Department of City Planning developed an integration system which facilitates use of flora in land use planning management. This entails mapping of locations of various species after an updated ground verification and matching of field reports against lists of species presented in laws and regulations and criteria of uniqueness.

The updated species mapping will be used to verify the preliminary Significant Flora and Fauna (Fish and Wildlife Habitat) maps produced by the New York State Department of Environmental Conservation, while the location of species protected by various laws and/or meeting uniqueness criteria of Stage 2 will be mapped as locations of unique flora and fauna.

Special Revitalization Areas:

- Areas of Particular Waterfront Significance

  Twelve areas were given preliminary designations during the planning phase of the Waterfront Revitalization Program. After intra-city and State review, this list was reduced to the following:

  . Bronx - Bronx River Valley
  . Brooklyn - Spring Creek
  . Manhattan - Southwest Waterfront
  . Queens - Eastern North Shore
  - South Shore
  - Northwest Waterfront

. Staten Island - South Richmond Natural Drainage Basins Area
- Fresh kills/Richmond Creek Drainage Basin
- Raritan Bay
. City-wide - East River/Upper Bay

Revitalization plans for six of these areas have been preliminarily drafted. The remaining designated areas will be addressed in the near future.

- Critical Erosion Areas

Department of City Planning has identified critically eroding areas within selected study areas of the New York City waterfront area, both natural and physical. Recommendations are made regarding mitigation proposals and for future planning efforts (see Chapter V - Special Revitalization Areas - Critical Erosion Areas). This work will be integrated with the proposed Statewide erosion hazard area planning process.

- Shorefront Access Areas

Department of City Planning has identified shorefront access problem areas in the New York waterfront area. Prototypical study areas were chosen and studied in-depth. Recommendations are offered for resolution of existing problems and future planning requirements are discussed (see Chapter V - Special Revitalization Areas.

This work will be integrated with the proposed Waterfront Revitalization Shorefront Access Planning Process.

- Special Zoning Districts

Because of their proximity to the waterfront or the direct or indirect impact of their special provisions on the New York City waterfront land/water interface, the following Special Zoning Districts were identified as waterfront area boundary determinants:

. The Special Battery Park City District
. The Special Scenic View District
. The Riverdale Special Natural Area District
. The Special Staten Island Natural Area District
. The Special South Richmond Development District
. The Special Sheepshead Bay District
. The Special South Street Seaport District

Figure 6

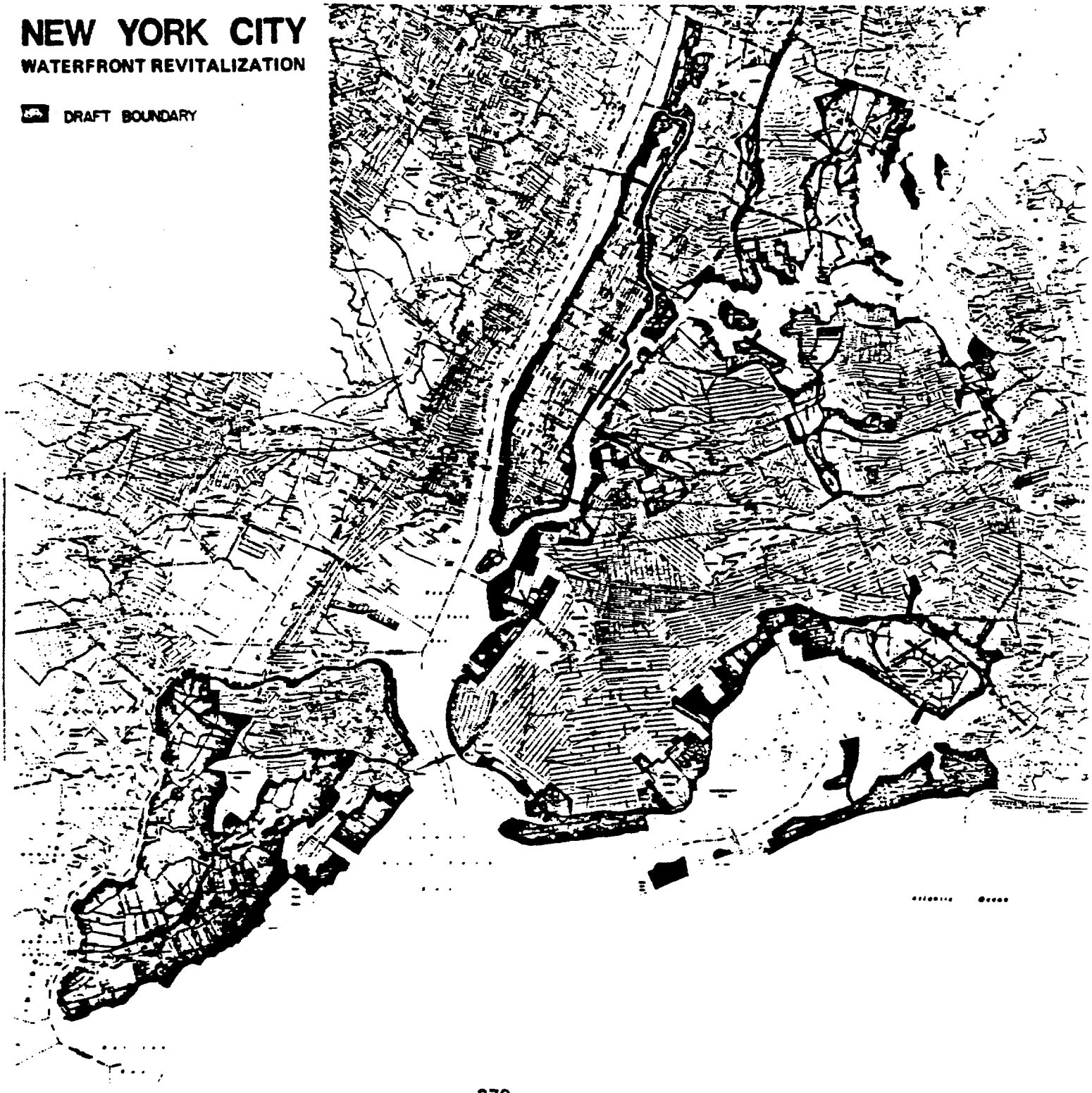
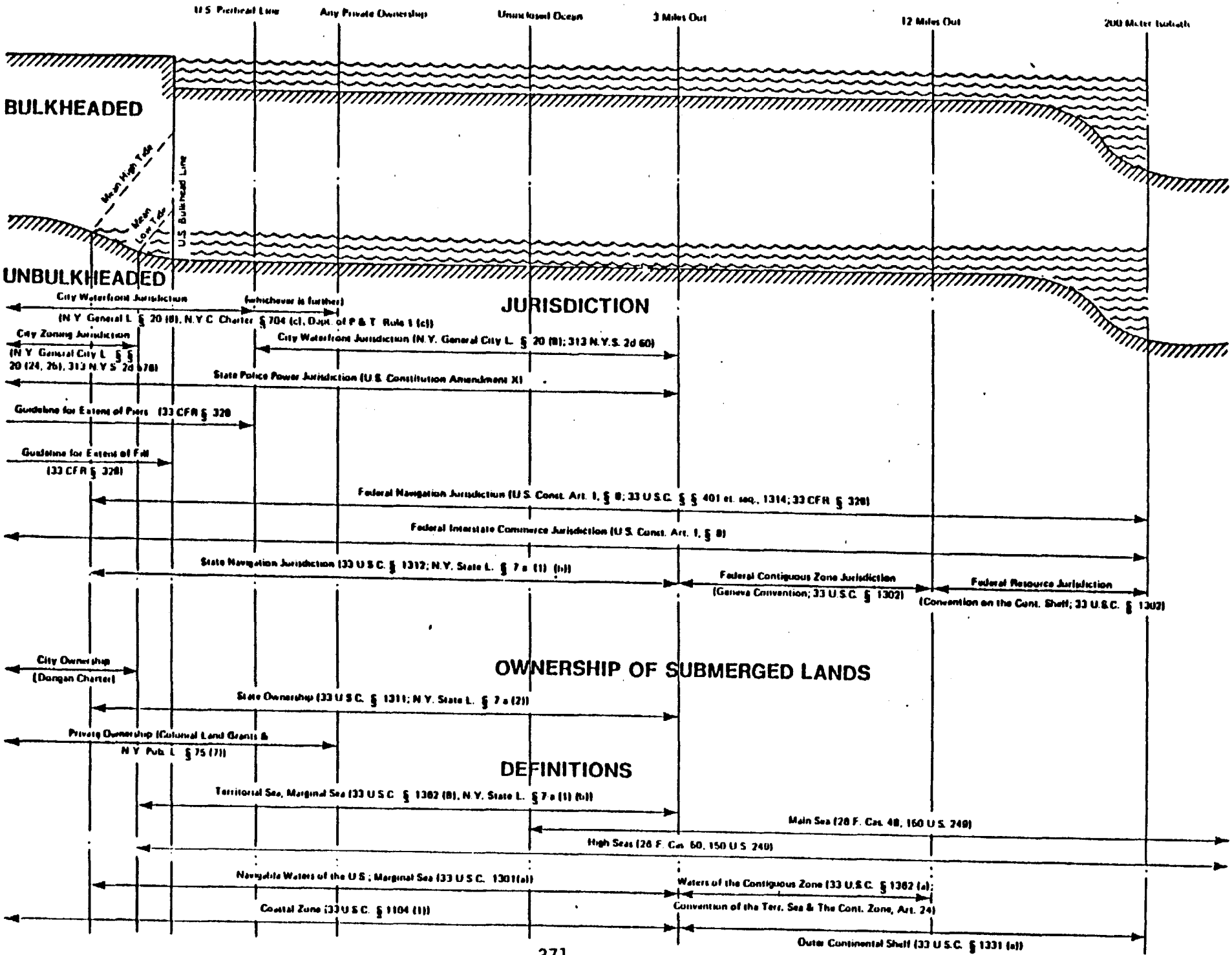


Figure 7


U S Pierhead Line
Any Private Ownership
Unsubmersed Ocean
3 Miles Out
12 Miles Out
200 Meter Isobath
BULKHEADED
Mean High Tide
Mean Low Tide
U.S. Bulkhead Line
UNBULKHEADED
JURISDICTION
City Waterfront Jurisdiction
(whichever is further)
(N Y General L § 20 (8), N Y C Charter § 704 (c), Dept. of P & T Rule 1 (c))
City Zoning Jurisdiction
(N Y General City L § § 20 (24, 26), 313 N Y S 2d 678)
City Waterfront Jurisdiction (N.Y. General City L. § 20 (8); 313 N.Y.S. 2d 60)
State Police Power Jurisdiction (U.S. Constitution Amendment X)
Guideline for Extent of Piers (33 CFR § 320
Guideline for Extent of Fill
(33 CFR § 320)
Federal Navigation Jurisdiction (U.S. Const. Art. I, § 8; 33 U.S.C. § § 401 et. seq., 1314; 33 CFR § 320)
Federal Interstate Commerce Jurisdiction (U.S. Const. Art. I, § 8)
State Navigation Jurisdiction (33 U.S.C. § 1312; N.Y. State L. § 7 a (1) (b))
Federal Contiguous Zone Jurisdiction
(Geneva Convention; 33 U.S.C. § 1302)
Federal Resource Jurisdiction
(Convention on the Cont. Shelf; 33 U.S.C. § 1302)
OWNERSHIP OF SUBMERGED LANDS
City Ownership
(Dongan Charter)
State Ownership (33 U.S.C. § 1311; N.Y. State L. § 7 a (2))
Private Ownership (Colonial Land Grants &
N Y Pub L § 75 (7))
DEFINITIONS
Territorial Sea, Marginal Sea (33 U.S.C. § 1362 (8), N.Y. State L. § 7 a (1) (b))
Main Sea (26 F. Cas. 48, 160 U.S. 249)
High Seas (26 F. Cas. 60, 150 U.S. 240)
Navigable Waters of the U.S.; Marginal Sea (33 U.S.C. 1301(a))
Waters of the Contiguous Zone (33 U.S.C. § 1362 (a);
Convention of the Terr. Sea & The Cont. Zone, Art. 24)
Coastal Zone (33 U.S.C. § 1104 (1))
Outer Continental Shelf (33 U.S.C. § 1331 (a))

CHAPTER III: ORGANIZATION & IMPLEMENTATION

INTRODUCTION

This section describes the proposed means for long-term management and maintenance of waterfront development and activities, pursuant to the New York City Waterfront Revitalization Program. Management will be the responsibility of the City Planning Commission, as the City Coastal Commission, and the Department of City Planning. This commitment is solidified through the process of the City Charter, Section 197-a, which is the approval process for the WRP in New York City. Upon approval of the 197-a plan, the WRP -- its policies, special areas, etc. -- will become a part of the City's "comprehensive plan" for zoning and land use purposes.

The relationship of New York City's Waterfront Revitalization Program (WRP) to waterfront planning and decision making is a product of two factors that had to be taken into account in order for the program to be effective and acceptable on the Federal, State and local level.

The first factor is that management of the city's waterfront area is spread out over all three levels of government (see Waterfront Jurisdiction chart).

Federal controls have their basis in Article I, Section 8 of the Constitution of the United States, which gives Congress the power to regulate foreign and interstate commerce. A large number of Federal statutes and regulations have been promulgated governing the navigable waters of the U.S.; these authorities play a key role in waterfront revitalization.

New York State derives its power to enact controls over the coastal area from the police power reserved to the States, the power to enact controls for the good of the State, and its power to regulate intrastate commerce. Most of the State controls which affect the coastal area are codified in the New York State Environmental Conservation, Transportation, Navigation, Public Service, and Energy Laws and the new Waterfront Revitalization and Coastal Resources Act.

The City of New York is empowered to adopt land use regulations pursuant to the New York State General City law. Many of the City's controls are contained in its Zoning Resolution, administered by the Department of City Planning, the Board of Standards and Appeals and the Board of Estimate. Other land use regulations are assigned to other city agencies. A total of eight Boards and Commissions, four elective bodies and twelve Mayoral line agencies, most significantly the Departments of Ports and Terminals, Sanitation and Environmental

Protection, possess authority to control or influence land use in the waterfront area. Thus, not only is power dispersed among the three levels of government, but also distributed within each level.

The second factor in shaping the program for New York City's waterfront area was the City's financial condition. New York City was, and is, in no position to add additional delay or expense to much needed economic development. Indeed, a priority of the City is to simplify and speed economic development, provided that development is environmentally sound. Thus, a new permit or other form of new administrative approval was not desirable as a means of implementing the WRP.

The response of City waterfront planners to these factors was to design a program which relied to the maximum extent possible on existing land and water use controls to achieve improved and coordinated waterfront area management. The program policies are described in Chapter IV. The basic strategy of the City is to insure that waterfront concerns and policies are incorporated in existing public decision-making processes. These waterfront concerns and policies will be addressed in two approaches: (1) through advocacy, incentive, and encouragement; and (2) through coordination, protection, and consistency. These approaches are further described through specific management techniques in the Related Local Program Requirements section below.

The major legal authorities cited below are contained in Appendix A.

CITY PLANNING COMMISSION AS CITY COASTAL COMMISSION

To insure a viable framework for the implementation and administration of the WRP more than twelve alternative organizational structures were developed.

Five of these proposals were retained for further analysis:

- the existing organizational structure;
- the City Planning Commission as a City Coastal Commission;
- the Waterfront Management Advisory Board as a coordinating council;
- a new City Coastal Commission; and
- a new Department of Land and Water use.

These alternatives, discussed fully in the Draft New York City Regional Element published in June, 1978 were analyzed in terms of Federal, State, and local program requirements as well as additional evaluation criteria, including legislative feasiblity, political acceptability and program effectiveness. After careful consideration and review of numerous comments, the alternative of the City Planning Commission, as a City Coastal Commission, was chosen as the best means

of satisfying the above discussed concerns.

The City Planning Commission consists of a Chairman and six members. Each member is appointed by the Mayor for a term of eight years. The Chairman serves at the pleasure of the Mayor. The major responsibilities of the agency include the review of applications respecting the use, development or improvement of real property subject to City regulations (ULURP); the promulgation of zoning regulations; the review of applications for variances to the Zoning Resolution filed with the Board of Standards and Appeals; and the issuance of an annual Capital Needs Statement.

The Chairman of the City Planning Commission serves as the Director of the Department of City Planning. The Department serves as staff to the Commission in all matters under the Commission's jurisdiction; advises and assists the Mayor and other City agencies in regard to physical planning and public improvement aspects of all matters related to the development of the City; provides professional and technical assistance to community planning boards; and conducts studies and collects data on an ongoing basis to serve as the basis for planning recommendations. The Department is also a co-lead agency for City Environmental Quality Review (CEQR) pursuant to the State Environmental Quality Review Act.

The WRP will be implemented upon the approval of the 197-a plan through the exercise of the above listed powers and responsibilities as more fully described below.

RELATED LOCAL PROGRAM REQUIREMENTS

Land Use Review

Since 1976, applications for major land use actions, identified below, by individuals, groups, businesses and governmental agencies have been subject to the formal review process known as the Uniform Land Use Review Procedure (ULURP), pursuant to Section 197-c of the City Charter.

Specific actions subject to ULURP include the following:

ZONING MAP. Amendment to the Zoning Map, pursuant to Charter Sections 200 and 201;

CITY MAP. Changes in the City Map pursuant to Charter Section 199;

SPECIAL PERMITS. Approval of special permits by the City Planning Commission pursuant to the Zoning Resolution, pursuant to Charter Section 200 and 201;

SITES FOR CAPITAL PROJECTS. Selection of sites for capital projects, pursuant to Charter Section 227;

FRANCHISES AND REVOCABLE CONSENTS. Granting of franchises and revocable consents involving residential, industrial, commercial, transportation or community facility projects, pursuant to Charter Chapter 14;

HOUSING AND URBAN RENEWAL PROJECTS. Approval of housing or urban renewal plans and projects, pursuant to State, City or Federal law.

LANDFILLS. Approvals of sanitory or waterfront landfills, pursuant to applicable Charter provisions or other provisions of law; and

SALE OF CITY PROPERTY. Approval of the sale, lease, other than the lease of office space, exchange, or other disposition of real property to the City and of the real property of the city, and the proposed acquisition, sale or lease of land under water pursuant to Section 67, Section 1603, Chapter 15, and other applicable provisions of law.

Applications for items covered by ULURP are first submitted to the Department of City Planning. Prior to the submission of an application, the Department of City Planning often assumes an advocate's role by assisting applicants in the preparation of proposals to be submitted under ULURP. This stage is called ULURP precertification. The staff will use Coastal Zone Management 306 funding, if available, and any other appropriate funding, for technical assistance to encourage appropriate waterfront development.

Once the application is ready for the approval process, the Department notifies the affected Community Board(s) of receipt of an application. The City Planning Commission as the City Coastal Commission certifies that an application is complete and ready to be forwarded to Community Boards when it finds that all information necessary for adequate evaluation of the proposal has been furnished by the applicant and concerned City agencies. Within 60 days after it has received the certified application, the Community Board must hold a public hearing and adopt a recommendation, which it forwards to the City Planning Commission. The City Planning Commission, as the City Coastal Commission, must hold a public hearing and approve, approve with modifications, or disapprove the application and forward a recommendation to the Board of Estimate. The Commission's recommendation is contained in a report which describes the proposal, any comments received on the proposal, and the factors considered in reaching a decision. In reviewing each application, the Commission considers all relevant planning and legal criteria. The Board of Estimate has 60 days from receipt of the Commission's report to hold a public hearing and act on the proposal. The Board of Estimate may

approve, disapprove, or modify the proposal, but may not go beyond the scope of the certification. Once the Board of Estimate's decision is made, other permitting agencies are bound to act in accordance with that approval. If substantial modifications are necessary after the Board of Estimate's aproval, those modifications must go through the ULURP process again.

Implementation of the WRP in the ULURP process will take place through City Planning Commission, as the City Coastal Commission, determination of the consistency of a proposal with the WRP. Where waterfront issues are raised, the Commission will address these issues in its report. Implementation of the WRP will insure that the policies and concerns of the WRP become one of the criteria upon which the Commission reviews an application. For example, zoning must be in accordance with a "well-considered plan" (New York General City Law, Section 20 (25)). The WRP will become one part of the City's overall plan to be considered in zoning matters. The Department of City Planning will advise the Commission and the Community Boards on WRP matters and, during the pre-certification process, insure that applicants are aware of the WRP.

Zoning Regulations

While the designation of zoning districts (zoning map changes) is subject to ULURP, the adoption of zoning regulations (text) is subject to a slightly different procedure. In this instance, the City Planning Commission has an even stronger role.

Upon its own initiative, or upon application, the Commission may adopt a resolution approving new or amended zoning regulations. Following notice and public hearing, the resolution is forwarded to the Board of Estimate. The Board must act on the resolution within 60 days of its receipt or the proposed zoning regulations become effective. As in ULURP, the Board of Estimate may approve, disapprove or modify the proposal, but may not go beyond the scope of what the Commission approved.

Most proposed zoning text is initiated by the City Planning Commission. The adoption of new zoning to achieve waterfront objectives of encouraging appropriate waterfront proposals and protecting valuable coastal resources is an important means to augment existing enforcement measures of the WRP. As stated above, all zoning must be in accordance with a "well-considered plan." The WRP will constitute a part of that plan as a result of 197-a.

Review of Variances

The Board of Standards and Appeals(BSA), pursuant to Chapter 27 of the Charter and other provisions of law, may grant variances to the Zoning

Resolution. The City Planning Commission is a party in interest to BSA actions and is permitted to argue cases before the Board "if, in the judgement of the City Planning Commission, the granting of relief requested in such application would violate the requirements of the Zoning Resolution relating to the granting of variances."

There are five basic findings the BSA must make pursuant to Zoning Resolution Section 72-21 in order to grant a variance. One of these findings is that the variance will not alter the "essential character" of the neighborhood. Upon implementation, the WRP provisions relating to an area will become a determinant in neighborhood character. The City Planning Commission, acting as the City Coastal Commission, in appearing before the BSA, will oppose variances which are not consistent with the WRP as a result of the approval of the 197-a plan. The Department of City Planning screens BSA applications and recommends opposition to the Commission, which may appeal adverse BSA decisions to the Board of Estimate. The Department will also provide technical assistance to the Board on waterfront issues.

City Environmental Quality Review

Pursuant to the State Environmental Quality Review Act (SEQR) and Mayoral Executive Order No. 91 (City Environmental Quality Review or "CEQR"), discretionary actions of City agencies are reviewed for significant impacts on the environment before a final decision to approve the action is made. The co-lead agencies for this review are the Department of City Planning and the Department of Environmental Protection. City Planning reviews for possible social, economic and land use impacts and Environmental Protection reviews for possible air, noise and water impacts.

The City Planning Commission, as the City Coastal Commission, will not act on an application under ULURP nor promulgate a zoning regulation until CEQR review is compeleted. Similarly, the Board of Standards and Appeals will not render a decisison on an application for a variance until CEQR procedures have been complied with.

If the proposed action or development is found likely not to result in any significant impacts by the co-lead agencies, a "negative declaration" is issued and the review and approval of the action may proceed. If significant impacts are likely, but may be mitigated through conditions, a "conditional negative declaration", in which the applicant agrees to perform certain conditions, is issued and review and approval of the action may proceed. If significant impacts are likely, and conditional negative declaration is not appropriate, an environmental impact statement must be prepared. This statement must disclose the possible adverse impacts, discuss mitigating measures and describe alternatives to the proposed action. The statement becomes part of the record which must be considered by the administrative

agency in reaching its decision on an action and the agency must find that reasonable mitigating measures are being taken and that the proposed action is preferable to other alternatives.

Upon implementation of the WRP, the provisions of the WRP will become relevant to the criteria for significant impacts on the environment used by the Department of City Planning in performing its role as CEQR co-lead agency. For example, some of the significant effect criteria used for review includes: the creation of a material conflict with a community's existing plans or goals as officially approved or adopted; the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources, or of existing community or neighborhood character; and a substantial change in the use of intensity or use of land or other natural resources or in their capacity to support existing uses. Inconsistency with the WRP, as factored into these criteria, may result in conditions being attached to proposed actions or in the preparation of environmental impact statements addressing waterfront issues.

Capital Needs Statement

The City Planning Commission is mandated by Section 214 of the City Charter to issue an annual statement on the capital needs and priorities of the City of New York. Recent statements have stressed the need to rebuild the City's infrastructure and to reorient capital spending priorities from expansion of the captial plant to maintenance of existing facilities. Demographic, economic, environmental and social factors are considered, and the 1981 Statement contained a section on waterfront redevelopment. Issues identified for the decade of the 1980's include "meeting the waterfront goals of the Coastal Zone Management Plan."

Implementation of the WRP in the City will serve as a focus for capital needs waterfront planning efforts during the next decade. Through the Capital Needs Statement, the City Coastal Commission takes an advocate role in the priorities of capital spending. Subject to Congressional appropriations, Coastal Zone Management 306 funding, and any other appropriate funding, will be used to promote the goals and policies of the Waterfront Revitalization Program.

The Department of City Planning has been responsible for the initiation of the local program throughout the program development process. Under contract with the New York State Department of State,

the Department of City Planning has received section 305 development grants and section 308 Coastal Energy Impact Program grants.

Comprehensive planning is one of the primary tools in achieving waterfront management program objectives. These objectives include both the use of waterfront resources and the protection of valuable waterfront resources. The local program is the result, in part, of planning for the resolution of identified issues. Implementation of the program continues by the Department of City Planning acting as staff for the City Coastal Commission. The WRP is implemented by the Commission and the Commission's staff as they develop and review land use or development within the waterfront area for consistency with the WRP.

With this procedure for guiding waterfront development in place and coordinated with existing review procedures, the text of the City Zoning Resolution and Building Code will be revised as necessary to further reflect waterfront revitalization policies, guidelines and standards (see Appendix B). These changes would become an amendment to New York City's Waterfront Revitalization Program, pursuant to NYCRR Title 19, Part 601.

CHAPTER IV: WATERFRONT POLICIES

INTRODUCTION

Every State Coastal Management Program must include policies upon which decisions pursuant to the program will be based. They must be articulated clearly to provide an understanding of the program to those who will be affected. The policies must provide a clear sense of direction for decision-makers and they must be of an enforceable nature to insure implementation of and adherence to the management program.

In addition, a local Waterfront Revitalization Program adds specificity to the applicable New York State Coastal Management Program policies. It can apply to the entire coastal area of the local government and must contain adequate authority for implementing, administering, and enforcing the program. This chapter demonstrates how the program fulfills these requirements.

The New York State Department of State, in developing the New York State Coastal Management Program identified coastal-related issues crucial to the revitalization, preservation and enhancement of the State's diverse shoreline. The issues, which included promoting waterfront revitalization; promoting water dependent uses; protecting fish and wildlife habitats; protecing and enhancing scenic areas; protecting and enhancing historic areas; protecting farmlands; protecting and enhancing small harbors; enhancing and protecting public access; providing solid and useful data and information on coastal resources and activities to decision makers; and coping with erosion and flooding hazards were examined in relationship to the coast's assets, problems and needs. Statewide program policies were then developed on the basis of the examination.

New York City performed a similar analysis. To adequately address a number of issues, additional policies for New York City were developed.

Discussion of protecting farmlands is not applicable to the New York City waterfront area and is, therefore, not included in this report. A solid waste issue is added because of the immediate necessity to solve problems associated with the disposal of solid wastes within the waterfront area and its associated potential impacts to the City's economic and environmental base.

New York City Program policies were developed during initial phases of the Waterfront Revitalization Program. As information was interchanged with New York State and revisions made as suggested by Federal, State and City agencies and the public, certain City policies developed to detail State policies. Many State policies evolved to be

sufficient for New York City's use. The State has grouped these policies into three categories: policies designed to promote the use of coastal resources, policies dealing with resources identified as being in need of protection, and policies which address major activities with affects on coastal resources. This explanation can be found in Part II, Section 6 of this document.

An ISSUE DISCUSSION section presents a synopsis of current conditions within the New York City waterfront area and an identification of problems the revitalizaton program is designed to resolve.

A PROGRAM POLICIES section explains each policy and the means of implementation. The State policies are listed 1-44, and the New York City Policies which lend specificity to those numbered State policies are listed A-L. The Federal Consistency Provision of the Coastal Zone Management Act and/or the State Consistency Provision of the Waterfront Revitalization and Coastal Resources Act apply to all policies. However, where recommendations are set forth, consistency would only apply if those recommendations were adopted by the Federal or State agency indicated.

ISSUES

The issue discussion below summarizes the analysis of current conditions in the waterfront area and identifies the problems which this program is designed to resolve. The issues have been broken down under the following headings: Development, Fish and Wildlife, Flooding and Erosion, Public Access, Recreation Resources, Scenic Quality, Energy Development, Water Resources, Air Quality, and Solid Waste Disposal.

DEVELOPMENT

Underutilization and Water Dependent Uses

Much of New York City's waterfront has been developed. A wide spectrum of land uses or activities such as housing, transportation, commerce, recreational boating, beaches, parks, maritime shipping, shipbuilding and manufacturing are accommodated along the shoreline. Demand for waterfront sites for various uses has fluctuated with changing economic and social conditions and has spurred renewal and redevelopment activities. In recent years, for example, demand for housing, particularly in and near Manhattan has resulted in the development of Waterside and Battery Park City, and a primarily housing proposal for Manhattan's East River waterfront south of Waterside.

As with other economic sectors, waterfront activities have felt the negative impact of recent regional economic trends. Shifts of

population and industry to other regions of the country have affected all the northeast ports. New York City was hard hit by the recession of the early 1970's. Private sector employment fell 16 percent between 1969 and 1977, and the unemployment rate rose over 6 points between 1970 and 1977. In addition, city government has been cut back because of the municipal fiscal crisis. With the general decline in business activity, shifting of a significant portion of general cargo to containerports concentrated in the New Jersey part of the Port District, reduction of bulk cargo shipments, and decline in activity of industrial firms which receive or ship material and products by water, a significant amount of waterfront land and facilities have fallen into disuse or have been converted to accommodate uses not dependent on direct waterfront access. Local economic stagnation has limited private and public ability to develop and implement plans for reusing abandoned areas of the waterfront.

Suitable waterfront area must be maintained to accommodate potential expansion of maritime and related industrial activities. Underutilized and vacant areas of the developed waterfront which have traditionally housed maritime and related activities could provide opportunities and distinct advantages for expansion, infill development and redevelopment for maritime and water-dependent industrial uses.

The existence of Federal channels and anchorages, deep natural water depths and waterfront infrastructure enhance the potential for infill development and expansion as well as redevelopment at minimum expense to the developer and the public. Greater utilization of existing publicly funded infrastructure and public land avoids the cost of new infrastructure and channels and reduced groundbreaking to operation time of development.

A realistic assessment of future siting requirements for uses dependent on a waterfront location for their existence must be made. Emphasis must be placed on recycling areas with existing infrastructure.

Well over seven thousand vessels call at the Port of New York every year. Most are container, bulk cargo or tanker vessels. Of 11 leading ports in the nation, the Port of New York continues to have the largest volume of vessel traffic, but total number of vessel calls and the Port District's share of cargo volume handled are slowly declining.

In 1976, over 179 million short tons of commodities were shipped to, from, or within the Port District, nearly three-quarters of which were crude or refined petroleum products. Petroleum products are shipped to the port in large oceangoing tankers and transferred to barges for delivery or movement within the Port. Other bulk cargo passing through the port includes: sand, gravel, and crushed rock, metallic ores, nonmetallic minerals and some food grains. Sand, gravel, and crushed rock quarried and used locally by the construction industry are transported primarily by barges which can use relatively shallow

channels. Waste and scrap transport includes barging solid wastes from marine transfer terminals and incinerators to landfill sites. The other two major categories of commodities are general cargo and miscellaneous freight, including bulk items and raw materials. General cargo includes commodities such as domestic and foreign food and manufactured goods, etc., which are transported in break bulk vessels or containerships.

While Port district tonnage has increased decade by decade, the Port's competitive position has declined.

Consolidated Statement of Waterborne Commerce
of the Port of New York*
(Short Tons)

Year	Total Traffic
1930	120,395,645
1940	129,712,186
1950	144,943,558
1960	153,198,620
1970	174,008,108

*Source: Waterborne Commerce of the United States, Calendar Year 1975. Part I, Waterways and Harbors, Atlantic Coast, U.S. Army Corps of Engineers, 1976.

Although the Port no longer handles the largest volume of cargo in the nation, its cargo dollar value is still the highest. It is difficult to project future cargo flows at the Port District although past trends suggest volume will continue to increase in the foreseeable future. Changes in bulk cargo and other categories will depend on many variables, including: possible construction of a deepwater port, extraction of offshore oil deposits, and further technological advances in containerized cargo handling.

Containerized cargo is the most rapidly growing sector of the general cargo shipping market. In 1970, 39 percent of Port District foreign and domestic general cargo was containerized. The percentage increased to about 51 percent by 1974. By 1976, approximately 13,328,000 tons of general cargo in foreign trade, 78 percent of total cargo in this category, was containerized. The containerized portion of general

cargo handled at the Port District will probably continue to grow as worldwide containerport development continues.

Terminal operations to support containerizaton requires large back up areas for storing and marshalling containers. Immediate and direct access to both highways and rail facilities is virtually a necessity. As the older, intensely developed port areas in the City at best were difficult to convert to meet containerization requirements, new container terminals were built in Staten Island and New Jersey. This has resulted in a reduction or termination of shipping activities at much of the City's break bulk terminals.

Among the vessels calling at the Port District in 1977, 249 were passenger ships. Passenger traffic, ranging from oceangoing cruises to lunch hour sightseeing excursions, is another economic activity on the waterfront. The hub of trans-oceanic and cruise passenger traffic is the Consolidated Passenger Lines Terminal on Manhattan's West Side, a nine-berth facility completed in 1974. Because of the long-term decline in oceanborne passenger traffic attributable to passenger preference for air transport, existing facilities are underutilized and would be able to accommodate any increased traffic resulting from current promotional efforts.

Recreational boating in the City has also declined in recent years, as has the number of marinas. Some older operations closed because of inadequate rates of return. Land and capital-intensive marinas are high risk businesses in light of the regional recession's impact on recreational boating in recent years and the population decline experienced here.

Commercial fishing, once a major economic activity, is banned in the Hudson River because of toxic pollutants in the waters. Commercial and charter boats continue to operate out of Sheepshead Bay, Coney Island and City Island. Because of anticipated increases in the ocean-fishing harvest off the Outer Continental Shelf (OCS), certain related commercial activities, such as fish processing, may expand in the City.

Shipbuilding, ship and boat repair yards and marine service firms utilize land along deepwater channels of the Brooklyn waterfront. With worldwide demand for most types of ocean-going vessels at low levels, shipbuilding activities are anticipated to continue at modest levels at best.

Rehabilitation and Maintenance of Piers, Docks, Wharves and Bulkheads

Upgrading or removal of the City's aging piers, docks, wharves and bulkheads is necessary to respond to changing technologies of waterborne transport and initiation of redevelopment projects.

The New York Harbor Collection and Removal of Drift Project, a cooperative Federal-local waterfront cleanup program, is a major commitment to the cleanup and rehabilitation of the waterfront. The project envisions the repair or removal of deteriorated waterfront structures and the removal of rotting vessel hulks that generate floating debris. In addition to abating drift damage to recreational, harbor and other small craft, the project offers the prospect of land reuse, as well as aesthetic and environmental enhancement.

Unlike the Corps' Federal channel maintenance program, which is funded from the annual operating budget, the New York Harbor Collection and Removal of Drift Project requires specific congressional authorization and appropriations. Under the program's current authorization, the cost share for structural removal is two-thirds Federal and one-third local. Local costs are shared equally by state and local interests. The cost of repair of useable and productive structures is totally the responsibility of local interests.

Taking into consideration the severe fiscal restraints facing the City, the local cost sharing provisions for structure removal is particularly burdensome. The State of New Jersey has recognized the importance of this effort by financing the entire local share with State bond monies.

In light of the importance of New York Harbor as a National, State and regional resource, the City recommends that the Federal or State government assume the non-federal costs of the project. (Refer to the Flooding and Erosion issue section of this Chapter for a program policy addressing this subject.)

Channelization

Vessels, tankers and general cargo ships entering the Port are becoming larger. Existing channel limitations can impede the safe and expeditious movement of these vessels and pose the threat of vessel groundings. In addition, increased costs are incurred from large vessels laying at anchor for berthing or high tide. Inadequate channels result in more frequent lighterage activity, and as transfer operations increase, so does the risk of oil and other pollutant spillage. These problems point up the need for timely initiation of new projects and modification to existing channels where needed.

Federal involvement in channel development is derived from the constitution and responsibility for navigation improvements has been specifically delegated to the Army Corps of Engineers. Today virtually all of the channels circumscribing the City's waterfront are established and maintained by the Corps of Engineers as an arm of the Federal government. The Corps of Engineers' role as prescribed by Federal rules and regulations is one of response to need for action initiated by local interested parties. The Corps' response to requests

for a new project or project modification is involved and quite lengthy. The time between local request and final action is frequently five years or longer.

Permit Procedures

Obtaining government approval to develop in the New York coastal region can sometimes be a difficult task. Applicants may face a long list of government approvals (e.g., permits, certifications, licenses, special permits, revocable consents, reviews, etc.). In addition, these applications must receive approval from several levels of government, including State, substate and local administrations. While such permit requirements may prove burdensome to large developers, they may be an almost insurmountable obstacle to the small developer who has limited financial and legal resources.

As a result of this vast permit system, it is altogether possible that necessary and appropriate development in the New York coastal region simply does not occur. In addition, the public sector also suffers from the time and money expended on governmental reviews for proposals that do not meet or are unable to complete the review procedures. Permit procedures must be responsive to the need for expeditiously reviewing development proposals.

Rail Freight Facilities

The Port of New York and New Jersey must compete with greater intensity for its trade. Full rail freight service is a necessary component of this effort, fostering healthy competition between rail and truck transport and broadening the transshipment alternatives and services available to shippers.

Over the past two decades rail freight service has deteriorated appreciably in the City and region. New York City is now served almost entirely by one rail freight carrier, the Consolidated Rail Corporation (Con Rail), which was established to operate what remained of the bankrupt northeastern railroads. Until recently no overland rail freight line served Brooklyn maritime shipping facilities and the physical plant could not accommodate the larger sized cars being constructed now. In addition, there were no intermodal terminals in New York City.

Funded primarily by State Rail Bond funds, the State Department of Transportation has initiated a rail freight facility development program which (1) provides overland rail access to the Brooklyn waterfront; (2) removes clearance obstructions on the Hudson Division Line south into the Bronx; and (3) will develop an intermodal facility in the City. These actions which the WRP supports, will help foster healthy competition between rail and truck transportation modes and bolster the City's economic development activities.

FISH AND WILDLIFE

The abundant fish and wildlife found in New York's coastal areas, particularly its estuaries, have long been recognized as important food resources and for their recreational and commercial value. As an indicator of their direct value to the State, the economic benefits derived in 1976 from commerical and sport utilization of New York's marine fisheries were estimated to be $87.8 million and $222.5 million.

Fish and wildlife resources also provide a less direct but equally important social benefit in that they function as indicators of the quality of man's environment. The decline of certain species (often the rarer species) is frequently an early symptom of environmental stress and degradation.

Finally, living coastal resources are important in terms of their own intrinsic ecological value. Diversity of flora and fauna provides stability to an ecosystem. In addition, these living resources contribute to the productivity of coastal environments through their conversion of energy and recycling of materials.

Hence, the basic goal of fish and wildlife management programs is to protect, manage, and develop these resources so that they sustain their capacity to continue providing these economic, social, and ecological benefits.

In New York, a category of habitats which have suffered the greatest losses are freshwater and tidal wetlands. Until 1973, draining and filling of wetlands for development purposes was largely unregulated. Wetlands also provided convenient, inexpensive sites for disposal of dredge spoils. Such practices resulted in the loss of breeding, nesting and feeding grounds for reptiles, amphibians, mammals, shorebirds and waterfowl, as well as the loss of spawning and nursery areas for fish, shellfish and crustaceans. Many of the wetland areas around the highly developed waterfront sections have been drained and filled.

Relatively few areas in New York City have natural systems which are not impacted by human activity. Therefore, there are few areas where the management of flora and fauna can begin with the wholesale exclusion of such activities. These areas, namely, tidal and freshwater wetlands, have been identified (freshwater wetland inventories are underway) as part of a Statewide effort to preserve specific ecosystems of prime value. Federal and State laws also protect specific endangered species. However, no further effort has been expended to develop a management system for flora and fauna in an urban environ such as New York City.

The New York City coastal zone has undeveloped areas which will remain so, partially developed areas which will continue to develop, previously developed areas in various states of decay and abandonment, which are likely to be redeveloped and fully developed areas which are not likely to change. The flora and fauna present in these various areas, rather than being mature associations of plants and animals, tend to be at various stages of ecosystem succession and remnants of horticultural plantings. These associations are predictable, natural to the conditions in which they are found, inter-related in their dynamics and able to successfully continue their life cycles.

In many cases, conditions created by prior development can be made to relate more closely to the natural coastal environment. The conditions created as a result of new development do not have to be detrimental to a natural system. A major goal of the New York City Waterfront Revitalization Program is recovering and strengthening of the natural systems which are present or should be present.

With New York being a coastal estuarine city, the management of estuarine systems near navigation channels and tidal wetlands is a major challenge for a an urban coastal zone program. The activities of humans - dredging, dumping, release of treated waters, harvest of particular organisms, etc. - should be treated as being integral with the natural system and guided so it is not damaging, but a positive stimulant to the estuarine ecosystem.

At the individual species level, the problem is one of developing an adequate data base and monitoring system. Although laws have been passed by New York State calling for lists of endangered species of flora and fauna, no identification (mapping) of existing valuable and endangered species has been attempted for New York City until very recently under the auspices of the Coastal Management Program. As described in greater detail in Chapter 2, much will be required to verify these preliminary maps and apply criteria specific to the New York City region.

Individual species in New York City cannot be maintained by prohibiting human activity. There will always be a need to integrate adjacent activities into the dynamics of the natural system. In other words, the management and maintenance of particular species involves the establishment or conservation of environments for those species. Environments must allow for the successful completion of a particular life cycle which will normally involve a variety of other plants and animals.

Habitat Protection

Valuable fish and wildlife species cannot be protected and maintained without preserving their habitats. A habitat is an area where there exists a unique combination of resources (food, shelter, living space, etc.) and environmental conditions (temperature, climate, salinity, etc.) which animals need for their survival. When man destroys a vital resource or alters an environmental condition beyond an organism's range of tolerance, he destroys the habitat.

Certain habitats, such as breeding grounds, nursery areas, and migratory routes, are special areas where fish and wildlife populations tend to congregate during various stages of their life cycle. Such areas must be identified and afforded special protection, since their loss would create a greater threat to the survival of a population than would the loss of areas where the organisms were less densely distributed.

Toxic Substances and Other Pollutants

In New York, a critical problem is the contamination of fish, wildlife and their habitats with toxic substances, in particular Polychlorinated biphenyls (PCBs), mirex, dioxin and heavy metals (mercury and cadmium). These compounds enter the environment from industrial and municipal discharges, atmospheric fallout and leachate from landfills.

The more conventional pollution problems created by combined overflows, failing septic systems, urban stormwater runoff, oil spills, discharge of vessel wastes and solid wastes, which have adverse effects on fish, shellfish, wildlife and their habitats, are common in major metropolitan areas like New York City.

Recreational Use of Fish and Wildlife Resources

Throughout most of New York's coastal area, inadequate public access constrains present hunting and fishing activities. Highways and railroads located along the coastline severely limit physical access to the marshes and estuaries which support valuable fish and game populations. Substantial efforts have been made to improve access to these resources through acquisition programs, and construction of boat ramps, and dock facilities. However, increasing cost of land and construction material and decreasing amounts of available public funding will limit future efforts to meet increasing demands for public access.

Commercial Fisheries Development

For years, New York's commercial fishing industry has been in a state of decline. New York City, once a prominent fishing port, is used today as a home port by only one commercial fishing vessel. However, a tremendous opportunity for expanding the State's commercial fishing industry was created with the passage of the Federal Fishery Conservation Management Act of 1976.

The Fishery Conservation and Management Act of 1976 (Pub. L 94-265; 16 U.S.C. 1801 et. seq.) created fishery management zones within the 200 mile limit. Federal control is exercised through a permit and quota system. As a result of the act, fishing operations of foreign fleets have declined in U.S. coastal waters, and domestic quota allocations have increased for certain species. The U.S. State Department with the advisement of the Department of Commerce administers and regulates the quota system. The National Marine Fisheries and the U.S. Coast Guard are the enforcement agencies.

This law provides U.S. fisherman priority rights to harvest the millions of tons of fish previously being caught by foreign fishing fleets. To realize this development potential, New York must make adjustments in the harvesting, processing and marketing sectors of its fishing industry. Inadequate channel access, and the limited availability of docking, unloading and processing facilities presently impede the growth of offshore deepwater fisheries. An insufficient number of boat ramps, inadequate catch transfer sites, and lack of shellfish processing and gear storage facilities limit development of the near-shore fisheries.

New York City has the opportunity to attract and develop a new fishery industry because of the extension of U.S. jurisdiction over fishery management to the 200 mile limit, and because of a growing world market for fish and fish products. The development of a new offshore fisheries industry is being supported by the Federal government. The industry will require deep-draft ports for the larger vessels being constructed. New York Harbor is the only location in New York State with deepwater access. New seafood processing plants will be required to convert the fish formerly exploited by foreign fleets into foods for domestic and export markets. The 1980 waterfront study, "Fisheries Development Opportunities for New York," funded by CZM recommends that the City encourage The Port Authority of New York and New Jersey to develop Erie Basin in Brooklyn as a major seafood complex.

Ship repair and chandlering facilities will be required to serve the fleet. Some shipbuilding or conversion of existing vessels may also occur; Federal government subsidy programs will affect the level of shipbuilding conversion activity.

The potential economic benefits to the City from the capture of the new offshore fisheries industry are substantial. In the past, coastal fishery landings in New York State (estimated at 34 million pounds) were only 4% of the total catch in coastal waters of New York (within a 200-mile limit). The remaining 96% of the catch was taken by foreign fishing fleets. A large part of this catch is now potentially available to domestic fishermen. The 4% of total catch (34 million pounds) sold for an estimated $32.1 million at dockside (or $67.4 million at wholesale and $87.6 million at retail). These figures only give an order-of-magnitude to potential sales.

FLOODING AND EROSION

The New York City shoreline is a valuable natural resource exploited for economic, recreational and environmental purposes. The continued productive use of the coastline is endangered because of gaps in the planning and management of coastal areas subject to destructive natural forces.

Most of the City shoreline has been altered by dredging, filling, bulkheading and other construction activities. Unwise development practices caused removal of vegetative cover, destruction of dunes, obliteration of wetlands, and, frequently, dense development of low-lying areas. As a result, many shorefront areas devoid of natural buffers are subject to the adverse effects of coastal hazards.

Storm induced winds, waves and tidal surges subject unprotected shores to severe shorefront erosion and upland flooding along the Atlantic and Long Island Sound coasts. In addition, beachfront along these coastal reaches shows net loss due to the gradual erosion of beach materials by longshore currents. Natural sources of these materials are often inadequate to ensure stable shorelines.

Public and private property in low-lying coastal areas is threatened by erosion and flood hazards. Coastal communities often experience substantial property damage and sometimes even loss of life. Public beaches and navigable inlets supporting boating, swimming and other activities are adversely impacted by the loss of shorefront recreation space and the sedimentation of navigation channels.

Erosion also takes place along reaches which have been bulkheaded, riprapped or otherwise developed to support maritime activities. The Waterfront Revitalization Program defines this type of erosion as structural erosion which is the deterioration of physically developed shorelines as opposed to shorelines in a natural state.

Wave-wash from passing ships, tides, currents, as well as more severe storm-induced forces contribute to the deterioration of waterfront

structures along the various waterways comprising New York Harbor. As they erode, the structures become sources of drift, make navigation hazardous, and degrade water quality and aesthetic values. The presence of dilapidated structures inhibits waterfront redevelopment efforts.

The magnitude and scope of beach erosion, structural erosion and coastal flood hazards have necessitated joint action involving Federal/State assistance. Federal/State sponsored beach erosion/hurricane protection programs offer substantial financial and technical assistance that would otherwise be far beyond the means of local government. Therefore, to achieve effective management, Federal/State programs must be responsive to local needs and concerns. Problems associated with Federal/State sponsored projects include:

- Massive structural flood protection plans often have irreversible effects on the environment and other coastal values, such as: coastal aesthetics, scenic views, and shorefront access. Mitigation techniques require the commitment of large sums of public funds. Guidelines for the implementation and design of structural projects should reflect the need to manage fragile coastal resources for the public good. Non-structural responses need to be examined in providing flood protection before costly structural devices are considered.

- Erosion control projects have not addressed problems along privately-owned shores where there is a public interest. Federal/State projects have been aimed primarily at mitigating erosion along public beachfront. The limited scope of these projects deprives eligible privately-owned shores of adequate protection and the public of their enjoyment. Consideration of these interests should be given in the development of erosion control plans.

- The loss of valuable public beachfront along much of the south shore of Long Island, Brooklyn, Queens and eastern Staten Island is a chronic problem. Beach restoration projects must ensure the long term beneficial use of these shores for public recreation, but only after public benefits have been weighed against long term financial and environmental considerations.

- Federal programs do little to assist in the mitigation of erosion along privately owned shores where there is no public interest. Technical assistance to individuals, in general, is limited to available data. As a result, no effort has been made to coordinate private erosion control efforts. Piecemeal erosion control planning simply leads to transferring the problem from one section of the shoreline to the next.

- Federal planning and assistance in the mitigation of structural erosion is limited to the <u>removal</u> of deteriorated waterfront

structures. The congressionally authorized Drift Removal Project for New York Harbor offers financial assistance to demolish structures. Repair, maintenance and development of alternate use plans remains the responsibility of local interests. Repair costs, however, are often greater than removal costs for individual structures.

Given the fiscal condition of local governments, the financial burden of tackling these problems inhibits the productive use and redevelopment of the urban waterfront for traditional and alternative uses.

Because of the enormous cost of erosion control projects, Federal and State participation are virtually mandatory. However, initiation of Corps of Engineers' involvement is a complicated procedure.

Local interests must petition their representatives in Congress either directly or through local governments. The Senator or Congressman then requests the appropriate Congressional Committee to direct the Corps of Engineers to investigate. During the investigation, which includes comprehensive surveys and feasibility studies, public hearings are held.

The Corps' findings and recommendations are transmitted to the Secretary of the Army, who eventually turns them over to Congress. The final decision lies with the Congressional or Senatorial Committee on Public Works. Following Congressional approval, Congress must appropriate the necessary funds.

PUBLIC ACCESS

The enjoyment and general benefit of the waterfront is considered to be a public right to be shared by all of the City residents. The availability of physical and visual access to the shore is a crucial determinant affecting the beneficial use of coastal resources. However, past ownership and development patterns, conflicting waterfront activities, transportation deficiencies, and inadequate or undeveloped recreational facilities limit shorefront access in New York City.

Public Areas

Publicly owned shorefront open space is the most significant recreational resource in the City. Public beaches at Coney Island, the Rockaways, eastern Staten Island (including Gateway properties) and Orchard Beach in the Bronx, satisfy the recreational needs of millions of New Yorkers each year. Natural areas such as fish and wildlife habitats and tidal wetlands along relatively undisturbed shores in Jamaica Bay, Raritan Bay, and Little Neck Bay provide a special opportunity to enjoy unique natural settings. Existing waterfront parks as well as other publicly owned underused or undeveloped shorefront provide an opportunity for shorefront access to communities otherwise deprived of waterfront views and recreation.

Many potential recreation areas are undeveloped, poorly maintained or otherwise unfit for public use. Landfill sites, other undeveloped mapped public parks, underused waterfront structures such as piers, unimproved mapped streets, and other vacant waterfront sites are untapped recreational resources. The development, rehabilitation and maintenance of these facilities would significantly contribute to the City's ability to fulfill the recreational needs of its residents. Access to such sites will be a critical element determining their use and defining their role in the overall regional recreational picture. Inadequate transportation to existing recreation areas limits the users of many public facilities. Many of the most valuable recreational resources are far from population centers. Beaches especially, tend to be located in areas that are relatively lightly developed. In general, autos are the major mode of transport to these coastal areas. Mass transit is usually oriented toward central business districts. The result has been the underutilization of public facilities where adequate public transportation has not been provided, and the denial of recreational opportunity to City residents who rely on public transit.

Private Areas

Private residential and commercial/industrial waterfront uses frequently isolate inland areas from the shore. Such development forms an edge or barrier limiting both physical and visual access. The scale and orientation of structures can effectively eliminate view corridors and prevent pedestrian passage, benefiting only adjacent waterfront users.

Improved shorefront access frequently conflicts with existing uses, activities and natural functions occuring at the shore. Along industrially developed waterfront, increased pedestrian use of available open space conflicts with traffic patterns and other aspects associated with incompatible adjacent uses. Such conditions endanger pedestrian safety, interfere with truck traffic circulation and hamper recreational facilities, could disrupt adjacent residential uses by causing traffic congestion and associated noise and air impacts and degrade recreational quality by the overuse of facilities.

Shorefront Access Areas (305 planning phase)

During the planning phase of Waterfront Revitalization Program, the Department of City Planning investigated sites needing access improvements. The planning process included a methodology for identifying shorefront areas appropriate for improved access and a tabulation of the nature of access issues for 33 areas (see Chapter V: Special Revitalization Areas).

RECREATION RESOURCES

The park system of New York City is composed of 24,610 acres which include 1400 parcels of land, from vest pocket parks and park strips linking highways to massive citywide parks, like Central Park in Manhattan. Park facilities include 225 neighborhood parks (from 0 to 3 acres)*, scattered throughout the five boroughs, 154 community district parks (from 3 to 10 acres), 45 multi-community parks (from 10 to 20 acres) and 26 citywide parks (20 acres and over). Outdoor recreation space covers 12% of the total City land area. By borough, Staten Island has 22%, Queens 27%, Manhattan 11%, Brooklyn 16%, and the Bronx 24% of the total citywide park acreage.

Many of these recreation areas are located within the waterfront area or take their character from a waterfront location. Shorefront parkland totals approximately 10,275 acres, 41% of all park acreage, well distributed throughout the five boroughs. There are approximately 3500 acres along the Bronx Coast, 2000 acres along Brooklyn, 1330 acres along Manhattan (including the 396 acre Randall's Island), 2145 acres along Queens and 1300 acres along Staten Island.

Public waterfront areas range from small esplanades and playgrounds of less than one acre to the 2,117 acre Pelham Bay Park along Eastchester and Pelham Bays on the northeastern shore of the Bronx, which is a major regional facility. The ten largest shorefront parks comprise approximately 5,965 acres or more than half of shorefront public space. They provide City residents with the opportunity for diverse active and passive recreational activities, including picnicking, baseball, basketball, bocci, bicycling, swimming, promenading, fishing and viewing the impressive City shoreline.

To improve recreation opportunities for City residents, beach frontage can be expanded with shorefront promenades and sitting, fishing, boating and picnic areas that are easily accessible to the public.

Future plans include developing access to the waterfront along the North Shore of Queens (at Powell's Cove, Little Bay and at Udall's Cove on the Queens-Nassau border). Implementation of these plans will require some acquisition of private property. Access improvements are also planned for the Bronx River.

Despite the extensive park system, many problems exist and many future opportunities may be lost unless swift management action is undertaken accompanied by fiscal relief. The greatest challenges are preservation of parkland from further physical deterioration; provision of additional access to underutilized areas especially for the elderly, handicapped and immobile inner-city poor; development of mapped parkland now vacant, littered and unusable (without any added City maintenance burden); and, in some cases, limiting access to prevent environmental degradation.

* Parks are classified by size.

Preservation

Physical deterioration of City waterfront parks has impacted use and enjoyment of recreational facilities. Over the past ten years, operation and maintenance funds have declined and demand for open space and recreation has grown. Age, overuse, vandalism and outdated facility designs have contributed to the deterioration. Adequate, ongoing maintenance programs are necessary to meet community needs.

Both capital and expense budget funds allocated to the park system are inadequate, reflecting higher priorities for economic recovery, transportation , health, welfare and other public needs. Citywide budget cuts have restricted acquisition and expansion as well as rehabilitation of parks. The resulting impact on park maintenance is more severe when inflation and increased energy and labor costs are considered.

Budgetary gaps are not met by State and Federal recreation programs. Many of America's urban recreation areas have become maintenance problems. Such facilities are an essential part of urban life and financing is crucial if they are not to be abandoned to vandals or made useless by overuse. The development of a program to provide funds and technical assistance to local park systems for maintenance and operating functions is strongly encouraged by New York City.

Access

Inadequate access opportunities to existing facilities due to physical obstructions, poor roadway design and limited mobility of user groups prevent the full use of City parks and open spaces.

Mass transit coverage and scheduling to coastal recreational areas provides only limited relief. Mass transit focuses on workday service to downtown business districts, rather than weekend access to the marine perphery. Where intermodal transfers are available, increased transit fare has made recreational travel for low income families, families without automobiles, the elderly, the young and the handicapped almost prohibitively expensive. The few beach areas with relatively good mass transit access such as Coney Island, are seriously overcrowded during summer months. Partial solutions to these problems have been proposed in the past. For example, the Special South Richmond Development District has extensive pedestrian and bicycle rights-of-way separated from vehicular routes, but this and other open space network plans lack implementation funds.

The Special Revitalization Areas section of this report discusses the identification of waterfront areas with access problems and the approach to their resolution. Please refer to that section.

Development

Maintenance, preservation and access problems should be resolved before additional park areas are acquired. However, some communities, especially high density areas, are inadequately served, lack open space, recreational facilities and special programs for the elderly, handicapped and young. In many cases, potential for waterfront open space development exists near these neighborhoods. For example, Soundview Penninsula along the East River waterfront, has great potential for multiple recreational activities and facilities. Development plans, based on community need, include the designation of natural areas in the northern section with provision for passive recreation; playing fields, bicycle paths and fishing docks are planned for the southern section.

The New York City Waterfront Revitalization Program will support the development of areas such as this which exhibit unbalanced supply/demand ratios in conjunction with available unused open space.

Two other issues are closely associated with recreational resources - overuse and water quality. Issues/policies and implementation techniques designed to resolve problems associated with those issues are included in the Public Access and Water Quality sections of this chapter.

SCENIC QUALITY

The New York City coastline offers numerous and diverse visual experiences along both man-made and natural shores. The Manhattan skyline, the entrance to New York Harbor and the Narrows are a few of the sweeping views created or completed by man's activity. Smaller scale urban settings having cultural/historical significance are also of scenic value. The Special South Street Seaport District and the Fulton Ferry Historic District preserve linkages to New York's maritime heritage by maintaining and stimulating re-creation of their historic character. Containerports and other maritime facilities provide an added dimension to the urban shorescape with their complexity and dynamic forms.

More natural coastal settings are also abundant in the City. Many miles of natural and artificial beaches offer traditional coastal views. Public bathing beaches at Coney Island and Rockaway have artificially expanded foreshores which give large numbers of seasonal visitors access to views of the Atlantic Ocean.

Waterfront views can enhance neighborhood quality, shorefront recreation facilities, and other waterfront activities compatable with pedestrian access.

Other coastal areas such as Gateway National Recreation properties in Rockaway, Jamaica Bay and on Staten Island (as well as city-owned and private shorefront) exhibit natural coastal formats and vegetation. In

many cases, artificially placed features such as the backshore dunes north of Great Kills on Staten Island are of high visual quality. Among the rarest of all coastal resources in New York City are undisturbed tidal wetlands and wildlife habitats. These areas have been altered by man's activity but have adapted and remain viable areas of natural activity with unique scenic value.

Enhanced scenic quality in the coastal zone can have a beneficial effect on coastal recreation, shorefront commercial activity, and adjacent neighborhood quality. Recreational activities at beaches and waterfront parks can be made more attractive and enjoyable. Commercial activities at amusement areas, beach concessions and marinas will increase in value if their facilities are cleaner, safer, more accessible facilities. Residential communities along densely developed urban shores and more lightly developed reaches, such as the Rockaways, will benefit psychologically from a more aesthetically pleasing environment.

Deterioration Of Scenic Quality

Coastal visual quality in New York City, however, is often deteriorated, inaccessible, obstructed, threatened by the lack of consideration for scenic values in planning waterfront development, or otherwise blighted by out of scale or disharmonious development.

Deteriorated waterfront property and degraded water quality detract from the scenic quality of waterfront recreational, residential pedestrian and commercial activities in the following ways:

- water pollution, including floating debris, makes fishing, swimming, boating, as well as commercial shipping, unattractive, unsafe and unhealthy;

- poorly maintained and abandoned waterfront structures contribute to floating debris and the blighted appearance of the urban shorescape, resulting in lost opportunity for public access and waterfront redevelopment;

- beach erosion results in the loss of valuable scenic and recreational open space, as well as the endangerment of upland development and natural areas;

- poorly maintained public parks discourage public use of available shorefront open space which represents the primary resource for public shorefront visual access;

- overcrowded public parks detract from the enjoyment of shorefront recreational facilities and endanger and degrade the available natural and scenic resources;

- undeveloped coastal landfill sites are eyesores that sometimes block coastal views since they are usually extended to great heights. The noise, odor and appearance of active sites have negative impacts on any adjacent use; and

- poorly managed wetlands often become unauthorized dumping grounds filled with vermin and pests, obnoxious odors and sights.

Consequently, the opportunity for the enjoyment of coastal scenic resources is lost or significantly limited.

The coastline in general, is often inaccessible to inland populations effectively isolating them from coastal views. Public spaces are not readily available along large reaches of privately owned or developed waterfront. Water-dependent activities such as shipping, energy production and storage facilities, as well as other industrial uses that require waterfront sites, further prohibit access to scenic views.

Maritime uses such as passenger terminals, containerports and commercial fishing can attract the interest of the public, provide passive recreational opportunity and enhance the scenic quality. Vacant and underused public waterfront structures are ignored as resources for physical or visual access. Abandoned piers, marginal streets and other city-owned property can provide the public with adequate space to experience and enjoy waterfront views.

Waterfront views are often degraded or obstructed by haphazard development. Residential development, transportation facilities (highways, bridges, etc.), energy production and storage facilities, etc. frequently are not in harmony with coastal environs.

Management of Scenic Resources

Many of the City's outstanding scenic views and other scenic resources are adequately protected. Existing regulatory mechanisms for the protection of scenic quality are in the City's Building Code and Zoning Resolution which regulate permissible uses and the designation of special districts. These mechanisms include provisions for performance standards, height and bulk regulations and the transfer of development rights. While these protective measures are substantial, they have not been applied to all of the City's scenic resources.

ENERGY DEVELOPMENT

Energy facilities have located in the New York City waterfront area because of their large scale water requirements for cooling and

proximity to fuel supply and proximity to market areas. These combined factors create a relative "waterfront dependence" that varies significantly by type of facility. Power plants, for example, which receive fuel by barge or tanker and which use large quantities of water for cooling are dependent upon a waterfront location. Petroleum storage tank farms derive an economic advantage by being sited close to power plants.

The dependence on and attraction of energy facilties to the coast is evident in New York City, where the majority of power plants, petroleum terminals, tank farms, and gas storage and processing facilities locate. The waterfront area of New York City has 10 electrical generating plants, at least 53 bulk oil storage terminals with over 500 petroleum tanks as well as liquefied natural gas (LNG) tanks and facilities. This siting arrangement plays a vital role in the supply, distribution and production of energy within New York.

Impacts

Energy facilities may adversely impact the waterfront in several important ways:

- Electrical generating facilities discharge thermal and chemical pollutants into adjacent waterways. The power plants located along New York's waterfront all use once-through cooling systems which raise temperatures of the immediate receiving waters from 16°F to 20°F resulting in reduced levels of dissolved oxygen and decreased marine organisms and species diversity.

- Petroleum terminals, tank farms, and pipelines exhibit chronic seepage and spillage. Petroleum delivered to utilities to generate electricity, provide heating oil and meet transportation needs, comes into the City mostly by tanker and/or barge. Because of the limited depths of channels in New York Harbor (up to 45 feet), only small tankers, up to 40,000-50,000 deadweight tons (DWT) can proceed to piers to unload. Larger oil tankers in the 70,000 DWT size (small compared to the more economic Very Large Crude Carriers (VLCC) of 100,000-500,000 DWT) have to "lighter" their loads outside the harbor. In reducing their load by transfer to barges they often spill oil which pollutes the waters.

Energy wastes are another potential polluter of the waters. For example, if coal burning is approved as an alternative and/or supplement to oil burning in the future, byproducts of coal and refuse-burning will have to be disposed of at sea or on land.

- Power plants, whether fueled by oil or coal or fuel-derived refuse, also affect air quality by emission of gases such as sulfur and nitrogen dioxides. Tanks storing lighter oils such as gasoline and aviation fuels emit hydrocarbons in the process of "breathing".

- Power plants and LNG facilities have large land requirements for buffering and safety reasons. Such land preempts waterfrontage and reduces public access. Energy facilties may also present adverse aesthetic impacts if plants are not properly sited, clustered, buffered and/or maintained.

These combined impacts can significantly alter the air, water and aesthetic quality of adjacent coastal uses and also impair upland locations.

The degree to which these impacts affect the waterfront is amplified by the energy supply and demand patterns of New York City, which imports all of its primary energy resources and generates an enormous demand for electric power. Compared to the country as a whole, New Yorkers are quite energy conservative. In 1979 they used 180 million British thermal units of energy per capita versus 346 million nationwide (one gallon of heating oil generates 138,000 BTUs). While well below the national average in per capita consumption, there is a concentrated demand for over 7,500 MW of power within a 317 square mile area which severely impacts the supply environment, in this case, the waterfront.

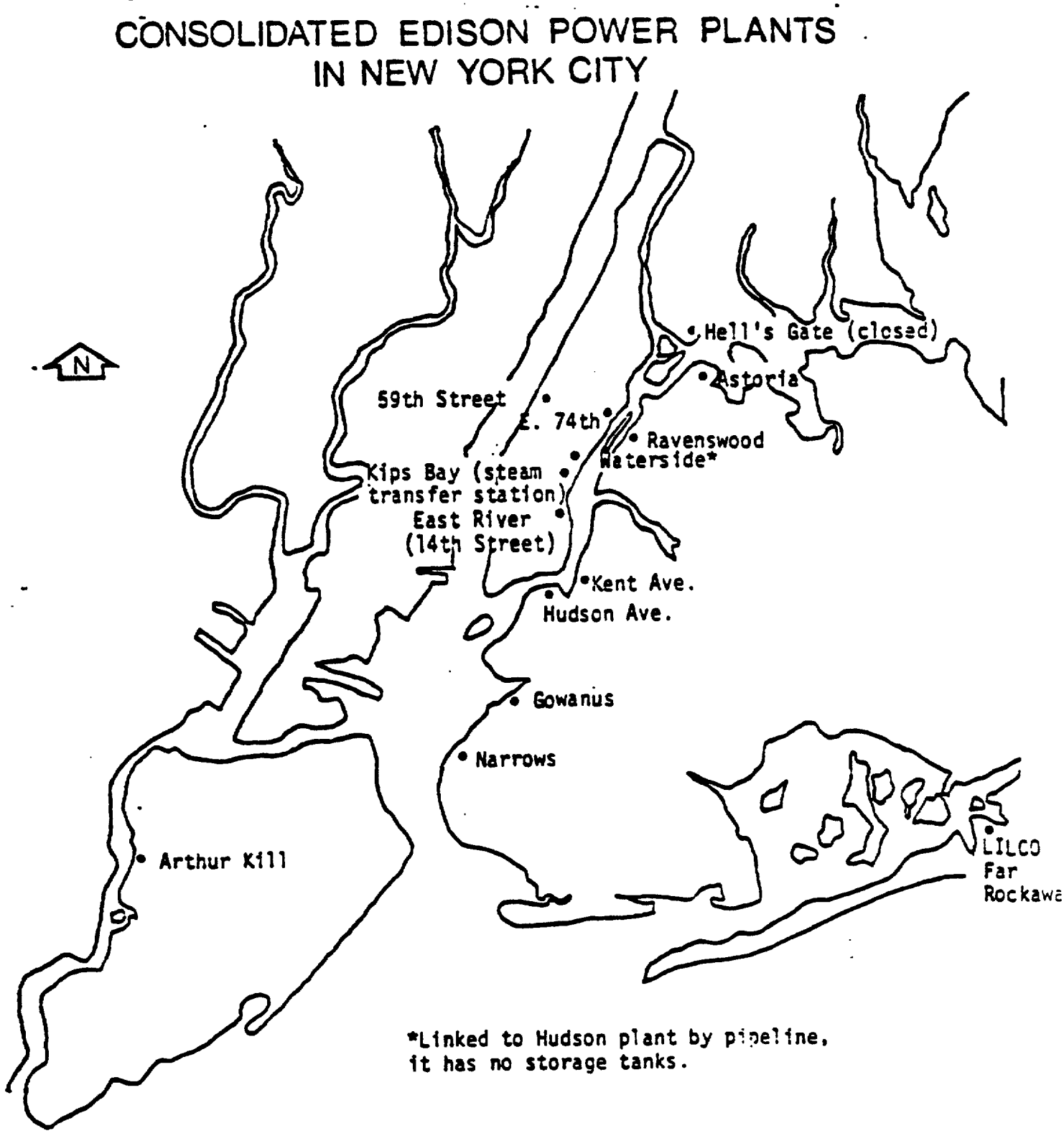
Following are issues related to facility types common to the City's waterfront:

Electric Generating Facilities

All electric generating stations in New York City are located within or adjacent to the waterfront (see Con Edison Power Plants map). Consolidated Edison (Con Edison) owns and operates ten power plants in the city having a capacity of 5300 megawatts. The steam turbine generating plants are "once-through" cooled with attendant large water requirements. Con Edison transports some oil within the boroughs by pipeline. It also receives some oil at its Arthur Kill plant by a pipeline from New Jersey. These pipelines lend reliability to operations against the event of strikes or inclement weather which might otherwise threaten deliveries by tanker or barge. Con Edison has proposed switching from the burning of oil to coal at its Arthur Kill and Ravenswood plants.

The use of refuse-derived fuel has been proposed by the Department of Sanitation, which has to dispose of 20,000 to 22,000 tons of refuse daily and is running out of space. The Department has proposed the

Figure 8


CONSOLIDATED EDISON POWER PLANTS
IN NEW YORK CITY
N
Hell's Gate (closed)
Astoria
59th Street
E. 74th
Ravenswood
Waterside*
Kips Bay (steam
transfer station)
East River
(14th Street)
Kent Ave.
Hudson Ave.
Gowanus
Narrows
Arthur Kill
LILCO
Far
Rockaway
*Linked to Hudson plant by pipeline,
it has no storage tanks.
Scale 1": 19800'

building of ten plants handling about 3,000 tons per day over a ten year period. It is reviewing proposals for the first such plant to be constructed at the former Brooklyn Navy Yard. Power derived from the plant in the form of steam would be fed into a nearby Con Edison plant. Both the Port Authority of New York and New Jersey and the Power Authority of New York have expressed interest in building similar plants in the Bronx and elsewhere. Like conventional oil and/or coal or resource recovery plants these will have air impacts which fall under the jurisdiction of the Clean Air Act. The adverse impacts from existing generating plants have been significantly reduced and controlled by Federal, State and local environmental programs in recent years.

Air Quality

All Consolidated Edison plants must be in compliance with applicable Federal, State and local air pollution control regulations. They must also meet New York City's stricter air pollution control code. (As a preliminary to switching to coal, the utility obtained a variance to test-burn oil having a sulfur content the equivalent of coal. The impacts of burning the higher sulfur fuel during 1980 and 1981 proved inconclusive. The utility has received permission from the City's Department of Environmental Protection and the State Department of Environmental Conservation to continue with the test burn under a variance of the air code which has to be renewed at six monthly intervals.

Water Quality

Energy facilities which take in or discharge water for cooling and processing require State Pollution Discharge Elimination System (SPDES) (402) permits. These set limits on the amount of emissions permitted to be discharged and are issued by the New York State Department of Environmental Conservation.

Petroleum Terminals and Storage Facilities:

Oil arrives in New York City by pipelines carrying the fuel from the Gulf Coast (see Oil Company Pipeline Routes map). The heavier more viscous grades arrive exclusively by tanker. Fuel delivered by tanker is delivered to some 44 storage terminals from where it is taken to market by trucks. The City has 16.2 million barrels of storage capacity along the waterfront (see Bulk Oil Storage Facilities map and legend). This represents about 18 percent of the capacity in the harbor which New York shares with New Jersey. A study funded by the Coastal Energy Impact Program and released in November 1981 indicated that petroleum handling impacts the City's waterways in several ways.

Figure 9

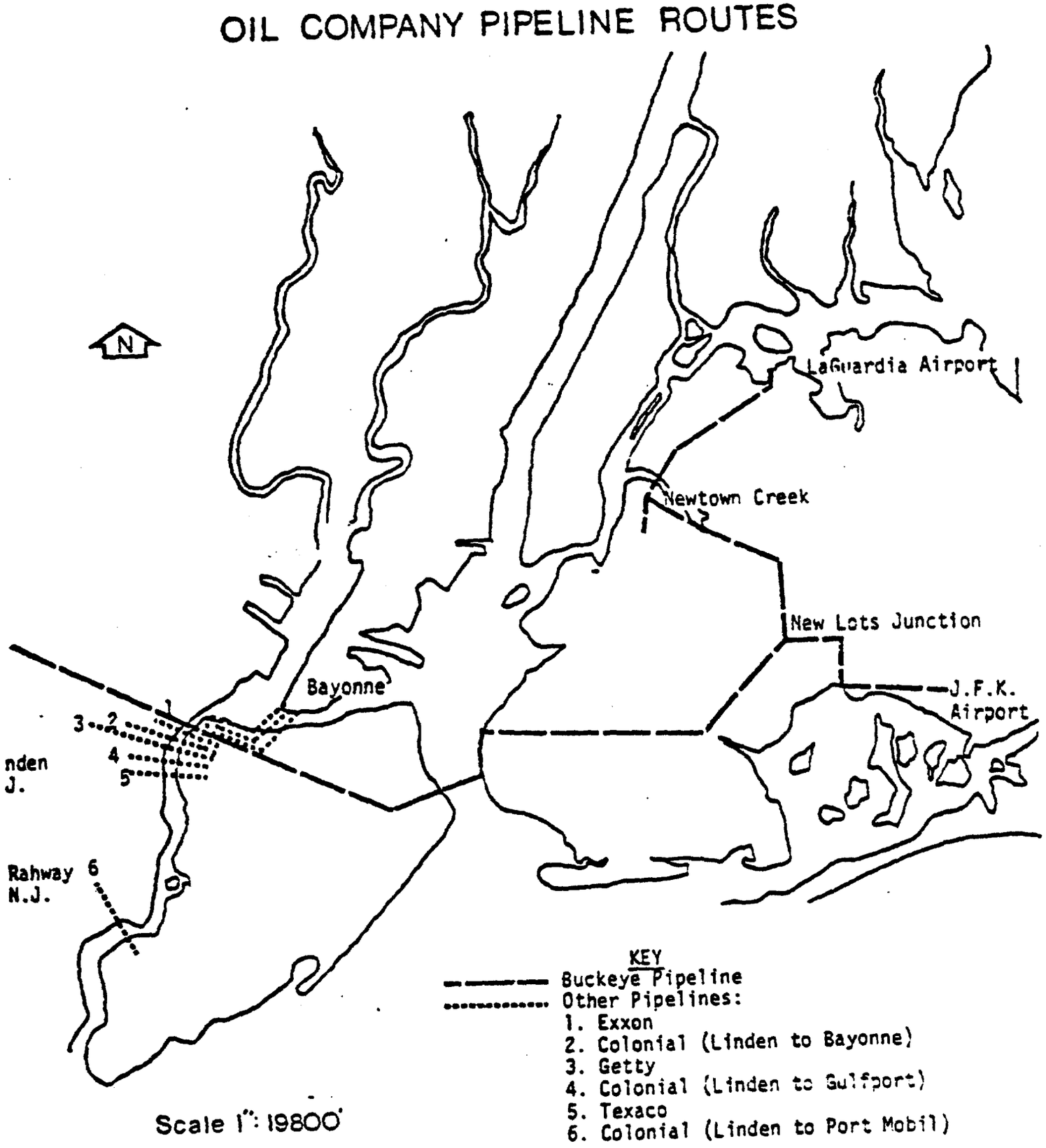
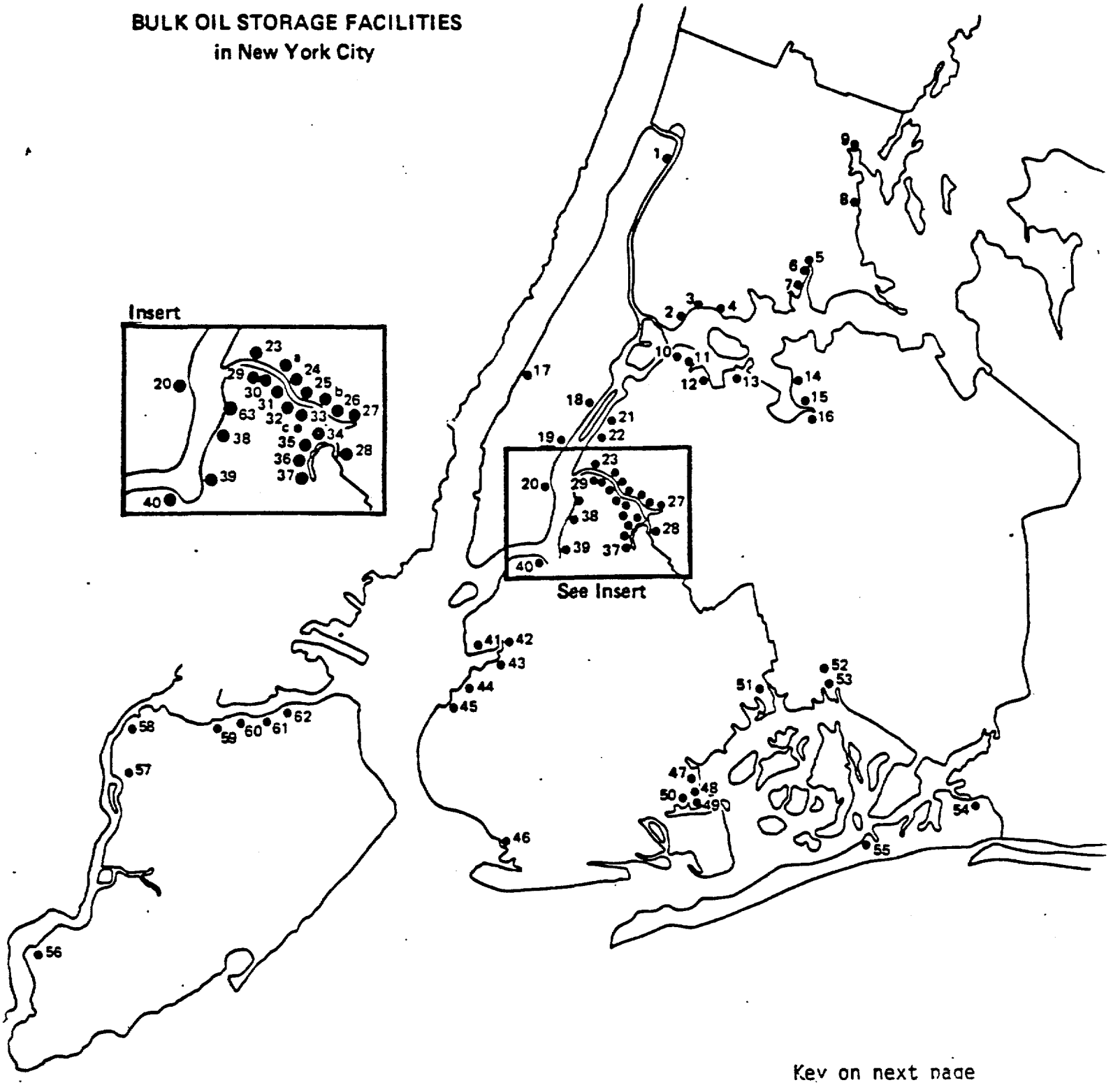

OIL COMPANY PIPELINE ROUTES
N
LaGuardia Airport
Newtown Creek
New Lots Junction
J.F.K. Airport
Bayonne
nden J.
Rahway N.J.
1
2
3
4
5
6
KEY
Buckeye Pipeline
Other Pipelines:
1. Exxon
2. Colonial (Linden to Bayonne)
3. Getty
4. Colonial (Linden to Gulfport)
5. Texaco
6. Colonial (Linden to Port Mobil)
Scale 1": 19800'

Figure 10



Key on next page

Figure 11

HARLEM RIVER
1. Belcher (2197:47)

EAST RIVER (Bronx)
2. Metropolitan (2597:225)
3. Cibro (2575:39)
4. Texaco (2771)

WESTCHESTER CREEK
5. Schildwachter (3939:250)
6. Hess (3838:250)
7. Cibro (3837:1 & 3836:1)

HUTCHINSON RIVER
8. Co-op City (5141:440)
9. Mt. Vernon Energy Terminal (4974:1)

EAST RIVER
10. Con Edison Astoria (850:1)*
11. Power Authority of State of New York (850:1)*
12. Greater New York Terminal (814:27)

FLUSHING BAY
13. Port Authority-La Guardia (926)

FLUSHING CREEK
14. Skaggs Walsh, formerly Sunrise Oil (4222:1 & 4223:10)
15. Bandolene (4398:26, 4399 & 4400)**
16. Metropolitan (4693)

HUDSON RIVER
17. Con Edison (1106:1)

EAST RIVER (Manhattan & Queens)
18. Con Edison, 73rd St. (1486:1 & 1487:15)
19. Con Edison, Waterside (945:33)
20. Con Edison, 14th St. (988:1)
21. Con Edison, Ravenswood (357:17)
22. Royal Petroleum (477:24)

NEWTOWN CREEK (Queens Side)
23. Ditmas (38:1 & 16)
24. Proterized Sciabau Neu (294:360)
25. Getty Oil (294)
26. Quanta Resources Corp. formerly Hudson Oil (312:69)
27. Phelps Dodge (2520)
28. Exxon (2611:35)

NEWTOWN CREEK (Brooklyn Side)
29. Shell (2491:1)
30. Exxon (2491; 2515
31. Metropolitan (2517:14)
32. Mobil (2515:13; 2612:1)
33. Amoco (2612:15)
34. Gulf Oil (2927:123; 2928:1)
35. Calleia (2927)
36. Cibro (2942:48 & 49)
37. Bandolene (2942:101)

EAST RIVER (Brooklyn)
38. Paragon (2277; 2687; 2690)
38. NEPCO (2361:1)
39. Con Edison-Kent Avenue (2023:10)
40. Con Edison-Hudson Avenue (6:1)
41. Patchogue (623:62 & 624:1)

GOWANUS CANAL
42. Bayside Fuel (431:17)
43. Cibro (480:1 & 483:11)

EAST RIVER
44. Con Edison, Gowanus (653:3)
45. Con Edison, Narrows (803:150)

GRAVESEND BAY
46. Paragon Oil (6491:293)

MILL BASIN
47. Metropolitan (8470:143 & 1064)
48. Sunmark Industries (8470:130)
49. A.R. Fuel (847)
50. Mobil (6491:293)

JAMAICA BAY
51. Starrett City (4452:85)
52. Jamaica Bay Fuel (14260)
53. Port Authority-J.F. Kennedy Airport (1426)
54. Tepco
55. Long Island Lighting Company (15,670:125)

ARTHUR KILL
56. Fort Mobil (7247:1)
57. Gulfport (1717; 1760; 1835)
58. Proctor and Gamble (1338:1)

KILL VAN KULL
59. Sipco (1107:31)
60. Riche Fuel (185:187)
61. Quinlan (254 & 256)
62. Taverna

OTHER FACILITIES:
a. Buckeye Pipeline (surge tanks) (294:312)
b. Barrow Oil Terminal-pending application (312)
c. Brooklyn Union Gas Facilities

* Facilities are located on same block and lot
** Bandolene took over from Premium, November 1980

Oil spills are generated, for example, during the transfer of oil from tanker or barge to dockside and again when oil is transferred from tank to truck at the loading racks. Oil spills also threaten aged storage tanks which may spring a leak at the weak point of a tank wall or bottom. The study found, however, that waste oil -- that which is spilled during transfer operations -- poses the greatest threat. The amount spilled is out of proportion to the amount of overall petroleum handled.

The study recommended regular monitoring of oil facilities and decommissioning of old tanks to mitigate some of these impacts. Spills are, however, a potential threat as long as oil is handled. Their severity will depend on the location and the type of oil spilled. Disposal of collected spilled oil in landfills may also pose impacts over time.

Air Quality - Hydrocarbon Emmissions

The air pollution effects of petroleum terminals and storage facilities result from hydrocarbon emmissions when light fuels such as gasoline and jet fuel are exposed to air during transfer or spillage. Vapor recovery controls and floating roofs for storage tanks are some of the ways in which emissions can be reduced.

Visual Blight

Storage facilities, when located adjacent to inland residential and recreational uses obstruct waterfront views.

Liquid Natural Gas (LNG)

LNG is natural gas that has been liquefied by supercooling to a temperature of -259° and is stored in cryogenic refrigerated tanks. New York City has two such plants: one operated by Brooklyn Union Gas is in Greenpoint, Brooklyn fronting Newtown Creek and the other operated by Consolidated Edison is adjacent to its Astoria generating station in Queens. They serve as peak shaving plants, supplementing the demand for energy during extreme climatic conditions when for example, air conditioners are turned up during a heat wave or thermostats raised during a cold spell. A third LNG plant in Rossville Staten Island was completed in 1973 but never operated due to permit approval problems. The facility is owned by the Energy Terminal Services Corporation, (ETSC) a subsidiary of the New Jersey Public Service Gas and Electric Company. ETSC is still trying to bring the plant into operation.

The concern regarding LNG facilities in Rossville relates to public safety. ETSC's application has been modified in the years since it submitted its original application, which was based on imported LNG being tankered into Rossville. The new project would bring in gas by pipeline and function as a peak shaving facility.

WATER RESOURCES

General Harbor Conditions

Efforts to clean up the harbor and its tributary streams deal with many pollution sources, domestic sewage being the largest single factor. Industrial discharges, regulated by national and state permit systems, is next in significance. Overflows from combined sewers are an unusually large problem exacerbated by continuous discharge of raw sewage at poorly maintained regulator sites. Street runoff, material deposited in sewer lines between storms, and industrial wastes are significant sources. Other major sources include oil spilled from ships and at oil storage areas, benthic deposits and dredged materials, non-profit sources such as landfill leachates, thermal discharges, floatable materials and pollutants such as PCBs transported by river currents from outside the City boundaries.

As a result of these discharges, water quality in some parts of New York Harbor and adjacent waterways fails to meet New York State standards. Often, bathing water standards are not met in the areas where swimming is desired. High total coliform levels have caused the closing of Coney Island, Staten Island, Bronx and Jamaica Bay beaches in the past. Floatables and drift materials are nuisances which directly affect boating and shoreline aesthetics, causing considerable damage to pleasure craft.

Improving the quality of discharges to area waterways would raise dissolved oxygen concentrations and lower coliform bacterial levels. While shellfish and finfish populations would benefit, the value of resident species would continue to be limited by the presence of toxic chemicals and metals. Bottom sediments will continue to leach these materials into the harbor waters for some time, posing a long-term problem for fishermen of the region. The proposed industrial pretreatment program will take many years to be effective, and will only succeed with the cooperation of upstream and adjacent communities in New York and New Jersey.

There is ample data on summertime values of conventional New York Harbor water quality parameters such as biochemical oxygen demand (BOD), suspended solids, and dissolved oxygen from surveys by the New York City Department of Environmental Protection, the Interstate Sanitation Commission and others. As a result, the local water quality plan has emphasized solutions to these problems. There is

little data on parameters such as heavy metals, toxics, chlorine residuals, and algae concentration during rainfall periods or other seasons of the year. Future studies will be directed toward understanding and solving these potential problems.

The cost of achieving water quality goals will require extensive funding support at all levels of government during the next two decades. New York City has arranged financing for a significant portion of wastewater treatment facility expansions, construction and other capital needs. With the construction grant program underway and industrial regulatory controls initiated, it is expected that most municipal treatment plants will be providing secondary treatment within 5 to 10 years and the major sources of industrial pollution will be abated.

The burden of operation and maintenance costs will remain a primary responsibility for City financing. Annual costs as well as financing of the City share of capital construction are projected to be within the capabilities of City revenues.

Municipal Discharges

Effluents from municipal wastewater treatment plants and raw discharges due to bypassing at incomplete facilities have been major sources of pollution in New York. In areas of the harbor where these discharges are large and hydrologic conditions prevent efficient dispersion, swimming and shellfishing are periodically or permanently prohibited for health reasons. Sedimentation and depressed dissolved oxygen levels also result. In New York City, most of the municipal sewage flows will be treated in secondary sewage treatment plants constructed with funds available under the Federal Water Pollution control Act and state bond acts approved in 1965 and 1972. The New York City share, 12.5% for new construction and upgrading, is available in part as a result of credits for construction programs undertaken without Federal and State aid.

After World War II, the City inaugurated a program of plant improvements, including repairs, rehabilitation, upgrading, and in some cases expansion. Complete upgrading to step aeration, a form of secondary treatment, is expected within the next few years at nine of the City's fourteen treatment plants. As a result of a consent decree between New York City and the U.S. Environmental Protection Agency (USEPA), the Red Hook and North River, the two plants now under construction, will be completed by 1986.

The following table shows the amount of BOD and suspended solids in the treated discharges of the New York City region in 1975 and those projected for the year 2000. It is assumed that all plants will be upgraded to provide 85% BOD and suspended solids removal as required by USEPA. The relatively high figures for 1975 reflect the fact that there is no treatment for Red Hook and North River service areas.

NEW YORK CITY WATER POLLUTION CONTROL PLANT DISCHARGES

Year	Flows MGD	BOD 1,000 #/Day	Suspended Solids 1,000 #/Day
1975	1,536	925	998
2000	1,674	252	251

Combined Sewer Overflows and Urban Runoff

Correcting problems related to combined sewer overflows (CSOs) is of major importance in the effort to upgrade water quality in New York City. CSOs are a bypass system for combined sewer pipes. When it rains heavily, a part of the greatly increased volume is automatically discharged to waterways without any treatment. Although somewhat diluted, this raw sewage is an obvious polluter.

In densely urbanized areas, storm runoff picks up contaminants from industrial sites, streets (settled air pollutants, litter, etc.) and other areas where debris accumulates or erosion occurs. Street runoff can, in some instances, be a more noxious pollutant than a raw sewage because of the wide variety of contaminants it contains.

A complete solution to the problem of combined sewer overflows is extremely expensive since it involves major alteration of the sewer system or treatment plants capable of handling large volumes of water on an intermittent basis. In addition, urban runoff in a highly developed area such as New York City is not easily modified through land management approaches without significant impact on the existing economic base. Solutions to CSO and storm water problems are more applicable for small areas or drainage basins where adjacent waterways are easily influenced. Concentrated efforts should be on abating or treating discharges in waterways which need good water quality for particular uses such as bathing.

Industrial Discharges

Industrial contaminants enter the habor as point discharges, indirect discharges into the municipal system, and non-point runoff and spills. Some water quality problems only occur periodically such as the occasional spills of oil and other hazardous substances during transport or transfer operations. Problems resulting from cooling

operations in various manufacturing and power generating processes cause secondary impacts by lowering dissolved oxygen and disrupting the natural environment through biological effects on certain aquatic species.

Water quality sampling has shown that there is a pervasive toxics problem in New York Harbor. Findings include the following results: (See Table, TOXIC PROBLEM AREAS.)

Polychlorinated biphenyls (PCBs) have been found to occur in significant quantities in harbor sediments. The tissues of non-resident finfish also contain PCBs indicating bioconcentration of PCBs in regions outside New York City. With the exception of recently discovered polybrominated biphenyls (PBBs) in the Arthur Kill area, the few organic compounds for which data exist appear to be concentrated in harbor sediments from which there is constant leaching, rather than new sources.

Mercury, lead, copper and zinc accumulate in potentially toxic concentrations throughout the harbor and affect the productivity of local finfish and shellfish populations. In addition, nickel concentrations are high in the Hudson, East and Harlem Rivers and in the Lower, Raritan and Sandy Hook Bays. Bicconcentration of arsenic and mercury in the tissue of commercially important finfish of the Lower Bay is also a potential public health hazard and reflects recent discoveries of high levels of mercury leaching from the Meadowlands in New Jersey.

Oil occurs in high concentrations in the sediments of the Arthur Kill and the East River. Four of the ten tributary streams sampled during the New York City 208 Study (Coney Island Creek, Gowanus Canal, Bergen Basin and Mill Creek) also contain high oil concentrations in their sediments.

During the summer, chlorine exceeds safe levels for shellfish throughout the harbor and may be toxic to finfish in Jamaica Bay, the Arthur Kill and Newark Bay.

Table 3

TOXIC PROBLEMS AREAS
(Summers, June through September 1974 to 1976)

Parameters	Hudson River	Long Island Sound	East and Harlem Rivers	Upper Bay	Arthur Kill, Kill Van Kull, Newark Bay	Lower Raritan Sandy Hook Bays	Jamaica Bay
Heavy Metals*	Levels considered hazardous to the marine environment exceeded in 90% of the time for copper and mercury and 60% of the time for lead and zinc.						
	30% of nickel values exceed hazardous levels		50% of nickel values exceed hazardous levels			36% of nickel values exceed hazardous levels	
Toxics* (Oil, chlorine, PCBs)	High PCB levels in spawning areas for anadromous fish		Oils in water occasionally at toxic levels for estaurine fish and shellfish; fish resources banned for human consumption because of PCBs	Oils in water occasionaly at toxic levels for estaurine fish and shellfish	Chlorine levels toxic to shellfish and finfish; oils in water occasionally at toxic levels for estaurine fish and shellfish; also high PCB levels	Chlorine levels toxic to shellfish are occasionally exeeded	Chlorine levels toxic to shellfish fish and finfish; water oils occasionally at toxic levels for estaurine fish and finfish

Development and implementation of strategies to control problem heavy metals is dependent on the ability of New York City to carry out a comprehensive industrial waste survey. The extent of pretreatment for heavy metals will depend on the quantity and concentration of effluent discharged by an industry and the economic applicability of process modification or treatment. Even with pretreatment strategies, existing heavy metal concentrations in the harbor can only decrease gradually as they slowly leach from bottom sediments. Problems associated with PCB's, metals and oil in sediments are expected to continue unless significant progress is made in reducing industrial effluents and accidental spillage.

Residual Wastes And Debris

Some environmental protection activities on the waterfront may, ironically, have negative impacts on water quality as a result of disposal practices of dredge residual wastes, solid waste collection and municipal waste treatment.

Treatment of raw sewage produces sludge, some of which contains toxic substances and other pollutants. Approximately 500 of 700 dry tons of sewage sludge produced daily in the New York-New Jersey metropolitan area are dumped at sea. Nearly 40% of the quantity is produced at New York City municipal treatment plants and barged to the New York Bight Apex for disposal. With the upgrading of City treatment plants to secondary treatment levels, it is estimated that daily sludge production will increase to more than 770 dry tons. Currently the City disposes of sewage sludge at a dump site 12 miles offshore. EPA is reviewing whether the City should be required to relocate the dump site to a site 106 miles out and beyond the continental shelf. The results of this question should help to provide information on the long-term effects of ocean dumping on ocean water quality.

Refuse consisting of household, commercial, institutional and industrial wastes, street sweepings, and construction and demolition wastes are deposited at landfill sites. About 76% of the refuse material used for landfill is biodegradable, but during the process of decomposition, toxics leach into and pollute adjacent surface and ground waters. Over 17,000 tons of solid waste are deposited daily within the coastal area. Total City refuse is expected to increase at a rate of about 1.5% per year and present landfill areas will reach their capacities within the next decade. (See Solid Waste Issues in this chapter.)

Dredge spoil is another type of residual waste which presents disposal problems. Dredging is undertaken to maintain and cut new shipping channels, and to provide sand for beach nourishment. The activity enhances waterfront uses by facilitating navigation and providing beachfill. It also improves water quality by promoting tidal flushing

in certain inlets. Negative impacts associated with dredging include disruption of benthic organisms and temporary turbidity at the dredge sites and contamination of disposal sites by dredge spoil.

The bottom sediment which is dredged often contains heavy metals (zinc, mercury, and lead), petroleum residues, and carbonaceous materials. This material has been dumped at a site within the New York Bight, approximately seven miles off the Sandy Hook Lighthouse. Negative environmental impacts and possible lack of additional capacity at the current "Mud Dump" make alternate methods of disposal a serious issue. Although dredging is presently controlled by a State permit program, a careful selection of possible disposal sites and criteria to reduce adverse impacts of contaminated harbor sediments has not been fully developed. Formulating an immediate solution to this problem is imperative because of the probable adverse economic impacts to the City's economic base.

Classifications and Standards

New York State, New Jersey and the Interstate Sanitation Commission have classified waters of the New York region according to "best usage." The three sets of classifications and standards differ in detail. All are directed toward the exclusion or reduction of pollutants harmful to public health and welfare, marine life and aesthetics.

Present New York State classifications for waters of the New York City region and surrounding waters are shown in Table, NEW YORK STATE STANDARD. They include four "best usages": Shellfishing, Bathing, Fishing and Fish Survival (better defined as "fish transit").

The New York City 208 Plan recommends that present State standards and classifications be reviewed and that after wastewater treatment plant improvements are completed, the upgrading of Fish Survival waters to Fishing waters be considered.

The 208 project also suggests that the fecal coliform limitations accompanying the total coliform limitations in the present New York State standard be revised to bring them into better correlation with total coliform standards.

NEW YORK STATE STANDARDS

Classification	DO Minimum	Total Coliform
Shellfishing (SA)	5.0	70
Bathing (SB)	5.0	2,400
Fishing (I)	4.0	*
Fish Survival (SD)	3.0	*

*No coliform standard.

Equally important from the standpoint of shellfishing, finfishing, and marine life are standards limiting toxic substances and heavy metals such as arsenic, copper, lead, mercury, nickel, zinc and PCBs. The USEPA has established guidelines for all direct discharges to the waterways and is formulating pretreatment standards for industries and discharges to the municipal sewer system which are expected to be more stringent than present New York City standards. New York State standards for other parameters such as pH, temperature, dissolved solids, turbidity, color, taste, odor and suspended solids, although not frequently monitored, are generally met throughout the harbor and contiguous waters. Discharges of oil and floating substances, although illegal, are frequent sources of complaint. A more comprehensive program of compliance monitoring could alleviate many of these problems.

Implementation

New York City water quality concerns are listed under appropriate New York State policies in the following section. This format was chosen to reflect the fact that all recommendations are results of the New York City 208 Areawide Waste Treatment Management Planning Program, which remains to be negotiated between the City and State and approved by the U.S. Environmental Protection Agency.

Once this cycle is complete, New York City and State recommendations will be compatible and implementable as specified in the plan itself.

Management and implementation recommendations include:

- Designate the New York City Department of Environmental Protection (DEP) as the 208 management agency, responsible for implementation of the Plan in the City.

- Evaluate the needs of the City Environmental Quality Review (CEQR) process Citywide to ensure adequate City staff and administration.

- Continue coordination between the DEP and other City departments, especially the Department of Sanitation.

- Retain all wastewater management responsibilities for the City sewerage system within the DEP.

- Review the user charge system for water and sewer services.

- Determine the annual costs of the wastewater treatment system to facilitate a review of user charges.

- Examine and prescribe alternative accounting methods for the revenues from the City sewerage system, as mandated by the City Charter.

- Broaden the role of the Interstate Sanitation Commission in regional water quality management, contingent upon including local representation (USEPA, Tri-State Regional Planning Commission, designated 208 Agencies, and Citizens) on the Commission.

Changes in the draft 208 Plan, either in technical information or policy realms, may necessitate changes in this report in order to meet the requirements of Subsection 307(f) of the Coastal Zone Management Act which states that the requirements established pursuant to the Federal Water Pollution Control Act of 1972 as amended must be incorporated into the State's Coastal Management Program.

Upon approval of the 208 Program, the City Coastal commission will be responsible for regulating the location, modification, or construction of wastewater facilities on the basis of their potential water quality impact through review of the Department of Environmental Protection plans. The WRP Plan is not expected to have a substantial direct effect on over-all water quality, although the increased protection of natural resources and greater shorefront accessibility resulting from the program may help to offset the costs of improving area water quality.

In addition, Federal Coastal Zone Management Act (306) funds and other appropriate funding may be used to assist with recommended technical feasibility studies and implementation strategies, where appropriate.

Please refer to Chapter IV for specified water quality recommendations keyed to State policies.

SOLID WASTE DISPOSAL

This issue does not appear as a separate issue in the New York State Coastal Management Program. It is discussed separately in this report because of its associated adverse impacts on the coastal area and economy of New York City. All program policies are designed to add specificity to New York State Policy 39.

The disposal of various types of solid wastes generated in New York City continues to be a critical issue, both city-wide and particularly in the coastal area. About 22,000 tons/day of refuse, comprised of household, commercial, nonhazardous manufacturing, and institutional wastes and street sweepings; approximately 2,000 tons/day of construction and demolition waste; about 200 dry tons/day of sludge (digested solids from sewage treatment plants); and, an unknown amount of hazardous wastes require disposal.

The primary means of disposal are landfilling, incineration and ocean disposal. Landfilling and ocean disposal cause particular problems within the New York coastal area and are, therefore, addressed below.

Landfilling

Of all disposal methods, landfilling has been used most extensively because of its low cost, the lack of economical alternatives and the lack of information about its short and long term negative impacts. A significant portion of the City's coastal shoreline and wetlands have been permanently altered by this disposal practice. Since the early 1930's, over 38 landfill sites having a combined area of about 5,500 acres have been completed. The composition of materials disposed of at these sites were not well monitored but generally included the entire spectrum of solid wastes.

Presently, the City operates five landfills having a total area of about 3,500 acres, all of which are located in the coastal area. There are no operating landfills in the Bronx or Manhattan. Two in Brooklyn (Pennsylvania Avenue and Fountain Avenue), one in Queens (Edgemere) and one in Staten Island (Muldoon Avenue) are truck-fed. Fresh Kills in Staten Island is barge fed from 9 marine transfer stations located in the other four boroughs.

Edgemere and Fresh Kills are the City's oldest landfills. Operations started in the late 1930's and late 1940's respectively and are expected to continue through the 1980's.

Pennsylvania Avenue and Fountain Avenue landfills are within Gateway National Recreation Area boundaries. According to a memorandum of understanding signed by the National Park Service of the U.S. Department of Interior and the City of New York, all landfilling must be terminated at Pennsylvania Avenue and at Fountain Avenue by 1985. The sites would then be turned over to Gateway for development as part of the entire recreation area.

Table 4

SOLID WASTE DISPOSAL FACILITIES (Landfills)

Name	Location	Areas in Acres	Amount Received* Tons/Day	Type of Waste	Expected Completion Date	Comments
Fountain Ave.	Brooklyn	297	9,000	Refuse Incinerator residues, Constr./Demol., &	1985	Completion date is set by M.O.U. between U.S.
Pennsylvania Ave.	Brooklyn	110	Inactive	Constr./Demol: Waste	1985	Same as above.
Edgemere	Queens	173	600	Refuse, Constr./ Demol.	-	Completion is not yet fixed.
Mouldon Ave.	Staten Island	60	1,200	Refuse, Constr./ Demol.	-	Same as above.
Fresh Kills	Staten Island	2,900	10,200	Refuse, Incinerator Residues.	-	Completion date is not yet fixed but, it may have to be extended well beyond 1985.
Total			15,768			

*Amounts received based upon average daily tonnage in January 1979.

Adherence to these closing dates would be detrimental to the City and the National Park Service for the following reasons:

- the City has no alternative disposal system to handle the volume of construction waste at Pennsylvania Avenue.

- the end-use plans developed and approved for the Fountain Avenue and Pennsylvania Avenue sites will not be completed by 1980 and 1985. Therefore, their recreational value would be greatly reduced.

Two sets of regulations have recently been promulgated covering the operation of solid waste management facilities: New York State Department of Environmental Conservation Part 360 regulations pursuant to Article 27, Title 5 of the N.Y.S. Environmental Conservation Law; and U.S. Environmental Protection Administration Solid Waste Management Criteria required by the Resource Conservation and Recovery Act of 1976.

Part 360 is designed to regulate the design, construction and operation of all solid waste management facilities and requires filing of a yearly permit application. In the case of landfills, detailed engineering information is required including topography, refuse and sub-soil compositions, leachate, hydrology, and conformance with other environmental laws. In addition, a determination of the future use these extensive areas should have is required.

The Waterfront Revitalization Program recognizes the importance of implementing a well thought out end-use site plan and development program for each landfill. The prototype for such a plan was developed for the Pennsylvania Avenue landfill in Brooklyn (see From Landfill to Park: An Experiment In Construction Waste Management At The Pennsylvania Avenue Landfill Site. New York Department of City Planning, 1974/NYC DCP 21-74). A site plan was developed which integrates maximum future recreational options with landfilling operations. The result has been a much better site design at very little cost.

The New York City Resource Recovery Task Force has completed a comprehensive solid waste management plan which assumed that existing landfills are nearly at their end and focused almost exclusively on finding the best available disposal technologies that recover energy and marketable materials from the solid waste stream. It recommended 11 new resource recovery plants throughout the City to handle all refuse generated here. If implemented as planned, this strategy would greatly reduce the future need for extensive landfill operations, but not eliminate the need entirely since residue/fly ash by-products and construction demolition wastes will still need to be landfilled.

The Resource Recovery Plan is now being updated. The Department of Sanitation has launched a program to bring modern reliable resource recovery plants on line as quickly as possible. The first two resource recovery plants that are in final stages of planning are expected to provide workable solutions to the City's waste disposal problem as well as provide a partial solution to the City's energy problem.

The first is a 3,000 ton per day Resource Recovery Facility in the former Brooklyn Navy Yard (Brooklyn). The Department of Sanitation has selected a resource recovery firm who will design, construct and operate the facility. It is schedueled to be completed and operative by 1987 at an estimated capital cost of $226.0 million. The steam produced by this facility will be sold to Con Edison.

The second resource recovery project is being negotiated with the Power Authority of the State of New York (PASNY) for Hunts Point in the Bronx. PASNY will design, build and operate a 1,700 ton per day facility to generate electricity from refuse. The Department of Sanitation expects to finalize negotiations with the Power Authority in 1982.

A third resource recovery project involves exploring the utilization of methane gas from existing landfills. For example, at Fresh Kills (Staten Island) a private firm - Getty Synthetic Fuel Corporation is constructing a methane gas recovery plant. It is expected to open by the middle of 1982. The Department of Sanitation has also concluded negotiations for building a methane recovery plant at Pelham Bay Landfill in the Bronx.

In the interim, New York City is developing an operational plan for Fresh Kill Landfill, which will include a strategy to accommodate waste disposal need of New York City until Resource Recovery facilities are on line. This operation plan will also upgrade the Fresh Kill site to meet all applicable environmental requirements. The final plan is expected to be completed by early 1983.

A number of factors will contribute to an increase in the amount of refuse and construction/demolition wastes to be disposed within City limits by landfill:

- strict enforcement of Federal air quality standards and New York City Local Law #14 will add an estimated 1,505 tons per day of refuse from the closing of on-site building incinerators;

- the State of New Jersey is expected to prohibit New York and other out-of-State private carters from using its landfills. This will increase daily tonnage from 22,000 tons per day to 25,000 tons per day by 1985; and

- the implementation of major City projects, such as Westway, the Convention Center and the Third City Water Tunnel may increase the construction/demolition wasteload.

The discussion above illustrates the fact that New York City has a critical need to determine optimum capacities for existing landfill sites; there may very well be a need to locate new sites; and, even given immediate implementation of a resource recovery scheme, landfill space will always be needed, if not for the large quantities of generated refuse, then most definitely for the other valueless components (for example, residue from resource recovery facilities) of the solid waste stream.

In addition, to ensure compliance with Waterfront Revitalization goals and objectives and ameliorate existing problems associated with solid waste disposal, the problem of illegal dumping must be resolved.

An estimated 270 tons per day of construction/demolition waste, about 1% of the total solid waste generated in New York City, collected by private cartmen is sold as "clean fill" or illegally dumped in vacant lots, marginal streets or unprotected parks and open spaces. Many private citizens, unaware of the damage caused by this practice also discard refuse illegally.

The New York City Council has recently amended the City Administrative Code (section 755(2)-7.2) increasing the civil penalties (fines, empoundment of vehicles, etc.) and offering an award to anyone providing information that leads to an illegal dumping conviction. The effectiveness of the stricter penalties is not yet known but other preventive measures must be introduced to be effective over the long term, particularily those that attack the problem on a wider front than regulation and enforcement.

Ocean Disposal: Sludge

About 200 dry tons/day of sludge is generated in New York City. When existing wastewater treatment plants are upgraded and construction completed on two new plants (Red Hook and North River), the rate of sludge production is expected to increase to 500-600 dry tons/day.

Ocean Disposal: Dredge Spoils

Historically, New York Harbor has served as a thoroughfare for a significant portion of the nation's waterborne commerce (approximately 12%, over 200 million tons). The harbor is not a naturally deep port. Natural depth averages approximately 18 ft., while channels have approved project depths of 45 feet. Consequently, a network of navigation channels must be continually dredged (from 8 to 10 million cubic yards per year) to accomodate increasingly larger and deeper draft vessels.

Of the eight to ten million cubic yards of material dredged from New York Harbor channels each year, approximately 90 percent has been disposed of at the ocean site commonly known as the "mud dump". An additional two to four million cubic yards per year from private sources have also been disposed of at this site under U.S. Corps of Engineers permits.

The U.S. Army Corps of Engineers and the U.S. Environmental Protection Administration have issued regulations governing disposal of dredged materials pursuant to the Federal Water Pollution Control Act of 1972 as amended, the Marine Protection Research and Sanctuaries Act of 1972 and the Rivers and Harbor Act of 1899.

The adverse environmental consequences of disposing dredged material are being cited by a number of environmental organizations as compelling reasons for a ban on ocean disposal. A number of suits have been filed against the Corps, charging laxity in its procedure for issuing dredging permits.

In addition, as discussed under landfilling above, land disposal within New York City is a limited option when discussing a sizable increase in volumes. The land requirements for disposal of 10 million cubic yards per year are enormous. The economic consequences of a ban on dredging operations in New York Harbor would be disastrous, to the City, region and nation.

The U.S. Corps of Engineers is currently developing a comprehensive environmental report that will discuss, in detail, all feasible methods of dredged material disposal. It will include a review of the environmental, social and economic consequences of each alternative and will be used by the New York District Engineer to decide the course of action to take in regard to the applications for dredged material disposal.

This planning process and forthcoming recommendations must be closely reviewed by the Waterfront Revitalization Program for consistency with program policies, in particular, the balancing of economic and environmental concerns. The Waterfront Revitalization Program may also perform an independent analysis of this problem in conjunction with relevant and public port interests in order to adequately assess recommended alternatives.

AIR QUALITY

On a typical day in New York City, approximately 660,000 vehicles of all types and about 4 million pedestrians use the 200 miles of streets in the Manhattan Central Business District (CBD). A myriad of buses, trucks, autos, cabs and bicycles crowd in the nation's slowest traffic. Air pollution problems are associated with congestion of this magnitude.

All of the State's coastal areas are affected by Federal, State, and City policies to abate and prevent air pollution. The Coastal Management Programs must be coordinated to ensure that each can be effectively utilized to support mutually desirable objectives. New York State's air pollution regulatory programs can be enlisted to achieve coastal management objectives such as protection of habitats or scenic areas. New York City, through its Department of Environmental Protection, have set some of the more stringent air quality standards of any metropolitan area in the country by implementing Local Law 49. At the same time, these programs could conflict with some coastal management objectives such as those related to economic development.

Major air quality management concerns in the coastal area, as elsewhere, are grouped into four general categories: the attainment and maintenance of National Ambient Air Quality Standards as proposed in the State Implementation Plan; protection of clean air areas from significant deterioration; air pollution control problems in rural areas; and control of toxic discharges into the air.

Attainment and Maintenance Of National Air Quality Standards

Under the Federal Clean Air Act, National Ambient Air Quality Standards have been established for seven pollutants. Recent amendments to the Act (1977) require that the compliance status of all areas of the country be determined for five of the seven pollutants. The Act further requires that all areas not in compliance with these pollutant standards be brought into compliance by the end of 1982 or, in special cases, by the end of 1987. The act also requires states to prepare "State Implementation Plans" which detail the mechanisms that will be utilized to attain the standards by the statutory date.

A revision to the State plan has been developed dealing primarily with the transportation control planning element for the New York Metropolitan Air Quality Area. Particular emphasis is placed on solving the problem areas for carbon monoxide and ozone in the congested CBD areas of Manhattan. Revision documents addressing the mass transit improvement requirements of the Clean Air Act and the stationary source control element of the State Implementation Plan will be released in the near future.

The current revision includes many recommendations in complete accord with the New York City Waterfront Revitalization Program. Highlights are offered below.

- The need to reach and maintain air quality goals, should be balanced with land use policies and development controls which sustain the economic development of New York City as one of the world's major urban commercial centers.

- Environmental review procedures will be used to review future land use development and the traffic activity generated. These reviews include the National Environmental Policy Act, the State Quality Review, the City Quality Review and the Uniform Land Use Review Procedure. Also, New York City's Local Law 49, the Air Pollution Control Code, sets standards for controlling the emissions levels of harmful substances such as soot, gases, fumes, odors, products of combustion and incomplete combustion from fuel burning equipment. As part of these processes, major traffic generating projects such as new office buildings and large parking facilities are reviewed for their air quality impacts.

- Replace truck trips with rail for all or part of the movement by increasing rail clearances to allow for trailer-on-flat-car service and improving rail connections to New York City port facilities. To enumerate on these actions, New York State has sponsored an Intermodal Rail Freight Study. This study has indicated the desirability of bringing new intermodal services to the New York City region; and as a result, New York State is spending $8 million for clearance improvements and site preparation to allow trailer-on-flat-car service to High Bridge in the Bronx. These clearance improvements are an initial step in the New York State Department of Transportation program to modernize, expand, and integrate the rail freight system in the New York City region. Through the Intermodal Study, the desirability of further clearance improvements has been affirmed, and New York State will provide a full clearance link between High Bridge and Oak Point Yard. This link will remove clearance restrictions that currently preclude intermodal equipment to enter New York City. Costs of this project are estimated at $25 million. Funds will be sought from Federal, State, local and Port Authority of New York and New Jersey sources. An Environmental Impact Statement has been prepared to discuss impacts which includes the access restrictions along 1.7 miles of the waterfront.

Protection Of Clean Air Areas From Significant Deterioration

The 1977 amendments to the Clean Air Act require a State to protect "clean air areas" from significant deterioration through regulations that classify the entire State into one of three land area classifications based upon allowable deterioration of air quality. This program can be supportive of the overall coastal management environmental goal to preserve, protect, enhance, or restore natural resources. At the present time, all of New York State is classified "Class II" which allows for moderate increases in air pollution. After obtaining agreement from the affected local governments and the

State Legislature, the Governor may redesignate areas as either Class I, where minimal increases in air pollution are allowed, or Class III where substantial increases in air pollution are allowed. The difficulty in obtaining and coordinating all of the approvals and the fact that the quality of air in most coastal locations is too near the established standards to allow full utilization of the increment permissible under Class II indicate that there will be few, if any, redesignations to Class III. Similarly, it is unlikely that there will be any redesignations of areas of the State to Class I, since the State air pollution source review system, other State development review programs, and local land use regulations are more suitable for preserving undeveloped areas than the Prevention of Significant Deterioration program.

PROGRAM POLICIES

This section explains each policy and either lists New York City program policies or indicates that statewide program policies are sufficient to address New York City problems. If New York State policies sufficiently address New York City problems, an explanation is provided that describes how the WRP and the New York State policy are connected. State agencies and programs which may affect the policies are listed with each policy.

An implementation of statewide policies section follows which lists each policy developed by New York State and identifies New York City implementation mechanisms, the relevant city agency (authority) responsible for its implementation. It also details the role of the City Coastal Commission in implementation and enforcement. A discussion of the problem the policy is designed to address and the role of Federal and State agencies in implementing the policy is discussed at length in the New York State Coastal Management Program report, and is therefore only summarized in this City document. State policies are numbered 1 through 44.

If separate New York City policies are listed, each is followed by a brief restatement of the problem it is designed to address, and the New York State Policy it makes more specific is identified. The Federal Consistency Provision of the Coastal Zone Management Act and/or the State Consistency Provision of the Waterfront Revitalization and Coastal Resources Act apply to all policies. However, where recommendations rather than policies are set forth, consistency would only apply if those recommendations were adopted by the Federal or State agency indicated. There is an Implementation Section that details the Federal, State, and City Actions (authorities and programs) which will be involved in implementing the policy. New York City refers to and concurs with the lists in Tables 1 and 2 as those agencies, activities, and projects likely to directly affect the New York City's Waterfront Revitalization Program. The Implementation Section also details the role of the City Coastal Commission in implementing and enforcing the policy. New York City policies are listed by letters A through L.

POLICY 1: RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR COMMERCIAL, INDUSTRIAL, CULTURAL, RECREATIONAL AND OTHER COMPATIBLE USES.

Explanation of Policy

Actions of governmental agencies can further the objectives of this policy. The transfer and purchase of property, the proposed construction of public buildings, a highway or park, or providing tax incentives to businesses are governmental actions which can assist in a waterfront revitalization effort. Uses requiring a location on the shoreline must be given priority in any redevelopment effort.

Revitalization of once dynamic waterfront areas is one of the most effective means of encouraging economic growth in the State, without consuming valuable open space outside of these waterfront areas, and/or fragile coastal areas. As explained in Policy 5, one reason for revitalizing previously active waterfront areas is that the costs for providing basic services to such areas is frequently less than providing new services to areas not previously developed.

New York City Implementation

Numerous New York City agencies have jurisdiction over waterfront development. To address this overlap and provide for consistent review of proposals, New York City has developed a local Waterfront Revitalization Program including a uniform set of policies and plans which will guide and in part promote reutilization and redevelopment of waterfront areas.

Development and funding proposals incorporated in citywide plans, subject to the Uniform Land Use Review Procedures or included in an application to the Board of Standards and Appeals for a variance or special permit will be reviewed for consistency with this policy by the City Coastal Commission.

NEW YORK CITY POLICY A: IMPROVE URBAN SHORELINES BY MAINTAINING, REMOVING OR RECYCLING WATERFRONT STRUCTURES (PIERS, DOCKS, WHARVES, ETC.) IN ACCORDANCE WITH WATERFRONT DEVELOPMENT POLICIES AND PLANS. IDENTIFY ALTERNATIVE USES FOR UNDERUTILIZED WATERFRONT STRUCTURES.

In New York City, physically developed but underused waterfront structures represent a significant public resource endangered by erosion. The public benefits of activities and developments

associated with the removal or recycling of waterfront structures can outweigh other costs. Efforts to rehabilitate the City's waterfront must be consistent with economic and recreational needs, to assure the most productive use of these assets.

Implementation

Federal Actions:

The U.S. Army Corps of Engineers is authorized by Congress to remove the sources of drift in the waterways of New York City in accordance with the New York Harbor Drift Removal Project authorized by section 91 of the Water Resources Development Act of 1974 (Pub L. 93-251), as amended by section 116 of the Water Resource Development Act of 1976.

State Actions:

The New York State Department of Environmental Conservation is authorized to participate in federally authorized projects as stated in New York Unconsolidated Law Chapter 770.

The Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34) contains a provision that, within coastal hazard areas, consideration be given to both public benefits and long range adverse effects of proposed activities and developments which use public funds.

Local Actions:

The New York City Department of Ports and Terminals, Department of Parks and Recreation and Department of Transportation are enpowered to maintain waterfront property (New York City Charter Section 704; New York City Administrative Code Section 532-6.0; New York City Charter Section 2603.c and Section 2603.d).

The City of New York, in its capital budget, allocated local cost-sharing funds to support the Harbor Drift Removal Program. Recommendations for this funding are made in the Capital Needs Statement of the City Planning Commission, acting as the City Coastal Commission for waterfront projects and planning.

Rehabilitation of the urban waterfront is an enormous problem beyond the means of State and local governments. As with beach erosion and hurricane projects, direct federal action must be taken to revitalize the developed city waterfront. While the above-mentioned Drift Removal Project aids in addressing the need for removal of damaged waterfront structures, it falls short of a comprehensive solution of maintaining waterfront structures affected by structural erosion.

It is recommended that the Harbor Drift Removal Program be modified to include funding for rehabilitation of structures identified as appropriate for alternate uses. The City Coastal Commission may utilize CZM Act implementation funds to assess the technical feasibility of alternate uses for existing structures.

POLICY 2: FACILITATE THE SITING OF WATER DEPENDENT USES AND FACILITIES ON OR ADJACENT TO COASTAL WATERS.

Explanation of Policy

Waterfront space suitable for development is limited. Although demand for a specific piece of property will vary with economic and social conditions, on both a citywide and statewide basis, long-term expectations are for increased demand for waterfront property.

Traditional market forces and local land use controls do not by themselves insure that uses which require waterfront sites will in fact, have access to coastal waters. Government, through its funding and review actions, can discourage the location of non-water dependent uses on coastal sites suitable for water dependent uses.

In addition to water dependent uses, uses which are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water dependent uses. If there is no immediate demand for a water dependent use in a given area but a future demand is reasonably foreseeable, temporary non-water dependent uses should be considered preferable to a non-water dependent use which envolves an irreversible, or nearly irreversible commitment of land.

New York City Implementation

The New York City Zoning Resolution currently contains provisions which aid implementation of this policy. To preserve manufacturing areas for industrial growth and expansion, three manufacturing zoning districts (M1, M2, and M3) were created. Water-dependent uses have traditionally located in these areas to provide services to the shipping industry. Retail and commercial uses are also permitted in manufacturing districts.

A C3 (commercial) district is also specifically designed to provide locational priority for boating and fishing uses. Typical development includes marinas, boat repair shops and public or private beaches.

A purpose of the Zoning Resolution Special City Island District is to "promote and strengthen the unique character of the Special City Island district for nautical and waterfront activities by limiting permitted uses to those which complement and enhance the existing character of the Special District."

The City Coastal Commission will review development and funding proposals incorporated in citywide plans, subject to the Uniform Land Use Review Procedures or included in an application to the Board of Standards and Appeals for a variance or special permit for consistency with this policy.

NEW YORK CITY POLICY B: IMPROVE CHANNELS AS NECESSARY TO MAINTAIN AND STIMULATE ECONOMIC DEVELOPOMENT.

Explanation of Policy

The process by which Federal projects are implemented is time consuming. Often a period of five years or more passes between the time that a proposal is brought to the Corps of Engineers and the proposal is authorized by Congress and work is begun. It is essential therefore to anticipate, at the earliest possible date, waterfront land use activity triggering the need to modify existing Federal projects or establish new projects.

This policy adds specificity to New York State Policy 2. It identifies the need to develop or modify Federal waterways on a timely basis and where needed to support water dependent uses.

Implementation

Federal Actions:

Pursuant to the Rivers and Harbors Act of 1899, as amended (33 USC 540 et. seq) jurisdiction for Federal investigations and improvement of rivers, harbors and other waterways lies with the U.S. Army Corps of Engineers. Investigations are conducted by the Board of Engineers and findings are submitted to the Public Works Committees of the Houses of Congress. Congressional authorization and appropriation of funds is then required for project initiation.

Local Actions:

Local interests must request the initiation of an investigation by the U.S. Army Corps of Engineers. Government bodies with the authority to

insure local cooperation in implementing projects is required. Pursuant to its wide-ranging power to regulate waterfront property and certain waterfront structures, the New York City Department of Ports and Terminals acts as the lead agency in New York City to insure the required local cooperation.

The Department of City Planning will periodically assess the current and anticipated navigation needs of waterborne commerce in New York Harbor.

POLICY 3: PROMOTE THE DEVELOPMENT AND USE OF THE STATE'S MAJOR PORTS AS CENTERS OF COMMERCE AND INDUSTRY, EMPHASIZING THE SITING, WITHIN PORT AREAS, OF LAND USE AND DEVELOPMENT WHICH IS NECESSARY TO, OR IN SUPPORT OF, THE WATERBORNE TRANSPORTATION OF CARGO AND PEOPLE.
THE STATE'S MAJOR PORTS ARE THE PORTS OF ALBANY, BUFFALO, NEW YORK, OGDENSBURG, AND OSWEGO.

Explanation of Policy

The aim of this policy is to focus efforts on direct and positive actions to support the major port agencies, the New York City Department of Ports and Terminals and the Port Authority of New York and New Jersey, in order to promote their continued and increased vitality. Three other development policies, discussed in this section, have significant implications for port development, namely: water dependency, concentration of development, and the expediting of permit reviews.

If an action is proposed for a site within or abutting a major port, or if there is a reasonable expectation that a proposed action elsewhere would have an impact on a major port, then the following guidelines shall be used:

1. In assessing proposed projects within or abutting a major port, the overriding consideration is the maintenance and enhancement of port activity which will have precedence over other, non-port related activities.

2. Dredging to maintain the economic viability of major ports will be regarded as an action of regional or statewide public benefit if: a need is shown for maintaining or improving the established alignment, width, and depth of existing channels; and, it can be demonstrated that environmental impacts will be minimized.

3. Landfill projects in the near-shore areas will be regarded as an acceptable activity within major port areas, provided adverse environmental impacts are minimized and a strong economic justification is demonstrated.

4. If non-port related activities within a major port are proposed to be located in or near to the port, these uses shall be sited so as not to interfere with normal port operations.

5. When not already restricted by existing laws or convenants, and when there is no regional or statewide public benefit to doing otherwise, surplus public land or facilities within or adjacent to a major port shall be offered for sale, in the first instance, to the appropriate port agencies.

6. In the programming of capital projects for port areas, highest priority will be given to projects that promote the development and use of the port. However, in determining such priorities, consideration must also be given to non-port related interests within or near the ports that have demonstrated critical capital programming needs.

7. No buildings, piers, wharves, or vessels shall be abandoned or otherwise left unused by a public agency or sold without provisions for maintenance in sound condition or for environmentally acceptable demolition or removal.

8. Proposals for the development of new major ports will be assessed in terms of the anticipated impacts on: a) existing New York State major ports; b) existing modes of transportation; and c) the surrounding land uses and overall neighborhood character of the area in which the proposed port is to be located.

9. Port development shall provide opportunities for public access insofar as these opportunities do not interfere with the day-to-day operations of the port and the port agency and its tenants do not incur unreasonable costs.

New York City Implementation

The New York City Department of Ports and Terminals has a number of discrete responsibilities with regard to waterfront commerce and industry: it plans through the modification of the City's waterfront plans; it manages City-owned waterfront commerce property; it develops City-owned waterfront property; it regulates all waterfront commerce development and use; and, it promotes New York Harbor as a center of commerce and industry. Those actions of the Department which are subject to review by the City Coastal Commission will be reviewed for consistency with this policy.

The Port Authority of New York and New Jersey was created to promote the Port of New York District, which covers an area between a 20 and 30 mile radius from the Statue of Liberty. The Authority is a public corporation, created by a compact between the States of New York and New Jersey, and empowered to purchase, construct, lease, and operate any terminal or transportation facility within the Port District.

The Port Authority is probably the largest entity involved in developing and operating marine terminals and related facilities in the Port of New York. On the New York side of the harbor the Port Authority owns and operates the Brooklyn-Port Authority Piers and operates the passenger ship terminal and the Red Hook container terminal. To ensure effective interface between the Port Authority and State and local waterfront revitalization programs the Port Authority's development plans and activities within coastal boundaries will be subject to review by the Secretary of State and the City Coastal Commission.

The port system of the New York City coastal region is a component of the 1,500 square mile Port District of New York encompassing 17 counties and 234 municipalities in New York and New Jersey. Individual ports within this area compete for similar market areas, many public and private entities are involved in the development and/or operation of facilities; and local, statewide and regional forecasters use varying methods of determining capacities, freight forecasting, cargo flows, etc. Within such a context it is difficult for a municipality to assess the cargo handling capacity of port facilities, predict locational requirements or insure the development of needed, economically efficient and environmentally responsive port facilities.

Therefore, it is recommended that a New York Port District regional port study be undertaken to provide baseline data to assist in identifying the long-term needs of the port industry and effectively interface the land use policy of the City with the City's port policy. Federal Coastal Management funds may be used to support such a study. The New York City Department of Ports and Terminals would be the appropriate agency to undertake such a task in cooperation with other municipalities in the New York Port District. Appropriate Federal and State agencies may support a study of this nature, because of the regional importance of the port and because of study of this type has never been done.

POLICY 4: STRENGTHEN THE ECONOMIC BASE OF SMALLER HARBOR AREAS BY ENCOURAGING THE DEVELOPMENT AND ENHANCEMENT OF THOSE ACTIVITIES WHICH HAVE PROVIDED SUCH AREAS WITH A UNIQUE IDENTITY.

Explanation of Policy

This policy recognizes that the traditional activities occurring in and around numerous smaller harbors throughout the State's coastal area contribute much to the economic strength and attractiveness of these harbor communities. Thus, efforts of State agencies shall center on promoting such desirable activities as recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits, and other compatible activities which have made smaller harbor areas appealing as tourist destinations and as commercial and residential areas. Particular consideration will be given to the visual appeal and social benefits of smaller harbors which, in turn, can make significant contributions to the State's tourism industry.

The following guidelines shall be used:

1. The action shall give priority to those traditional and/or desired uses which are dependent on or enhanced by a location adjacent to the water.

2. The action will enhance or not detract from or adversely effect existing traditional and/or desired anticipated uses.

3. The action shall not be out of character with, nor lead to development which would be out of character with, existing development in terms of the area's scale, intensity of use, and architectural style.

4. The action must not cause a site to deteriorate, e.g., a structure shall not be subject to vandalism and/or structural decline.

5. The action will not adversely affect the existing economic base of the community, e.g., waterfront development designed to promote residential development might be inappropriate in a harbor area where the economy is dependent upon tourism and commercial fishing.

6. The action will not detract from views of the water and smaller harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity.

New York City Implementation

Special district zoning, the most widely used affirmative zoning technique in New York City will be an effective means of implementing this policy. This technique permits special areas, with their unique characteristics, to flourish rather than be overwhelmed by standard development.

New York City Implementation

The New York City Zoning Resolution currently provides the means to channel growth within New York City to appropriate areas, thereby implementing this policy. For example, growth in less dense areas of the City (Staten Island) is governed by Special Zoning Districts designed to limit density and preserve natural features (Special Natural Area District). Another is designed to systematically guide development of predominantly vacant land in southern Staten Island to maintain densities and insure that new development is compatible with existing communities (Special South Richmond Development District). Such water-dependent uses as shipping and shipbuilding and repairs are designated uses in M3 zoning districts which are often located along the waterfront.

The City Planning Commission, as the City Coastal Commission, will continue to administer provisions of the Zoning Resolution in accordance with this policy. In addition, the City Coastal Commission will review development and funding proposals incorporated in citywide plans, subject to the Uniform Land Use Review Procedures or included in an application to the Board of Standards and Appeals for a variance or special permit for consistency with this policy.

POLICY 6: EXPEDITE EXISTING PERMIT PROCEDURES IN ORDER TO FACILITATE THE SITING OF DEVELOPMENT ACTIVITIES AT SUITABLE LOCATIONS

Explanation of Policy

For appropriate types of development activities and in areas suitable for such development, New York City as a participant in the Waterfront Revitalization Program, will to the maximum extent practicable, coordinate and synchronize existing permit procedures and regulatory programs, as long as the integrity of the regulations objectives is not jeopardized.

New York City Implementation

A City Coastal Commission will act as a coordinating body to facilitate the streamlining of permitting procedures in the New York City Coastal Zone by, for example, reducing overlapping permitting requirements and coordinating review by all agencies involved in waterfront project review. The Department of City Planning as the staff of the City Coastal Commission will be responsible for coordinating project reviews among involved City agencies.

Special zoning districts have been established to achieve specific planning and urban design objectives in limited areas. Two existing special zoning districts, the Special City Island District and the Special Sheepshead Bay District were established to maintain certain characteristics related to waterfront land use and activities. The establishment of the Special Sheepshead Bay District was, among other purposes, intended "to promote and strengthen the unique character of the Special Sheepshead Bay District area as a prime location for waterfront related commercial and recreational development..." A principal purpose of the Special City Island District is "to promote and strengthen the unique character of the district for nautical and waterfront activities..." The City Coastal Commission will continue to enforce these special provisions in the unique harbor areas of the City.

POLICY 5: ENCOURAGE THE LOCATION OF DEVELOPMENT IN AREAS WHERE PUBLIC SERVICES AND FACILITIES ESSENTIAL TO SUCH DEVELOPMENT ARE ADEQUATE.

Explanation of Policy

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, large scale development in the coastal area will be encouraged to locate within, contiguous to, or in close proximity to, existing areas of concentrated development where infrastructure and public services are adequate, where topography, geology, and other environmental conditions are suitable for and able to accommodate development, and where development will not have significant adverse effects on the achievement of other coastal policies.

The above policy is intended to accomplish the following:

- strengthen existing residential, industrial, and commercial centers;
- foster an orderly pattern of growth where outward expansion is occurring;
- increase the productivity of existing public services and moderate the need to provide new public services in outlying areas;
- preserve open space in sufficient amounts and where desirable;
- foster energy conservation by encouraging proximity between home, work, and leisure activities.

POLICY 7: SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS WILL BE PROTECTED AND PRESERVED SO AS TO MAINTAIN THEIR VIABILITY AS HABITATS.

Explanation of Policy

Land and water uses or development shall not be undertaken if such actions destroy or significantly impair the viability of an area designated a significant coastal fish and wildlife habitat. When the action causes the elimination of a vital resource (e.g., food, shelter, living space) or a change in environmental conditions (e.g., temperature, substrate, salinity) beyond the tolerance range of an organism, then the action would be considered to "significantly impair" the habitat. Indicators of a significantly impaired habitat include but are not limited to: reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

New York City Implementation

The New York City Zoning Resolution currently includes provisions which implement this policy. Pursuant to Article X of the Resolution, Special Natural Area Districts were established in which development can occur only upon the issuance of a special permit by the New York Planning Commission. The purpose of the district, among others, is to preserve natural features by limiting modifications in topography and by preserving plant and marine life.

Special Natural Area Districts have been mapped in the greenbelt area of Staten Island and in Riverdale (Bronx). These areas are endowed with steep slopes, rock outcrops, creeks and a variety of botanic environments. After field checking, identified State fish and wildlife areas may be added to the Special Natural Area Districts section of the Zoning Resolution, where appropriate.

Another example is the Special South Richmond Development District established to systematically guide development of predominantly vacant land in the southern half of Staten Island. The District mandates tree preservation, planting requirements, topography change controls and the restriction of construction within designated open space.

The City Planning Commission, as the City Coastal Commission, will continue to administer the Zoning Resolution in conformance with this policy.

POLICY 8: PROTECT FISH AND WILDLIFE RESOURCES IN THE COASTAL AREA FROM THE INTRODUCTION OF HAZARDOUS WASTES AND OTHER POLLUTANTS WHICH BIOACCUMULATE IN THE FOODCHAIN OR WHICH CAUSE SIGNIFICANT SUBLETHAL OR LETHAL EFFECT ON THOSE RESOURCES.

Explanation of Policy

Hazardous wastes are unwanted by-products of manufacturing processes generally characterized as being flammable, corrosive, reactive, or toxic. More specifically hazardous waste is defined in Environmental Conservation Law [Section 27-0901(3)] as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitate reversible illness; or (2) poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or otherwise managed. "A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

New York City Implementation

The New York City Department of Health enforces the New York City Health Code. Enforcement of the Health Code involves the Department in housing and institutional inspections and gives it wide licensing and permit authority to prevent the introduction of toxic substances and other pollutants into valuable habitats. Proposed private sewage disposal systems; the alteration or construction of sewage disposal systems which discharge wastes into the City's waterways; the siting, construction and alteration of bathing establishments and beaches; sewer connections; and septic tank constructions are also regulated by the Department.

The City Environmental Quality Review or Executive Order 91, implemented by the Department of City Planning and Department of Environmental Protection, considers the impact of development on the environment as it affects the removal or destruction of large quantities of vegetation or fauna. The Department of Health is routinely consulted as the expert on hazardous waste matters during the CEQR review process. Adherence to this policy by the Department of Health will, therefore, be assured through this review process.

POLICY 9: EXPAND RECREATIONAL USE OF FISH AND WILDLIFE RESOURCES IN COASTAL AREAS BY INCREASING ACCESS TO EXISTING RESOURCES, SUPPLEMENTING EXISTING STOCKS AND DEVELOPING NEW RESOURCES.

Explanation of Policy

The New York State Department of Environmental Conservation is authorized to manage the State's fish and wildlife resources. Any efforts to increase recreational use of fish and wildlife, whether through private or public sector initiatives, must be done in accordance with existing state law and in keeping with sound resource management considerations. Such considerations include: biology of the species, carrying capacity of the habitat, public demand, costs, and available technology.

New York City Implementation

The New York City Zoning Resolution currently includes provisions which are used to provide access to public lands. For example, the Special South Richmond Development District restricts construction within a designated open space (which is a defined network of landscaped open space with paths and green areas to be preserved) in order to provide access to waterfront areas. The City Planning Commission, while administering the Zoning Resolution also utilizes restrictive declarations to require that certain amenities, such as access to public lands, be a part of appropriate development proposals.

The Commission, as the City Coastal Commission, will continue to utilize these techniques to ensure implementation of this policy.

The City Environmental Quality Review, or Executive Order 91, implemented by the Department of City Planning and Department of Environmental Protection, considers the impact of development on the environment as it affects the removal or destruction of large quantities of vegetation or fauna.

Also, the New York City Department of Ports and Terminals has the authority to manage the wharf and waterfront property owned or possessed by the City. It may also grant a one-year terminable use permit to use any of the City's wharf property. The Department's policy is to require provisions for public access to and along the waterfront when appropriate.

POLICY 10: FURTHER DEVELOP COMMERCIAL FINFISH, SHELLFISH AND CRUSTACEAN RESOURCES IN THE COASTAL AREAS BY ENCOURAGING THE CONSTRUCTION OR IMPROVEMENT OF EXISTING ON-SHORE COMMERCIAL FISHING FACILITIES, INCREASING MARKETING OF THE STATE'S SEAFOOD PRODUCTS, MAINTAINING ADEQUATE STOCKS AND EXPANDING AGRICULTURE FACILITIES.

Explanation of Policy

Commercial fishery development activities must occur within the context of sound fishery management principals developed and enforced within the State's waters by the New York State Department of Environmental Conservation and the Regional Fishery Management plans developed by the Regional Fishery Management Councils within the Fishery Conservation Zone.

New York City Implementation

The New York City Department of City Planning, when identifying sites suitable for the location of Outer Continental Shelf oil and gas support facilities, determined that infrastructure requirements for commercial fisheries facilities were similar. Six sites were identified which are suitable for locating or co-locating either industry: the Brooklyn Navy Yard, the Northeast Marine Terminal, the Brooklyn Army Terminal, and Erie Basin in Brooklyn; St. George and Stapleton in Staten Island. Of these sites, the 1980 waterfront study funded by CZM, supports the development of Erie Basin in Brooklyn as the most viable choice in terms of physical characteristics and overall construction costs. The study suggests that a staged development of Erie Basin would be the most cost-effective approach because the project would expand with the growth of the fishing industry.

This work will be utilized by the New York City Planning Commission, as the City Coastal Commission, to identify and reserve waterfront locations to accommodate uses such as fish processing plants, per New York State Executive Law, Article 40.

POLICY 11: BUILDINGS AND OTHER STRUCTURES WILL BE SITED IN THE COASTAL AREA SO AS TO MINIMIZE DAMAGE TO PROPERTY AND THE ENDANGERING OF HUMAN LIVES CAUSED BY FLOODING AND EROSION.

Explanation of Policy

On coastal lands identified as coastal erosion hazard areas, buildings and similar structures shall be set back from the shoreline a distance sufficient to minimize damage from erosion unless no reasonable prudent alternative site is available as in the case of piers, docks and other structures necessary to gain access to coastal waters to be able to function.

New York City Implementation

Refer to New York City Policies C, D, and E below. Those policies add specificity to NYS Policy 11 by addressing erosion protection of

private shores and the commitment of technical assistance to private property owners.

In addition, the Department of City Planning has received Coastal Zone Management planning (305) funds to identify, in cooperation with the New York State Department of Enviromental Conservation, critical erosion hazard and structural erosion areas in New York City. This information will be used to develop and implement an erosion hazard area ordinance as required by Environmental Conservation Law, Article 34.

This law provides for the identification of areas that are subject to critical erosion and for regulation of new development to prevent significant damage in the future.

Where no erosion protection structures have been built, the guidelines would:

- require new development to be set back from the shore sufficiently to prevent damage from erosion over at least a 30 year period;

- insure that new development does not unreasonably increase the severity of erosion to other lands because of alteration of land areas that provide erosion protection; and,

- require land restoration or stabilization activities to be used, as may be necessary, when new development occurs, to make sure that damages resulting from the erosion of other lands are minimized.

Where erosion protection structures are required, the above would not apply, but the guidelines would contain criteria for the design of structures so that they would have a reasonable probability of controlling erosion for a period of at least thirty years, and of not increasing erosion on other lands.

The City Coastal Commission will work with New York State to develop reasonable rules and regulations for the City's waterfront areas and thereafter assume administration of this program within the City.

The City Environment Quality Review (CEQR) process requires all actions subject to the City's Uniform Land Use Review Procedure (ULURP) to be investigated for a determination of significance regarding adverse environmental impacts, (Executive Order 91).

CEQR criteria states that:

> "Any action may have a significant effect on the environment if it can... lead to...A substantial adverse change in erosion or flooding...[or] The creation of a hazard to human health or safety." (Executive Order 91, Section 6)

This process, therefore, will be used by the City Coastal Commission to reinforce the objectives of the Erosion Hazard Area Ordinance during the review of proposals.

NEW YORK CITY POLICY C: PROVIDE SHOREFRONT PROTECTION AGAINST COASTAL EROSION HAZARDS WHERE THERE IS PUBLIC BENEFIT AND PUBLIC USE ALONG NON-PUBLIC SHORES.

Public access and use has been assured along much of New York City's shorefront, especially in southeastern Staten Island. While much of these areas are not publicly owned, public benefit is derived from their use. Their protection should be assured for future generations.

This policy adds specificity to Policies 11 and 16 by providing erosion protection and by identifying a particular public resource endangered by erosion. Local implementation is detailed below.

Implementation

Federal Actions:

As outlined under Policy 1, the Army Corps of Engineers is authorized by Congress to design and construct erosion control projects. Regulations developed by the Corps of Engineers recognize the value of mitigating the effects of erosion where there is a public interest or benefit. However, priority has been given to public areas to such a degree that a project has never been initiated for other than publicly owned areas.

State Actions:

The Department of Environmental Conservation has the authority to participate in federally authorized projects. In addition, the State's Coastal Erosion Hazard Areas Act, Environmental Conservation

Law (Article 34) provides for the identification, mapping and designation of coastal erosion hazard areas by the State in cooperation with local governments. Further, this state act contains a provision that, within identified coastal erosion hazard areas, consideration is to be given to both the public benefits and long range adverse effects of proposed activities which use public funds.

Local Actions:

The City Coastal Commission will develop a local erosion hazard area ordinance as required by Environmental Conservation Law, Article 34. This work will include the identification of private shores used for the benefit of the public. At such time as this policy would become enforceable at the City level and amended to the State program, consistency provisions would apply.

NEW YORK CITY POLICY D: PROVIDE TECHNICAL ASSISTANCE FOR THE IDENTIFICATION AND EVALUATION OF EROSION PROBLEMS, AS WELL AS THE DEVELOPMENT OF EROSION CONTROL PLANS ALONG PRIVATELY-OWNED ERODING SHORES.

Existing Federal and State programs for erosion control do not provide funding for mitigation of problems along private shorefront. Consequently, little effort has been made to assist private efforts to provide erosion control protection for private structures. Neglecting these problems or allowing privately designed mitigation measures frequently has adverse impacts on adjacent shores and public property.

This policy also adds specificity to State Policies 11 and 16 since it addresses erosion protection for private property which may impact other sites. It also identifies a practice which adversely affects resources of public benefit. Local implementation is detailed below.

Implementation

State Actions:

New York State Environmental Conservation Law, Article 34 provides that erosion protection structures shall have a "reasonable probability" of controlling long term erosion on the site.

Local Actions:

The City Coastal Commission, using Federal Coastal Zone Management Act funds, may provide technical assistance to private property owners to identify erosion problems, develop mitigation measures and assess or monitor impacts of proposed projects.

NEW YORK CITY POLICY E: IMPLEMENT PUBLIC AND PRIVATE STRUCTURAL FLOOD AND EROSION CONTROL PROJECTS ONLY WHEN:

- PUBLIC ECONOMIC AND ENVIRONMENTAL BENEFITS EXCEED PUBLIC ECONOMIC AND ENVIRONMENTAL COSTS;
- NON-STRUCTURAL SOLUTIONS ARE PROVEN TO BE INEFFECTIVE OR COST PROHIBITIVE;
- PROJECTS ARE COMPATIBLE WITH OTHER COASTAL MANAGEMENT GOALS AND OBJECTIVES, INCLUDING AESTHETICS, ACCESS AND RECREATION;
- ADVERSE ENVIRONMENTAL IMPACTS ARE MINIMIZED;
- NATURAL PROTECTIVE FEATURES ARE NOT IMPAIRED; AND,
- ADJACENT (DOWNDRIFT) SHORELINES ARE NOT ADVERSELY AFFECTED.

In New York City, funding for publicly sponsored projects and the range of acceptable protection measures is limited while the potential for environmental degradation and damage to public and private property is great. Much of the City's coastal areas lie in flood plains yet are heavily developed.

In most cases, structural protection measures are necessary to protect existing property from storm related damages.

This policy adds specificity to State Policies 11, 12, 13, 14, 15, 16, and 17 by identifying potential problems associated with structural flood control projects. These state policies address the siting of activities and developments in hazard areas.

Structures are sited to minimize damage caused by erosion, so that:

- Adverse effects are minimized on natural protective features (Policy 12);
- There will be no measureable increase in erosion nor flooding at other locations (Policy 14):
- Public benefits exceed other costs (Policy 16); and
- Non-structural measures are used whenever possible (Policy 17). Implementation will be as detailed below.

Implementation

Federal Actions:

It is the policy of the U.S. Army Corps of Engineers to undertake projects to prevent erosion and flooding of coastal areas when such

projects best serve the public interest, (33 U.S.C. Section 282). The U.S. Army Corps of Engineer is authorized by Congress to study and construct flood control projects that are structurally feasible and economically justified, where project costs exceed $1,000,000 (33 U.S.C. Section 541). Small flood control projects are authorized by section 205 of the Flood Control Act of 1948, 33 U.S.C. Section 701-s, where project costs do not exceed $1,000,000.

State Actions:

The New York State Department of Environmental Conservation is authorized to participate in federally authorized projects as provided in Article 16 of the State Environmental Conservation Law.

The Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34) outlines standards and criteria for the promulgation of regulations which will require that activities and development will have minimal adverse effects on natural protective features, that erosion of other lands do not measurably increase, and that public benefits and long range adverse effects of development are considered.

The State Environmental Quality Review Act requires a disclosure and minimizing of adverse environmental impacts.

The Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42), Section 912(5) states in part that it is public policy "to minimize damage to natural resource and property from flooding and erosion [through the] use of non-structural measures whenever possible."

Local Actions:

Municipalities are authorized to participate with the State in Federal flood control projects (Environmental Conservation Law-Article 16).

Because of the enormous cost of erosion control projects, Federal and State participation are virtually mandatory. However, initiation of Corps of Engineers involvement is a complicated procedure.

In order to help streamline the procedure it is recommended that a petition to investigate by the Secretary of State or the City Coastal Commission be sufficient to trigger a Corps of Engineer investigation.

In addition the City Coastal Commission will be developing and implementing an erosion hazard area ordinance consistent with Environmental Conservation Law, Article 34, which requires standards and criteria for flood control projects as listed above.

The City's Environmental Quality Review process (Executive Order 91) stipulates that consideration be given to changes in flooding and erosion and to human health or safety for proposed projects.

POLICY 12: ACTIVITIES OR DEVELOPMENT IN THE COASTAL AREA WILL BE UNDERTAKEN SO AS TO MINIMIZE THEIR ADVERSE EFFECTS UPON NATURAL FEATURES WHICH PROTECT AGAINST FLOODING AND EROSION.

Explanation of Policy

Beaches, dunes, barrier islands and other natural protective features help safeguard coastal lands and property from damage, as well as reduce the danger to human life, resulting from flooding and erosion. Their excavation, or improperly designed structures, inadequate site planning, or other similar actions, which fail to recognize their fragile nature and high protective values, lead to weakening or destruction of those landforms. Activities or development in, or in proximity to, natural protective features will be permitted only if it can be demonstrated that all responsible means have been taken to mitigate their adverse effects upon those landforms.

New York City Implementation

Refer to New York City Policy E which outlines criteria under which structural flood control projects (a specific type of activity) will be reviewed by the City Coastal Commission.

The City Coastal Commission will be developing an erosion hazard ordinance as required by Environmental Conservation Law, Article 34 which outlines standards and criteria for the promulgation of regulations which will require that activities or developments will have minimal adverse effects on natural protective features.

The City Environmental Qaulity Review (CEQR) criteria stipulate that a project may have a significant effect on the environment if it leads to:

> "A substantial adverse change to erosion or flooding,.... The removal or destruction of large quantities of vegetation [which acts as a natural flood and erosion buffer or] the creation of a hazard to human health or safety."
> (Executive Order 91, Section 6)

POLICY 13: THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES SHALL BE UNDERTAKEN ONLY IF THEY HAVE A REASONABLE PROBABILITY OF CONTROLLING EROSION FOR AT LEAST THIRTY YEARS AS DEMONSTRATED IN DESIGN AND CONSTRUCTION STANDARDS AND/OR ASSURED MAINTENANCE OR REPLACEMENT PROGRAMS.

Explanation of Policy

Erosion protection structures are widely used throughout the coastal areas. However, because of improper design, construction and maintenance standards, many fail to give the protection which they were presumed to provide. As a result, development is sited in areas where it is subject to damage or loss due to erosion. This policy will ensure the reduction of such damage or loss.

New York City Implementation

Refer to New York City Policy G. This policy adds specificity to Policy 13 requiring continuous maintenance of public beaches.

In addition New York City Policy D provides for technical assistance for individuals in addressing erosion control problems.

POLICY 14: ACTIVITIES AND DEVELOPMENT INCLUDING THE CONSTRUCTION OR RECONSTRUCTION OF EROSION PROTECTION STRUCTURES, SHALL BE UNDERTAKEN SO THAT THERE WILL BE NO MEASUREABLE INCREASE IN EROSION NOR FLOODING AT THE SITE OF SUCH ACTIVITIES NOR DEVELOPMENT AT OTHER LOCATIONS.

Explanation of Policy

Erosion and flooding are processes which occur naturally. However, by his actions, man can increase the severity and adverse effects of those processes, causing damage to, or loss of property, and endangering human lives. Those actions include: the use of erosion protection structures such as groins, or the use of impermeable docks which block the littoral transport of sediment to adjacent shorelands, thus increasing their rate of recession; the failure to observe proper drainage or land restoration practices, thereby causing run-off and the erosion and weakening of shorelands; the placing of structures in identified floodways so that the base flood level is increased causing damage in otherwise hazard-free areas.

New York City Implementation

Refer to New York City Policy E which specifies that erosion control structures can only be constructed if they do not adversely affect adjacent shorelines. Further, the Department of City Planning will be developing an erosion hazard area ordinance which will be in conformance with the State's Environmental Conservation Law, Article 34. This law provides for minimum standards and criteria that are to be used to condition or modify a proposal, which include regulation of activities or developments, including the placement of erosion protection structures so there will be no measureable increase in erosion to the development site or at other locations.

The City Environmental Quality Review (CEQR) criteria stipulate that a proposal may have a significant effect on the environment if it creates "a substantial adverse change to erosion or flooding," (Executive Order 91, Section 6).

POLICY 15: MINING, EXCAVATION, OR DREDGING IN COASTAL WATERS SHALL NOT SIGNIFICANTLY INTERFERE WITH THE NATURAL COASTAL PROCESSES WHICH SUPPLY BEACH MATERIALS TO LAND ADJACENT TO SUCH WATERS AND SHALL BE UNDERTAKEN IN A MANNER WHICH WILL NOT CAUSE AN INCREASE IN EROSION OF SUCH LANDS.

Explanation of Policy

Coastal processes including the movement of beach materials by water, and any mining or excavation in nearshore or offshore waters which change the supply and net flow of such materials can deprive shorelands of their natural regenerative powers. Such mining and excavation should be accomplished in a manner so as not to cause a reduction of supply, and thus an increase of erosion, to such shorelands.

New York City Implementation

The New York City Department of Ports and Terminals is authorized to issue permits for dredging, mining and excavation along the shore. When dredging is essential for beach nourishment, navigation, flow control, pollutant removal, water-dependent uses, etc., consideration will be given to the possible adverse effects on environmental resources.

Adherence to this policy by the Department of Ports and Terminals will be assured by the City Coastal Commission's review of dredging requests not regulated by as-of-right provisions in the City Zoning Resolution.

In addition, as indicated for other policies above, the City Environmental Quality Review (CEQR) process requires consideration of actions which may have a significant effect on the environment if they lead to a substantial change in erosion or flooding, (Executive Order 91, Section 6).

POLICY 16: PUBLIC FUNDS SHALL BE EXPENDED FOR ACTIVITIES AND DEVELOPMENT, INCLUDING THE CONSTRUCTION OR RECONSTRUCTION OF EROSION CONTROL STRUCTURES, ONLY WHERE THE PUBLIC BENEFITS CLEARLY OUTWEIGH THEIR LONG TERM MONETARY AND OTHER COSTS INCLUDING THEIR POTENTIAL FOR INCREASING EROSION AND THEIR ADVERSE EFFECTS ON NATURAL PROTECTIVE FEATURES.

Explanation of Policy

Public funds are used for a variety of purposes on the shorelines. This policy recognizes the public need for the protection of human life, existing investment in development or new development which requires a location in proximity to the coastal area or in adjacent waters. However, it also recognizes the adverse impacts of such activities and development on the rate of erosion and on natural protective features and requires that careful analysis be made of such benfits and long-term costs prior to expending public funds.

New York City Implementation

Refer to City Policies A, C, D, E, and G. Those policies add specificity to Policy 16 by the following:

- identifying particular public resources endangered by erosion where public benefits are likely to outweigh other costs (Policies A and C);
- addressing erosion protection on private property which can impact public lands (Policies C and D);
- Allowing structural flood control projects only when public benefits exceed public economic and environmental costs (Policy E); and,
- providing for improvements to urban shorelands which represent a significant public resource (Policy G).

In addition, the City will be developing and implementing an erosion hazard ordinance which will conform to the Environmental Conservation Law, Article 34.

This Law allows for proposed activities and development where public funds are utilized when the public benefits clearly outweigh long range adverse effects.

POLICY 17: NON-STRUCTURAL MEASURES TO MINIMIZE DAMAGE TO NATURAL RESOURCES AND PROPERTY FROM FLOODING AND EROSION SHALL BE USED WHENEVER POSSIBLE.

Explanation of Policy

This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the coastal area, as well as the costs of protection against those hazards which structural measures entail.

New York City Implementation

Refer to City Policy E. This policy allows structural flood control projects when non-structural solutions are proven to be ineffective or cost prohibitive.

POLICY 18: TO SAFEGUARD THE VITAL INTEREST OF THE STATE OF NEW YORK AND OF ITS CITIZENS IN THE WATERS AND OTHER VALUABLE RESOURCES OF THE STATE'S COASTAL AREA, ALL PRACTICABLE STEPS SHALL BE TAKEN TO ENSURE THAT SUCH INTERESTS ARE ACCORDED FULL CONSIDERATION IN THE DELIBERATIONS, DECISIONS AND ACTIONS OF STATE AND FEDERAL BODIES WITH AUTHORITY OVER THOSE WATERS AND RESOURCES.

Explanation of Policy

The State of New York is concerned that such deliberations, decisions and actions, and resultant programs or projects, may be undertaken in a manner which will impair significantly the value and use of those waters and resources and frustrate the State's achievement of the purposes of those safeguards which it has established to protect them.

New York City Implementation

The City Coastal Commission, through ULURP, CEQR, the Zoning Resolution, and the Capital Needs Statement will review planning efforts, applications, and development for the safety and welfare of New York City citizens and for its waterfront.

POLICY 19: PROTECT, MAINTAIN AND INCREASE THE LEVEL AND TYPES OF ACCESS TO PUBLIC WATER-RELATED RECREATION RESOURCES.

Explanation of Policy

This policy calls for achieving balance among the following factors: the level of access to a resource or facility, the capacity of a resource or facility, and the protection of natural resources.

Priority will be given to improving physical access to existing and potential coastal recreation sites and to increasing the ability of urban residents to get to coastal recreation areas by improved public transportation. Facilities and resources given priority for improved access are public beaches, boating facilities, fishing areas and waterfront parks. The Waterfront Revitalization Program will encourage mixed use areas and multiple use of facilities to improve access.

The following guidelines* will be used in determining the consistency of a proposed action with this policy:

1. The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibilty of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated, unless such actions are demonstrated to be of overriding regional or statewide public benefit, or in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access.

2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:

   The level of access to be provided should be in accord with estimated public access needs.

   The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource of facilty.

3. The State will not undertake or fund any project which increases access to a water-related resource or facilty that is not open to all members of the public.

*Guideline terms are explained in the New York State Coastal Zone Management Document, Public Access Section.

4. In their plans and programs for increasing public access to public water-related resources and facilities, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

New York City Implementation

The New York City Zoning Resolution currently includes provisions which implement this policy at the City level. For example, the Special Battery Park City District, created to govern a large waterfront development in Lower Manhattan, includes requirements to maintain visual corridors, to develop pooled open spaces and a circulation system for pedestrians and vehicles. The Special Sheepshead Bay District was devised to protect that neighborhood's unique waterfront recreation and commercial character by restricting uses and requiring shorefront access. Planned Unit Developments are also encouraged by granting bonuses for a well-designed site plan, provision of community facilities, recreation space and shorefront access. The Special Scenic View District protects and prevents the obstruction of outstanding scenic views. Also, the City Coastal Commission, concurrent with any zoning change, may require a restrictive declaration which mandates the provision of amenities, such as shorefront access, be provided as part of the development. The City Planning Commission, as the City Coastal Commission, will continue to utilize these techniques to ensure implementation of this policy.

Also, the New York City Department of Ports and Terminals has the authority to manage the wharf and waterfront property owned or possessed by the City and may lease or grant a one-year terminable use permit to use any of the City's wharf property. It may include requirements to provide public access as a condition of lease approvals. The New York City Department of Parks and Recreation has the authority to acquire and manage areas and facilities for the recreation of the public. It also regulates the use of and determines the curb and surface construction of all streets and avenues lying within any park, square or public place or within a distance of 350 feet from the outer boundaries thereof. The New York City Department of Transportation is responsible for developing and coordinating all transportation planning for the City.

New York City agency plans and actions regarding shorefront access will undergo ULURP review by the City Coastal Commission to ensure adherence to this policy. Federal Coastal Zone Management Act (306)

funds may also be used, if available and where appropriate, to implement agency actions which conform to this policy and the specific recommendations included in the Shorefront Access Areas section of Chapter V of this report.

POLICY 20: ACCESS TO THE PUBLICLY OWNED FORESHORE OR WATER'S EDGE, AND TO THE PUBLICLY OWNED LANDS IMMEDIATELY ADJACENT TO THESE AREAS SHALL BE PROVIDED, AND IT SHALL BE PROVIDED IN A MANNER COMPATIBLE WITH ADJOINING USES. TO ENSURE THAT SUCH LANDS REMAIN AVAILABLE FOR PUBLIC USE, THEY WILL BE RETAINED IN PUBLIC OWNERSHIP.

Explanation of Policy

In coastal areas where there are little or no recreational facilities providing specific water-related recreational activities, access to the publicly-owned lands of the coast at large should be provided for numerous activities and pursuits which require only minimal facilities for their enjoyment. Such access would provide for walking along a beach or a city waterfront or to vantage points from which to view the seashore. Similar activities requiring access would include bicycling, birdwatching, photography, nature study, beachcombing, and fishing.

The following guidelines explained in more detail in Part II, Section 6 of this document, will be used:

1. Existing access from adjacent or promixate public lands or facilities to existing public coastal lands and/or waters shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or nearby public lands or facilities to public coastal lands and/or waters be eliminated, unless such actions are demonstrated to be of overriding regional or statewide public benefit, or in the latter case, estimates of future use of these lands and waters are too low to justify maintaining or providing increased access.

2. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new public land use or development except where (a) it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; (b) adequate access exists within one-half mile; or (c) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

3. State-owned coastal lands or waters, including underwater lands, may be sold, leased, or otherwise conveyed to persons for private use only when such action is (a) demonstrated to be of overriding regional or statewide public benefit and there is no reasonable means of providing public access; or (b) the lands or waters are contiguous to property owned by the person requesting sale, lease, or conveyance and can continue to be used in such a manner as to retain reasonable public access; or (c) the lands and waters are proposed to be used in such a manner as to retain reasonable public access.

4. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.

5. In their plans and programs for increasing public access, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined urban area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

6. Proposals for increased public access to coastal lands and waters shall be analyzed according to the following factors:

   -The level of access to be provided should be in accord with estimated public access needs. If not, the proposed access to be provided shall be deemed inconsistent with the policy.

-The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the coastal lands or waters. If this were determined to be the case, the proposed access to be provided shall be deemed inconsistent with the policy.

New York City Implementation

Same as Policy 19 above.

POLICY 21: WATER DEPENDENT AND WATER ENHANCED RECREATION WILL BE ENCOURAGED AND FACILITATED, AND WILL BE GIVEN PRIORITY OVER NON WATER RELATED USES ALONG THE COAST.

Explanation of Policy

Water-related recreation includes such obviously water-dependent activities as boating, swimming, and fishing as well as certain activities which are enhanced by a coastal location and increase the general public's access to the coast such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of coastal scenery.

Provided the development of water-related recreation is consistent with the preservation and enhancement of such important coastal resources as fish and wildlife habitat, aesthetically significant areas, historic and cultural resources, agriculture and significant mineral and fossil deposits, and provided demand exists, all practical effort to increase water related recreation development will be undertaken and such uses shall have a higher priority than any non coastal dependent uses, including non water-related recreation uses. Determining a priority among coastal dependent uses will require a case by case analysis.

Among priority areas for increasing water-related recreation opportunities are those areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and those areas where the use of the shore is severely restricted by highways, railroads, industry, or other forms of existing intensive land use for development.

The siting or design of new public development in a manner which would result in a barrier to the recreational use of a major portion of the waterfront should be avoided as much as practicable.

New York City Implementation

The New York City Department of Ports and Terminals has the authority to manage the wharf and waterfront property (out to the U.S. Pierhead Line) owned or possessed by the City, New York City Charter Section 704 (b) (1977).

It may lease or grant a one-year terminable use permit to use any of the City's wharf property; New York City Charter Section 704 (g), 704(h) (1977).

The New York City Department of Parks and Recreation has the authority to acquire and manage areas and facilities for the recreation of the public; New York City Charter Section 533.b.1. (1977).

The City Coastal Commission may use Federal Coastal Zone Management (Section 306) funds or other appropriate funding to identify water-dependent uses (such as marinas) and determine where demand is greatest. Subsequently, City property leasing and acquisition activities by the Departments of Ports and Terminals and Parks and Recreation undergo review by the City Planning Commission. If not incorporated into the provisions of the City Zoning Resolution, these actions will require approval by the City Coastal Commission.

The New York City Zoning Resolution, developed to insure compatibility of adjacent uses, currently includes provisions which implement this policy at the City level.

In addition, the City Planning Commission, as the City Coastal Commission, may adopt a resolution approving new or amended zoning regulations. Since most proposed zoning text is initiated by the City Planning Commission, the adoption of new zoning to facilitate water-related uses along the coast is an important means to implement this policy.

The New York City Coastal Commission, through the Uniform Land Use Review Procedure, will consider the increase of water-related uses along the coast in its decision to approve, modify, or disapprove any proposal or application.

Similarly, the New York City Planning Commission, as the New York City Coastal Commission, may oppose variances to the Zoning Resolution before the Board of Standards and Appeals if, in their judgement, the granting of relief requested in such application is not in accordance with this policy.

The 1981 Capital Needs Statement of the New York City Planning Commission helps implement this policy at the City level. The Commission states that "Opening up the City's vast waterfront to public recreational uses has been a recent City priority" and recommends that the " creation of waterfront recreational areas should continue to be encouraged." The Commission, as the City Coastal Commission, will continue to use the Capital Needs Statement to implement this policy.

NEW YORK CITY POLICY F: PRIORITY SHALL BE GIVEN TO THE DEVELOPMENT OF MAPPED PARKLANDS AND APPROPRIATE OPEN SPACE WHERE THE OPPORTUNITY EXISTS TO MEET THE RECREATIONAL NEEDS OF:

-IMMOBILE USER GROUPS; AND
-COMMUNITIES WITHOUT ADEQUATE WATERFRONT PARK SPACE AND/OR FACILITIES.

Mapped parklands and vacant waterfront areas have a great potential to meet recreational needs of city residents who rarely enjoy water-related activities. Special groups of concern include the elderly, handicapped, female head-of-households and others who live in high density, low-income commmunities which lack open space, social or recreational programs and waterfront access. All acquisitions should involve non-city maintenance if at all possible.

This policy, developed to address these concerns, adds specificity to New York State Policy 21. Local implementation will be as detailed below.

The City recommends that Gateway National Recreation Area give priority to these concerns.

Implementation

State Action:

The New York State Parks and Recreation Law (NYSPRL) Section 3.094 authorizes park acquisition and development by the New York State Office of Parks and Recreation. Creation of a statewide plan for a system of urban cultural parks by this office is mandated by Section 3.21 of the NYSPRL and Section 3.15 authorizes the development of a Statewide Comprehensive Recreation Plan. All plans and actions pursuant to this law should incorporate this policy criteria.

New York City Actions:

The New York City Department of Parks and Recreation is authorized by Section 533 of the City Charter to propose land acquisition as part of the City park system. Acquisition activities have been minimal due to fiscal constraints. However, adherence to this policy when acquisitions occur will be assured through review of the Department's acquisitions by the City Planning Commission, acting as the City Coastal Commission.

When adequate Urban Cultural Parks funding becomes available, New York City will coordinate with the New York State Office of Parks and Recreation in developing a management plan for New York City Urban Cultural Parks.

In the 1981 Capital Needs Statement, the New York City Planning Commission, as the City Coastal Commission, recommends that "the City must move to develop a policy addressing vacant land and open space needs, an issue of special importance to redeveloping neighborhoods." The Commission recognizes the need to "provide some opportunity for altering and adding to the existing park system." However, it is recommended that "acquisition should be accomplished without any added City maintenance burden. This can be accomplished by providing another source of maintenance and operation, as with the proposed arrangements for Westway, Riverwalk, and Battery Park City, which the developers or the State will maintain. The addition of natural areas in the outer reaches of the City, which would require minimal maintenance, should also be considered."

NEW YORK CITY POLICY G: MAINTAIN AND PROTECT NEW YORK CITY BEACHES TO THE FULLEST EXTENT POSSIBLE.

In New York City, public beaches are the most significant seasonal recreational resource (especially those located in the Rockaways, Coney Island and Staten Island). Chronic beach erosion causes significant damage and results in the loss of public recreational benefits. Only continuous efforts addressing this problem will assure uninterrupted public use.

This policy adds specificity to New York State Policy 21 by insuring that water dependent recreation will be encouraged and facilitated, and adds specificity to New York State Policy 16 by identifying a particular public resource endangered by erosion. In addition this policy implements Policy 13 which requires that erosion control structures, including the renourishment of beaches, be built or maintained to control erosion over a 30-year period, by providing continuous maintenance for erosion control devices which protect public beaches. Local implementation is as detailed below.

The City recommends that the U.S. Army Corps of Engineers maintains and protects New York City's beaches to the extent possible pursuant to Section 103 of the Rivers and Harbors Act of 1962, 33 U.S.C. Section 426 (g) (where project costs do not exceed $1,000,000).

Implementation

State Actions:

The New York State Department of Environmental Conservation is authorized to participate in federally authorized projects as stated in New York Unconsolidated Laws Section 1301 et. seq. and Section 1531 et. seq.

The Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34) contains a provision that, within identified coastal erosion hazard areas, consideration is to be given to both the public benefits and long range adverse effects of proposed activities which use public funds.

New York City Actions:

The New York State Unconsolidated Laws cited above also authorized municipalities to participate in Federal projects. ULURP review of proposed projects by the City Coastal Commission will ensure local compliance with this policy. In addition, City implementation of a coastal erosion hazard ordinance in conformance with the State's Environmental Conservation Law (Article 34) will provide consideration of public benefits versus long range effects of activities such as beach maintenance. The City will be able to develop beach maintenance and protection proposals when coastal erosion hazard area maps are completed.

The New York City Department of Parks and Recreation authorities are set forth in Section 533 of the City Charter. It has the power to manage and care for all parks, to prepare plans for a City park system, acquire, construct and improve facilities for public recreation and to manage all real property which is used for the establishment of parks. As mentioned above, these are hampered by fiscal constraints.

The New York City Planning Commission will help implement this policy through the Capital Needs Statement. For example, in the 1981 Capital Needs Statement, the Commission recommends that funds be "requested to continue the ongoing rehabilitation of beaches and boardwalks at Coney Island, Rockaway Beach, and Orchard Beach."

POLICY 22: DEVELOPMENT WHEN LOCATED ADJACENT TO THE SHORE WILL PROVIDE FOR WATER-RELATED RECREATION ACTIVITIES WHENEVER SUCH RECREATIONAL USE IS APPROPRIATE IN LIGHT OF REASONABLY ANTICIPATED DEMAND FOR SUCH ACTIVITIES, AND THE PRIMARY PURPOSE OF THE DEVELOPMENT.

Explanation of Policy

Many large-scale developments present practical opportunities for providing recreation facilities as an additional use of the site or facility. Therefore whenever large-scale developments are located adjacent to the shore they should to the fullest extent permitted by existing law provide for some form of water-related recreation use unless there are compelling reasons why any form of such recreation

would not be compatible with the development, or a reasonable demand for public use cannot be foreseen.

Whenever a proposed development would be consistent with WRP policies and the development could, through the provision of recreation and other multiple uses, significantly increase public use of the shore, then such development should be encouraged to locate adjacent to the shore (this situation would generally only apply within the more developed portions of urban areas).

New York City Implementation

The New York City Department of Parks and Recreation has the authority to acquire areas and facilities for the recreation of the public; New York City Charter Section 533.b.1.(1977). Adherence to this policy by the Department of Parks and Recreation will be assured through review of the Department's acquisitions by the City Coastal Commission.

Also, the New York City Zoning Resolution currently includes provisions which implement this policy at the City level. The New York City Planning Commission reviews all plans for the development, growth, and improvement of the City and its boroughs and community districts initiated by the Mayor, Borough Boards, or Community Boards, New York City Charter Section 197-c, b. It has the authority to issue special permits in certain Special Zoning Districts, to allow the transfer of development rights from historic landmarks, and to initiate changes in the New York City Zoning Resolution.

The New York City Coastal Commission, through the Uniform Land Use Review Procedure, will consider the provision of water-related recreation activities in waterfront developments when making its decision to approve, modify, or disapprove any proposal or application.

The Commission also utilizes restrictive declarations, when appropriate, to require that certain amenities be provided as a part of development proposals.

In the 1981 Capital Needs Statement, the Commission recommends City support for large-scale developments which provide water-related recreation activities. For example, it states that "the proposal to create a public recreation and performance area along the waterfront in Battery Park City offers a special opportunity to expand public use of the waterfront."

The Commission, as the City Coastal Commission, will continue to use these techniques to ensure implementation of this policy.

POLICY 23: PROTECT, ENHANCE, AND RESTORE STRUCTURES, DISTRICTS, AREAS OR SITES THAT ARE OF SIGNIFICANCE IN THE HISTORY, ARCHITECTURE, ARCHEOLOGY OR CULTURE OF THE STATE, ITS COMMUNITIES, OR THE NATION.

Explanation of Policy

Among the most valuable of the State's man-made resources are those structures or areas which are of historic, archeological, or cultural significance. The protection of these structures must involve a recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites but with areas of significance, and with the area around specific sites. Protection is not to be continued as a passive mandate but must include active efforts when appropriate to restore or revitalize through adaptive reuse. While the program is concerned with the preservation of all such resources within the coastal boundary, it will actively promote the preservation of historic and cultural resources which have a coastal relationship.

New York City Implementation

The New York City Landmarks Preservation Commission has the authority to regulate and establish landmarks, landmark sites, interior landmarks, scenic landmarks, and historic districts. Therefore, this policy is presently implemented in New York City. However, demolition of landmark properties or applications to demolish involve more complex procedures and occasionally lead to the loss of valuable coastal related historic resources. For example, if a building has been determined to be a hazard to health and safety by the Department of Buildings the landmarks law is preempted and demolition is mandated by the Department of Buildings. The owner is then required to demolish the structure. If the building is in hazardous condition but recoverable, the Commission may request the Department of Buildings to seal the building rather than demolish it. If a private owner of landmark property is not making a reasonable return on it (6 percent), and wishes to demolish the building, the Commission seeks to develop a plan which will create a satisfactory return on the building, using tax abatement or tax remission if necessary to do so. If creation of a reasonable return is not possible, the City must find an alternate buyer for the property or the City must acquire the property or an appropriate interest in it. If the City fails to do so within a specified time, the Commission must grant the demolition permit.

Implementation funds may be utilized to prevent the loss of such structures and to aid in their rehabilitation.

The Department of City Planning, as a co-lead agency for City Environmental Quality Review (CEQR) will review discretionary actions

for possible social, economic and land use impacts. As set forth in Mayoral Executive Order No. 91, City Environmental Quality Review, Section 6, (a) (5) Determination of significant effect; criteria, "An action may have a significant effect on the environment if it can reasonably be expected to lead to... the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character."

The City Planning Commission, as the City Coastal commission, will not act on an application under ULURP nor promulgate a zoning regulation until CEQR review is completed. Similarly, the Board of Standards and Appeals will not render a decision on an application for a variance until CEQR procedures have been complied with. Therefore, if the City Environmental Quality Review results in the preparation of an environmental impact statement, this statement becomes part of the record which must be considered by the administrative agency in reaching its decision on an action. Impacts to historic or archeological resources would be fully disclosed and considered.

NEW YORK CITY POLICY H: INSURE ONGOING MAINTENANCE OF ALL WATERFRONT PARKS AND BEACHES TO PROMOTE FULL USE OF SECURE, CLEAN AREAS WITH FULLY OPERABLE FACILITIES.

New York City waterfront parks and outdoor recreational facilities are inadequately maintained; many are in dire need of rehabilitation. While operation and maintenance funds have declined, demands for secure and well maintained parks have grown. A solution to this problem is beyond the funding capabilities of local government.

There are no state policies included in the Coastal Management Plan which address the issue of operation and maintenance. Consistency of Federal and State agency actions, therefore, can only be encouraged. However, the policy can be enforced at the City level by priority utilization of certain non-categorial Federal funds and direct City agency actions as outlined below.

Implementation

Federal Actions:

Park management authorities at the Federal level are held by the U.S. Department of the Interior, National Park Service which may provide assistance to states and localities for the planning and development

of public park facilities. Funds, as mentioned earlier, cannot be used for operation and maintenance. The City Waterfront Revitalization Program strongly endorses the involvement of the Federal and State governments to provide the minimal amount of Federal funding to local park systems for maintenance and operation functions, as suggested in the draft National Urban Recreation Study. Other federal programs provide funds, administered by appropriate city agencies, which can be utilized for operation, maintenance and rehabilitation of recreation areas. Examples include:

-Non-categorial general revenue sharing funds pursuant to the State and Local Assistance Amendments of 1976, P.L. 94-488;

-Funds provided by the Community Development Block Grant Program of the Community Development Act of 1974 (42 U.S.C. Section 5301).

Funding levels of these programs should be increased and earmarked where possible for preservation.

State Actions:

At the State level, authority is held by the New York State Office of Parks and Recreation as detailed in the New York State Parks and Recreation Law (PRL). The Office of Parks and Recreation has, in the past, provided special work training programs, such as Young Adult Conservation Corps Programs (which was eliminated in March, 1982) to aid in recreational maintenance and operations. However, direct financial aid in the operation and maintenance of existing New York City parks has been accomplished only several times by transferring surplus city (in-rem) property to the state park system. The vehicle for accomplishing this task is the Statewide Comprehensive Recreation Plan (SCRP) which contains an evaluation procedure to guide allocation of State and Federal funds and a planning process to evaluate future recreation and open space needs of the State. Section 309 of the New York State PRL authorizes park acquisition and development consistent with this plan.

The decision to transfer a given surplus parcel is a difficult one. Each site must be studied individually with consideration given to state policies regarding access, closing hours, maintenance commitments, etc. and the possibility of future policy changes.

Section 3.21 of New York State PRL establishes the Urban Cultural Parks Program which requires the New York State Office of Parks and Recreation to undertake a survey and formulate a plan for a statewide system of urban cultural parks. Once again, aid in operation and maintenance of existing City parks can only be accomplished through a land exchange to the state park system.

It is recommended that existing statutes be amended to allow funding of operation and maintenance of City parks of statewide significance.

New York City Actions

The New York City Department of Parks and Recreation authorities are set forth in Section 533 of the City Charter. It has the power to manage and care for all parks, to prepare plans for a City park system, acquire, construct and improve facilities for public recreation and to manage all real property which is used for the establishment of parks. As mentioned above, these are hampered by fiscal constraints.

Adherence to this policy by the Department of Parks and Recreation will be assured through ULURP review of the Department's acquisitions by the City Coastal Commission.

When adequate Urban Cultural Parks funding becomes available, New York City will coordinate with the New York State Office of Parks and Recreation in developing a management plan for New York City Urban Cultural Parks.

The 1981 Capital Needs Statement of the New York City Planning Commission helps to implement this policy at the City level. In addressing the need for rehabilitation of waterfront parks and recreational facilities, the Commission states that a capital program continues an effort to rehabilitate heavily-used regional facilities which....are in need of a major overhaul." These funds are to be allocated for "rehabilitation of community and local facilities," "repairs to stadiums, golf courses, and marinas" and "rehabilitation of beaches and boardwalks at Coney Island, Rockaway Beach, and Orchard Beach."

In addressing the issue of operation and maintenance, the Commission recommends that "additions should be made to the Department of Parks and Recreation's staff,...to reduce the impact of the proposed termination of the CETA program" and that "the Department should take measures to improve productivity via training and via other management initiatives." Currently, the City Department of Parks and Recreation has taken steps toward rebuilding agency staff through tax levy positions in an attempt to offset CETA losses.

The encouragement of Federal and State actions to facilitate implementation of this policy at the City level is stressed in the 1981 Capital Needs Statement in which, "the Commission urges that rechanneled Federal funds be allocated fairly to the Department of Parks," and recommends that "the role of the State in providing for park and recreation services within the City should be expanded." The Commission states that "the greatest need is assistance for

rehabilitating, maintaining, and operating the existing park system" and that Federal funds are "also needed in areas of new development, where the City is unable alone to provide for the appropriate expansion and maintenance of the park system."

City waterfront parks will be considered for designation as State Geographic Areas of Particular Concern in the future with appropriate amendments to the State Coastal Management Program.

POLICY 24: PREVENT IMPAIRMENT OF SCENIC RESOURCES OF STATEWIDE SIGNIFICANCE.

Explanation of Policy

When considering a proposed action, agencies shall first determine whether the action could affect a scenic resource of statewide significance. An action must not substantially hinder achievement of this policy if the action is not of significant regional or statewide public benefit. The policy can be enforced by applying siting and design guidelines. If an action benefits a region or the state significantly, it must to minimize the degradation of the specified scenic resource, set a precedent for the establishment of a waterfront development and coastal resources policy and remain the only option for action possible, even though the action would hinder the achievement of this policy.

New York City Implementation

The New York City Zoning Resolution currently includes provisions to prevent the impairment of its scenic resources. For example, the Special Natural Area District was established to preserve geologic and topographic features having ecological, conservation and scenic qualities by mandating review of all new developments and site alterations on primarily vacant land.

In addition, many other specal permits administered by New York City Planning Commission have statutory scenic criteria for their issuance. Zoning Resolution regulations on the size, location, and design of advertising and business signs also have scenic considerations. For example, the Zoning Resolution, at Sections 22-34, 32-661 and 42-531 prohibits moving or stationary advertising signs on vessels plying New York City waterways that are within view of an arterial highway.

The New York City Coastal Commission, through the Uniform Land Use Review Procedure, will consider the scenic resources in waterfront development when making its decision to approve, modify, or disapprove the proposal or application.

These controls are enforced pursuant to Section 645(b) of the New York Charter, by the Department of Buildings throughout the City except for on the waterfront under the jurisdiction of the Department of Ports and Terminals. The Department of Ports and Terminals, pursuant to Section 704(d) and 704(f) of the City Chapter, enforces these controls with respect to waterfront commerce structures.

POLICY 25: PROTECT, RESTORE AND ENHANCE THE NATURAL AND MAN-MADE RESOURCES WHICH ARE NOT IDENTIFIED AS BEING OF STATEWIDE SIGNIFICANCE BUT WHICH CONTRIBUTE TO THE OVERALL SCENIC QUALITY OF THE COASTAL AREA.

Explanation of Policy

When considering a proposed action, reasonable steps shall be taken to ensure that the action would be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. The effects of activities which would impair the scenic quality of the general coastal area would not be considered as serious as the effects of the same activities for significant scenic areas. As in the previous policy, siting and design guidelines serve to enforce this policy. Emphasis may be placed on the removal of elements which degrade and the addition of elements which enhance the coastal area's scenic quality.

New York City Implementation

Much of the New York City Zoning Resolution is concerned with scenic quality. Many special permits administered by the New York City Planning Commission, for example, the Special South Richmond Development District which requires tree preservation, height limits and restriction of construction within designated open space, have statutory scenic criteria for their issuance. The City Planning Commission is responsible for planning relating to orderly growth and improvement and future development of the City. It is also empowered, while administering the Zoning Resolution, to require restrictive decalarations which place conditions on the future use of land, including scenic considerations.

The Special Scenic View District is designed to prevent obstruction of outstanding scenic views as seen from existing points of visual access such as a public park, esplanade or mapped public place. Such a district has been approved for the area west of the Brooklyn Heights promenade in order to protect the waterfront view of the Lower Manhattan skyline, Governor's Island, the Statue of Liberty and the Brooklyn Bridge. The Special Battery Park City District, created to govern a large developement in an area close to the business core of Lower Manhattan, establishes regulations which reflect vertical separation of land uses and provision of visual corridors allowing a view of the waterfront from upland areas.

The City Planning Commission also has the authority to conduct planning relating to the orderly growth and improvement and future development of the City. It may also require restrictive declarations which place conditions on the future use of land, including aesthetic consideration.

The City Planning Commission, as the City Coastal Commission will continue to utilize these techniques to ensure implementation of this policy.

Zoning Resolution provisions will continue to be enforced by the Department of Buildings throughout the City except for on the waterfront under the jurisdiction of the Department of Ports and Terminals.

POLICY 26: CONSERVE AND PROTECT AGRICULTURAL LANDS IN THE STATE'S COASTAL AREA.

Not applicable to New York City.

POLICY 27: DECISIONS ON THE SITING AND CONSTRUCTION OF MAJOR ENERGY FACILITIES IN THE COASTAL AREA WILL BE BASED ON PUBLIC ENERGY NEEDS, COMPATIBILITY OF SUCH FACILITIES WITH THE ENVIRONMENT AND THE FACILITY'S NEED FOR A SHOREFRONT LOCATION.

Explanation of Policy:

The supply and distribution of energy is regarded by the Federal government as having "a greater than local interest" and because State and Federal permits are usually needed by public utilities (especially with respect to gas facilities and pipelines). State legislation (Articles VII and VIII pertaining to transmission and steam plant generation) contain provisions to determine compatibility of these facilities with the environment and their necessity to be sited along the waterfront.

New York City Implementation

The need for energy facilities are set forth in the State Energy Master Plan (SEMP) which calls for its updating every two years. In as much as SEMP provides for public participation, New York City, through its Energy Office and other agencies (such as the Department of Planning and Department of Environmental Protection) will continue as it did in 1979 and early 1982 to provide input to the plan.

The siting procedures in Articles VII and VIII of the Public Service Law mandate that public hearings be held prior to the granting of Certificate of Environmental Compatibility and Public Need by the New York Public Service Commission and the New York State Board of Electric Generating Siting and the Environment. New York City through its Energy Office and other agencies including the Department of City Planning will continue to invoke this tool to express its views.

City Environmental Quality Review Act (CEQR) (Executive Order #91) is the means to implement the State Environmental Quality Review Act (ECL Sec. 8-0113). As with SEQR, an environmental impact statement is required under CEQR for large-scale facilities, such as petroleum, LNG, SNG, and resource recovery facilities. This will allow an early weighing of social, economic and environmental issues. Specifically, it will ensure that waterfront policies are considered, alternate inland locations for certain energy facilities are given consideration, and mitigation measures appropriately addressed.

Interstate transmission facilities, such as gas and petroleum pipelines, coal slurry pipelines and electric transmission lines associated with hydroelectric facilities, are regulated by Federal agencies. Through State and Federal consistency provisions, such facilities will be sited in a manner that is consistent with the New York City Waterfront Revitalization Program.

Under the New York City Air Pollution Control Code, sulfur dioxide emmissions from coal burned in large utility boilers may not exceed 200 parts per million (ppm) which is equivalent to approximately 0.4 pounds of sulfur for each million British Thermal Units of heat energy input. This local law essentially bans coal burning in the City, unless it is revised. It is currently being reviewed by the Department of Environmental Protection and the City Energy Office.

NEW YORK CITY POLICY I: FACILITIES ASSOCIATED WITH THE TANKERING OF LIQUEFIED NATURAL GAS (LNG) INTO NEW YORK HARBOR WILL NOT BE PERMITTED ALONG NEW YORK CITY'S WATERFRONT.

Explanation of Policy:

The problems of safety involved in locating LNG facilities in metropolitan areas have not been adequately resolved. Current data indicate that locating an LNG facility along New York City's waterways serviced by LNG tankers would create an unwarranted public saftety hazard.

New York City Implementation:

The New York City Fire Department has the authority, pursuant to Section 489 of the City Charter, to regulate the storage, transportation and use of combustibles, chemicals, inflammable or other dangerous substances. Pursuant to this authority, Section C19-12.0 of City Administrative Code requires a permit from the Department for such activities and uses.

The City Coastal Commission, through ULURP, will review such proposals to promote and protect public health and safety. For example, the Zoning Resolution Manufacturing District Regulations states that one of its general goals is, "To protect adjacent residential and commercial areas, and to protect the labor force in other establishments engaged in less offensive types of manufacturing and related activities, by restricting those manufacturing activities which involve danger of fire, explosions, toxic and noxious matter, radiation and other hazards, or create offensive noise, vibration, smoke and other particulate matter, odorous matter, heat, humidity, glare, and other objectionable influences, to those limited areas which are apropriate therefore" (Section 41-00, (d).

Adherence to this policy will be assured by ULURP review of such applications by the City Coastal Commission.

POLICY 28: ICE MANAGEMENT PRACTICES SHALL NOT DAMAGE SIGNIFICANT FISH AND WILDLIFE AND THEIR HABITATS, INCREASE SHORELINE EROSION OR FLOODING OR INTERFERE WITH THE PRODUCTION OF HYDROELECTRIC POWER.

Not applicable to New York City.

POLICY 29: ENCOURAGE THE DEVELOPMENT OF ENERGY RESOURCES ON THE OUTER CONTINENTAL SHELF (OCS) AND IN OTHER WATER BODIES AND ENSURE THE ENVIRONMENTAL SAFETY OF SUCH ACTIVITIES.

Explanation of Policy:

Oil exploration has been taking place in the Atlantic Ocean, north and south of New York State, since 1976 when Exxon spudded the first well in the Baltimore Canyon. As of December 1981, twenty three out of twenty eight wells drilled came up dry. The remainder showed gas, but in insufficent quantities for commercial production. In the event of an oil or gas find, some of this fuel could be landed in New York or routed along New York waterways. A 1977 Department of City Planning study funded by Section 305 of the Coastal Zone Management Act indicated that a successful oil find could add 150 tanker trips along the Ambrose-Nantucket sea lane. The study also identified sites for an offshore support base, which included the former Brooklyn Navy Yard as the most likely candidate.

New York City Implementation

The New York City Department of Ports and Terminals has jurisdiction over the wharf and waterfront property owned by the City and

jurisdiction over waterfront property, waterfront commerce, navigation structures on waterfront property up to the marginal streets. The Department has authority to regulate this property; to enforce the New York Labor Law, the City Zoning Resolution, the City Building Code and all applicable laws with respect to waterfront commerce and/or navigation structures on such property; and to regulate dredging and filling.

The New York City Zoning Resolution currently contains provisions for guiding the location of onshore support facilities of the Outer Continental Shelf oil and gas industry.

The New York City Department of City Planning has been funded, as participants in the CZM planning process and as grantees of the Coastal Energy Impact Program, to provide information and technical assistance to New York State regarding the Federal offshore leasing process and its probable impacts on New York City.

The City Coastal Commission will utilize Federal Coastal Zone Management Act (306) funds, if available or Coastal Energy Impact Program funds, whichever is appropriate, to perpetuate coordination between the City and State; and to prepare, as allowed under the Outer Continental Shelf Lands Act Amendments of 1978, recommendations concerning proposed lease sales or development and production plans for transmittal by the Mayor to the Secretary of the Interior.

POLICY 30: MUNICIPAL, INDUSTRIAL AND COMMERICAL DISCHARGE OF POLLUTANTS, INCLUDING, BUT NOT LIMITED TO, TOXIC AND HAZARDOUS SUBSTANCES, INTO COASTAL WATERS WILL CONFORM TO STATE WATER QUALITY STANDARDS.

Explanation of Policy

Municipal, industrial and commerical discharges include not only "end-of-the-pipe" discharges into surface and groundwater but also plant site runoff, leaching spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving coastal waters and those which pass through municipal treatment systems before reaching waterways.

New York City Implementation

New York City 208 Plan recommendations regarding pollutant discharges include:

- Complete construction of the foundation for the Red Hook Pollution Control Plant (WPCP), and design the North River and Red Hook plants for secondary treatment while seeking Federal legislative relief from full secondary treatment requirements at both plants.

- Upgrade the Coney Island and Owls Head Water Pollution Control Plants from modified aeration to secondary treatment.

- Rehabilitate the Newtown Creek Water Pollution Control Plant, retaining modified aeration.

- Provide staffing for the operation and maintenance of the new North River and Red Hook WPCP's and additional staffing for the upgraded Coney Island and Owls Head WPCP's contingent upon City finances, continued State aid, and Federal funding.

- Disinfect all sewage treatment plant discharges to the Harbor during the summer to permit bathing in classified waters and discontinue year-round disinfection unless required to protect shellfishing.

- Prepare 208 Continuing Planning or 201 Facilities Planning studies of: a) less than full secondary treatment during the cold weather months at all treatment plants and year-round at the new North River and Red Hood WPCP's; b) the need for dechlorination or alternative methods for disinfection of sewage plant effluents in areas of high chlorine residuals; and c) alternatives to improve the removal of BOD and suspended solids at City WPCP's.

- Amend existing Federal water pollution laws to permit less than full secondary treatment of municipal wastewater if the discharge is to well-mixed estuarine/marine waters and all water quality standards and uses are met.

- Rehabilitate regulators along the waterfront and in tributaries, assure adequate regulator maintenance, and seek State and Federal support if additional funding is required.

- Conduct 201 Facilities Planning studies of regulator systems and propose integrated improvements.

- Continue recent City improvements in sewer maintenance and integrate sewer rehabilitation/modernization as well as new construction into 208 Continuing Planning.

- Conduct a Harbor-wide 201 Facilities Planning study of heavy metals, cholorine related compounds and PCB's (polychlorinated biphenyls) to determine sources, effects on marine life, and problem areas, contingent upon regional support.

- Amend existing City regulations to permit control of industrial wastes discharged to the sewer system, consistent with water quality maintenance and standards in the Harbor.

- Conduct a City-wide 201 Facilities Study to identify all sources of heavy metals and toxic substances (industrial and other) in the sewer system (combined, sanitary, and storm), including a list of regulated industries, based upon the City definition of "normal sewage" and "industrial wastes", as amended.

- Develop a pretreatment program for heavy metals and toxic substances discharged to the City sewer system, consistent with water quality maintenance and standards in the Harbor and considering influent standards, water treatment modifications, residential/commercial product controls, and building code revisions.

In addition, the City Environmental Quality Review process requires a determination of any significant adverse changes to water quality, (Executive Order No. 91, Section 6), which will ensure conformance to Federal and State water quality standards. Further, the City's "Capital Needs and Priorities" Statement (1981) indicates Commission support for continued funding for water pollution control.

POLICY 31: STATE COASTAL AREA POLICIES AND MANAGEMENT OBJECTIVES OF APPROVED LOCAL WATERFRONT REVITALIZATION PROGRAMS WILL BE CONSIDERED WHILE REVIEWING COASTAL WATER CLASSIFICATIONS AND WHILE MODIFYING WATER QUALITY STANDARDS; HOWEVER, THOSE WATERS ALREADY OVER-BURDENED WITH CONTAMINANTS WILL BE RECOGNIZED AS BEING A DEVELOPMENT CONSTRAINT.

Explanation of Policy

The State has classified its coastal and other waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. Management objectives of Local Waterfront Revitalization Plans and State coastal management policies shall be factored into the review process for coastal waters. Waters not meeting State standards and which would not be expected to meet these standards even after applying "best practicable treatment" to effluent discharges are classified as "water quality limiting". Those segments meeting stream standards or areas expected to meet them after application of "best practicable treatment" are classified as "effluent limiting", and all new waste discharges must receive "best practicable treatment". However, along stream segments classified as "water quality limiting", waste treatment beyond "best practicable treatment" would be required, and costs of applying such additional treatment may be prohibitive for new development.

New York City Implementation

New York City 208 Plan recommendations regarding standards and classifications include:

- Review the State water quality standards for New York Harbor, particularly the fecal coliform standards for bathing and the toxic standards for marine life.

- Consider the reclassification of Fish Survival waters (Class SD) in New York Harbor to Fishing water (Class 1), after the completion of wastewater treatment plant improvements.

In addition, the New York City Department of City Planning, as a participating agency in the 208 Water Quality Management Program and as the grant agency in developing the Waterfront Revitalization Program has utilized technical and land use data generated in 208 Task Reports to make land use recommendations within the coastal area. The Department will continue to recognize water quality as a positive or negative factor in development decisions to reflect Waterfront Revitalization policies.

POLICY 32: ENCOURAGE THE USE OF ALTERNATIVE OR INNOVATIVE SANITARY WASTE SYSTEMS IN SMALLER COMMUNITIES WHERE THE COST OF CONVENTIONAL FACILITIES ARE UNREASONABLY HIGH, GIVEN THE SIZE OF THE EXISTING TAX BASE OF THESE COMMUNITIES.

Explanation of Policy

Alternative systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost-effective in smaller less densely population communities and for which conventional facilities are too expensive. Areas of New ;York City where this occurs are Northern and Southern Queens and Southern Staten Island.

New York City Implementation

New York City 208 Plan recommendations regarding the study and implementation of innovative approaches for water quality improvement and waste disposal include:

- Prepare 201 Facilities Planning Studies for the City tributaries identified as having significant water quality problems and study the remaining tributaries under 208 Continuing Planning. These

studies should consider other tributary improvements in addition to wastewater treatment, such as CSO controls, dredging, dike modification, flushing tunnel reactivation, and land use controls.

Specific water quality improvement recommendations are also included in the Waterfront Revitalization work. For example, the redesign of a drainage plan to prevent the destruction of valuable natural watercourses in southern Staten Island.

Federal Coastal Zone Management Act (306) funds, if available, may be used by the City Coastal Commission to participate in tributary studies with the designated 208 Agency and to assist in the implementation of alternative or innovative sanitary waste disposal systems in appropriate locations.

In addition, the City's "Capital Needs and Priorities" Statement (1981) states that the "Commission also supports the continuation of tributary studies."

POLICY 33: BEST MANAGEMENT PRACTICES WILL BE USED TO ENSURE THE CONTROL OF STORMWATER RUNOFF AND COMBINED SEWER OVERFLOWS DRAINING INTO COASTAL WATERS.

Explanation of Policy

Structural approaches to controlling stormwater runoff (construction of retention basins) and combined sewer overflows (e.g., replacement of a combined system with separate sanitary and stormwater collection systems) are presently economically not feasible. Until affordable technology is developed, nonstructural approaches (e.g., improved street cleaning, reduced use of road salt) will be encouraged.

New York City Implementation

New York City 208 Plan recommendations regarding the control of storm runoff and combined sewer overflows include:

- Advance a 201 Facilities Planning Study of CSO (combined sewer overflow) control facilities along Jamaica Bay to improve bathing water quality, in conjunction with beach use studies and Gateway National Park plans. Institution of 201 Design/Construction phases should be contingent upon the results of these studies, plans and financial arrangements.

- Advance a 201 Facilities Planning Study of CSO controls for Eastchester Bay, in conjunction with beach use studies. Institution of 201 Design/Construction phases should be contingent upon the results of these studies and financial arrangements.

- Advance a 201 Facilities Planning Study of diversion, relocation, or other alternatives for CSO problems in specific tributaries; and along the Upper East River, in conjunction with beach use studies. Institution of 201 Design/Construction phases should be contingent upon the results of the studies and financial arrangements.

In addition, the Uniform Land Use Review Procedure, and the CEQR process, provides an implementing mechanism for ensuring that storm water runoff and sewer overflows are investigated. Any adverse change in drainage and water quality induced by private or public proposals must be considered and evaluated per CEQR regulations, (Executive Order No. 91, Section 6).

POLICY 34: DISCHARGE OF WASTE MATERIAL INTO COASTAL WATERS FROM VESSELS UNDER THE STATE'S JURISDICTION WILL BE LIMITED SO AS TO PROTECT SIGNIFICANT FISH AND WILDLIFE HABITATS, RECREATIONAL AREAS AND WATER SUPPLY AREAS.

Explanation of Policy

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the state's waters is prohibited. Specific effluent standards for marine toilets have been promulgated by the Department of Environmental Conservation (6 NYCRR, Part 657). Priority will be given to the enforcement of these regulations in the areas such as shellfish beds and other significant habitats, beaches and public water supply intakes, which need protection from contamination by vessel wastes.

New York City Implementation

Implementation of this policy by the New York State Department of Environmental Conservation pursuant to the New York State Navigation Law, Section 33-c is sufficient to protect the coastal area of New York City. This law prohibits the discharge of sewage, garbage, rubbish and other solid and liquid materials from all watercraft and marinas into the State's waters.

POLICY 35: DREDGING AND DREDGE SPOIL DISPOSAL IN COASTAL WATERS WILL BE UNDERTAKEN IN A MANNER THAT MEETS EXISTING STATE DREDGING PERMIT REQUIREMENTS AND PROTECTS SIGNIFICANT FISH AND WILDLIFE HABITATS, AESTHETIC RESOURCES, NATURAL PROTECTIVE FEATURES, IMPORTANT AGRICULTURAL LANDS AND WETLANDS.

Explanation of Policy

Dredging often proves to be essential for waterfront revitalization and development, maintaining navigation channels at sufficient depths, pollutant removal and meeting other coastal management needs.

Such dredging projects, however, may adversely affect water quality, fish and wildlife habitats, wetlands and other important coastal resources. These adverse effects can be minimized through careful design and timing of the dredging operation and proper siting of the dredge spoil disposal site. Dredging permits will be granted after it has been satisfactorily demonstrated that these anticipated adverse effects have been reduced to a level considered acceptable by permitting agencies.

New York City Implementation

The New York City Department of Ports and Terminals has the authority to approve, through a permitting process, dredging proposals along the waterfront of New York City.

However, the problem for New York City is one of disposing of dredged materials in an environmentally acceptable and economically feasible manner. Between 8 and 10 million cubic yards of dredged material is removed each year while the Corps of Engineers routinely maintains the shipping channels in New York Harbor. Up to now approximately 90 percent has been disposed of at the ocean site commonly known as the "mud dump". An additonal two to four million cubic yards per year from private sources have also been disposed of at this site under U.S. Corps of Engineers permits.

Environmental challenges to rules and regulations governing the disposal of dredged materials and the failure of bio-assay tests, required to determine the quality of spoils before dumping is allowed, has led to a number of studies to determine an alternative to ocean dumping. Most of these alternatives involve land disposal, a method that would have tremendous impact on the City's waterfront and the economy of the Port of New York.

Because of its potential impact, this disposal problem is treated separately in the Solid Waste issue section in Chapter IV.

POLICY 36: ACTIVITIES RELATED TO THE SHIPMENT AND STORAGE OF PETROLEUM AND OTHER HAZARDOUS MATERIALS WILL BE CONDUCTED IN A MANNER THAT WILL PREVENT OR AT LEAST MINIMIZE SPILLS INTO COASTAL WATERS: ALL PRACTICABLE EFFORTS WILL BE UNDERTAKEN TO EXPEDITE THE CLEANUP OF SUCH DISCHARGES; AND RESTITUTION FOR DAMAGES WILL BE REQUIRED WHEN THESE SPILLS OCCUR.

Explanation of Policy

See Policy 39 for definitation of hazardous materials.

New York City Implementation

Implementation of this policy will be addressed as discussed under New York State Policy 29.

POLICY 37: BEST MANAGEMENT PRACTICES WILL BE UTILIZED TO MINIMIZE THE NON-POINT DISCHARGE OF EXCESS NUTRIENTS, ORGANICS AND ERODED SOILS INTO COASTAL WATERS.

Explanation of Policy

Best Management Practices used to reduce non-point sources of pollution could include but are not limited to encouraging organic farming and pest management principals, soil erosion control practices, and surface drainage control techniques.

New York City Implementation

208 Plan studies conclude that nutrient concentrations, primarily nitrogen, will increase very slightly in the Harbor waters after 1985 because of other plan recommendations which will increase wastewater flows. The potential for algal bloom would remain, but an "unknown factor" prevents massive summer algal blooms in the Harbor.

The study also concluded that mitigation measures would not be effective unless all non-point sources are treated or controlled for nitrogen removal, a massive undertaking.

The 208 Plan, therefore, recommended the following:

- Develop a Harbor-wide water quality monitoring program, based upon federal, state and regional resources, emphasizing toxic substances (heavy metal, PCB's, chlorine) and nutrient parameters(Biochemical Oxygen Demand, dissolved oxygen, pH, temperature, salinity, and coliforms).

- Require major waterfront construction projects, such as new highways and landfilling, to assess non-point water quality impacts and monitor, if necessary, under existing Federal and State permit programs.

  Such a requirement can be enforced through the CEQR regulations or ULURP process which allow development only upon mitigation of adverse environmental impacts.

POLICY 38: THE QUALITY AND QUANTITY OF SURFACE WATER AND GROUNDWATER SUPPLIES WILL BE CONSERVED AND PROTECTED PARTICULARLY WHERE SUCH WATERS CONSTITUTE THE PRIMARY OR SOLE SOURCE OF WATER SUPPLY.

Explanation of Policy

Groundwater is used as a potable water supply in the southeastern part of Queens (60 million gallons per day servicing 500,000 persons). The quality of this water is continually deteriorating because of the impact of nitrates, primarily from sewage, and chlorides, primarily from salt water intrusion.

Groundwater is also used for industrial cooling in parts of Brooklyn and Queens. The quality of water in these areas has deteriorated to such an extent that Federal and State potable water standards are not met.

New York City Implementation

The New York City 208 Plan makes the following recommendations:

- Encourage the State and the U.S. Geological Survey to study groundwater resources throughout the City and monitor the groundwater in Brooklyn and Queens, especially the Jamaica Water Supply wells.

- Provide a regional mechanism for stabilizing potable (drinkable) groundwater use in Jamaica, Queens and Nassau County, including monitoring and pollutant modeling.

- Encourage the City, in conjunction with the State, to study potential potable water problems in the City watersheds and reservoirs under 208 Continuing Planning and existing Federal water legislation.

Any major project request which will adversely impact ground water supplies will be modified through the CEQR and ULURP procedures.

306 CZM funds may be used to support technical feasibility analyses conducted per the above recommendations.

POLICY 39: THE TRANSPORT, STORAGE, TREATMENT AND DISPOSAL OF SOLID WASTES, PARTICULARLY HAZARDOUS WASTES, WITHIN COASTAL AREAS WILL BE CONDUCTED IN SUCH A MANNER SO AS TO PROTECT GROUNDWATER AND SURFACE WATER SUPPLIES, SIGNIFICANT FISH AND WILDLIFE HABITATS, RECREATION AREAS, IMPORTANT ARGRICULATURAL LANDS AND SCENIC RESOURCES.

Explanation of Policy

Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

New York City Implementation

The New York City 208 Plan includes the following recommendations regarding the disposal of solid wastes:

- Integrate into 208 Continuing Planning the leachate survey program for sanitary landfills being developed by the Department of Sanitation.

- Continue the ocean dumping of sewage sludge but consider the effects of dumping at a 12 mile site versus a potential 106 mile site to permit the development of locally proven, cost-effective solutions.

The disposal of solid waste (residential, industrial and commercial wastes; demolition and construction debris; sludges from air, water pollution control, or resource recovery facilities; and dredge spoils) is an issue of major concern in New York City. Land disposal sites are quickly reaching capacities while the search for alternative disposal methods is encountering environmental and/or economic roadlocks.

Therefore, the New York City Waterfront Revitalization Program includes the following solid waste policies. All policies are designed to add specificity to New York State Policy 39 above.

NEW YORK CITY POLICY J: ADOPT END-USE PLANS FOR LANDFILL AREAS WHICH SPECIFY THE FOLLOWING:

- FINAL CAPACITY
- FINAL CONTOURS
- LEACHATE, EROSION AND GAS CONTROL SYSTEMS
- RE-VEGETATION STRATEGIES
- INTERIM REVIEW SCHEDULES

In New York City all landfill sites, except the ones in Staten Island are scheduled to close by the mid-1980s. All these active landfill areas lack approved end-use plans that fix ultimate capacities, delineate final contours and appropriate land-use; or outline measures to abate the adverse effects of gaseous emissions, leachate discharge into surrounding waters and erosion. Two of the sites are located at Gateway National Recreation Area. It is recommended that termination dates be renegotiated and extended so that end use site plans could be fully developed at these two landfills.

It may be necessary to locate new landfill areas or reactivate old landfill sites to dispose of valueless components (i.e., residue from recource recovery facilities) of the solid waste stream.

IMPLEMENTATION

Federal Actions:

The U.S. Environmental Protection Agency assists states in the development of solid waste disposal plans and dispenses Federal aid for planning and implementation consistent with Federal standards pursuant to Section 6941 of the Resource Conservation and Recovery Act, 42 U.S.C. & 6901. It has also promulgated rules and regulations governing the ocean disposal of various solid and liquid wastes. The U.S. Army Corps of Engineers issues permits to regulate the ocean disposal of various liquid and solid wastes.

State Actions:

The New York State Department of Environmental Conservation is responsible for development of a statewide comprehensive solid waste

management plan, which gives approval prior to construction and operation of a solid waste management facility and provides financial aid to localities pursuant to Section 27-0507 of the New York Environmental Conservation Law.

New York City Actions:

The New York City Department of Sanitation has the authority to issue permits for the use of land as dumps pursuant to Sections 755(5) - 2.0 and 755(5) - 3.0 of the New York City Administrative Code.

It also is cooperating with Federal and State agencies to develop plans in compliance with promulgated rules and regulations. The Department of Sanitation has awarded a consultant contract to develop an operational plan pursuant to Part 360 of the State Environmental Conservation Law.

The Department of Sanitation's plan will be subject to review through ULURP by the City Coastal Commission to insure compliance with this policy. In addition, Federal Coastal Zone Management Act (306) funds may be used to assist in performing studies to determine future use plans for these sites.

NEW YORK CITY POLICY K: CURTAIL ILLEGAL DUMPING THROUGHOUT THE COASTAL ZONE AND RESTORE AREAS SCARRED BY THIS PRACTICE.

Explanation of Policy

Illegal dumping continues to degrade neighborhoods, scar parklands, destroy remaining natural resources and add to the cost of upgrading such areas.

This policy adds specificity to New York State Water Quality Policy 39. However, its enforceability depends on completion of an illegal dumping curtailment plan.

Implementation

New York City Actions:

The New York City Department of Sanitation, has the authority to issue fines for illegal dumping pursuant to section 755(2)-7.1 of the New York City Administrative Code, however, the practice continues due to the difficulty encountered in enforcement.

Federal Coastal Zone Management Act (306) funds may be used by the City Coastal Commission, in cooperation with the Department of Sanitation, to develop a strategy to curtail this practice and/or to hire enforcement personnel. Those areas which have attracted this practice and contain vital natural resources will be identified and considered for restoration.

NEW YORK CITY POLICY L: ENCOURAGE ENERGY DEVELOPMENT FROM WASTE AND WASTE LANDFILLS

Explanation of Policy

The City of New York is committed to the national goal of independence from foreign imported oil for energy use. The City's 1977 Comprehensive Solid Waste Management Report, developed with Federal and State assistance, entails ways of refuse disposal with provisions for recovery of materials and energy resources. This policy of recovering or producing energy from waste is in line with the national objective of energy independence.

IMPLEMENTATION

Federal Actions:

The U.S. Environmental Protection Agency assists states in the development of solid waste disposal plans and dispenses Federal aid for planning and implementation consistent with Federal standards pursuant to Section 6941 of the Resource Conservation and Recovery Act, 42 U.S.C. & 6901.

State Actions:

The New York State Department of Environmental Conservation is responsible for development of a statewide comprehensive solid waste management plan, gives approval prior to construction and operation of a solid waste management facility and provides financial aid to localities pursuant to Section 27-0507 of the New York Environmental Conservation Law.

City Actions

The Department of Sanitation is mandated by City Charter to dispose of City waste. The resource recovery technology method of disposing

waste allows energy production as well. The Department has produced a resource recovery plan and has a current application to construct a facility pursuant to that plan. Adherence to this policy will be assured through review of this and future applications pursuant to ULURP and CEQR.

POLICY 40: EFFLUENT DISCHARGED FROM MAJOR STEAM ELECTRIC GENERATING AND INDUSTRIAL FACILITIES INTO COASTAL WATERS WILL NOT BE UNDULY INJURIOUS TO FISH AND WILDLIFE AND WILL CONFORM TO STATE WATER QUALITY STANDARDS.

Explanation of Policy

The State Board of Electrical Generation Siting and the Environment must consider a number of factors when reviewing a proposed site for facility construction. One of these factors is the facility "not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the State, public health, the public enjoyment of the receiving waters." The effects of thermal discharges on water quality and aquatic organisms will be considered by the Board when evaluating an application to construct a new steam electric generating facility.

New York City Implementation

Implementation of this policy through Article VII and VIII of the New York State Environmental Conservation law is sufficient to protect the coastal area of New York City. This Law authorizes the establishment of standards for thermal discharges into State waters.

POLICY 41: LAND USE OR DEVELOPMENT IN THE COASTAL AREA WILL NOT CAUSE NATIONAL OR STATE AIR QUALITY STANDARDS TO BE VIOLATED

Explanation of Policy

New York's Coastal Management Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation. Coordination of the coastal management and air pollution programs will focus on ensuring the required consistency. Mutual program review will concentrate on identification of the effect of each program upon the other. Any adjustments that are required will reflect the primacy of National Ambient Air Quality Standards.

To the extent possible, the State Implementation Plan will be consistent with coastal land and water use policies. Conversely, coastal management guidelines and program decisions with regard to land and water use and any recommendations with regard to specific sites for major new or expanded industrial, energy, transportation, or commercial facilities will reflect an assessment of their compliance with the air quality requirements of the State Implementation Plan.

New York City Implementation

In New York City, the Department of Environmental Protection and the Department of Buildings have responsibility to safeguard clean air. The Department of Environmental Protection (DEP) has the authority to set standards for the regulation of all emissions into the open air pursuant to Section 1403 of the City Charter. Also, this section gives the Commissioner of DEP the authority to enforce all rules and regulations pertaining to air pollution control. The Department of Buildings (DOB) enforces those sections of the Zoning Resolution which pertain to performance standards for air pollution emissions. These standards are applied to certain manufacturing and commercial uses. Both DEP and DOB have the authority to issue permits prior to the installation of certain control equipment. In addition to the two agencies discussed above the New York City Environmental Control Board acts as a judicial body with respect to violation of the Air Pollution Control Code and the Department of City Planning participates with DEP and the New York State Department of Environmental Conservation in developing and revising air quality management plans.

The City Coastal Commission will perform continuing reviews of developing plans and strategies and consider proposed air quality requirements during implementation of the Local WRP Program, especially with respect to use determinations and designation of areas for special management attention.

POLICY 42: COASTAL MANAGEMENT POLICIES WILL BE CONSIDERED IF THE STATE RECLASSIFIES LAND AREAS PURSUANT TO THE PREVENTION OF SIGNIFICANT DETERIORATION REGULATIONS OF THE FEDERAL CLEAN AIR ACT.

Explanation of Policy

The policies of the State and local coastal management programs concerning proposed land and water uses and the protection and preservation of special management areas will be taken into account prior to any action to change prevention of significant deterioration land classifications in coastal regions or adjacent areas. In addition, the Department of State will provide the Department of

Environmental Conservation with recommendations for proposed prevention of significant deterioration land classification designations based upon State and local coastal management programs.

New York City Implementation

The City Coastal Commission will provide the various responsible agencies mentioned under Policy 1 with recommendations for proposed significant deterioration land classification designations based upon the New York City WRP.

POLICY 43: LAND USE OR DEVELOPMENT IN THE COASTAL AREA MUST NOT CAUSE THE GENERATION OF SIGNIFICANT AMOUNTS OF THE ACID RAIN PRECURSORS: NITRATES AND SULFATES.

Explanation of Policy

The New York Coastal Management Program incorporates the State's policies on acid rain. As such, the Coastal Management Program will assist in the State's efforts to control acid rain. Conversely, these efforts to control acid rain will enhance the continued viability of coastal fisheries, wildlife, agricultural, scenic and water resources.

New York City Implementation

The City Coastal commission will perform continuing reviews of developing plans and strategies concerning acid rain control and will make recommendations on proposed plans to various responsible agencies mentioned under Policy 41.

POLICY 44: PRESERVE AND PROTECT TIDAL AND FRESHWATER WETLANDS AND PRESERVE THE BENEFITS DERIVED FROM THESE AREAS.

Explanation of Policy

Tidal wetlands include the following ecological zones: coastal fresh marsh; intertidal marsh; coastal shoals; bars and flats; littoral zone; high marsh or salt meadow; and formerly connected tidal wetlands. These tidal wetland areas are officially delineated on the Department of Environmental Conservation's Tidal Wetlands Inventory Map.

Freshwater wetlands include marshes, swamps, bogs, and flats supporting aquatic and simi-aquatic vegetation and other wetlands so defined in the New York State Freshwater Wetlands Act and the New York State Protection of Waters Act.

The benefits derived from the preservation of tidal and freshwater wetlands include but are not limited to:

- habitat for wildlife and fish, including a substantial portion of the State's commercial fin and shellfish varieties; and contribution to associated aquatic food chains;
- erosion, flood and storm control;
- natural pollution treatment;
- groundwater protection;
- recreational opportunities;
- educational and scientific opportunities; and
- aesthetic open space in many otherwise densely developed areas.

New York City Implementation

The enforcement of New York State Tidal and Freshwater Wetland Statutes by the New York State Department of Environmental Conservation is sufficient to implement this policy at the City level. Adherence to this policy is aided when, pursuant to the City Environmental Quality Review (CEQR), Mayoral Executive Order No. 91, discretionary actions of City agencies are reviewed for determination of significant effect. This review would include criteria such as "the removal or destruction of large quantities of vegetation..." (Section 6(a)(2). This review is made before a final decision to approve an action can be made by the City Planning Commission in the ULURP process.

CHAPTER V: SPECIAL REVITALIZATION AREAS

INTRODUCTION

The area within the waterfront boundary, as discussed earlier, is the area where land uses and activities will be regulated to protect life and property from natural hazards, to restore and conserve valuable natural and man-made resources or to preserve critical habitats. Within this zone, where uses and activities will be subject to some degree of management, there are a number of specific areas where natural or manmade features, environmental processes, or existing and potential economic and recreational opportunities merit further protection, preservation or enhancement. The New York City Waterfront Revitalization Program identifies Erosion/Flood Hazard Areas, Shorefront Access Areas and Areas of Particular Waterfront Significance, and selected existing Special Zoning Districts as Special Revitalization Areas.

Erosion/Flood Hazard areas, Shorefront Access Areas and Areas of Particular Waterfront Significance are discussed further in the following sections of this chapter. Details of selected existing Special Zoning Districts can be found in the New York City Zoning Resolution. The existing Special Zoning Districts selected to further implementation of the New York City WR Program include: The Special Battery Park City District, created to govern a large development in the business core of Lower Manhattan by requiring visual corridors, views of the water from upland areas and pooled open spaces; The Special Scenic View District, intended to prevent obstruction of outstanding scenic views as seen from a public park, esplanade or mapped public place by not allowing buildings or structures to penetrate a scenic view plane; The Special Natural Area Districts, designed to preserve natural features on primarily vacant land in Staten Island and Bronx by reviewing all new developments and site alterations; The Special South Richmond Development District, established to systematically guide development of vacant land in southern Staten Island by mandating tree preservation, planting and maintenance of open space networks; The Special Sheepshead Bay District, devised to encourage develpment that will strengthen and protect the neighborhood's unique waterfront and recreation character by establishing special density and height limits and requiring sitting areas, kiosk and cafes; and, The Special South Street Seaport District, enacted to preserve and restore the Seaport's historic building by allowing transfer of development rights. The Special City Island District was enacted to promote the nautical and waterfront uses of City Island.

These Special Districts all clearly contain provisions in complete accord with Waterfront Revitalization goals and objectives and are used as tools to implement certain WR policies (please refer to Chapter IV - Waterfront Policies). The City Coastal Commission will aid in administering the special provisions within these areas.

Erosion/Flood Hazard Special Management Areas

Federal regulations covering shoreline erosion/mitigation planning, developed in response to the Coastal Zone Management Act Amendments of 1976, require "A planning process for (A) Assessing the effects of shoreline erosion (however caused), and (B) Studying and evaluating ways to control, or lessen the impact of such erosion."

In order to meet these requirements, New York State has articulated Program Policies and demonstrated how existing State laws may be used for their implementation. In addition, it has developed a new program which provides for the identification, mapping and designation of waterfront erosion hazard areas in cooperation with local governments. The legislation requires local governments to adopt minimum standards and criteria for the siting and building of structures and for land use and development within erosion hazard areas.

The Flooding and Erosion issue and some of the New York City Policies section of Chapter IV, details how the City Coastal Commission will implement the new State Erosion Hazard Legislation. That chapter identifies a unique form of erosion in urban areas, structural erosion.

This section of the New York City WRP Program addresses those reaches (linear sections of shorefront) which have been studied in detail by the U.S. Army Corps of Engineers. Much of the New York Harbor has active proposals to mitigate flooding and erosion and to remove decaying structures and floating debris.

Coastal hazards occur along two distinct shorelines. First, exposed shorelines along the Lower New York Bay facing the Atlantic Ocean and Western Long Island Sound are eroded and flooded by winds, waves and storms. The U.S. Army Corps of Engineers[1] has identified four reaches where these hazards are serious:

1 National Shoreline Study; U.S. Army Corps of Engineers, 1972

Reach 1 - STATEN ISLAND - Fort Wadsworth to Arthur Kill
Reach 2 - CONEY ISLAND - Rockaway Inlet to Norton Point
Reach 3 - THE ROCKAWAYS - East Rockaway Inlet to Rockaway Inlet
Reach 4 - WESTERN LONG ISLAND SOUND - Eastern Bronx Shore and Nearby Islands

Second, physically built-up shores along the numerous bays, inlets and rivers of New York Harbor are subject to both natural and man-induced forces which erode waterfront structures, a problem studied by the Army Corps of Engineers.[2] Work is nearly complete on Reach A and Reach B is now in the planning and engineering stages to remove waterfront structures along the shoreline:

Reach A - MANHATTAN - East River, Battery Park to East 96th Street
Reach B - STATEN ISLAND - St. George to the Verrazano Narrows Bridge

Shorefront Access Areas

Coastal Zone Management Act rules and regulations encourage the development of a single coordinated statewide access planning process.

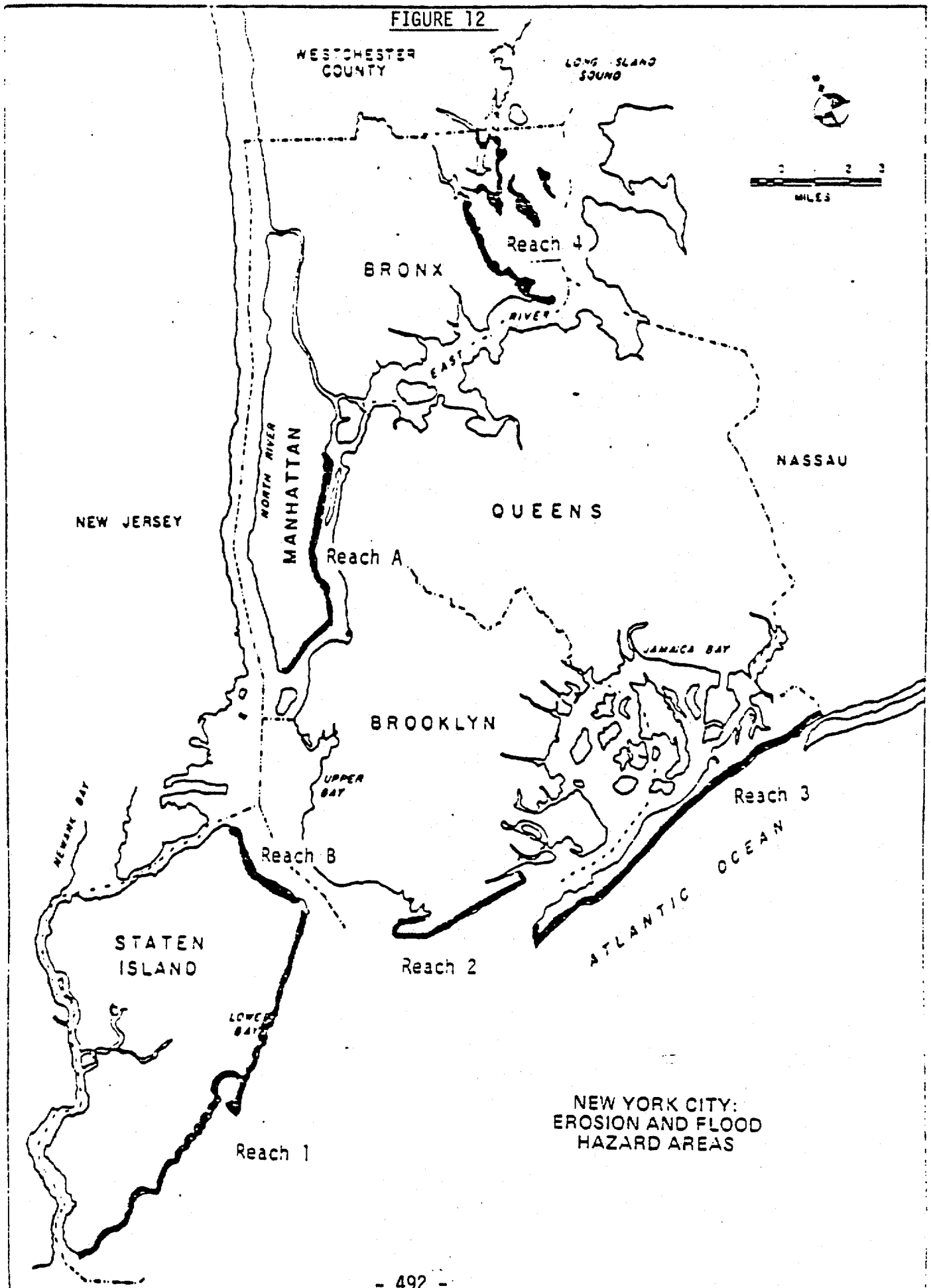
The New York State Coastal Management Program explains that the statewide process "... utilizes, in part, various methodologies and inventories already developed by ... state and local agencies and the lists of specific sites needing access improvements."

Presented below is the work completed by the Department of City Planning during the development (305) phase of the Waterfront Revitalization Program. It includes a methodology for identifying shorefront areas appropriate for improved access and a tabulation of the nature of access issues for thirty-three (33) areas.

Planning during the development (305) phase also included site specific studies for three areas - Fulton Ferry, in Brooklyn, Soundview Pennisula, in the Bronx, and the Northeastern Shore of Queens; the detailed plans resulting from these studies may be incorporated at a later date as amendments to the New York City WR Program.

2 "Survey Report on Review of Project, New York Harbor Collection and Removal of Drifts"; U.S. Army Corps of Engineers, 1974.

FIGURE 12



NEW YORK CITY:
EROSION AND FLOOD
HAZARD AREAS

Federal Coastal Zone Management Act (306) funds and other appropriate funding may, if available, be used to complete the remaining site specific studies and to implement recommendations in accordance with the statewide access planning process.

Identification Methodology

The entire New York City waterfront area has been examined with regard to need, potential, and demand for shorefront access relating to:

1) the inaccessibility of waterfront recreation areas, views or open space;
2) the absence of available waterfront or upland open space;
3) conflicts generated by expanding shorefront access; and
4) opportunity for shorefront recreation.

Sources for data leading to the identification of areas showing shorefront access needs were:

- previous studies and reports done by the Department of City Planning;

- City and State agencies involved in the planning and development of the waterfront for activities compatible with public shorefront access;

- experts associated with public agencies and civic groups; (These include: New York City Department of Parks and Recreation, New York City Parks Council, New York State Sea Grant, New York State Office of Parks and Recreation, various New York City Community Planning Boards and civic associations.)and,

- inventories of existing recreational facilities.

Shorefront Access Areas are listed in Table I in relationship to the type of access involved (physical, visual, transportation) and general nature of the access issue. In addition, all City parks and other City-owned waterfront property are generically designated. Additional sites may be identified during the implementation phase of the program.

Shorefront Access Areas are also designated in Table I according to their basis of selection in order to provide an historical perspective on how the study originated. These sites have been selected based on a proposed plan, policy or WRP identification: either a proposal was requested by a community board which suggested a study should be made of the designated area; or a plan regarding the specific shorefront access area was drawn up by the New York City Department of Planning;

SHOREFRONT ACCESS:

TABLE 5

Bronx Sites	Basis for Selection		Type of Access			Nature of Access Issue								
	Proposal, Plan, Policy	WRP Identification	Transportation	Visual	Physical (Pedestrian)	Inadequate Access to waterfront open space	Need for waterfront open space	Opportunity for view/ access corridors or water front open space	Inadequate Public Transportation	Conflicting waterfront activities	Potential for disruption of natural features	Existing transportation impacts such as traffic congestion and parking problems.	Lack of upland open space
Bronx River	x			x	x	x	x	x		x			
City Island	x		x									x	
Ferry Point Park		x	x					x	x				
Pelham Bay Park		x						x	x		x		
Soundview Peninsula	x	x	x	x	x	x		x	x				x
Riverdale Natural Area	x				x	x							

SHOREFRONT ACCESS:

TABLE 5

Brooklyn Sites	Basis for Selection		Type of Access			Nature of Access Issue									
	Proposal, Plan, Policy	WRP Identification	Transportation	Visual	Physical (Pedestrian)	Inadequate Access to waterfront open space	Need for waterfront open space	Opportunity for view/ access corridors or water front open space	Inadequate Public Transportation	Conflicting waterfront activities	Potential for disruption of natural features	Existing transportation impacts such as traffic congestion and parking problems.	Lack of upland open space
Spring Creek	x		x		x		x	x			x		
Paerdegat Basin		x		x	x		x	x					
Sheepshead Bay		x	x						x			x	
Coney Island Beach		x	x		x	x			x				
Dreier-Offerman Park	x		x		x	x		x					
Red Hook		x			x	x	x	x		x			
Fulton Ferry	x				x	x	x	x		x			x
Northern Brooklyn Waterfront	x				x		x	x		x			x

SHOREFRONT ACCESS:

TABLE 5

Manhattan Sites	Basis for Selection		Type of Access			Nature of Access Issue								
	Proposal, Plan, Policy	WRP Identification	Transportation	Visual	Physical (Pedestrian)	Inadequate Access to waterfront open space	Need for waterfront open space	Opportunity for view/ access corridors or water front open space	Inadequate Public Transportation	Conflicting waterfront activities	Potential for disruption of natural features	Existing transportation impacts such as traffic congestion and parking problems.	Lack of upland open space
Manhattan Landing	x			x	x	x		x					
Battery Park City	x			x	x	x		x					x
Greenwich Street	x				x	x							
Westway	x				x	x	x	x					
Penn Yards	x				x	x		x					
North River WPC	x				x	x	x						
Randall's Island		x	x		x	x	x		x				x
East River Waterfront		x			x	x		x					

SHOREFRONT ACCESS:

TABLE 5

Queens Sites	Basis for Selection: Proposal, Plan, Policy	Basis for Selection: WRP Identification	Type of Access: Transportation	Type of Access: Visual	Type of Access: Physical (Pedestrian)	Nature of Access Issue: Inadequate Access to waterfront open space	Need for waterfront open space	Opportunity for view/ access corridors or water front open space	Inadequate Public Transportation	Conflicting waterfront activities	Potential for disruption of natural features	Existing transportation impacts such as traffic congestion and parking problems.	Lack of upland open space
North East Shore	x			x	x			x			x		
Flushing Meadow Park		x	x						x			x	
Northwest/East River Shore		x		x	x		x			x			
Edgemere Landfill		x			x			x					
Arverne	x				x			x					

SHOREFRONT ACCESS:

TABLE 5

Staten Island Sites	Basis for Selection: Proposal, Plan, Policy	Basis for Selection: WRP Identification	Type of Access: Transportation	Type of Access: Visual	Type of Access: Physical (Pedestrian)	Nature of Access Issue: Inadequate Access to waterfront open space	Nature of Access Issue: Need for waterfront open space	Nature of Access Issue: Opportunity for view/ access corridors or water front open space	Nature of Access Issue: Inadequate Public Transportation	Nature of Access Issue: Conflicting waterfront activities	Nature of Access Issue: Potential for disruption of natural features	Nature of Access Issue: Existing transportation impacts such as traffic congestion and parking problems.
Sailor Snug Harbor		x	x		x			x	x			
St. George Ferry Terminal	x				x	x						
Alice Austen Esplanade		x			x	x						
Richmond Natural Area	x				x						x	
South Richmond	x				x		x	x				

or a policy regarding the shorefront access area was previously identified in the New York City Zoning Resolution. WRP identification indicates that the investigation of the site took place during the CZM planning period (305) and that previously, no proposal, plan or policy had been established.

Each of the identified sites presents a unique case exhibiting different problems and requiring varied solutions. This necessitates site specific studies which must include the following elements:

- community characteristics (population, housing, open space, etc.), recent trends, and future development plans;
- an identification and evaluation of the current modes of access to the shore;
- an identification of specific shorefront access problems based on the above investigations; and,
- recommended actions necessary to mitigate these problems.

Areas of Particular Waterfront Significance

A site specific resource and management studies of a limited numb.. of areas with unique, scarce or sensitive resources (natural or man-made) where the general policies of the Waterfront Revitalization plan do not meet specific area needs were undertaken. For example, a study might promote preservation, reclamation, restoration, public access to the shorefront and/or economic development. These areas are called Areas of Particular Waterfront Significance (APWS).

Management plans for New York City APWSs address site specific, as opposed to waterfront areawide problems. The selection process included identifying candidate areas through review of the data and determinants used to map the waterfront area boundaries as well as federal, state and city programs applicable to specific areas and conditions in the area. City agencies and departments, New York City Department of City Planning Borough Offices and neighborhood and interest groups offered nominations.

Potential sites were reviewed in terms of present uses and conditions, proposed uses and projected changes which could alter the site and adjacent areas. They were then grouped according to representative categories listed in Coastal Zone Management Act regulations. The categories are:

- areas of significant natural habitats or character;
- areas of historical significance or cultural value;
- areas of existing or potential scenic value;

- areas of high natural productivity or habitats essential for living resources;
- areas of substantial recreational value or opportunity;
- areas of water-dependent developments and facilities;
- areas of geological or topographic significance to industrial or commercial development.
- areas of urban concentration where shoreline utilization and water uses are highly competitive;
  - areas of significant hazard or damage if developed (or already developed) due to storms, slides, floods, erosion, settlement, dreainage or inadequate sewer systems;
  - areas to protect, maintain or replenish coastal lands or resources or areas in need of shoreline protection; and,
  - areas of value for scientific research and academic study.

Once grouped, the potential sites within each category were evaluated for significance relative to the other potential sites based on additional criteria addressing specific urban concerns. These additional criteria are:

- sites with unique problems or scarce qualities.
- sites suited for intense use or development;
- sites vulnerable to impacts from developments and exhibiting an immediacy of need for protection;
- sites with conflicting isssues of concern requiring protection beyond existing plans and management strategies.

Evaluation of over 50 initial nominations resulted in the selection of twelve areas that were proposed for designation as APWS's and submitted to the New York State Department of State's Coastal Management Unit:

The State then selected ten areas it considered of statewide importance. These areas are: Bronx - Bronx River Valley, Brooklyn - Spring Creek, Manhattan - Southwest Waterfront Area, Queens - Eastern North Shore, South Shore, and Northwest Waterfront, Staten Island - South Richmond Natural Drainage Basin Area, Fresh Kills/Richmond Creek Drainage Basin and Raritan Bay, and City-wide - East River/Upper Bay.

NEW YORK CITY

WATERFRONT REVITALIZATION PROGRAM
AREAS OF PARTICULAR WATERFRONT SIGNIFICANCE

1. BRONX RIVER VALLEY
2. EASTERN NORTHSHORE QUEENS
3. EAST RIVER/UPPER BAY
4. FRESH KILLS/RICHMOND CREEK
5. RARITAN BAY

6. SOUTH SHORE QUEENS
7. STATEN ISLAND NATURAL DRAINAGE BASINS
8. SPRING CREEK
9. WESTERN NORTH SHORE QUEENS
10. SOUTHWEST MANHATTAN WATERFRONT

The City Coastal Commission will develop management plans for each of these areas. Six plans have been preliminarily drafted to date. They will be submitted for approval as program amendments at a later date.

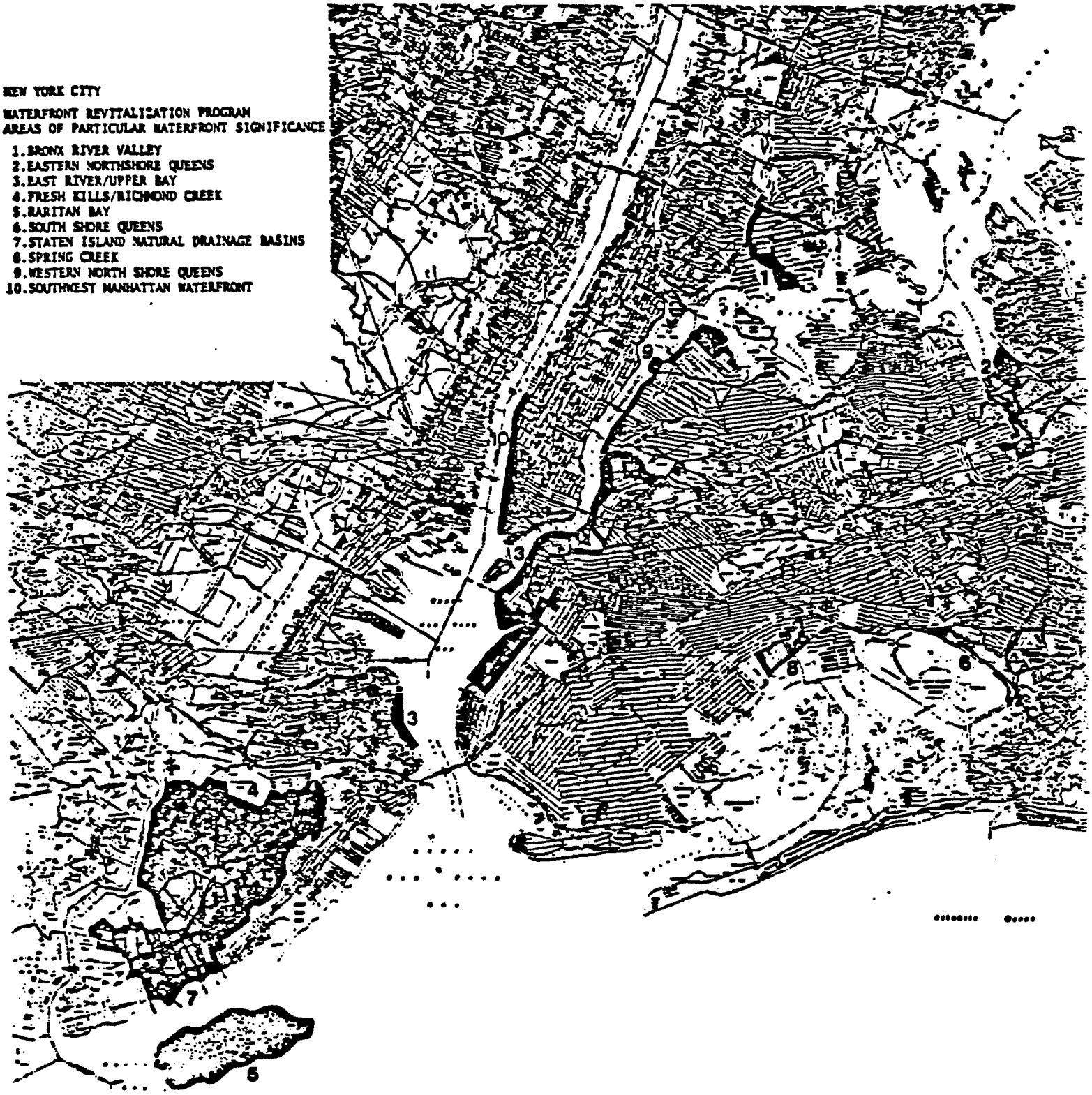
Community Participation

In the continued planning and implementation these areas, the local government will work with all interests which may be affected by the program's implementation. The Waterfront Revitalization Program will be a detailed program based on extensive dialogue and cooperation among all affected interests of the community and all levels of government. All local authorities will be utilized to enforce the achievement of the community's waterfront needs.

Each plan amendment will undergo review by appropriate City agencies and local community boards through the Uniform Land Use Review Process.

Areas of Particular Waterfront Significance

Figure 13



APPENDIX A: MAJOR STATUTORY AND REGULATORY PROVISIONS

1. Power and Responsibility of Department of City Planning -- Charter Section 191.

2. Power and Responsibility of City Planning Commission -- Charter Section 192.

3. Uniform Land Use Review Procedure -- Charter Section 197-c.

4. Zoning Reglations -- Charter Section 200

5. Findings for Board of Standards and Appeals Variances -- Zoning Resolution Section 72-21.

6. City Environmental Quality Review -- Executive Order No. 91.

7. Capital Needs Statement -- Charter Section 214.

8. 197-a Plans -- Charter Section 197-a.

1. Power and Responsibility of Department of City Planning -- Charter Section 191.

§ 191. Department and director of city planning. a. There shall be a department of city planning, the head of which shall be the director of city planning. He shall be chairman and a member of the city planning commission.

b. The director of city planning shall:

1. Advise and assist the mayor, the board of estimate and the council in regard to the physical planning and public improvement aspects of all matters related to the development of the city.

2. Provide staff assistance to the city planning commission in all matters under its jurisdiction.

3. Be the custodian of the city map and record thereon all changes legally authorized.

4. Conduct continuous studies and collect statistical and other data to serve as the basis for planning recommendations.

5. Provide community boards with such staff assistance and other professional and technical assistance as may be necessary to permit such boards to perform their planning duties and responsibilities under this chapter.

6. Perform such other functions as are assigned to him by the mayor or other provisions of law.

c. The department shall employ such planning experts, engineers, architects and other officers and employees as may be required to perform its duties, within the appropriation therefor. *(Amended by Local Law 1969, No. 39; vote of the electors, Nov. 4, 1975)*

2. Power and Responsibility of City Planning Commission -- Charter Section 192.

§ 192. City planning commission. a. There shall be a city planning commission to consist of the chairman and six members to be appointed by the mayor. The appointments shall be made so that there is at least one resident of each borough on the commission. Except as otherwise provided in section one hundred ninety-one, no member shall hold any other city office. Members other than the chairman shall be appointed for a term of eight years. In case of a vacancy in the office of a member other than that of the chairman, the mayor shall appoint a member to serve for the remainder of the unexpired term.

b. One of the members other than the chairman shall be designated by the mayor as vice-chairman and shall serve as such at the pleasure of the mayor. The vice-chairman shall possess the powers and perform the duties of the chairman when the chairman is absent or while a vacancy exists in the office of chairman, and shall at such times serve as director of city planning. *(Amended by vote of the electors, Nov. 4, 1975)*

3. Uniform Land Use Review Procedure -- Charter Section 197-c.

§ 197-c. Uniform land use review procedure. a. Except as otherwise provided in this charter, proposals and applications by any person or agency respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure. Such procedure shall apply to changes, approvals, contracts, consents, permits, and authorizations respecting:

(1) The city map pursuant to section one hundred ninety-eight;

(2) Map of a subdivision or platting of land into streets, avenues or public places pursuant to section two hundred two;

(3) Designations of zoning districts under the zoning resolution, including conversion from one land use to another land use;

(4) Special permits pursuant to the zoning resolution;

(5) Site selection for capital projects pursuant to section two hundred twenty-seven;

(6) Franchises and revocable consents involving residential, industrial, commercial or community facility projects pursuant to chapter fourteen;

(7) Improvements in real property the costs of which are payable other than by the city pursuant to section two hundred twenty-nine;

(8) Housing and urban renewal plans and projects pursuant to city, state and federal housing laws;

(9) Land-fills pursuant to chapter fifty-six and other applicable provisions of law;

(10) Sale, lease, other than the lease of office space, exchange, or other disposition of real property to the city and of the real property of the city, and the proposed acquisition, sale or lease of land under water pursuant to section sixty-seven, section sixteen hundred three, chapter fifteen, and other applicable provisions of law; and,

(11) Such other matters involving the use, development or improvement of property as are specified by the board of estimate upon recommendation of the city planning commission.

b. Each proposal or application shall be filed with the department of city planning, which shall forward a copy within five days to the community board for the community district in which the land is located, and to the respective borough board, if the proposal or application involves land located in two or more community districts.

c. Each community board shall (1) notify the public of the proposal or application in a manner specified by the city planning commission pursuant to subsection g of this section, (2) conduct a public hearing, and (3) prepare and submit a written recommendation directly to the city planning commission not later than sixty days after receipt of the proposal or application.

d. A copy of a recommendation by a community board pursuant to subsection c of this section that involves land located within two or more community districts shall also be filed with the borough board within the same time period specified in subsection c of this section. Not later than thirty days after the filing, the borough board may hold a public hearing on any such recommendation and submit a written recommendation to the city planning commission.

e. Not later than sixty days after the filing of any recommendation with it, the city planning commission shall approve, modify, or disapprove the proposal or application and shall file its decision with the board of estimate. The city planning commission shall conduct a public hearing on any proposal or application on which a hearing was not held by a community board or borough board. The commission may waive a public hearing if a community board or borough board held a public hearing after adequate notice. Prior to taking any action pursuant to this subsection on a matter involving the siting of a capital project, the sale, lease, exchange or other disposition of real property, a franchise or a revocable consent, the city planning commission shall obtain a report from the office of management and budget, the department of real estate, or the bureau of franchises, as appropriate. Any action of the city planning commission which modifies or disapproves a recommendation of a community board or borough board shall be accompanied by a written explanation of its reasons for such action.

f. The city planning commission shall file copies of its decision or recommendation with the board of estimate, together with copies of any recommendation of a community board or borough board. Within sixty days of such filing, the board of estimate shall hold a public hearing on the matter and take final action by a majority vote unless otherwise specified in this charter.

g. The city planning commission, after notice and a public hearing, shall establish and publish not later than June first, nineteen hundred seventy-six, guidelines, minimum standards, and procedural requirements for community boards, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section.

h. If a community board, borough board, or the city planning commission fails to act within the time limits for review pursuant to subsections c, d and e of this section, the proposal or application is referred to the next level of review. If the board of estimate fails to act within the time limit specified in subsection f of this section, any prior decision of the city planning commission is final.

i. Notice of any hearing on a proposal or application by the city planning commission or board of estimate shall be published in the City Record at least ten days immediately prior to the date of the hearing, and a copy of the notice shall be mailed to all community boards or borough boards affected by the proposal or application. *(Adopted by vote of the electors, Nov. 4, 1975)*

4. Zoning Regulations -- Charter Section 200

§ 200. Zoning regulations. Except for changes in the designation of zoning districts and the issuance of special permits under the zoning resolution which are subject to the uniform review procedure pursuant to section one hundred ninety-seven-c and to subsection four of this section, any existing resolution or regulation of the board of estimate or of the city planning commission to regulate and limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces, to regulate density of population or to regulate and restrict the locations of trades and industries and location of buildings designed for specific uses or creating districts for any such purpose, including any such regulation which provides that the board of standards and appeals may determine and vary the application of such resolutions or regulations in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations, may be amended, repealed or added to only in the following manner:

1. The city planning commission may upon its own initiative at any time, or upon application as provided in section two hundred one, adopt a resolution for any such purpose subject to the limitations provided by law. Before adopting any such resolution, the commission shall notify any community board or borough board affected by the resolution and shall afford persons interested an opportunity to be heard at a time and place to be specified in a notice of hearing to be published in the City Record for the ten days of publication of the City Record immediately prior thereto setting forth in general terms the nature of the proposed resolution and a statement of the place at which the entire resolution may be examined. Any such resolution shall be filed with the secretary of the board of estimate within five days from the day of its adoption.

2. Approval, disapproval or modification by the board of estimate of a recommendation by the commission for a change in the zoning resolution must occur within sixty days from the date of filing of the recommendation of the commission with the board. In case the board shall fail to act on such affirmative resolution within such period of sixty days, such change shall be deemed approved and effective on the sixty-first day after the date of filing unless a protest of owners of affected property shall have been filed in accordance with the provisions of subdivision three. Any resolution for a zoning change which the mayor shall have certified to the planning commission as necessary, and which has been disapproved by the commission, may be adopted by the board of estimate by a three-fourths vote and, after notice to the parties affected, a public hearing. The foregoing limitation of sixty days shall be inapplicable to such an adoption and the change shall become effective at a time fixed by the board of estimate.

3. In case a protest against a proposed resolution shall have been presented to the secretary of the board of estimate within thirty days from the date of such filing, duly signed and acknowledged by the owners of twenty per centum or more of the area of:

(1) the land included in changes proposed in such proposed resolution, or

(2) the land immediately adjacent extending one hundred feet therefrom, or

(3) the land, if any, directly opposite thereto extending one hundred feet from the street frontage of such opposite land, such resolution shall not be effective after the filing of such protest unless approved by the board of estimate, either in the form in which it was filed or as modified by the board, by a three-fourths vote of the board within one hundred eighty days after the filing of said resolution with the secretary of the board of estimate. The effective date of such resolution, if so approved, shall be the date of such approval. A protest duly filed as herein provided may be withdrawn at any time within sixty days from the date of the filing of such resolution.

(4) Whenever the city planning commission has not recommended approval of a proposed change in the designation of a zoning district or the issuance of a special permit under the zoning resolution or has failed to act on such a matter with the time specified in section one hundred ninety-seven-c, the board of estimate by a three-fourths vote may approve such change or the issuance of such permit only if the mayor shall have certified to the city planning commission that such change or issuance is necessary. *(Amended by vote of the electors, Nov. 4, 1975)*

5. Findings for Board of Standards and Appeals Variances -- Zoning Resolution Section 72-21.

Findings Required for Variances

When in the course of enforcement of this resolution, any officer from whom an appeal may be taken under the provisions of Section 72-11 (General Provisions) has applied or interpreted a provision of this resolution, and there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such provision, the Board may, in accordance with the requirements set forth in this Section, vary or modify the provision so that the spirit of the law shall be observed, public safety secured, and substantial justice done.

Where it is alleged that there are practical difficulties or unnecessary hardship, the Board may grant a variance in the application of the provisions of this resolution in the specific case, provided that as a condition to the grant of any such variance, the Board shall make each and every one of the following findings:

(a) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular *zoning lot*; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the *use or bulk* provisions of the resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the *zoning lot* is located.

(b) That because of such physical conditions there is no reasonable possibility that the *development* of the *zoning lot* in strict conformity with the provisions of this resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such *zoning lot*. This finding shall not be required for the granting of a variance to a *non-profit* organization.

(c) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the *zoning lot* is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(d) That the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title. Where all other required findings are made, the purchase of a *zoning lot* subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(e) That within the intent and purposes of this resolution the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for.

It shall be a further requirement that the decision or determination of the Board shall set forth each required finding in each specific grant of a variance, and in each denial thereof which of the required findings have not been satisfied. In any such case, each finding shall be supported by substantial evidence or other data considered by the Board in reaching its decision, including the personal knowledge of or inspection by the members of the Board. Reports of other City agencies made as a result of inquiry by the Board shall not be considered hearsay, but may be considered by the Board as if the data therein contained were secured by personal inspection.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 91

AUGUST 24, 1977

CITY ENVIRONMENTAL QUALITY REVIEW

WHEREAS, the improvement of our urban environment is critically important to the overall welfare of the people of the City; and

WHEREAS, the development and growth of the City can and should be reconciled with the improvement of our urban environment; and

WHEREAS, it is the continuing policy of the City that environmental, social and economic factors be considered before governmental approval is given to proposed activities that may significantly affect our urban environment; and

WHEREAS, subdivision (3) of section 8-0113 of Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act, or "SEQRA") and the regulations promulgated thereunder (6 NYCRR 617) authorizes local governments to adopt rules, procedures, criteria and guidelines for incorporating environmental quality review procedures into existing planning and decision making processes; and

WHEREAS, the procedures formulated in this Executive Order are intended to be integrated into existing agency procedures, including the Uniform Land Use Review Procedure contained in section 197-c of Chapter 8 of the City Charter, in order to avoid delay and to encourage a one-stop review process; and

WHEREAS, section 8-0117 of SEQRA, as amended, provides that only actions or classes of actions identified by the State Department of Environmental Conservation as likely to require preparation of an environmental impact statement shall be subject to this Executive Order until September 1, 1978, after which date non-exempt actions will be fully subject to this Executive Order; and

WHEREAS, the implementation of SEQRA in the City by this Executive Order will accomplish the purposes for which Executive Order No. 87 of October 18, 1973 ("Environmental Review of Major Projects") was promulgated and will continue the policy established therein.

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, Executive Order No. 87 of October 18, 1973 is, in accordance with the provisions of sections 16 and 18 hereunder, hereby replaced by this Executive Order as follows:

Section 1. Definitions

As used herein, the following terms shall have the indicated meanings unless noted otherwise:

(a) Action means any activity of an agency, other than an exempt action enumerated in section 4 of this Executive Order, including but not limited to the following:

(1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;

(2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;

(3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;

(4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;

(5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

(b) Applicant means any person required to file an application pursuant to this Executive Order.

(c) Agency means any agency, administration, department, board, commission, council, governing body or any other governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.

(d) Conditional negative declaration means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternatives designed to avoid adverse environmental impacts.

(e) DEC means the New York State Department of Environmental Conservation.

(f) Environment means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

(g) Environmental analysis means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

(h) Environmental assessment form means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

(i) Environmental impact statement (EIS) means a written document prepared in accordance with sections 8, 9, 11 and 13 of this Executive Order. An EIS may either be in a draft or a final form.

(j) Environmental report means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepare or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in section 9 of this Executive Order as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this Executive Order, including the preparation of an EIS.

(k) Lead agencies means the Department of Environmental Protection

and the Department of City Planning of the City of New York, as designated by the Mayor pursuant to section 617.4 of Part 617 of Volume 6 of the New York Code of Rules and Regulations, for the purpose of implementing the provisions of Article 8 of the Environmental Conservation Law (SEQRA) in the City of New York, by order dated December 23, 1976.

(l) Ministerial action means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although such law may require, in some degree, a construction of its language or intent.

(m) Negative declaration means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action will not have a significant effect on the environment.

(n) Notice of determination means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

(o) NYCRR means the New York Code of Rules and Regulations.

(p) Person means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

(q) Project data statement means a written submission to the lead agencies by an applicant on a form prescribed by the lead agencies, which provides an identification of and information relating to the environmental impacts of a proposed action. The project data statement is designed to assist the lead agencies in their evaluation of

an action to determine whether an action under consideration may or will not have significant effect on the environment.

(r) SEQRA means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).

(s) Typically associated environmental effect means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

(t) ULURP means the Uniform Land Use Review Procedure (section 197-c of Chapter 8 of the New York City Charter).

§ 2. General rule

No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this Executive Order.

§ 3. Actions involving federal or state participation

(a) If an action under consideration by any agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:

(1) in the case of an action for which there has been duly prepared both a draft EIS and a final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to section 12 of this Executive Order.

(2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement

under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this Executive Order, and the action shall be fully subject to the same.

(b) If an action under consideration by any agency may involve any state action which may have a significant effect on the environment under SEQRA, pursuant to which a state agency is required to comply with the procedures specified in 6 NYCRR 617, then the determination as to whether the state agency or the lead agencies shall be responsible for the environmental review shall be made on the basis of the following criteria:

(1) the agency to first act on the proposed action;

(2) a determination of which agency has the greatest responsibility for supervising or approving the action as a whole;

(3) a determination of which agency has more general governmental powers as compared to single or limited powers or purposes;

(4) a determination of which agency has the greatest capability for providing the most thorough environmental assessment of the action;

(5) a determination of whether the anticipated impacts of the action being considered are primarily of statewide, regional or local concern, e.g., if such impacts are primarily of local concern, the lead agencies shall conduct the environmental review.

If this determination cannot be made within 30 days of the filing of an application, the Commissioner of DEC shall be requested, in writing, to make such determination.

§ 4. Exempt actions

The following actions shall not be subject to the provisions of this Executive Order:

(a) projects or activities classified as Type I pursuant to section 15 of this Executive Order directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this Executive Order;

(1) such actions include, but are not limited to, those actions defined in sections 1(a)(1),(2),(3) and (4) of this Executive Order;

(2) an action shall be deemed to be undertaken at the point that:

(i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or project; or

(ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or

(iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(b) projects or activities classified as Type I pursuant to section 15 of this Executive Order approved by an agency prior to September 1, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this Executive Order;

(1) such actions include, but are not limited to, those actions defined in sections 1(a)(2) and (5) of this Executive Order;

(2) an action shall be deemed to be approved at the point that:

(i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, licence, certificate or other entitlement for use or permission to act; or

(iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(c) projects or activities not otherwise classified as Type I pursuant to section 15 of this Executive Order directly undertaken, funded or approved by an agency prior to September 1, 1978 except that if such action is sought to be modified after September 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to

the requirements of this Executive Order;

(1) such actions include, but are not limited to, those actions defined in section 1(a) of this Executive Order;

(2) an action shall be deemed to be undertaken as provided in subsections (a)(2) and (b)(2) of this section, as applicable.

(d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(e) ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in section 15, Type I, of this Executive Order, relating to critical areas and historic resources;

(f) maintenance or repair involving no substantial changes in existing structures or facilities;

(g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Articles 7 and 8 of the Public Service Law;

(h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and

(i) actions of the Legislature of the State of New York or of any court.

§ 5. Determination of significant effect; applications

(a) Each agency shall ascertain whether an application need be filed pursuant to this section, employing lists of actions, classified as either exempt, Type I or Type II pursuant to sections 4 and 15 of this Executive Order, respectively, which lists shall be certified by the lead agencies.

(b) The applicant initiating the proposed action, other than an exempt or Type II action pursuant to sections 4 and 15 of this Executive Order, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;

(1) within 20 calendar days of receipt of the application, or of a determination pursuant to section 3(b) of this Executive Order, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;

(2) when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.

(c) Each application shall include an identification of those agencies, including federal and state agencies, which to the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.

(d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this Executive Order.

(e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.

(f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

§ 6. Determination of significant effect; criteria

(a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

(2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;

(4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or tvpe of energy;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use of intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to section 13 of this Executive Order;

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.

(b) For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e. whether it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e. degree

of change or its absolute size). Section 15 of this Executive Order refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

§ 7. Determination of significant effect; notification

(a) The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to section 5(a) of this Executive Order whether the proposed action may have a significant effect on the environment;

(1) in making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in section 6 and consider the lists of actions contained in section 15 of this Executive Order;

(2) the lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subsection.

(b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:

(1) Negative Declaration. If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to sections 4 and 15 of this Executive Order, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;

(v) a statement setting forth the reasons supporting the lead agencies' determination.

(2) Conditional Negative Declaration. If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to sections 4 and 15 of this Executive Order, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subsection):

(i) a list of the conditions, modifications or alternatives to the proposed action which supports the determination;

(ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;

(iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subsection.

(3) Notice of Determination. If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to sections 4 and 15 of this Executive Order, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a brief description of the possible significant effects on the environment of the action;

(v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with sections 8 and 9 of this Executive Order.

(c) The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the regional director of DEC, the commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

§ 8. Draft environmental impact statements; responsibility for preparation

(a) Non-agency applicants:

(1) after receipt of a Notice of Determination pursuant to section 7(c)(3) of this Executive Order, a non-agency applicant shall notify the lead agencies in writing as to whether it will

exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;

(2) the lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.

(3) if the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

(b) Agency applicants:

(1) when an action which may have a significant effect on the environment is initiated by an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

(2) all agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.

(c) Notwithstanding the provisions contained in subsections (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

§ 9. Environmental impact statements; content

(a) Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subsection (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or a final;

(2) the name or other descriptive title of the action;

(3) the location of the action;

(4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;

(5) identification of individuals or organizations which prepared any portion of the statement; and

(6) the date of its completion.

(c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.

(d) The body of all draft and final EIS's shall at least contain

the following:

(1) a description of the proposed action and its environmental setting;

(2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typical associated environmental effects;

(3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(4) a discussion of the social and economic impacts of the proposed action;

(5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;

(6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) a description of mitigation measures proposed to minimize adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (forthe final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

(e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

§ 10. Draft environmental impact statements; procedures

(a) Notice of Completion. Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subsection. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subsection.

(1) Contents of Notice of Completion. All Notices of Completion shall contain the following:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the location of the action and its potential impacts and effects; and

(iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than

10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) Circulating Notice of Completion. All Notices of Completion shall be circulated to the following:

(i) all other agencies, including federal and state agencies, involved in the proposed action;

(ii) all persons who have requested it;

(iii) the editor of the State Bulletin;

(iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) Filing Notice of Completion. All Notices of Completion shall be filed with and made available for public inspection by the following:

(i) the Commissioner of DEC;

(ii) the regional director of DEC;

(iii) the agency applicant, where applicable;

(iv) the appropriate Community Planning Board(s);

(v) the City Clerk;

(vi) the lead agencies.

(b) Filing and availability of draft EIS. All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to subsection (a)(3) of this section.

(c) Public hearings on draft EIS.

(1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subsection (b) of this section, except where a different hearing date is required as appropriate under another law or regulation.

(3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subsection (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

(4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this Executive Order.

§ 11. Final environmental impact statements; procedures

(a) Except as provided in paragraph (1) of this subsection, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect

on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in section 7 of this Executive Order.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in the light of further review by the lead agencies, comments received and the record of the public hearing.

(b) immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in the manner specified in section 10(a) of this Executive Order, provided, however, that the Notice shall not contain the statement described in paragraph (1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to section 10(b) of this Executive Order.

§ 12. Agency decision making

(a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.

(1) Except as provided in paragraph (2) of this subsection where a final decision whether or not to carry out or approve an action is required by law to be made by any agency, such decision shall be made within 30 calendar days of the filing of a final EIS.

(2) Where a proposed action is simultaneously subject to ULURP, the final decision whether or not to carry out or approve the

action shall be made by the Board of Estimate within 60 calendar days of the filing of the final EIS.

(b) When an agency decides to carry out or approve an action which may have a significant effect on the environment, it shall make the following findings in a written decision:

(1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) consistent with social, economic and other essential considerations of state and city policy, all practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to section 10(b) of this Executive Order.

§ 13. Programmatic environmental impact statements

(a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statements, master or area wide statements, or statements for comprehensive plans are often appropriate to assess the environmental effects of the following:

(1) a number of separate actions in a given geographic area;

(2) a chain of contemplated actions;

(3) separate actions having generic or common impacts;

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subsection (a) of this section. However:

(1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and

(2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;

(3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this subsection shall be processed in full compliance with the requirements of this Executive Order.

§ 14. Rules and regulations

The lead agencies shall promulgate such rules, regulations, guidelines, forms and additional procedures as may be necessary to implement this Executive Order.

§ 15. Lists of actions

TYPE I

Type I actions enumerated in section 617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of section 617.12. In

addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

(a) relating to public institutions:

(1) new correction or detention centers with an inmate capacity of at least 200 inmates;

(2) new sanitation facilities, including:

(i) incinerators of at least 250 tons/day capacity;

(ii) garages with a capacity of more than 50 vehicles;

(iii) marine transfer stations;

(3) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;

(4) new schools with seating capacity of at least 1500 seats;

(5) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of the expanded facility exceeds 100,000 sq. ft. of floor area.

(b) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of the expanded facility exceeds 240,000 sq. ft. of floor area.

TYPE II

(a) Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical

area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of section 617.12 of 6 NYCRR 617.

(b) Pursuant to SEQRA, as amended, a list of Type II actions shall be promulgated prior to July 1, 1978, to become effective on September 1, 1978.

§ 16. Related orders; repeal

(a) Executive Order No. 87 of October 18, 1973 shall remain in effect prior to the effective dates of this Executive Order pursuant to Article 8 of the Environmental Conservation Law.

(b) In the event of the repeal of Article 8 of the Environmental Conservation Law, Executive Order No. 87 of October 18, 1973 shall replace this Executive Order.

§ 17. Evaluation of effectiveness

The lead agencies shall conduct a public hearing, not later than June 1, 1979, for the purpose of evaluating the effectiveness of this Executive Order in implementing the State Environmental Quality Review Act, and its impact on the City's physical and economic development process.

§ 18. Effective date

This Executive Order shall take effect immediately.

Abraham D. Beame

ABRAHAM D. BEAME
M A Y O R

7. Capital Needs Statement -- Charter Section 214

§ 214. Departmental estimates for capital projects. a. On such date as the mayor may direct, but not later than the fifteenth day of December, the head of each agency shall submit to the mayor, the board of estimate, the council, the city planning commission, and the department of city planning a detailed estimate of all capital projects pending or which he believes should be undertaken within the ensuing fiscal year and the three succeeding fiscal years. The estimates shall be known as departmental estimates for capital projects and shall be in such form and contain such information as may be required by the mayor. Copies of departmental estimates shall be forwarded to each community board and borough board. Agencies shall consult with the community boards in the preparation of the estimates.

b. Not later than the first day of February, each community board shall (1) hold a public hearing on the departmental estimates with respect to the capital needs and priorities of the community district, and (2) submit a statement of its budget priorities and capital improvement needs for the ensuing fiscal year and the three succeeding fiscal years to the mayor, board of estimate, council, city planning commission, department of city planning, and the respective borough board.

c. Not later than the tenth day of February, each borough board shall submit a comprehensive statement of the budget priorities and needs of the borough for the fiscal year and three succeeding years to the mayor board of estimate, council, city planning commission, and department of city planning.

d. Not later than the first day of March, the city planning commission shall submit to the mayor, board of estimate, and council a report containing a statement of the city's capital needs and priorities, including recommended dollar allocations for general categories of programs and an explanation of recommended priorities among such categories of programs and their likely impact on the orderly growth and development of the city. *(Formerly § 213. Amended by Local Law 1963, No. 30; amended and renumbered by vote of the electors, Nov. 4, 1975; Local Law 1977, No. 12)*

8. 197a Plans -- Charter Section 197a.

§ 197-a. Plans. a. The city planning commission shall be responsible for the conduct of planning relating to the orderly growth and improvement and future development of the city, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, comfort, convenience, health and welfare of its population. Plans for the development, growth, and improvement of the city and of its boroughs and community districts may be initiated by (1) the mayor, (2) the city planning commission, (3) a borough board with respect to land located within two or more community districts, or (4) a community board with respect to land located within a community district. A community board or borough board that initiates any such plan shall conduct a public hearing on it and submit a written recommendation to the city planning commission. Plans initiated by the mayor or the city planning commission shall be referred to the affected community board or borough board for review and recommendation after public hearing. The mayor or the city planning commission, respectively, shall establish the procedures and schedule for review by community boards and borough boards and for public hearings on any plans initiated by them which involve matters of city-wide concern.

b. The city planning commission shall review any plan initiated pursuant to subsection a of this section, hold a public hearing on it and recommend to the board of estimate approval or disapproval of the plan. The board of estimate shall hold a public hearing, and thereafter by a three-fourths vote may override any action of the city planning commission which disapproved a plan. If the city planning commission has approved a plan, the board of estimate may take final action on it by majority vote. Copies of approved plans shall be filed with the city clerk, the department of city planning, the borough president, and the borough board and community boards affected. *(Adopted by vote of the electors, Nov. 4, 1975)*

APPENDIX B: FUTURE APPROACHES

Introduction

It was stated in Chapter V that while there exist many areas of conflicting interests and overlapping authorities and controls, there are no significant governmental objectives or functional areas that are not at work in the complex system which has evolved over the years to manage the New York City Waterfront area. In short, regulatory gaps are almost non-existent; the major problem is institutional and regulatory overlap.

The primary land use management tool of New York City, the City Zoning Resolution must be revised to remove conflicts, incorporate Waterfront Management guidelines, policies and standards and to streamline the development process where appropriate.

This appendix summarizes some standards and guidelines which will be followed to adjust the City Zoning Resolution within the boundaries of the New York City Waterfront Area and outlines the existing or additional authorities required to implement such a system. If approved, these changes will become amendments to the New York City Waterfront Revitalization Program.

Flood Plains

Standards:

New York City, as of July, 1975, became a participant in the National Flood Insurance Program. The program, administered by the U.S. Department of Housing and Urban Development's Federal Insurance Administration (FIA), pursuant to 42 U.S.C. Section 401, enables persons to purchase insurance against losses from physical damage to or loss real or personal property caused by floods.

Maps developed by FIA the purposes of this program identify areas within which flood protection measures must be undertaken for all new construction or substanial improvements existing structures (i.e., additions, major renovations, etc.).

These flood protection measures, basically construction standards, were added by Local Law No. 13 (1975) to the New York City Building Code and are enforced by the New York City Department of Buildings.

The more significant aspects of these regulations are:

- all new residential and institutional buildings must be built with the lowest residential floor at or above elevation + 8.6 U.S datum (approximately + 6.0± on the local borough datum). For two-family or larger residential building, all levels below this datum are limited to non-residential areas (i.e., garage, cellar, utility room, etc.) and must be flood proofed;

- non-residential buildings can have floor area below the +8.6 elevation provided the space is flood proofed; and,

- within special flood hazard areas and below the regulatory flood datum, materials, designs and construction of structural elements must conform with Reference Standard RS 4-5, Flood Proofing Regulations published by the Office of the Chief of Engineers, U.S. Army, Washington, D.C. dated June 1972, Sections 210.1 through 210.4, Table I, Chapters 3, 4, 5, 6, 7, 8, 13 and 14. Please refer to that document for details along with the New York City Building Code, New York City Administrative Code Section C26-409.2, et. seq.

It should be noted that all property owners in New York City are now eligible for subsized flood insurance due the passage of Local Law 13. Property owners are able to obtain this insurance without being required to make any physical changes to existing structures or property no matter what the present condition of these structures or to what elevations they were built. Property owners whose property are not in flood-prone areas but are subjected to flooding during and after heavy rainfall for any reason, e.g., inadequate sewers, are also eligible. Property owners in flood-prone areas applying for mortgage or other loans from banks or other lending institutions are now required to obtain flood insurance as a condition for receiving the loan. While this is a requirement for Federally assisted mortgage loans, it has been extended by the banks to include all loans.

Authorities:

Existing performance standards in the City Building Code, New York City Administrative Code Section C26-400.1 et. seq., that were added by Local Law No. 13 (1975) so that the City could participate in the National Flood Insurance Program are adequate to prevent major flood damage to newly constructed buildings in New York City's flood plains. Performance standards related to environmental protection of sensitive features within flood plains, in contrast to the protection of structures, will be developed.

Steep Slopes

Standards:

Construction guidelines applicable to new developments that would result in structures able to minimize the hazards to both the new development and the environment associated with steep slopes will be developed by the New York Department of City Planning. Such construction guidelines will be applicable to new developments or significant site alterations and will result in structures able to minimize the hazards to both the new development or site alteration and the environment. However, steep slope hazards are dependent on soil type and condition, information not inventoried on a city-wide basis. This information can be obtained, as mentioned in Chapter 2, by designation of the City as a Soil Conservation District and assistance from the U.S. Soil Conservation Service. After this information is gathered for the City, a developer will be required to design and locate his building in accordance with the performance standards pertaining to those soil conditions on his site. In addition, all steep slopes in New York City waterfront area that have scenic value will be identified and development or site alteration only allowed if the proposed action does not destroy the aesthetic value of site topography.

Authorities:

Two different additional authorities are needed for steep areas: one, to protect future developments from the hazards of locating on steep slopes, e.g., erosion and mudslides; and two, to preserve areas of steep slopes for their aesthetic value.

Construction standards to protect newly constructed buildings from the hazards associated with steep slopes will be authorized by new provisions in the City Building Code and the Zoning Resolution. This authority, like other controls in the City Building Code will be enforced by the Department or Ports and Terminals for waterfront commerce structures, New York City Charter Section 704 (1977), and the Department of Buildings for all other structures, New York City Charter Section 643 (1977), through these Departments' issuance of building permits and certificates of occupancy.

Preservation of steep slopes for scenic value will be authorized by a new zoning control patterned after the steep slope preservation provisions in the Special South Richmond Development District, New York City Zoning Resolution Section 107-00 et. seq. This authority will be enforced by the Departments of Buildings, and Ports and Terminals through their issuance of building permits and certificates of occupancy.

High Water Table/Shallow Soils

Standards:

The New York City Department of City Planning has been investigating construction standards to protect both newly constructed buildings from hazards associated with areas of high water table or shallow soils and to protect groundwater in such areas.

AUTHORITIES:

Construction standards to protect newly constructed buildings from the hazards associated with areas of a high water table or shallow soils and to protect the groundwater in such areas will be authorized by new provisions in the City Building Code. This authority, like other controls in the City Building Code, will be enforced as now by the Department of Ports and Terminals for waterfront commerce structures, New York City Charter Section 704 (1977), and the Department of Buildings for all other structures, New York City Charter Section 643 (1977), through the issuance of building permits and certificates of occupancy.

Significant Flora and Fauna Areas

Standards:

As discussed in Chapter 2 (significant flora and fauna and unique flora and fauna sections) the New York City Department of City Planning has undertaken an extensive effort to develop a data base and criteria to identify significant flora and fauna. Areas for preservation of existing habitats, areas where new ecosystems should be created and areas where new fish or wildlife species should be introduced to an existing natural habitat will be designated.

Standards and criteria regarding the maintenance of plants and animals on these sites in the appropriate density and variety to maintain a viable habitat by assuring the reproductive cycles of the desired species, and by assuring food sources throughout the entire food cycle for the desired species are also under investigation.

Preliminary work indicates the standards to be applied to land use and development in management areas should be based on the following elements:

- the use, operation or development should not be a source of poisons, toxins or contamination of the animal/plant system. These toxins, poisons or contaminants are to be identified from existing health and hazard codes, and from knowledge of compounds which are known to affect the food chain and specific organisms comprising the system in the area;

- the use, operation or development should not create potentially disastrous conditions which can destroy or eliminate the plant and animal system for the area without well developed plans, designs or procedures as to how to prevent such disasters or arrest their damage.

- top soil of the area around the use, development and operation shall not be destroyed, buried, eroded or eliminated. Where possible, existing soil shall be improved in quality or extent;

- drainage from development, use or operations shall not create water runoff which will erode, cause fluctuations in either water quality or quantity which are destructive to the plant and animal system for the immediate surrounding area or subsequent areas through which it passes;

- the development, use or operation should serve to extend and improve the plant and animal association designated for the area;

- an area planting requirement should be established which may be met at alternative locations removed from the development site - these requirements would establish the desired mixture of species and the quantities of each to be established and maintained;

- the development; use or operation should serve to protect, establish or extend the nesting and feeding habitat for the animal population being managed;

- animal circulation should not be unduly restricted by siting or construction detail or timing of operations; and,

- the introduction of or reduction of animals into the area as a result of the development use or operation should be clarified as to numbers and types so as to not upset the plant/animal balance found or anticipated for the area.

Authorities:

Coastal Management proposed land or water uses (i.e., those activities that tend to impact flora or fauna) in the waterfront area will be required to be designed in conformance with performance standards regarding the maintenance of plants and animals on the site in the appropriate density and variety to maintain a viable habitat by assuring the reproductive cycles of the desired species, and by assuring food sources throughout the entire food cycle for the desired species. This additional authority will be added to the City Zoning Resolution as a voluntary requirement.

This authority will be enforced by the Departments of Buildings and Ports and Terminals through their issuance of building permits and certificates of occupancy.

Scenic Vistas

Standards:

The New York City Department of City Planning has been investigating standards and criteria to preserve scenic vistas for their aesthetic value.

Authorities:

Preservation of scenic vistas for their aesthetic value will be authorized by a new zoning control patterned after the preservation of visual corridors in the Special Battery Park City District and the Special Manhattan Landing District, New York City Zoning Resolution Section 84-00 et. seq. and 98-00 et. seq.

This authority will be enforced by the Departments of Buildings and Ports and Terminals through their issuance of building permits and certificates of occupancy.

Historic and Archeological Sites

Standards:

There are extensive existing controls at the City level regarding landmarks vested in the New York City Landmarks Preservation Commission (LPC). The Commission's functions include the designation of landmarks, landmark sites, historic districts, interior landmarks and scenic landmarks, and the protection of designated landmarks and buildings within historic districts through the regulation of construction, alterations or demolition thereon. Regulation takes the form of requiring LPC permits prior to demolition or alteration of historic properties. These regulations are described in brief below.

In alteration work, three types of certificates are used: Certificate of No Effect on Protected Architectural Features; Certificate of Appropriateness; and Permit for Minor Work. If changes are to be made only to the interior of a historic structure, and do not affect the exterior, a Certificate of No Effect is issued immediately. Alterations and structural changes to the exterior requiring a Certificate of Appropriateness must be given a public hearing, after which the Commission may approve or deny the application or approve it subject to designated changes. Signs which must be filed with the Department of Buildings fall into this category. In addition, the

Commission is required to provide advisory reports on projects affecting city-owned property.

Demolition of landmark properties or applications to demolish involve more complex procedures. If a building has been determined to be a hazard to health and safety by the Department of Buildings, the landmarks law is preempted, and the demolition is mandated by the Department of Buildings. The owner is then required to demolish the structure. If the building is in hazardous condition but recoverable, the Commission may request the Department of Buildings to seal the building rather than demolish it. If a private owner of a landmark property is not making a reasonable return on it, and wishes to demolish the building, the Committee seeks to develop a plan which will create a satisfactory return on the building, using tax abatement or tax remission, if necessary, to do so. If creation of a reasonable return is not possible, the City must find an alternative buyer for the property or the City must acquire it or an appropriate interest in it. If the City fails to do so within the specified time, the Commission must grant the demolition permit.

Landmark and historic district owners are also charged with an affirmative duty to keep their property in good repair, New York City Administrative Code Section 20710.0. Violations are subject to fines and/or imprisonment.

The New York City Department of City Planning is also investigating development of construction guidelines applicable to future development that would result in structures which would preserve existing archeological resources, either in situ or in recorded form. This work may be added as an amendment to the WRP in the future.

Authorities:

Additional authority in historic sites is unnecessary given the existing authority.

Performance standards to achieve management objectives at archeological sites will be authorized by new provisions in the City Building Code and the Zoning Resolution. This authority will be enforced by the Department of Ports and Terminals for waterfront commerce structures, New York City Charter Section 704 (1977), and the Department of Buildings for all other structures, New York City Charter Section 643 (1977), through the Department's issuance of building permits and certificates of occupancy.

Parks and Beaches

Standards:

Existing rules and regulations pertaining to the management of parks and beaches, administered by the New York City Department of Parks and Recreation are sufficient to meet Waterfront Revitalization goals and objectives. Highlights of those regulations are given below.

Prohibited Uses: Included are discharging household refuse in litter receptacles; intentionally disturbing or attempting to disturb any animal life in park waters; allowing any animal to discharge urine or fecal matter in any park; commercial advertising; commercial fishing; parking in undesignated areas, etc.

Regulated Uses: Included are holding of meetings; holding organized and supervised activities; selling or leasing of anything whatsoever; of animals; building of fires; camping, etc.

For a complete listing, refer to rules and regulations promulgated pursuant to Section 533(s) (9) of the New York City Charter.

Authorities:

Additional authority within the City's waterfront parks and beaches is unnecessary given existing authority held by the City Department of Parks and Recreation.

Tidal Wetlands

Standards:

Existing use guidelines and development restrictions promulgated by the New York State Department of Environmental Conservation pursuant to the New York Environmental Conservation Law, Article 25 regulate land use within these areas and within 150 feet (in NYC) surrounding them. Regulation takes the form of requiring notification letters and permits prior to construction.

For a complete description and listing of definitions, use guidelines and development restrictions, see Tidal Wetlands - Land Use Regulations, Part 661 (Statutory authority: Environmental Conservation Law Section 1-0101, 3,0301 and 25-0302), State of New York - Department of Environmental Conservation.

Authorities:

Additional authority within tidal wetlands, and 150 feet from a tidal wetland, in New York City is unnecessary given existing authority held

by the New York State Department of Environmental Conservation (DEC) pursuant to the Tidal Wetlands Act, New York Environmental Conservation Law. However, New York Waterfront Revitalization Program will request that delegation of authority to administer this act be transferred to the City Coastal Commission. This will require amending the State Tidal Wetlands Act and development of an additional City authority embodied in the Zoning Resolution. Refer to Freshwater Wetlands in this section.

Freshwater Wetlands

Standards:

Draft use guidelines and development restrictions have been developed by the New York State Department of Environmental Conservation pursuant to the New York Environmental Conservation Law, Article 24 similar to those above for tidal wetlands. Until these regulations are adopted and final maps are drawn designating freshwater wetlands areas, land uses are subject to interim rules and regulations enforced through an interim permitting procedure.

Any person wishing to alter the state of any freshwater wetland having a surface area of twelve and four-tenths acres or more, or of one having a smaller surface area which has been determined to be of "unusual local importance", or any of the adjacent areas (100' surrounding these water bodies in NYC) must obtain this interim permit.

A permit is issued if actions are consistent with the policies of the Freshwater Wetlands Act. As mentioned, this discretionary review will end upon filing of the final maps and adoption of rules and regulations.

The New York City Department of City Planning as staff to the City Coastal Commission is working closely with the New York State Department of Environmental Conservation to complete the freshwater wetlands mapping effort in New York City and is proposing to assume administration of this program, under the proposed organizational structure.

Authorities:

Additional authority to achieve Waterfront Revitalization Program goals and objectives within freshwater wetlands, or within 100 feet thereof, in New York City is unnecessary given existing authority held by the New York State Department of Environmental Conservation (DEC) pursuant to the Freshwater Wetlands Act.

However, since future amendments of the Waterfront Revitalization Program in New York City may involve delegation of this existing State Coastal Management authority to the City, an option included in the existing statute, an additional City authority is necessary. This will be accomplished by a new zoning authority. All waterfront area land or water uses in the area falling within the jurisdiction of the Freshwater Wetlands Act will be required to be in accord with the new zoning regulations. Regulated activities will include but not be limited to: draining, dredging or excavation; the removal of soil, mud, shells or gravel; dumping or filling or the depositing of fill of any kind; the erecting of any structure or the construction of any road; the placing of any obstacle; and any activity causing any form of pollution which impairs the function or benefits of the wetland area. The depositing or removal of products connected with recreational or commercial fishing and activities related to public health are among exempt activities. A building permit will be granted only if the proposed land or water use is consistent with the DEC freshwater wetland land use regulations, as well as provisions of the Zoning Resolution and the Building Code. The control will be enforced by the Departments of Buildings and Ports and Terminals through their issuance of building permits and certificates of occupancy.

Unique Flora and Fauna

Standards:

The New York City Department of City Planning has undertaken an extensive flora and fauna identification effort (See Chapter 2, NYC Waterfront Revitalization Boundaries and Significant Flora and Fauna in this chapter).

This work will be completed and amended into the program.

PART III

FEDERAL ALTERNATIVES TO THE PROPOSED ACTION

All alternatives to the proposed action, approving the New York Coastal Management Program, involve a decision to delay or deny approval. Delay or denial of approval could be based on failure of the New York Coastal Management Program to meet any one of the requirements of the Coastal Zone Management Act. In approving a Coastal Management Program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on more than twenty requirements.

Development of the New York Coastal Management Program has involved eight years of work. Alternative approaches including different forms of legislation have been introduced. Of particular concern throughout program development was the method of obtaining consistency of State agency actions with the coastal program. Another major concern has been the adequate protection of beaches and dunes. The first issue is addressed in section 919 of the Waterfront Revitalization and Coastal Resources Act. The second issue was addressed in passage of the Shoreowners Protection Act.

The Assistant Administrator for Coastal Zone Management has made a preliminary determination that New York State has met the requirements for program approval under Section 306 of the Coastal Zone Management Act.

However, in order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, this section identifies issue areas where there may be possible need for revisions and considers the alternatives of delaying or denying approval based upon each issue area.

1. Loss of Federal Funds to Administer the Program

   Under Section 306, New York would receive approximately $3 million to administer its coastal management program; if such funds are made available pursuant to Congressional action. The loss of any available Federal Section 306 funds would result in the inability of the State to provide adequate staffing and administrative support to coordinate and evaluate coastal actions, implement a state coastal program, address priority issues, and assure that government agencies coordinate and operate consistently with coastal policies. State technical assistance to local governments, essential for the development of local waterfront revitalization programs, would also be curtailed due to limited funds. To deny approval of this program would also make it difficult for the State to coordinate and expedite resolution of conflicts, and establish unified state policies for State actions in the coast. Denial of approval would also jeopardize the eligibility of the State to receive Coastal Energy Impact Program (CEIP) funds pursuant to Section 308 of the Coastal Zone Management Act.

2. Loss of Consistency of Federal Actions with the Program

Approval of New York's Coastal Management Program would mean Federal actions in or affecting the coastal area would have to be consistent with the State Coastal Management Program under Section 307 (c) of the Coastal Zone Management Act. Loss of Federal consistency with the State's Coastal Management Program would have significant and adverse effects on the resources of the State's coastal area.

FEDERAL ALTERNATIVES

Alternative 1: The Assistant Administrator could delay or deny approval if the State cannot adequately manage activities having direct and significant impacts on coastal waters.

Section 305 (b) (2) of the Federal Coastal Zone Management Act requires each State seeking approval of its program to manage land uses which have direct and significant impacts on coastal waters. The Assistant Administrator has made a preliminary determination that New York has such management authority not only in special areas such as wetlands and erosion hazard areas but also throughout the coastal area based on its Waterfront Revitalization and C stal Resources Act (WRCRA) and its State Environmental Quality Review Act (SEQRA).

Section 919 of the WRCRA requires State agencies to act consistently with the coastal area policies. As a result of the proposed amendments to the SEQRA and the proposed Department of State (DOS) regulations as contained in Appendix A, two procedures will be used to assure State agency actions will be undertaken consistent with these policies.

First, all actions subject to a State agency's authority and that may have a significant affect on the environment will be reviewed through the SEQRA process by those State agencies party to the action. The proposed amendments to the SEQRA will ensure that direct State actions including public investments such as highways, major sewer and water lines and wastewater treatment facilities must be consistent with the coastal policies. The SEQRA review process will also tie to the coastal policies the issuance of State permits for all significant public and private projects requiring a State Pollutant Discharge Elimination System permit from the Department of Environmental Conservation (DEC). The SEQRA not only requires full disclosure of the environmental impacts of significant activities, but also has been interpreted as containing the authority for agencies to condition or deny permits to ensure environmental compatibility. Miracle Mile Associates, v. DEC. 430 F. Supp 2nd 440 (July 10, 1980).

Second, pursuant to the proposed DOS regulations, all direct and funding actions, other than permitting actions, undertaken by a State agency that do not have a significant affect on the environment will be reviewed by the State agency for consistency with the coastal policies. At the time that the agency makes a decision on an action, a certification of consistency must be forwarded to the Department of State.

Alternative 2: The Assistant Administrator could delay or deny approval if the policies of the program are not specific enough to meet the requirements of the Federal Coastal Zone Management Act.

CZMA regulations 923.11 (b) (2) and 923.(b) (4) require that coastal policies must provide a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program. Specificity is particularly important when such policies will be administered in part by local governments, as will be provided in local waterfront revitalization programs. It is also important to assure that State administered policies are not subject to an excessively broad range of interpretations.

The Assistant Administrator has made the preliminary decision that the new policies and standards contained in the Waterfront Revitalization and Coastal Resources Act and proposed regulations together with those existing policies, standards and regulations incorporated into the program from other State legislation, provide sufficient specificity for program approval. This decision is based in part on the draft guidelines contained in Appendix B, which give local governments much further assistance in preparing more specific policies for their voluntary local waterfront revitalization programs.

Alternative 3: The Assistant Administrator could delay or deny approval if the boundary is not adequate to meet the requirements of Section 304 (1) - definition of the coastal zone and 923.31 (a) of the CZM regulations - inland boundaries.

Section 304 (1) of the Coastal Zone Management Act states that the coastal zone shall extend inland from the shoreland only to the extent necessary to control shoreland uses which have a direct and significant impact on coastal waters. The State has established a boundary that is approximately 1,000 feet inland from the shorelines. However, in urbanized locations it is about 500 feet inland and in a few areas where a major roadway or railroad line runs parallel to the shoreline

it is less than 500 feet. Detailed maps of the exact boundary at a scale of 1:48,000 have been filed with clerks of coastal counties, cities, towns and villages and with state agencies.

The issue can be raised of the adequacy of regulating in urban areas less than 500 feet from the shoreline. Federal CZMA regulations 923.31 (c) (general comments), however, clearly allow for a narrower boundary in urban areas by stating that "in many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not impossible, to define in terms of direct and significant impact". Because of the nature of the New York coastline in the urban areas - its extensive bulkheading, high density, existence of infrastructure, and generally builtup character - the Assistant Administrator has preliminarily determined that the State will be regulating in an area adequate to cover all uses that have a direct and significant impact on coastal waters. The criteria which were employed for delineation of the final boundary are outlined in further detail in Part II, Section 3 of this document. Reviewers of this DEIS are especially encouraged to comment on any land use which could occur inland of this boundary which may have a direct and significant impact on coastal waters.

STATE ALTERNATIVES TO THE PROPOSED ACTION

Introduction

During development of New York's Coastal Management Program, a number of substantive and organizational alternatives were considered at length. The Legislature, in passing the Waterfront Revitalization and Coastal Resources Act, made a choice about the particular combination of these alternatives which were to operate in the State. Thus, the number of alternatives left to be examined in this environmental impact statement has been greatly reduced. Before discussion of the current alternatives, a history of the major alternatives considered during program development is presented below.

A. History of Major Alternatives

The discussion of options focused on various possibilities for legal program authority. A coastal management program could have been based on State legal authorities at either the State level or delegated to the local level, or a combination of both. In New York, State agencies have strong management authorities for matters of statewide or regional concern, while local governments have strong powers to manage issues of local concern. On a number of matters, a close interrelationship exists between the exercise of authority at State and local levels. State and local authority alternatives were considered separately as follows.

1. State Authority Alternatives

a. Status Quo

The status quo alternative would continue all existing State programs with no new additions. A specific coastal management program would not be established. This alternative would rely on the State policy, as expressed in Article XIV, Section 4 of the Constitution, to conserve and protect the State's natural resources and scenic beauty and encourage the development and improvement of its agricultural lands. The Legislature, in implementing this policy, has enacted numerous programs that already provide for management of most resources of statewide or regional concern in the coastal area. Important programs administered by the Department

of Environmental Conservation deal with air quality, water quality and supply, tidal and freshwater wetlands, flood plains, and streams as well as mining, dredging and energy development activities. Other State agencies, such as the Office of Parks, Recreation and Historic Preservation, the Department of Transportation, and the Office of General Services, also administer a wide range of programs to manage, use, and regulate resources in the coastal area.

While a wide variety of issues affecting New York's coastal area have already been given special attention, this alternative would create no mechanism to coordinate separate State and local activities that affect the coastal area. Thus, coastal resources would not be managed as effectively as possible. Further, this alternative would add no new authorities to deal with the specific problems of severe coastal erosion and siting of water dependent uses. As a result of these inadequacies, the status quo alternative would not fulfill the requirements of the federal Coastal Zone Management Act.

b. Coordinate existing State program authorities

Under this alternative, a State coastal management program would incorporate the many existing State management programs and add new authority to coordinate or "network" these programs. This would provide for integrated management of coastal resources and lead to achievement of identified State coastal management policies.

Coordination of the State authorities could be accomplished through interagency memoranda of understanding, through an Executive Order from the Governor, or through specific State authorizing legislation. Also, a single State agency would be designated to administer the program, although that specific agency need not itself have the power to enforce the coordination of programs.

This alternative would ensure the coordinated management of coastal resources in matters of statewide or regional concern, but would leave gaps in existing authorities (in particular, management of erosion hazard areas) and would fail to qualify the State for Federal approval of a coastal management program.

c. Coordinate existing State program authorities plus additional program authorities to fill gaps (essentially the alternative chosen)

This alternative would be the same as the coordination alternative but would add several specific new program authorities to fill identified gaps in existing programs. These additions would include authority to regulate development in erosion hazard areas and provide for designation of water-dependent uses.

This alternative would qualify New York State for Federal coastal management program approval.

d. Comprehensive coastal management program authority

This alternative would also keep all existing State program authorities, but would add new legislative authority to institute a comprehensive State coastal management program for directly controlling development throughout the coastal area. A variety of sub-options exist for this alternative in terms of the extent to which development would be controlled. These options range from a program that would directly control all development any where in the coastal area to one that would directly control only a few key types of development with a specified minimum size in specific designated locations. This alternative would establish priorities for permissible uses in specific locations within the coastal boundary, both in terms of areas appropriate for development and areas where development would be inappropriate.

This alternative would establish a new level of authority for the State's coastal resources. It would provide uniform statewide implementation of policies for coastal resources and would increase predictability regarding the use of coastal resources. The alternative would qualify the State for approval of its coastal management program, making Federal financial assistance available to the State. However, it could create problems associated with possible preemption of existing authorities, both State and local. Also, the establishment of a new level of government administration could either expedite or delay the development process in coastal areas, depending on the effectiveness of the administration.

2. Local Authority Alternatives

a. Status Quo

This status quo alternative would simply continue unchanged the existing powers and responsibilities of local governments. Under authority of Article IX of the New York State Constitution (the "Bill of Rights for Local Governments"), the Statute for Local Governments, the Municipal Home Rule, and various other statutes, local governments in New York State are authorized to exercise a broad range of powers, including the enactment of strong land use control programs if they so choose, as long as these powers are not specifically preempted by State and federal law. Local land use control programs are exercised primarily through local zoning and subdivision controls, which can be used to manage land and water resources of a community. In addition, under the State Environmental Quality Review Act (SEQR), local governments are required to consider environmental factors in reaching decisions on proposed actions and to prepare impact statements on actions which are likely to have significant effects upon the environment.

The status quo alternative would be consistent with New York State's "home rule" tradition and would be responsive to many local attitudes about desirable levels of local involvement in land use regulations. However, because the use of local authority is optional, local land use control programs in coastal areas range from very strong to non-existent. Furthermore, not all local land use programs in coastal areas fully consider the environmental and economic importance of coastal resources. Thus, significant gaps in the management of coastal resources by local governments would remain, as would the problems and cumulative impacts of independent local decisions.

Although the State's Coastal Management Program could provide the basic level of management required for Federal program approval, the status quo local alternative would result in inconsistencies between State and local policies, where these exist, leading to conflicts in the protection and management of coastal resources and to possible losses of those resources not explicitly protected by State programs. Also, although the State would maintain its jurisdiction over the siting of facilities which serve a region, opposition of local governments could limit the ability of the State to promote actions such as economic development in desirable locations.

b. Voluntary local coastal management programs complying with State Coastal Management Program (essentially the alternative chosen)

Under this alternative, specific provisions would be made in new State legislation for local governments to adopt local coastal management programs that would comply with the State's Coastal Management Program. This alternative would differ from the status quo alternative in that approvable local programs would be required to meet State's established criteria. Participating local governments would be eligible for financial and technical assistance in preparing local management

programs and in managing coastal resources. Also, the actions of State and Federal agencies would be consistent with such local coastal management programs.

Although this alternative would result in greater local participation in coastal management than under the status quo alternative and would thus provide additional management attention to coastal resources, the voluntary nature of local participation would result in similar problems of inconsistency and conflicts, particularly between those localities that do and do not participate in the program. The actual amount of local participation would depend to a significant extent on the specific approval criteria used by the State coastal management agency and the amount of Federal financial assistance available for implementation of local coastal management programs. Whatever the level of local involvement, the regulatory process in coastal areas could become more complex. There would, thus, be a need for measures to coordinate and streamline review and permitting processes.

c. Mandatory local coastal management programs complying with State Coastal Management Program

This alternative would establish, through new State legislation, a requirement that local governments in coastal areas adopt local coastal management programs consistent with the State Coastal Management Program. Counties would be authorized to prepare and implement coastal management programs if a locality failed to act; in the event the county failed to act, the State's coastal management agency would implement a program in the locality. Local governments would be eligible to receive financial and technical assistance for preparing and implementing local coasta management programs.

This alternative would eliminate the problems of potential State-local conflicts in the protection and management of coastal resources that would be present in the status quo and

voluntary local program alternatives. Depending on the specific State requirements for local coastal management programs, this alternative could help to assure statewide coverage and consistency with the Coastal Management Program, increase enforceability of coastal policies as a result of the universality of local management programs, and result in better management and protection of coastal resources by including decisions of sub-regional significance in the overall Coastal Management Program. It would, however, affect local autonomy by requiring that local governments use their present authority to develop and implement coastal management programs, in accord with State guidelines. This could be seen either as a loss of local "home rule" power or as a strengthening of these prerogatives through the partnership of local governments with other levels of government.

d. Preemption of local government coastal management authority

Under this alternative, any local controls in the coastal area which are not consistent with a comprehensive State coastal management program would be superceded by legislation declaring the management of coastal resources to be a matter of State concern. In effect, such controls as zoning would be exercised by the State coastal management agency for areas within the management boundary.

This alternative would prevent problems of inconsistency between local actions and the State management program and would ensure a uniform management program throughout the coastal area. Coastal resources would be better managed and the development process in coastal areas would be more predictable. However, the alternative would significantly limit local "home rule" powers in coastal areas and would move many land-use and resource decisions from the local to State level.

3. Additional Alternatives

a. Boundaries

In order to have an effective coastal management program, the boundaries of the coastal area must be clearly defined. The Federal Coastal Zone Management Act requires the boundaries to extend inland" only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters". Within this requirement, the boundaries could be drawn broadly or narrowly.

An expansive boundary, such as one that included all of the watersheds draining into the State's coastal areas, could include virtually all uses affecting coastal waters, but would do so at the expense of having to control many uses which have little or no effect on coastal waters.

An expansive boundary would thus be an inefficient means of providing management of coastal resources and could require substantial administrative support. A limited boundary, such as one that extended only a short distance from the shoreline (e.g., 500 feet) would substantially limit the area subject to the Coastal Management Program, but might not provide for all uses that could affect coastal waters. A compromise between these two alternatives, based on consideration of specific local and statewide interests in each segment of the coast, is a third alternative.

There are two other options regarding the application of a coastal management program within designated boundaries. One involves a multiple-tier boundary which divides the coastal area into two or more sub-areas that are subject to different levels of management. This would complicate the administration of a coastal management program which by its nature is complex. The other involves a single-tier boundary within which a coastal management program would apply equally.

Funding

The State could decide not to seek approval of a coastal management program under the Federal Coastal Zone Management Act, but there are significant advantages to a Federally approved program, including financial assistance. Section 306 of the Act authorizes such funding, but other sections of the law authorize financial assistance for specific aspects of coastal management, such as coastal energy impacts. There are a number of major categories to which such funding, if appropriated by the Congress, could be allocated, including the following:

-- Administration of the Coastal Management Program. This would include such administrative functions as applying for, accepting and distributing assistance, as well as monitoring and evaluating performance and compliance with the program by other agencies. Administration funds would be used by the "306" Agency.

-- Improving management of existing State programs incorporated in the Coastal Management Program. This could include providing additional regulatory staff for specific programs that are key to the coastal management effort, such as erosion hazard areas, in order to provide improved protection and management and speed the processing of permit applications.

-- Preparing and adopting local coastal management programs. Funding could be provided directly to local governments to prepare and adopt local programs for managing coastal resources. In addition, funding could be used to support technical assistance to local governments by the "306" Agency or other State agencies.

-- Implementing adopted local coastal management programs. Assistance could be provided to local agencies to administer local management programs and to provide additional support for local management efforts.

B. Current Alternatives

1. Alternative Choices Concerning State Participation in Federal Coastal Management Program

a. Participate in the Federal Coastal Management Program - Proposed Action

Since states participate voluntarily in the Federal Coastal Management Program, New York State could determine that it is necessary and desirable for the implementation of its State-mandated coastal program to participate and seek Federal approval of the State program.

With an approved program, and subject to Congressional appropriations, New York would be eligible to receive Federal Coastal Management Program ("306") and Coastal Energy Impact Program (CEIP) funds which could in turn be used to leverage additional assistance from other sources. The "306" and CEIP funds would help to support State administration of its coastal program and could be vital to effective implementation of waterfront revitalization and resource protection aspects of the State program. Moreover, financial assistance could be particularly important as an incentive to local governments in need of aid not otherwise available for project planning to revitalize deteriorated and underutilized coastal areas.

In addition, by participating in the Federal program, New York would benefit from the consistency requirements of the Federal Coastal Zone Management Act. These requirements would create a continuing dialogue between the State and Federal agencies engaged in activities in New York's coastal area. Thus, Federal agencies would be better informed about the State's coastal concerns and would be able to make decisions more sensitively and more efficiently. Also, those potentially affected by Federal actions would be better able to predict the outcome of the decision-making process.

Finally, New York's participation in the "306" phase of the Federal Coastal Management Program would be an appropriate conclusion to years of State and Federal efforts under the "305" phase to develop a well-balanced State Coastal Management Program. An approved State program would also be important for the achievement of national coastal objectives.

The alternative to participate in the Federal Coastal Management Program could, however, have certain disadvantages. During the "306" phase, State compliance with Federal program regulations could increase administrative duties for State agencies, thus increasing costs and delaying implementation activities mandated by the State Waterfront Revitalization and Coastal Resources Act. The State could rely on "306" funding to cover some costs incurred by participation in the Federal program, but reductions in Federal funding levels seriously jeopardize implementation of the State program.

In addition, by participating in the Federal program, New York could find itself in conflict with the Federal government over respective priorities for resources to be protected and activities to be encouraged. Further, national priorities could change making it difficult for the State to operate a consistent program. Ultimately, Federal involvement in State decision-making might be viewed as excessive and encroaching upon State prerogatives.

b. Not to participate in the Federal Coastal Management Program - No Action Alternative

Since State participation in the Federal program is voluntary, New York could choose not to participate. Whether the State chooses to participate or not, it must, nonetheless, implement the recently enacted Waterfront Revitalization and Coastal Resources Act. The "no participation" alternative could be

reasonable, if Federal program regulations were to hinder the State from taking immediate and necessary steps to implement the Act and if "306" funds were suddenly reduced or terminated. Further, this alternative could allow the State to avoid conflicts with the Federal government over respective priorities for managing New York's coastal resources, and would prevent further intervention of the Federal government in the management of its coast. (See also discussion of disadvantages under Proposed Action alternative.)

On the other hand, the "no participation" alternatives would have disadvantages. A decision not to participate could, regardless of current efforts at the national level to reduce domestic program expenditures, result in the loss of funds which could be vital to the implementation of State and local aspects of New York's coastal program. Further, Federal consistency provisions would not be applicable to New York, and the State could not expect Federal agencies to abide by its coastal policies when undertaking actions within New York's coastal area.

Finally, New York and the Federal government have both expended considerable efforts toward instituting a Coastal Management Program in the State. A decision not to participate in the Federal program would not only reduce the State's effectiveness in implementing its program, but would also significantly limit the Federal government's ability to achieve national coastal management objectives since New York has one of the most extensive, varied and valuable coastlines in the Nation.

2. Alternative Administrative Mechanisms for Implementing State Consistency Requirements

a. Implement the State consistency requirements of the Waterfront Revitalization and Coastal Resources Act (Article 42) by amending State Environmental Quality Review Act and Department of State regulations to require that proposed actions be consistent with the coastal area polices of the Act - Proposed Alternative

This alternative would satisfy the intent of the Act in two ways. First, for all actions requiring preparation of an environmental impact statement under the State Environmental Quality Review Act (SEQR), it would incorporate the need to achieve consistency with the coastal policies contained in Article 42. Thus, the decisions on all actions which may have a significant impact on the environment must be consistent with the coastal policies. Second, for direct actions which do not have a significant effect on the environment, Department of State regulations require State agencies to certify that the actions are consistent with the coastal policies of Article 42.

This alternative would for the most part eliminate the need for the Department of State to consult at length with more than fifty State agencies, since they will simply use the existing SEQR process to determine the consistency of significant actions. Also, with this alternative, SEQR procedures would remain substantially unaltered except for the need that the findings be in accord with coastal policies.

The consistency review requirements under SEQR and Department of State regulations will allow the Department to monitor activities in the coastal area. With this information, the Department of State will be able to advance recommendations to the Governor and the Legislature for more effectively implementing the Waterfront Revitalization and Coastal Resources Act.

b. Implement State consistency requirements of the Waterfront Revitalization and Coastal Resources Act by formal agreements (memoranda of understanding) between the Department of State and other State agencies

This alternative would satisfy the intent of the Act, but the Department of State would have to consult with more than fifty State agencies in developing these agreements. This effort would be time-consuming and costly. In addition, certain small but significant programs might be overlooked with so many programs being considered. Also, the different regulatory procedures of each agency would make this alternative very complex, and there would be no mechanism for efficient monitoring of agency decisions. Thus, the Department of State could not assess the effectiveness of coastal policies in order to improve their implementation. Still, formal agreements with other State agencies would provide assurances that their decision-making procedures had at least incorporated coastal policies so that all agencies regarded coastal revitalization and protection goals similarly.

c. Implement State consistency requirements of the Waterfront Revitalization and Coastal Resources Act by informal agreements between the Department of State and other State agencies

This alternative might satisfy the letter of the law; however, it would probably not satisfy its intent to coordinate State agencies actions and programs so as to ensure consistency with coastal policies. Again, the Department of State would have to consult with numerous agencies; the results would be the same as under the "formal agreement" alternative. In addition, informal agreements with other State agencies would provide no real assurances that their interpretations of coastal policies were acceptable or that various decision-making procedures had in fact incorporated coastal policies. As a consequence, implementation of coastal policies would be complex and

uneven. As under the previous alternative, informal agreements would provide no mechanism for regular exchange of information on proposed agency actions or final decisions affecting the coastal area. Thus, again, the Department of State could not assess the effectiveness of coastal policies nor take well-founded steps to improve their implementation.

3. Alternatives Concerning the Department of Environmental Conservation and the Coastal Erosion Hazard Areas Act

a. Promulgate regulations which implement the provisions of Article 34 - Proposed Action

Shoreline recession, beach erosion and man's creation of potentially hazardous conditions by destroying protective landforms are problems which have long plagued New York's coastal areas. Hundreds of millions of dollars have been expended attempting to halt coastal erosion by structural means such as construction of seawalls, revetments, groins, bulkheads, and artificial nourishment. Article 34 is based on the rationale that erosion is a naturally occurring phenomenon of tremendous physical proportions. Structural attempts at harnessing nature are always very expensive, occasionally ineffective and usually not cost effective. Erosion protection structures have sometimes created as many problems as they have solved.

Article 34 directs the Department of Environmental Conservation to identify coastal areas subject to serious erosion and establishes State policies regarding the regulation of certain activities and development in such erosion hazard areas. State policies also require that certain activities and development in areas containing protective landforms should be regulated so as to maintain their capability to withstand the forces of erosion and high water.

Section 34-0108 directs the Commissioner of Environmental Conservation to promulgate rules and regulations which will implement the provisions of Article 34. These regulations must contain the following:

-- standards and criteria to regulate certain activities and development in erosion hazard areas;

-- standards and criteria govering the location and construction of erosion protection structures;

-- a procedure pursuant to which any owner of land in an identified erosion hazard area may appeal such designation; and

-- a procedure by which the strict application of standards and criteria may be varied where practical difficulty or unnecessary hardship can be demonstrated.

6NYCRR Part 505 (Draft) are the regulations which the Department of Environmental Conservation is presently developing to meet the statutory mandates of Article 34. These draft regulations are contained in Appendix A of this document.

b. Do not promulgate regulations to implement Article 34 - No Action Alternative

The no action alternative would ignore the legislative mandate of Article 34 and result in continuance of the status quo regarding the regulation of land use and development in coastal erosion hazard areas. Since many local governments in the coastal areas of New York State do not have adequate, if any, local laws or other management programs to address erosion problems, unwise development and inappropriate activities would continue. This would result in continued unnecessary environmental damage and economic and social costs to not only coastal residents, but to the general population as well. Unwise development in coastal hazard areas ultimately places a financial burden on

all taxpayers through payment of disaster aid. Likewise, coastal environmental degradation is a cost borne by everyone whether it is higher costs for seafood, degradation of aesthetic quality, reduced opportunities for recreation of diminished potential for harvesting or viewing fish and wildlife resources.

The no action alternative is obviously not viable. First of all, the Department of Environmental Conservation would have to blatantly ignore a statutory mandate of the New York State. Secondly, the Coastal Erosion Hazard Areas Act had the solid support of State agencies, such as the Department of State and Environmental Conservation, many organizations with an interest in proper coastal management as well as many coastal local governments.

c. Do not promulgate regulations to implement Article 34 - Education/ Information Program

This third alternative would be for the Department of Environmental Conservation to ignore the regulatory mandate of Article 34 and develop a public education/information program with no regulatory aspects. The Department of Environmental Conservation would identify and quantify areas of coastal erosion and provide this information to interested parties. The Department could also develop model local ordinances to be used by local governments interested in taking a more affirmative step in reducing erosion and high water damage problems. As a third step the Department could develop handbooks or other instructive material which provide information on coastal erosion processes and the importance of preserving coastal landforms which protect against flooding and erosion. Such information could provide advice on the limitations of coastal natural systems to development.

However, such a course of action would necessitate ignoring a clear legislative mandate. Furthermore, an education/ information program probably would not be effective because most coastal landowners are not interested in erosion issues until they are directly affected. Coastal erosion management is most beneficial and cost effective, if it can be implemented before erosion or high water problems exist. Furthermore, by eliminating the regulatory, i.e. permit, aspects of an erosion management program, State and local governments lose the potential for such programs to be financially self-sufficient through collection of permit fees.

PART IV

AFFECTED ENVIRONMENT

General Description

For further description of the affected environment, refer to Part II, Section 2 Coastal Regions, Resources and Problems of New York.

The coastal area of New York State is comprised of all coastal waters within the State's territorial jurisdiction and the shorelands adjacent to these waters. Article 42 of the State's Executive Law describes coastal waters as: lakes Erie and Ontario; St. Lawrence, Niagara, East and Harlem rivers; Hudson river south of the Federal dam at Troy; Kill von Kull and Arthur Kill; Long Island sound; Atlantic ocean; and, their connecting water bodies, bays, harbors, shallows and marshes. The latter include, but are not limited to, the following:

1. Block Island sound;

2. Great South, Shinnecock, Great Peconic, Little Peconic, Gardiners, Napeague, Moriches, Smithtown, Northport, Huntington, Manhasset, Little Neck, Flushing, Jamaica, Upper New York, Lower New York, Eastchester, Raritan, Irondequoit, Sodus, Little Sodus, Henderson, Black River and Chaumont bays;

3. Hempstead, Cold Spring, Port Jefferson, Oyster Bay and Huntington harbors; and,

4. Extensive segments of the Peconic, Connetquot, Nissequoque, Carmans, Bronx, Hutchinson, Croton, Buffalo, Genesee, Oswego, Black, Chaumont, Grass and Raquette rivers.

Entire lengths or substantial segments of numerous creeks, many small bays, harbors and ponds, and extensive saltwater and freshwater marshlands are included within the State's coastal waters.

The onshore portion of New York State's coastal area is limited, by Article 42 of the Executive Law, to adjacent shorelands containing uses which have a direct and significant impact upon coastal waters. These shorelands include, but are not limited to, islands, wetlands, beaches, dunes, barrier islands, bluffs, intertidal estuaries and erosion prone areas. In addition to the above, onshore physical and man-made conditions were taken into consideration. As a result of this process, the onshore portion of the State's coastal area varies from region to region. Generally, the following conditions prevail:

1. The inland boundary is approximately 1000 feet from the mainland's shoreline;

2. In developed or urbanized locations along the coast, the inland boundary is about 500 feet from the shoreline or less in areas where a major roadway or railroad line runs parallel to the shoreline; and,

3. Where major State-owned facilities and lands and electric power generation facilities abut the shoreline, the boundary is extended inland to include such lands and facilities.

On Long Island, the State's coastal area includes all barrier and other islands located in the coastal waters of this region. On the mainland, the inland boundary is generally 1000 feet from the shoreline, however, at major tributaries and headlands it extends several thousand feet inland.

In New York City, the coastal area boundary extends inland 500 to 1000 feet, generally. On Staten Island and at major tributaries (e.g., Bronx River, Newtown Creek, Flushing Creek) the boundary is several thousand feet in from the shoreline.

The coastal area boundary extends 1000 to 8000 feet inland along the Long Island Sound coast of Westchester County.

In the Hudson River Valley, the coastal area boundary is generally 1000, but at some locations over 10,000, feet inland. The latter occurs at places which are exceptionally scenic (e.g., Hudson Highlands) or have significant agricultural and recreational lands.

Finally, the coastal area in the Great Lakes region of the State extends over 1000 feet inland from the shoreline. However, in the urbanized and built-up areas of the coast (e.g., Buffalo, Rochester, Oswego, Alexandria Bay, Ogdensburg) and at several locations where major roadways and rail lines parallel the shoreline, the boundary may extend 500 feet or less inland.

TABLE 3
Local Governments With Jurisdiction
Over Land and/or Waters Within
New York State's Coastal Area

SUFFOLK COUNTY

Babylon (T)
- Amityville
- Babylon
- Lindenhurst

Brookhaven (T)
- Bellport
- Belle Terre
- Old Field
- Patchoque
- Poquott
- Port Jefferson
- Shoreham

East Hampton (T)
- East Hampton

Huntington (T)
- Asharoken
- Huntington Bay
- Lloyd Harbor
- Northport

Islip (T)
- Brightwaters
- Ocean Beach
- Saltaire

Riverhead (T)

Shelter Island (T)
- Dering Harbor

Smithtown (T)
- Head of the Harbor
- Nissequoque

Southampton (T)
- North Haven
- Quoque
- Sag Harbor[1]
- Southampton
- Westhampton Beach

Southold (T)
- Greenport

NASSAU COUNTY

Glen Cove (C)

Long Beach (C)

Hempstead (T)
- Atlantic Beach
- Cedarhurst
- East Rockaway
- Freeport
- Hewlett Bay Park
- Hewlett Harbor
- Hewlett Neck
- Island Park
- Lawrence
- Rockville Center
- Valley Stream
- Woodsburg

North Hempstead (T)
- Baxter Estates
- Flower Hill
- Great Neck
- Great Neck Estates
- Kensington
- Kings Point
- Manorhaven
- Plandome
- Plandome Heights
- Plandome Manor
- Port Washington
- Roslyn
- Roslyn Harbor
- Saddle Rock
- Sands Point
- Thomaston

Oyster Bay (T)
- Bayville
- Centre Island
- Cove Neck
- Lattingtown
- Laurel Hollow
- Massapequa Park
- Mill Neck
- Oyster Bay Cove
- Sea Cliff

BRONX, KINGS, NEW YORK, QUEENS & RICHMOND COUNTIES

New York City (C)

WESTCHESTER COUNTY

New Rochelle (C)

Peekskill (C)

Rye (C)

Cities are noted by (C); towns by (T); other listed local governments are villages

[1]Also partly within the T. of East Hampton

Yonkers (C)
Cortlandt (T)
  Buchanan
  Croton-on-Hudson
Greenburg (T)
  Dobbs Ferry
  Hastings-on-Hudson
  Irvington
  Tarrytown
Mamaroneck (T)
  Larchmont
  Mamaroneck[2]
Mount Pleasant (T)
  North Tarrytown
Ossining (T)
  Briarcliff Manor
  Ossining
Pelham (T)
  Pelham Manor
Rye (T)
  Port Chester

ROCKLAND COUNTY

Clarkstown (T)
  Upper Nyack
Haverstraw (T)
  Haverstraw
  West Haverstraw
Orangetown (T)
  Grand View-on-Hudson
  Nyack[3]
  Piermont
  South Nyack
Stony Point (T)

PUTNAM COUNTY

Philipstown (T)
  Cold Spring

ORANGE COUNTY

Newburgh (C)
Cornwall (T)
  Cornwall-on-Hudson
Highlands (T)
  Highlands Falls
Newburgh (T)
New Windsor (T)

DUTCHESS COUNTY

Beacon (C)
Poughkeepsie (C)
Fishkill (T)
Hyde Park (T)
Poughkeepsie (T)
Red Hook (T)
  Tivoli
Rhinebeck (T)
Wappinger (T)

ULSTER COUNTY

Kingston (C)
Esopus (T)
Lloyd (T)
Marlborough (T)
Saugerties (T)
  Saugerties
Ulster (T)

COLUMBIA COUNTY

Hudson (C)
Cleremont (T)
Greenport (T)
Germantown (T)
Livingston (T)
Stockport (T)
Stuyvesant (T)

GREENE COUNTY

Athens (T)
  Athens
Catskill (T)
  Catskill
Coxsackie (T)
  Coxsackie
New Baltimore(T)

RENSSELAER COUNTY

Rensselaer (C)
Troy (C)
East Greenbush (T)
North Greenbush (T)
Schodack (T)
  Castle-on-Hudson

ALBANY COUNTY

Albany (C)
Watervliet (C)

[2]Also partly within T. of Rye

[3]Also partly within T. of Clarkstown

Bethlehem (T)
Coeymans (T)
  Menands
Green Island (T)
  Green Island

CHAUTAUQUA COUNTY

Dunkirk (C)
Dunkirk (T)
Hanover (T)
  Silver Creek
Pomfret (T)
Portland (T)
Ripley (T)
Sheridan (T)
Westfield (T)

ERIE COUNTY

Buffalo (C)
Lackawanna (C)
Tonawanda (C)
Brant (T)
Evans (T)
Grand Island (T)
Hamburg (T)
Tonawanda (T)

NIAGARA COUNTY

Niagara Falls (C)
North Tonawanda (C)
Lewiston (T)
  Lewiston
Newfane (T)
Porter (T)
Somerset (T)
Wheatfield (T)
Wilson (T)
  Wilson
Youngstown (T)

ORLEANS COUNTY

Carlton (T)
Kendall (T)
Yates (T)

MONROE COUNTY

Rochester (C)
Greece (T)
Hamlin (T)
Irondequoit (T)
Parma (T)
Penfield (T)
Webster (T)

WAYNE COUNTY

Huron (T)
Ontario (T)
Sodus (T)
  Sodus Point
Williamson (T)
Wolcott (T)

CAYUGA COUNTY

Sterling (T)
  Fair Haven

OSWEGO COUNTY

Oswego (C)
Mexico (T)
New Haven (T)
Oswego (T)
Richland (T)
Sandy Creek (T)
Scriba (T)

JEFFERSON COUNTY

Alexandria (T)
  Alexandria Bay
Brownville (T)
  Dexter
Cape Vincent (T)
  Cape Vincent
Clayton (T)
  Clayton
Ellisburg (T)
Henderson (T)
Hounsfield (T)
  Sackets Harbor
Lyme (T)
  Chaumont
Orleans (T)

ST. LAWRENCE COUNTY

Ogdensburg (C)
Hammond (T)
Lisbon (T)
Louisville (T)
Massena (T)

Morristown (T)
  Morristown
Oswegatchie (T)
Waddington (T)
  Waddington

PART V

ENVIRONMENTAL CONSEQUENCES

A. Environmental

New York State proposes to implement a Coastal Management Program that is consistent with the Federal Coastal Zone Management Act of 1972, as amended. New York's Program will further the goals of the Federal act, i.e., to protect, preserve, develop and restore our coast's land, water, and air resources so they may continue to fulfill man's present and future needs. The State's Program is designed to achieve a balance between resource development and preservation activities in the coastal area by encouraging the most environmentally appropriate uses of coastal resources and by minimizing or avoiding many of the adverse environmental consequences of coastal development.

To implement the Coastal Management Program, the State will rely upon various existing State programs (See Appendices E and F for a description of these State programs) plus the recently enacted Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) and the Coastal Erosion Hazard Areas Act (Environmental Conservation Law, Article 34). While Coastal Management Program implementation will not significantly alter the environmental effects of any single, existing State program, the integration and coordination of these programs as required by the waterfront law will create net environmental benefits for the State's coastal area.

The Waterfront Revitalization and Coastal Resources Act (WRCRA) provides for a balanced statewide approach for encouraging development in coastal areas while protecting natural resources. The WRCRA establishes the boundaries of New York State's coastal area by formally adopting a map which the Department of State, with considerable local government input, has prepared. This map is on file in the Secretary of State's office as well as in the offices of affected local governments, counties, and State agencies. This legislation also calls upon local governments to prepare waterfront revitalization programs. The 240 local governments eligible to participate in this waterfront revitalization program are listed in Table 3 in Part IV of this document. Participation in this program is at the option of the municipalities. As of this writing, there are approximately 50 communities eager to develop local waterfront revitalization programs. Because of the need for close coordination between local government representatives and Department of State staff

particularly at the outset of the Program, only twelve communities are likely to enter the program in the first year. Should they elect to prepare such waterfront programs, the Department of State will provide technical and financial assistance under specific guidelines set forth in the WRCRA. The local waterfront revitalization programs will be prepared in conjunction with the policies set forth in the legislation. These policies apply in the mapped coastal area and have been developed to "insure the proper balance between natural resources and the need to accommodate the needs of population growth and economic development." They deal with the need for coastal development, better utilization of New York State's waterfront areas, and protection of significant coastal resources. Furthermore, the WRCRA gives the Secretary of State a broad advisory role in reviewing and evaluating State activities and programs in the coastal area. The Secretary must, within six months of the effective date of the legislation, identify each State agency that has programs and powers affecting coastal resources, and six months thereafter must report to the Governor and Legislature on the present level of consistency of State programs. Finally, the Secretary must identify State agency programs which will likely affect the achievement of any approved local waterfront revitalization program.

The Coastal Erosion Hazard Areas Act requires the New York State Department of Environmental Conservation, in full cooperation with affected local governments, to complete a preliminary identification of erosion hazard areas throughout New York State's coastline. Erosion hazard areas will be identified by determining annual land recession rates along the coast. Erosion hazard areas will also include natural protective features such as dunes, beaches, and shoals. The Act requires that consultations and public hearings must take place before final identification is made. Once final identification is made of the erosion hazard areas, regulatory provisions of the legislation will apply. Any activities or development proposed for such areas will only be approved if they meet certain minimum standards and criteria related to the: use of setbacks; prevention of an increase in erosion; minimization of adverse effects on natural protective features; and measures to ensure the effectiveness of control structures. The legislation also specifies that, when public funds are to be used for activities and development, the public benefits must clearly outweigh any long-range adverse effects. The legislation also offers each affected local government the opportunity to deal with erosion hazard areas identified within its boundaries through the community's own laws or ordinances. Should the affected local

government not exercise its right to regulate such areas, the county, or finally, the State Department of Environmental Conservation would promulgate regulations for that community.

The New York State Coastal Management Program has been designed to improve the management of the State's coastal resources. To achieve this end, the Program includes a set of coastal policies applicable to State agency actions in the coastal area which (1) steer development away from environmentally sensitive areas such as fish and wildlife habitats, wetlands, and scenic areas; (2) channel waterfront development and revitalization activities towards areas which are either without ecological and physical development constraints or areas which had once been developed but need rehabilitation; (3) promote the proper use, development or preservation of coastal erosion hazard areas such as beaches, bluffs, dunes, and barrier islands; and (4) encourage wise utilization of coastal resources which are renewable (e.g., commercial fisheries) and non-renewable (e.g., underwater sand and gravel deposits). These coastal policies will provide a comprehensive framework to guide future resource management and land use decisions by State, and where appropriate, Federal and local agencies.

The formal and legal integration of decision-making by Federal, State and local government agencies will achieve better management and utilization of the State's coastal resources. Improved communication and coordination of all three levels of government will be achieved by implementing the consistency provisions of State and Federal legislation and through the development, approval and implementation of local waterfront revitalization programs. Through these inter-governmental coordination procedures, resource use conflicts will either be resolved more quickly and efficiently or avoided altogether. By alleviating resource development pressures, the Program will help prevent over-exploitation of particular renewable coastal resources. Also, the possibility of identifying underutilized resources is increased with improved inter-govermental communication.

Another means by which the State Coastal Management Program will provide for environmentally appropriate uses of coastal resources and minimize many of the otherwise adverse environmental consequences of coastal development is by using the natural and cultural resource inventory, provided for in the Waterfront Revitalization and Coastal Resources Act. This inventory will provide consolidated source of information which will be valuable to public agencies and private developers in the identification of potential sites for a specific use or development activity.

Considerable effort has already been expended during Program development by State, regional and local agencies to gather and compile land use and natural resource data throughout the State's coastal regions. The Waterfront Revitalization and Coastal Resources Act requires the Department of State to maintain and update this data inventory. It will, therefore, continue to provide an expanded resource information base which will enable the State and participating local governments to make more environmentally sensitive decisions with regard to conservation, allocation and commitment of coastal resources.

The implementation of the Coastal Erosion Hazard Areas Act is expected to result in significant long-term environmental, social and economic benefits to the people of New York. The full impact of the program will not be felt immediately upon implementation. In fact, it may take years before definite results can be identified. Nevertheless, the positive economic, social and environmental impacts should be substantial.

Future impacts will be recognized in various ways. Damage from erosion and storm induced high water to structures placed or constructed in conformance with the erosion program's regulations will be significantly reduced. Problems caused by inappropriate or poorly designed erosion control structures constructed pursuant to the standards and criteria of 6 NYCRR Part 505 should, hopefully, be eliminated. The enforcement of minimum setbacks for new structures in coastal areas experiencing high rates of shoreline recession will ultimately result in less need for costly, and often environmentally undesirable, erosion protection structures. The conservation and preservation of coastal resources will help insure their existence for future generations.

Social benefits should take the form of a more naturally appearing coastline. For example, a secondary benefit of mandatory minimum setbacks for new structures is that they will not immediately be encroaching, and detracting from, the scenic qualities of the shoreline. The preservation of coastal landforms such as dunes, bluffs, barrier islands and spits are, to most people, more aesthetically pleasing than the existence of artificial structures such as groins, revetments, or seawalls. The encouragement of non-structural approaches may also foster a greater understanding of the inherent natural functions and values of coastal features. Coastal areas might be more appreciated for the truly unique areas that they are.

1. Unavoidable Adverse Environmental Effects

New York State's Coastal Management Program is not expected to have many unavoidable adverse environmental effects.

The Program will encourage new water-dependent development to locate in areas which are already developed and/or which are environmentally suitable for such development. This new development may increase air and water pollution, but these unavoidable effects are regulated under existing programs so that State air and water quality standards are not violated. New development may also require dredging of channels, but these activities must be conducted according to existing State and Federal regulations so as to reduce adverse impacts on water quality, fish and wildlife habitats, and other natural resources.

Another unavoidable effect may be short-term economic losses that might occur by favoring water dependent uses which at the time may not be the most profitable or desired use of waterfront lands. Although every effort will be made to find ways to offset this economic loss, there probably will be instances where this cannot be done.

2. Irreversible and Irretrievable Commitments of Resources

State adoption and Federal approval of the Coastal Management Program will not in and of itself lead to losses of coastal resources. The implementation of coastal management policies will affect the actions of State agencies and participating local governments in the coastal area, and may thereby result in irreversible and irretrievable commitments of resources. For example, policies to channel growth to already-developed locations along the coast and to give priority to water dependent uses will lead to increased development at these sites and result in irreversible commitments of resources. Development activity necessarily results in the affected site being committed to the new use for an indefinite period of time, and can practically be considered irreversible and irretrievable.

To the extent that the Program supports acquisition of environmental, cultural and recreational resources in coastal areas, the Program will result in commitment of these resources to public use, and the exclusion of these areas from future private use. This is especially true of areas added to the State Nature and Historic Preserve Trust, which are given constitutional protection and cannot be taken out of the preserve except by law enacted by the two successive regular sessions of the Legislature.

B. Institutional

Although the State's Coastal Management Program will rely largely on the use of existing State programs, it will also create new institutional arrangements designed to focus attention on, and improve the management of, coastal resources. These new arrangements will not affect present constitutional relationships between State and local government, but should increase coordination and cooperation among State agencies and different levels of government as well as encourage local governments to exercise their powers and responsibilities more fully in coastal areas. The new arrangements should also help local governments resolve problems on a partnership basis with State and other local agencies which they previously had to face alone.

The Program establishes State coastal management policies that will guide State and Federal agency actions, along with those actions taken by participating local governments. The Program will require that all such actions be consistent with the coastal policies. (The policies are described in detail in Part II of this document.)

To assist State agencies in carrying out their responsibilities to be consistent with policies, the Department of State has worked with the Department of Environmental Conservation to develop a consistency review process that is coordinated with the existing State Environmental Quality Review (SEQR) procedures. The interagency effort has resulted in proposed regulations that will facilitate the determination of an action's consistency with the coastal policies and will not complicate SEQR procedures.

The proposed consistency review regulations take two forms:

1. Selected amendments to the existing SEQR regulations;

2. Regulations to be promulgated by the Department of State.

The former address Type I and Unlisted Actions in the coastal area, which require the preparation of an environmental impact statement. The amendments to Section 617.9 require State agency actions to be consistent with the coastal policies. Where appropriate, the agency would also find that its action is consistent to the maximum extent practicable with an approved waterfront revitalization program.

The Department of State's regulations cover Type I and Unlisted Actions in the coastal area which do not have a significant effect upon the environment. Specifically, the filing of a certification of consistency with the Secretary of State will be required for direct and funding actions. A similar certification will be necessary for all actions where an approved local waterfront revitalization program is in effect.

Section 600.5 of the Department's regulations contains the coastal policies which are to be used in determining the consistency of a proposed action.

The principal advantages of using these procedures to implement the State consistency provisions are described in Part III.

C. Economic

Federal approval of the State's Program may result, subject to Congressional appropriations, in increased Federal financial assistance for program administration and managing coastal resources. Program approval would also mean grants may be available, subject to Congressional appropriations, for responding to anticipated impacts of coastal energy activity under Section 308, the Coastal Energy Impact Program. The Federal act also authorizes grants for marine and estuarine sanctuaries. Available Federal funds may be used to improve the capacity of the State and local governments to manage New York's coastal resources. Also, these Federal dollars, matched by State funds, may provide the impetus for waterfront revitalization projects which will have local and possibly regional economic benefits.

The State's Coastal Management Program is likely to have a dramatic and positive economic impact a the development of complex, natural resource-based industries such as commercial fishing and aquaculture. Growth of the State's commercial fishing industry, for example, has been impeded by the high degree of risk and complexity associated with this particular economic activity. Private investors shy away from this industry because of erratic changes in harvest rates, complex pricing mechanisms and the difficult political context within which fishery resources are managed. Many of these risks and disincentives, however, can be reduced to acceptable levels through the State's Coastal Management Program.

The Program can make a significant contribution in developing these resources by conducting studies to identify the environmental, technical and political constraints which impede further resource development. The results of such studies can then provide the basis for preparing a resource development plan which will provide for more orderly development of the resource. Such plans are absolutely essential to creating truly new economic development opportunities rather than merely displacing existing economic activities from one geographic location to another.

The Coastal Management Program, through its coordinated decision-making process involving Federal, State and local governments will more efficiently channel public sector efforts to assist private industry in development of natural resource based industries. Consensus among government agencies on development objectives can now be more readily achieved. Also, a significant reduction of political constraints and associated regulatory delays will result as the various government agencies come to agreement on development strategies. These reductions in political constraints, coupled with joint Federal and State financial assistance, should create sufficient incentive for attracting private investment in appropriate development of our natural resources.

A net gain in the number of jobs in the State may be anticipated as a result of the Coastal Management Program. First, program policies do not infringe on existing economic activities and, therefore, no existing jobs should be lost. Further, as a consequence of Program support for new coastal-related enterprises, employment levels can be expected to rise. Such enterprises include fishing, agriculture, recreation and tourism industries as well as ports, boat construction and other concerns requiring waterfront space. Finally, by improving the natural and economic environment of coastal areas, the Program should help to improve the entire State's image as a good place in which to develop new enterprises and thus new jobs.

As a result of new water-related development, it may be necessary for localities to make major capital investments for infrastructure and building rehabilitation. Such investments are likely due to the Program's emphasis on channeling growth to developed areas where existing infrastructure can accommodate growth.

Local tax revenues will also be affected as a result of water-related development and natural protection policies of the coastal program. The designation, by local governments, of certain coastal areas for water-dependent development may increase property tax revenues from these areas. This new development may reduce the value of adjacent properties if the new and existing adjacent uses are incompatible; but such a reduction will be minimized by careful selection of sites for industrial and commercial development which would be compatible with the existing adjacent uses.

The identification of some coastal areas for protection and preservation may limit property tax revenues from those areas; however, the natural and aesthetic qualities of protected areas may increase the value of adjacent or nearby property, especially residential and commercial property.

Coastal management policies directed particularly at identifying and managing erosion and flood hazard areas may, in the short term, reduce tax revenues to the extent that more stringent development restrictions on private property will reduce the value of the property, and therefore the property tax revenues. However, in the long term, identification of these areas should have beneficial impacts by preventing unwise development and thus eliminating or reducing the need for government disaster relief as well as expenditures to replace, repair or reconstruct damaged roads, sewers and other infrastructure.

D. Developmental

The Coastal Management Program is committed to encouraging growth in already developed areas or in areas where development can be concentrated and adequately served by public facilities. This policy is based on the belief that concentration of development will not only protect the environment but also strengthen the economy of the State. While the Program intends to accomplish its objectives in part by using certain restrictive measures, such as the State's wetlands and erosion laws, its goals will be achieved primarily by undertaking the more affirmative activities outlined in the Waterfront Revitalization and Coastal Resources Act and the policies section of this document. Such activities include permit expediting, identification of suitable development sites, and State and Federal consistency.

By implementing these activities, the Coastal Management Program will assist in intensifying development in existing population and commercial centers. This will reduce development pressures on ecologically sensitive areas, particularly in non-urban communities, but will not automatically preclude development in these areas, since local governments retain their powers to make land use decisions.

E. Energy

No negative effects on energy use and development are expected as a result of implementing the Coastal Management Program. On the contrary, the Program recognizes the importance of adequate energy supplies for the economic development of the State. It also recognizes the possible national interest in locating energy production facilities in the coastal area. To ensure that such facilities are developed with satisfactory environmental safeguards, the Department of State will participate, as appropriate, in the processes for siting transmission lines and electric power plants under Articles VII and VIII of the Public Service Law, in State Environmental Quality Review Act procedures, and in other review procedures.

The Program encourages, subject to existing State environmental controls, development of additional energy resources in the State and recognizes that development of Outer Continental Shelf (OCS) and Lake Erie resources could be of moderate benefit to New York State in meeting its goal of energy self-sufficiency. This development must, however, be subject to strict environmental controls.

In regard to energy conservation, the Program advocates concentration of new development in appropriate areas, which may help to reduce future energy consumption for transportation. Also, any rejuvenation of port facilities may result in shifts to use of water transportation for some commodities. Because ships and barges are an energy-efficient means of transportation, some conservation of energy may be a consequence of the Program's policy to favor port development.

F. Social

The Program is expected to have a favorable social impact. The Program seeks to create a heightened awareness of the relationship between land and water and between people and their environment. As a result, they will be able to make decisions that will ultimately improve the quality of life along the waterfront. A deteriorated waterfront is an economic and psychological burden; but a vibrant waterfront area can serve as a catalyst for areawide economic rejuvenation and foster a sense of community pride.

A positive social impact will result from the policy of favoring redevelopment of waterfront areas. Revitalized urban coastal areas will draw people back to the urban center. Thus, there will be greater opportunities for positive social interaction.

Another favorable social impact will result from the Program policies to increase public access to the shore. The poor and less mobile people have often been denied the opportunity to enjoy the State's coastlines. Improved public transportation, more public access points and increased amounts of park acreage will contribute to more use of the shore by all segments of the population.

A possible negative social impact of the Program would be perceived infringement on private property rights brought about by governmental efforts to increase public access to the coast. The Program recognizes that some fears are justified; however, it advocates tht efforts to increse public access be undertaken judiciously, without limiting property rights and without taxing the carrying capacity of any given resource.

ENVIRONMENTAL CONSEQUENCES - NEW YORK CITY PROGRAM

New York City recognized the opportunities provided by the Coastal Zone Management Act of 1972 at an early date. The New York City Department of City Planning began working with the New York State Department of State in 1974 to develop a plan consistent with the State and Federal objectives of striking a balance between resource development and preservation activities in its coastal area.

The result of this long, cooperative effort is a program which provides detail to the State's program. The expected environmental consequences are, therefore, similar to those enumerated in the preceding pages of this report. The discussion below focuses on the consequences of the New York City program due to the necessary modifications devised to make the program responsive to an urban coastal environment. These modifications include different institutional arrangements and implementation strategies to enforce policies at the City level and, in some cases, the addition of area specific language to New York State policies.

Like the statewide program, New York City's plan is designed to ensure environmentally appropriate uses of coastal resources and to minimize adverse environmental consequences of coastal development by fully supporting State and City environmental statutes in effect within the coastal area, in particular, those standards and guidelines incorporated into Special Zoning Districts designed to enhance environmental quality and unique coastal related neighborhood characteristics.

In addition to the objective of providing a comprehensive framework to guide future resources management and land use decisions, New York City poliices are designed to provide incentives to redevelop the waterfront for maximum public benefit and to stimulate solutions for long-range critical issues. Recommendations are offered to unclog the maze of overlapping and competing governmental jurisdictions that blur lines of responsibility and accountability and unduly lengthen project approval processes.

To this end, a series of policies are to be adopted as part of the City's official plan. The New York City Planning Commission, thereafter, will act as the City Coastal Commission to insure that all public and private discretionary actions are consistent with coastal policies. An existing process, the Uniform Land Use Review Process (ULURP), which involves extensive public input, is proposed as the mechanism to effect this review. The program, therefore, requires no new institutional commitments beyond addition of coastal related criteria to established review procedures. This approach is preferred in order to avoid additional delay in proposal approval.

In addition, the following beneficial effects are expected upon program approval:

- technical resources and financial resources, if available, to assist in reaching wise land and water use decisions;
- funding, if available, to help solve problems associated with new or increased energy development;
- funds, if available, to provide access to beaches, to establish estuarine sanctuaries, and for research, education, and preservation;
- assistance in determining appropriate methods of controlling or decreasing shoreline erosion;
- simplification of permit procedures;
- means for resolving land use conflicts;
- coordinated government action on regional problems;
- a balance between economic, social, and ecological concerns; and,
- strong local land use control in accordance with the statewide program.

Impacts Related to New York City Recommended Policies

As explained in the introduction to Chapter IV of the New York City Waterfront Revitalization Program, twelve (12) New York City Policies - lettered A through L - are proposed in order to lend local area specificity to generic statewide policies. To the extent that the specificity leads to program changes within the New York City coastal area, environmental consequences can be expected to differ. Below is an estimate of environmental consequences within the New York City coastal area.

Policy A identifies eroding piers, docks, wharves and other structures as specific impediments encountered by private and public entities alike in efforts to redevelop underutilized waterfront areas. It would require, once adopted, that redevelopment programs reflect the need to rehabilitate and maintain these structures.

Positive environmental consequences are expected should resources be focused in such a manner, since eroding, physically improved shorelines lead to deteriorated water quality and enormous economic burdens to the public.

Policy B highlights the importance of the New York City waterway system and the need to make timely adjustments based on economic factors. It suggests that periodic assessments of current and anticipated navigation needs by the proposed City Coastal Commission would lend valuable input to agencies as they consider implementing changes.

Timely data submission and priority recommendations may also accellerate the initiation of current implementation procedures. Impacts are, therefore, expected to be positive.

Policy C is intended to clarify the fact that most of the New York City coastal area, although privately owned, provides direct and substantial benefits to the general public. It would require programs designed to protect shorefront areas for future generations to consider privately owned shores used by the public on a par with publicly owned lands.

The environmental consequences of implementing this policy are expected to be positive when combined with requirements of other program policies which require that due attention be paid to the protection of natural resources in the event structural protection measures are utilized.

Policy D recognizes the fact that public construction monies should not be allocated to curtail erosion along privately owned shorefronts that offer no public benefit. However, it also recognizes that piecemeal protection efforts often lead to long term problems by, for example, changing erosion patterns along downdrift shores.

The policy suggests that the City Coastal Commission provide technical assistance to private property owners so that appropriate erosion control projects are implemented. Environmental consequences are expected to be positive to the extent that poorly designed schemes are eliminated.

Policy E outlines specific criteria which must be met before public and private structural flood and erosion control projects are implemented in the New York City coastal area. The criteria are designed to provide a final safeguard to prevent environmentally damaging actions and are, therefore, expected to have positive impacts.

Policy F recognizes the potential of developing new parklands and open space to meet the recreational needs of immobile user groups and communities without adequate waterfront park space or facilities. It would require open space development programs to meet these needs when funds are available.

Development of these areas for recreational use is expected to have positive social consequences and assist in the upgrading of under-utilized land.

Policy G highlights the need for long-term maintenance and protection of City beaches now replenished as part of on-going beach erosion and flood control projects. The policy requires that a long term commitment be made when structural or non-structural programs are selected to protect areas of high public benefit.

The policy is expected to have positive environmental consequences by decreasing the land area lost from erosion and insuring continued public use.

Policy H is a recommendation to channel recreation funds toward operation and maintenance of urban parks.

Adoption of this recommendation would lead to promoting a better environment through the upgrading of unsecured and unsafe facilities and open space.

Policy I prohibits the waterfront siting of facilities associated with the tankering of liquified natural gas into New York Harbor. Public safety hazards associated with tankering activities in such a densely populated area have been determined to outweigh future economic benefits. To the extent that alternative means must be provided to transport LNG into New York Harbor, negative economic impacts may result. However, the policy identifies a positive environmental approach, in that potential public safety hazards would be avoided.

Policy J recognizes the significant amount of waterfront devoted to landfill in the New York City coastal area and specifies the need for end-use plans. The plans would include ultimate capacities, final contours, and appropriate land uses. The policy also calls for implementing measures to abate adverse effects of gaseous emissions and discharges leaching into surrounding waters.

Such a plan is expected to have environmental benefits.

Policy K identifies illegal dumping as a major problem in the New York City coastal area. It stresses the need to curtail the practice and to restore scarred areas. Once adopted, the policy would eliminate the degrading of neighborhoods, scarring of parkland, and destruction of natural features. The policy is, therefore, expected to have positive environmental consequences.

Policy L highlights the need to support resources recovery techniques as alternatives to landfills in the New York City coastal area. It encourages energy development from waste products and solid waste. Recovering or producing energy from waste supports a national and State policy and would result in increased energy independence.

Environmental consequences of this policy are expected to be positive.

PART VI

AGENCIES CONSULTED

Implementation of the most formal means of consultation with those identified as having an interest in the development of the State's Program was achieved by forwarding to them for review, copies of the March 1979 Draft Coastal Management Program Report. Copies of the Draft New York City Local Coastal Management Program were sent also to certain Federal agencies, to State agencies and to other local and non-governmental groups.

Federal Agencies Consulted

Council on Environmental Quality

Department of Agriculture

- Soil Conservation Service
- Farmers Home Administration
- Cooperative Extension

Department of Commerce

- Economic Development Administration*
- National Oceanic and Atmospheric Administration
- National Marine Fisheries Service*
- Sea Grant*
- Maritime Administration*
- Marine Mammal Commission*
- Office of Coastal Zone Management*
- Atlantic Marine Center

Department of Defense

- U.S. Air Force*
- Department of the Army*
- Aerospace Development Command
- Corps of Engineers*
- Air National Guard
- Veterans Administration
- Defense Supply Command

Department of Health, Education and Welfare

Department of Housing and Urban Development*

Department of the Interior*

- Bureau of Indian Affairs*
- Bureau of Land Management*
- Bureau of Mines*
- Heritage Conservation and Recreation Service* (formerly Bureau of Outdoor Recreation)

Fish and Wildlife Service*
National Parks Service*
U.S. Geological Survey*

Department of Transportation*

Federal Aviation Administration
Federal Highway Administration
National Highway Traffic Safety Administration
St. Lawrence Seaway Development Corporation
Urban Mass Transportation Administration
U.S. Coast Guard*

Department of Energy

(Formerly Energy Research and Development Administration and Federal Energy Administration*)
Federal Energy Regulatory Commission*
(Formerly Federal Power Commission)

General Services Administration

Nuclear Regulatory Commission*

Great Lakes Basin Commission

New England River Basins Commission

Environmental Protection Agency*

*Those agencies received both the Draft State Coastal Management Program Report and the Draft New York City Local Coastal Management Program.

State Agencies Consulted

Department of Environmental Conservation

St. Lawrence-Eastern Ontario Commission

Office of Parks, Recreation and Historic Preservation

Division of Housing and Community Renewal

Office of General Services

Economic Development Board

Department of Commerce

Department of Agriculture and Markets

Department of Transportation

State Energy Office

Department of Health

Department of Public Service

Department of Education

Power Authority of the State of New York

Division of Military and Naval Affairs

Northeastern Queens Nature and Historical Preserve Commission

Port Authority of New York and New Jersey

Urban Development Corporation

Local Governments Consulted

Draft Program documents and explanatory materials were also sent to the elected and appointed officials, and to appropriate local and regional agencies, in the 26 counties and over 240 municipalities, in the State's coastal area.

Other Interests Consulted

Widespread distribution of the Draft Coastal Management Program Report and of additional brochures and summaries assured the success of the consultative process with non-governnment groups and individuals. As a result, a broad range of interests became involved in the Program's development of which the following are representative: Long Island Beach Buggy Association; Center for the Hudson Valley; Rochester Gas and Electric Corporation; Upstate Ports Council; Natural Resources Defense Council; League of Women Voters; Long Island Marine Contractors Association; Charlotte Community Association; N.Y.S. Farm Bureau; Sierra Club; N.Y.S. Petroleum Council; N.Y.S. Builders Association; and Environmental Planning Lobby.

SECTION VII

LIST OF AGENCIES, OR ORGANIZATIONS, AND PERSONS RECEIVING THE DOCUMENT

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Transportation
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
Nuclear Regulatory Commission
Federal Emergency Management Agency

National Interest Groups

American Association of Port Authorities
American Bureau of Shipping
American Fisheries Society
American Gas Association
American Industrial Development Council
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Waterways Operators
Amoco Production Company
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Boating Industry Association
Bureau of Marine Resources
Center for Law and Social Policy
Center for Urban Affairs
Center for Urban and Regional Resources
Chamber of Commerce of the United States
Chevron U.S.A., Inc.
Cities Service Company
Conservation Foundation
Continental Oil Company
Council of State Planning Agencies
The Cousteau Society
CZM Newsletter
Ecology and Environment, Inc.
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Comapny, U.S.A.
Friends of the Earth
Gulf Oil Company
Gulf Refining Company
Institute for the Human Environment
Interstate Natural Gas Association of America
League of Conservation Voters
League of Women Voters Education Fund
Marathon Oil Company
Marine Manufacturers Association
Marine Technology Society
Mobile Oil Corporation
Mobil Exploration and Producing, Inc.
Murphy Oil Company
National Association of Conservation Districts
National Association of Realtors
National Audubon Society
National Boating Federation
National Coalition For Marine Conservation
National Commission on Marine Policy
National Fisheries Institute
National Forest Products Association
National Ocean Industries Association
National Recreation and Parks Association
National Waterways Conference
National Wildlife Federation
Natural Resources Defense Council
Nature Conservancy
Rice University Center for Community Design and Development
Shell Oil Company
Sierra Club
Soil Conservation Society of America
Sport Fishing Institute
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.

National Interest Groups (Continued)

United Mobile Sport Fishermen
Urban Research and Development Associations, Inc.
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute

Congressional

Members of the New York State Congressional Delegation

State Officials and Legislators

Governor Hugh L. Carey
Office of the Lieutenant Governor
Members of the Senate and Assembly with coastal area districts

State Coastal Management Program Citizens Advisory Committee

State Agencies and Authorities

New York State Urban Development Corporation
Department of Law
St. Lawrence Eastern Ontario Commission
Niagara Frontier Transportation Authority
New York State Power Authority
New York State Dormitory Authority
Northeastern Queens Nature and Historical Preserve Commission
Department of Commerce
Job Development Authority
Soil and Water Conservation Committee
New York State Council of the Arts
Metropolitan Transportation Authority
Department of Education
New York State Library
Department of Audit and Control
Office of Mental Health
Facilities Development Corporation
Health Planning Commission
Energy Research and Development Authority
Department of Transportation
State University Construction Fund
State University of New York
Division of State Police
Department of Social Services
Department of Public Service
Office of Business Permits
Division of Alcoholism and Alcohol Abuse
Office of Parks, Recreation and Historic Preservation
Division of Military and Naval Affairs
Department of Agriculture and Markets
Commission of Correction
Department of Correctional Services
Office of General Services
Department of Health
Environmental Facilities Corporation
State Energy Office
Division of Housing and Community Renewal
Department of Environmental Conservation
Port Authority of New York and New Jersey
Ogdensburg Bridge and Port Authority
Port of Oswego Authority
Albany Port District Commission

Municipalities and Counties

(245 municipalities and 26 counties)

See Part IV, Table 3 for listing.

Regional Agencies

Long Island Regional Planning Board
Southern Tier West Regional Planning and Development Board
Black River-St. Lawrence Regional Planning Board
Capital District Regional Planning Commission
Central New York Regional Planning and Development Board
Erie-Niagara Counties Regional Planning Board
Bi-State Regional Planning Commission

Environmental Management Councils

Local Government Associations

Conference of Mayors
Association of Towns
County Officers Association
New York Planning Federation

Indian Nations

St. Regis Mohawk Tribe
Seneca Nation (Cattaraugus)

Other Governmental

Coastal States Organization
Great Lakes Commission
Mid-Atlantic Governors Conference
Mid-Atlantic Regional Fishery Management Council
New England Governors Conference
Northeast-Midwest Congressional Coalition
New York Sea Grant

International Agencies

Great Lakes Fishery Commission
International Joint Commission

Distribution for New York City

Mayor
Deputy Mayor
Board of Estimate
Community Boards
Borough Presidents
Citizens Advisory Committee

Interest Groups

Center for the Hudson River Valley
Environmental Planning Lobby
League of Women Voters
Charlotte Community Association
Save The River
American Planning Association
American Littoral Society
Izaak Walton League, N.Y. Division
Clearwater
Wave Hill Center for Environmental Studies
The Group for America's South Fork
Sierra Club, Atlantic Chapter
Center for Environmental Information (Rochester)
Citizens Union
Coastal Coalition
Marine Environmental Council of Long Island

Private Sector

N.Y.S. Petroleum Council
New York Power Pool
Business Council of N.Y.S., Inc.
New York Farm Bureau
N.Y.S. Builders Association
Bethlehem Steel Corporation

Private Sector (Con't)

Republic Steel Corporation
Maritime Association of the Port of New York
Eastman Kodak Co.
Long Island Association of Commerce and Industry
Empire State Marine Trades Association
Long Island Marine Trades Association

Other

Canada
Province of Ontario
Environment Canada

PART VIII

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APPENDIX A

- DISCUSSION DRAFT -

DOS Part 600

Amendments to NYCRR, Title 19

for Purposes of Executive Law Article 42

Chapter 13

Part 600

§600.1 Authority, intent and purpose. (a) This Part is adopted pursuant to section 913 of the Executive Law to implement the provisions of the waterfront revitalization and coastal resources act.

(b) This Part is intended to provide for state agencies acting in the coastal area the necessary framework for the consideration and application of the state's policies with respect to waterfront revitalization and coastal resources, as contained in Article 42 of the Executive Law.

(c) It was the intention of the Legislature that the preservation, enhancement and utilization of the natural and man-made resources of the State's unique coastal area take place in a coordinated and comprehensive manner to insure the proper balance between those natural resources and the need to accommodate the needs of population growth and economic development. Accordingly, it is the intention of this Part to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems.

(d) In adopting the waterfront revitalization and coastal resources act, it was the Legislature's intention that review by state agencies required pursuant to Article 42 of the Executive Law, to determine the consistency of proposed actions with the policies of Article 42 and with any applicable approved local waterfront revitalization program, be coordinated with and made a part of each agency's existing procedures, including reviews conducted under the State environmental quality review act ('SEQR'), (Environmental Conservation Law, Article 8). Accordingly, in compliance with Article 42, this Part provides a framework which is compatible with and capable of coordination with a state agency's existing review responsibilities under SEQR (NYCRR, Title 6, Part 617).

§600.2 Definitions. (a) "Actions" mean either type I or unlisted actions as defined in SEQR (NYCRR, Title 6, Part 617.2), which are undertaken by state agencies; the term shall not include excluded actions as defined in SEQR (NYCRR, Title 6, Part 617.2).

(b) "Certification" means a notice prepared and filed by a state agency with the secretary at 162 Washington Avenue, Albany, New York, 12231, which notice shall: 1) contain a statement that is a certification for purposes of Article 42 of the Executive Law, the name and address of the state agency and the name and telephone number of a person who can provide further information; 2) briefly state and precisely describe the nature, extent and location of the action; and 3) briefly state the reasons supporting certification.

(c) "Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in Article 42 of the Executive Law. It includes lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill von Kull and Aurther Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes. The specific boundaries of the coastal area are shown on the coastal area map on file in the office of the secretary, as required by section 914(2) of the Executive Law. A copy of the coastal area map has been provided to each state agency with jurisdiction over programs identified by the secretary pursuant to Executive Law, Article 42 as having the potential to affect coastal resources.

(d) "Direct action" or "directly undertaken action" means an action planned and proposed for implementation by a state agency. Direct actions include but are not limited to capital projects, rule-making, procedure making and policy making.

(e) "Funding" means any financial support given by a state agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a proposed action.

(f) "Involved agency" means a state agency that has jurisdiction by law to fund, approve or directly undertake a given action.

(g) "Permit" means a permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by a state agency.

(h) "Secretary" means the Secretary of State.

(i) "State agency" means any department, bureau, board, commission, public authority or other agency of the state, including any public benefit corporation, any member of which is appointed by the governor.

§600.3 General rules. (1) No state agency involved in an action shall carry out, fund or approve the action until it has complied with the provisions of Article 42 of the Executive Law.

(2) In accordance with Executive Law, Article 42, actions directly undertaken by state agencies within the coastal area, including grants, loans or other funding assistance, land use and development, planning and land transactions, shall be consistent with the applicable coastal policies set forth in section 600.5 of this Part so as to achieve a balance between the protection of natural resources and the need to accommodate the needs of population growth and economic development, as provided in Executive Law, sections 910 and 912(1). It is intended that this balancing occur in the manner specified in section 600.4 of this Part.

(3) In accordance with Executive Law, Article 42, when the secretary has approved a local government waterfront revitalization program, and has identified state agency program actions which are likely to affect the achievement of the policies and purposes of such approved local waterfront revitalization program, the state agency program actions so identified shall be undertaken in a manner which is consistent to the maximum extent practicable with the approved local waterfront revitalization program.

(4) This Part shall not apply to actions for which a final environmental impact statement has been prepared or for which a determination has been made that the action will not have a significant effect on the environment, pursuant to NYCRR, Title 6, Part 617, prior to the effective date of this Part.

(5) Nothing in this part shall be construed to authorize or require the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

§600.4 Initial review of actions. As early as possible in a state agency's formulation of an action it proposes to undertake, or as soon as a state agency receives an application for a funding or approval action, it shall determine whether the action is located within the coastal area. For purposes of this Part, planning or rulemaking actions which affect land or water in the coastal area shall be deemed to be located therein. At the time it is determined that the action is located within the coastal area the state agency shall follow the review procedures set forth in this Part, including the completion of a coastal assessment form (CAF) in a form prescribed by the secretary. The CAF is to be completed prior to the agency's determination of significance pursuant to SEQR (NYCRR, Title 6, Part 617). The CAF is intended to supplement other information used by state agencies in making determinations of significance pursuant to such Part 617. If it is determined that an action will not have a significant effect on the environment, the CAF is intended to assist state agencies in arriving at their decision as to certification if required by section 600.4. Where any question on the CAF is answered yes, a brief and precise description of the nature and extent of the action shall be provided on the CAF, and a copy of the CAF forwarded to the

secretary; provided, however, this requirement does not apply to permit actions unless such actions involve federal review, funding, or approval. For the purposes of complying with the requirements of Executive Law, Article 42, state agencies shall meet the requirements of either paragraph (1), (2) or (3) of this section, whichever applies.

(1) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action may have a significant effect on the environment, the agency shall comply with the requirements of NYCRR, Title 6, Part 617, subsection 617.9(c). Fulfilling such requirements constitutes a determination of consistency as required by Executive Law, Article 42.

(2) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action will not have a significant effect on the environment, and where a state agency is undertaking a direct or funding action, other than rule-making, the state agency, at the time of making its decision on the action, shall file with the secretary a certification that such action will not substantially hinder the achievement of any of the coastal policies set forth in section 600.5 of this Part and whenever practicable will advance one or more of such policies. If the action will substantially hinder the achievement of any policy, the agency shall instead certify that the following four requirements are satisfied: (a) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy; (b) the action taken will minimize all adverse effects on such policies to the maximum extent practicable; (c) the action will advance one or more of the other coastal policies; and (d) the action will result in an overriding regional or statewide public benefit. Such certification shall constitute a determination of consistency as required by Executive Law, Article 42.

(3) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action will not have a significant effect on the environment, and where the action is in the coastal area within the boundaries of an approved local waterfront revitalization program area, and the action is one identified by the secretary pursuant to section 916(1)(a) of the Executive Law, a state agency shall submit, through appropriate existing clearing house procedures, information on the proposed action to the local government and, at the time of making its decision on the action, file with the secretary a certification that the action will not substantially hinder the achievement of any of the policies and purposes of the applicable approved local waterfront revitalization program and whenever practicable will advance one or more of such policies. If the action will substantially hinder the achievement of any policy or purpose of the applicable approved local waterfront revitalization program, the state agency shall instead certify that the following three requirements are satisfied: (i) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy or purpose; (ii) the action taken will minimize all adverse effects on the local policy and purpose to the maximum extent practicable; and (iii) the action will result in an overriding regional or statewide public benefit. Such certification shall constitute a determination that the action is consistent to the maximum extent practicable with the approved local waterfront revitalization program as required by Executive Law, Article 42.

§600.5 Coastal Policies. (a) Development policies.

(1) Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial and industrial, cultural, recreational and other compatible uses.

(2) Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.

(3) Encourage the development of the State's existing major ports of Albany, Buffalo, New York, Ogdensburg, and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of State public authorities of land use and development which is essential to or in support of waterborne transportation of cargo and people.

(4) Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.

(5) Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitates its location in other coastal areas.

(b) Fish and wildlife policies.

(1) Significant coastal fish and wildlife habitats, as identified on the coastal area map, shall be protected and preserved so as to maintain their viability as habitats.

(2) Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

(3) Further develop commercial finfish, shellfish and crustacean resources in the coastal area by:

(i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities;

(ii) increasing marketing of the State's seafood products; and

(iii) maintaining adequate stocks and expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them.

(4) Ice management practices shall not damage significant fish and wildlife and their habitats, increase shoreline erosion or flooding, or interfere with the production of hydroelectric power.

(c) Agricultural lands policy.

(1) To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss, nor impair the productivity, of important agriculture lands, as identified on the coastal area map, if that loss or impairment would adversely affect the viability of agriculture in an agricultural district or if there is no agricultural district, in the area surrounding such lands.

(d) Scenic quality policies.

(1) Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include:

(i) the irreversible modification of geological forms, the destruction or removal of vegetation, the destruction or removal of structures, wherever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and,

(ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

(2) Protect, restore and enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the scenic quality of the coastal area.

(e) Public access policies.

(1) Protect, maintain and increase the levels and types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas and waterfront parks.

(2) Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided, and it should be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

(f) Recreation policies.

(1) Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development.

(2) Development, when located adjacent to the shore, shall provide for water-related recreation, as a multiple use, whenever such recreational use is appropriate in light of reasonably anticipated demand for such activities and the primary purpose of the development.

(3) Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities or the Nation.

(g) Flooding and erosion hazards policies.

(1) Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include:

(i) the set back of buildings and structures;

(ii) the planting of vegetation and the installation of sand fencing and drainage systems;

(iii) the reshaping of bluffs; and

(iv) the flood-proofing of buildings or their elevation above the base flood level.

(2) Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

(3) The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

(4) Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

(5) Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations.

(6) Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

(h) Water resources policies.

(1) State coastal area policies and purposes of approved local Waterfront Revitalization Programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over-burdened with contaminants will be recognized as being a development constraint.

(2) Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high given the size of the existing tax base of these communities.

(3) Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

(4) Discharge of waste materials from vessels into coastal waters will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

(5) Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.

(i) To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

Draft
Coastal Assessment Form

(a) State agencies shall complete this assessment form for actions which are subject to Part 600 of Title 19 of the NYCRR. This assessment is intended to supplement other information used by state agencies in making determinations of significance pursuant to the State Environmental Quality Review Act (see 6 NYCRR Part 617). If it is determined that an action will not have a significant effect on the environment, this assessment is intended to assist state agencies in arriving at their decision as to certification as required by 19 NYCRR § 600.4.

(b) If any question in subsection (e) on this form is answered "yes," then the proposed action may affect the achievement of the coastal policies contained in Article 42 of the Executive Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to either (a) making a certification of consistency pursuant to 19 NYCRR Part 600, or (b) if the action is one for which an environmental impact statement is being prepared, making the findings required under SEQR, 6 NYCRR, § 617.9. If an action cannot be certified as consistent with the coastal policies, it shall not be undertaken.

(c) Before answering the questions in subsection (e), the preparer should review the coastal policies as explained in 19 NYCRR § 600.5. Actions should be evaluated as to their beneficial and adverse effects upon the coastal area.

(d) Description of Action

1. Type of Action
   ____ (a) Directly undertaken, pursuant to: _____.
   ____ (b) Funding, pursuant to: _____.
   ____ (c) Permit(s), pursuant to: _____.
   ____ (d) Planning activity(ies), pursuant to: _____.
   ____ (e) Rule, regulation, procedure, policymaking, pursuant to: _____.
2. Location of Action, fill in blank(s), as applicable.
   _____ County(ies) _____ Town(s) _____ City(ies), Village(s) _____ Site
3. Anticipated Start Date of Action: _____. month/day/year
4. Will the action require review, funding, and/or approval by a federal agency(ies)? If yes, which federal agency(ies) _____

(e) Coastal Assessment

	Yes	No
1. Will the action result in a large physical change to coastal site or physically alter more than two acres of land, land under water, or coastal waters, if located adjacent to the shore, or five acres if elsewhere within the coastal area?	____	____
2. Will the action be located in or significantly affect the viability of a significant fish or wildlife habitat identified on the coastal area map?	____	____
3. Will the action have a significant effect on the commercial or recreational use of fish and wildlife resources?		
4. Will the action be located in or have a significant effect upon an area identified on the coastal area map as a scenic resource of statewide significance?	____	____
5. Will the action have any significant visual effect upon a natural or manmade resource which contributes to the scenic quality of the coastal area?	____	____
6. Will the action be located on or significantly affect the conservation of important agricultural lands identified on the coastal area map?	____	____
7. Will the action be located in or have a significant effect upon any area included in an approved local waterfront revitalization program?	____	____
8. Will the action significantly affect existing or the development of future water dependent uses?	____	____
9. Will the action have a significant effect upon the operation of the State's major ports?	____	____
10. Will the action significantly affect land or water uses in and adjacent to the State's small harbors?	____	____
11. Will the action require new or expansion of public services or infrastructure into undeveloped or low density areas of the coast?	____	____
12. Does the action involve an energy facility not subject to Article VII or VIII of the Public Service Law?	____	____
13. Will the action be located in or significantly affect development in designated flood or erosion hazard areas, or on a beach, dune, barrier island, or other feature that functions as a natural protection feature against erosion or flooding?	____	____
14. Does the action involve mining, excavation or dredging within coastal waters?	____	____
15. Will the action result in a reduction of existing or potential public access to or along the shore?	____	____
16. Does the action involve the sale or change in use of state-owned underwater lands or lands adjacent to the coastline?	____	____
17. Will the action affect existing or potential recreation opportunities?	____	____
18. Will the action affect any structures, districts, areas, or sites of historic, archeological or cultural significance to the State or nation?	____	____

(f) If you checked other than (d)(1)(c), and answered yes to one or more questions in subsection (e) on this form, briefly and precisely describe the nature and extent of the proposed action, in the space below, and submit the Department of State copy to the Division of Local Government and Community Services, NYS Department of State, 162 Washington Avenue, Albany, NY 12231.

Preparer's Name: _____ Telephone Number: _____

Title: _____ Agency: _____ Date: _____

- DISCUSSION DRAFT -

SEQR Part 617 Amendments

for Purposes of Executive Law Article 42

1) §617.2(f) "Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in Article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the office of the secretary of state, as required by section 914(2) of the Executive Law.

2) Reletter definition items (f), (g), etc. to read (g), (h), etc.

3) §617.5(d) For state agencies only, determine whether the action is located in the coastal area. If the action is either a type I or unlisted action as defined in section 617.2 and is in the coastal area, the provisions of NYCRR, Title 19, Part 600 shall apply.

4) §617.9(c)(3) - add: State agency actions in the coastal area, shall be consistent with the applicable policies of Executive Law, Article 42 as contained in NYCRR, Title 19, Part 600, section 600.5, so as to achieve a balance between the protection of natural resources and the need to accommodate social and economic considerations as provided in such policies. When the state agency action in the coastal area is within the boundaries of an approved local waterfront revitalization program and the action is one identified by the secretary of state pursuant to section 916(1)(a) of the Executive Law, the action shall be consistent to the maximum extent practicable with the applicable policies of such local waterfront revitalization program.

5) §617.10(e)(6) one copy with the secretary of state where the action is a state agency action in the coastal area.

6) §617.14(f)(10) for state agency actions in the coastal area, an identification of the coastal policies of Executive Law, Article 42 as contained in NYCRR, Title 19, Part 600, section 600.5 which are applicable to such actions and a discussion of the effects of the proposed action on such applicable policies, except when that state agency action in the coastal area is within the boundaries of an approved local waterfront revitalization program area, and the action is one identified by the secretary of state pursuant to section 916(1)(a) of the Executive Law, the identification and discussion shall instead be of the applicable policies and purposes of such an approved local waterfront revitalization program.

7) Renumber 617.14(f)(10)-(12) as (11)-(13).

PART 505

COASTAL EROSION MANAGEMENT (DRAFT)

(Statutory authority: Environmental Conservation Law, §§3-0301 & 34-0108)

Section

505.1 Purpose

505.2 Functions of natural protective features

505.3 Definitions

505.4 Applicability

505.5 Permits; regulatory requirements

505.6 Standards for issuance of permits

505.7 Restrictions on regulated activities within structural hazard areas

505.8 Restrictions on regulated activities within natural protective feature areas.

505.9 Erosion protection structures

505.10 Setback restrictions and requirements

505.11 Appeal of erosion hazard area designation

505.12 Emergency activities

505.13 Bond

505.14 Variances

505.15 Fees

505.16 Severability

Coastal Erosion Management

Section 505.1 Purpose. (a) This Part implements the provisions of Article 34 of the Environmental Conservation Law, the Coastal Erosion Hazard Areas Act. Land use, development and other activities are regulated in coastal areas subject to serious erosion. The purpose is to minimize or prevent damage or destruction to man-made property, natural protective features and other natural resources, due to inappropriate actions of man.

(b) New construction or placement of structures are regulated to place them a safe distance from areas of active erosion. This is to ensure that such structures aren't prematurely destroyed or damaged due to improper siting.

(c) Public investment in services, facilities or activities which are likely to encourage new permanent development in erosion hazard areas are severely limited.

(d) Publicly financed structures to minimize erosion damage are to be used only where necessary to protect human life or where the public benefits of such structures clearly outweigh the public expenditures.

505.2 Functions of natural protective features. (a) Natural features such as beaches, bluffs, dunes, barrier islands, sandbars, shoals, nearshore areas, spits, bay barriers and wetlands, and the vegetation thereon, protect coastal areas and human lives from wind and water erosion and storm-induced high water. Inappropriate activities of man may diminish or eliminate entirely the erosion buffering function of natural protective features.

(b) The specific functions and protective values of different types of natural protective features may vary. Certain types of natural protective

features are intrinsically better suited for certain types of uses, activities or development than others. The standards and development restrictions of this Part that apply to regulated activities within specific types of natural protective features are based on:

(1) The protective functions that specific types of natural protective features provide, and

(2) the interaction between specific types of natural protective features and physical coastal processes.

(c) Described below are the erosion protection functions of various types of natural protective features and their relationship to physical coastal processes.

(1) Beaches buffer shorelands from erosion by absorbing wave energy that otherwise would be expended on the toe of bluffs or dunes. Steep, high, wide beaches protect shorelands from erosion more effectively than flat, low, narrow ones. Beaches also act as a reservoir of sand or other unconsolidated material for longshore littoral transport and offshore sandbar and shoal formation.

(2) Bluffs protect shorelands and coastal development by absorbing the often destructive energy of open water. Like dunes, bluffs are of greatest protective value during times of storm-induced high water. Bluffs are a source of depositional material for beaches and other unconsolidated natural protective features.

(3) Dunes, along with bluffs and beaches, buffer shorelands from the energy of open water and are of greatest protective value during conditions of storm-induced high water. The two primary functions of dunes are prevention of wave overtopping and storage of sand for coastal

processes. High, vegetated dunes provide a greater degree of protection than small, unvegetated ones. The key to maintaining a stable dune system is the establishment and maintenance of beachgrass or other vegetation on the dunes.

(4) The protective functions of barrier islands reflect those of beaches and dunes, their two major component parts. Because barrier islands often protect some of the most biologically productive as well as developed coastal areas their value as protective features is especially great. The key to the maintenance of barrier islands and the protection provided by them is the preservation of their dunes and ensuring that supplies of sand or gravel are not artifically impeded from nourishing barrier island beaches.

(5) Sandbars control the orientation of incoming waves and remove a substantial amount of wave energy before it reaches the shoreline. Sandbars often serve as reservoirs of sand that are eventually returned to upper beach areas by natural processes. Sandbars also promote the development of ice cap formations which help to protect shorelines during winter storms.

(6) Shoals and nearshore areas function similar to sandbars because they absorb incoming wave energy by decreasing wave length and veolcity. Shoals and nearshore areas also function as a reservoir of sand, gravel and other unconsolidated material.

(7) Spits and bay barriers are geomorphologically very similar to barrier islands and function like them by protecting adjacent bays, wetlands, shellfish beds, and other natural areas as well as mainland development. The key to maintaining relatively stable spits and bay

barriers is to protect and preserve their dunes and to ensure that longshore littoral transport to them is not obstructed.

(8) Wetlands function similar to nearshore areas, shoals and sandbars by reducing wave energy before it can be expended on the shoreline. The roots of wetland vegetation bind fine grained silts, clays and organic matter to form a fairly cohesive bottom which resists erosion.

505.3 Definitions. The following terms used in this Part have the meaning indicated, unless the context clearly requires otherwise:

(a) "Act" means the Coastal Erosion Hazard Areas Act which has been codified as Article 34 of the Environmental Conservation Law, as amended.

(b) "Appurtenances" means minor or accessory structures attached to or placed near a principal structure.

(c) "Barrier island" means a detached, elevated landform surrounded by water, which is essentially parallel to the mainland, and which separates open water from a bay, lagoon or wetland. Barrier islands usually consist of beaches, dunes, interdunal troughs, bay shores, and vegetation.

(d) "Bay barrier" means an elongate, elevated landform commonly consisting of sand or gravel deposited by longshore drifting. Bay barriers separate open water from wetlands or lagoons and are connected to the mainland at both ends.

(e) "Beach" means the zone of unconsolidated material that extends landward, from the mean low water line, to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, or to the seaward toe of a dune, whichever is most seaward.

(f) "Bluff" means any bank or cliff with a precipitous or rounded face adjoining a beach or a body of water. The seaward limit of a bluff is the landward limit of its contiguous beach. Where no beach is present the seaward limit is mean low water. The landward limit is the bluff's receding edge.

(g) "Coastal Waters" means Lakes Erie and Ontario, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill van Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, their connecting water bodies, bays, harbors, shallows and wetlands.

(h) "Coastline" means the lands adjacent to the state's coastal waters.

(i) "Commissioner" means the Commissioner of Environmental Conservation or his duly authorized representative.

(j) "Debris line" means a linear accumulation of waterborne debris deposited by high waters on a beach.

(k) "Department" means the Department of Environmental Conservation.

(l) "Dune" means a ridge or hill of loose, windblown or artifically placed material, principally sand.

(m) "Erosion" means the loss or displacement of land due to the action of waves, currents, tides, wind-driven water, waterborne ice or other impacts of storms. It also means the loss or displacement of land due to the action of wind, runoff of surface waters or groundwater seepage.

(n) "Erosion area permit" means the written Departmental approval required by this Part for the undertaking of any regulated activity within erosion hazard areas as shown on erosion hazard maps.

(o) "Erosion haard area" means an area of the coastline which is:

(1) a structural hazard area, or

(2) a natural protective feature area.

(p) ""Erosion hazard map" means the final map issued by the Commissioner which delineates the boundaries of erosion hazard areas subject to regulation under this Part.

(q) "Erosion protection structure" means a structure specifically designed to prevent erosion such as a groin, jetty, seawall, revetment, bulkhead, or breakwater. Artificial nourishment projects are also regulated as if they were erosion protection structures.

(r) "Existing structures" means those structures and appurtenances in existence within erosion hazard areas on the effective date of any erosion hazard area local law or ordinance enacted by a local governmet pursuant to Article 34 of the Environmental Conservation Law or on the effective date of this Part, whichever is first. Existing structures also includes structures and appurtenances which were initially constructed outside a coastal erosion hazard area, but as a result of additional shore recession are located in a revised coastal erosion hazard area.

(s) "Local government" means a village, town (outside the area of any incorporated village), city, or county.

(t) "Major addition" means an addition which results in a 25 per cent or greater increase in the ground area coverage of a structure. The increase will be calculated as the ground area coverage to be added, including any additions previously constructed under an erosion area permit, divided by the ground area coverage of "existing structures" as defined in subdivision (r) above.

(u) "Movable structures" means structures designed and constructed to be readily relocated with minimum disruption of intended use.

(v) "Natural protective features" means beaches, dunes, sandbars, spits, shoals, barrier islands, bay barriers, nearshore areas, bluffs and wetlands, and the vegetation thereon.

(w) "Nearshore area" means those lands under water beginning at the mean low water line and extending seaward to a point where mean low water depth is 15 feet, or to a horizontal distance of 1000 feet from the mean low water line, whichever is greater.

(x) "Person" means any individual, public or private corporation, political subdivision, government agency, partnership, association, firm, trust, estate or any other legal entity whatsoever.

(y) "Primary dune" means the most seaward major dune where there are two or more parallel dune lines within a coastal area. Where there is only one dune present it is the primary dune. Occasionally one or more relatively small dune forms exist seaward of the primary dune. For the purposes of this Part, such forms will be considered to be part of the primary dune. The seaward limit of a primary dune is the landward limit of its fronting beach. The landward limit of a primary dune is 25 feet landward of its landward toe.

(z) "Receding edge" means the most landward line of active erosion, or in cases where there is no discernable line of active erosion, it is the most seaward line of permanent vegetation.

(aa) "Recession rate" means the rate, expressed in feet per year, at which an eroding shoreline moves landward.

(bb) "Regional permit administrator" means the person designated to process permits in each Regional Office of the Department.

(cc) "Regulated activity" means the construction or placement of a structure, or any action or use of land which materially alters the condition

of land, including grading, excavating, dumping, mining, dredging, filling, or other disturbance of soil.

(dd) "Sandbar" means an elongate offshore ridge, mound or bank of unconsolidated material such as sand or gravel, which is submerged at least at high tide. Sandbars are often located at the mouth of a river or estuary, or are located a short distance from, and usually parallel to, a beach.

(ee) "Secondary dune" means the major dune immediately landward of the primary dune. The seaward limit of a secondary dune is the landward limit of its fronting primary dune. The landward limit of a secondary dune is 25 feet landward of its landward toe.

(ff) "Shoal" means a detached elevation of the bottom of a sea, lake, bay, or river, consisting of or covered by sand, mud, gravel or other unconsolidated material. Shoals aren't covered by more than 6 feet of water at mean low water.

(gg) "Significant fish and wildlife habitat" means those habitats which:

(1) are essential to the survival of a large portion of a particular fish or wildlife population,

(2) support rare or endangered species,

(3) are found at a very low frequency within a geographic area,

(4) support fish or wildlife populations having significant commercial or recreational value, or

(5) would be difficult or impossible to replace.

(hh) "Spit" means a long, narrow arm of land commonly consisting of sand or gravel, deposited by longshore drifting, and having one end attached to the mainland and the other terminating in open water.

(ii) "State agency" means any department, division, bureau, commission, board, public authority or other agency of the state. Any public benefit corporation, any member of which is appointed by the governor, is a state agency.

(jj) "Structural hazard area" means those shorelands, other than natural protective features, which are subject to erosion during a 40 year period, and are located landward of shorelines receding at an average annual rate of 1 foot or more per year. The inland boundary of a structural hazard area is calculated by starting at its receding edge and measuring along a line which is normal to the line of mean low water a distance which is 40 times the long-term average annual rate of shoreline recession.

(kk) "Structure" means any object constructed, installed or placed on land or in water including, but not limited to, a building, shed, garage, mobile home, tank, pier, dock, jetty, wharf, or any addition or alteration to any of these.

(ll) "Toe" means the lowest point of a dune or bluff.

505.4 Applicability. The Department will process erosion area permit applications for regulated activities within identified erosion hazard areas in the following instances:

(a) any regulated activity is undertaken by any state agency;

(b) New York City fails to submit to the Commissioner an erosion hazard area local law or ordinance within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0105(3) of the Act, and, the Department

meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(c) New York City's proposed erosion hazard area local law or ordinance is not approved by the Commissioner within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0105(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(d) the Commissioner revokes his approval of New York City's erosion hazard area local law or ordinance because of improper administration; or

(e) the Department does not designate a county to administer a city, town, or village erosion hazard area local law or ordinance which has been revoked because of improper administration ; or

(f) a county outside New York City fails to submit to the Commissioner an erosion hazard area local law or ordinance within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0106(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(g) a county's proposed erosion hazard area local law or ordinance is not approved by the Commissioner within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0106(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(h) the Commissioner revokes his approval of a county erosion hazard area local law or ordinance because of improper administration; or

(i) the Commissioner revokes his designation of a county to administer and enforce a city, town or village erosion hazard area local law or ordinance because of improper administration.

505.5 Permits; regulatory procedures. (a) Any person proposing to undertake a regulated activity within a designated erosion hazard area must first obtain an erosion area permit.

(b) Permit applications are available from each regional office of the Department. Applications must be made on a form prescribed by the Department, and must include the following information:

(1) a description of the proposed activity,

(2) a map showing the location of the proposed activity, and

(3) any additional information the department may require to properly evaluate the proposed activity.

Permit applications are not complete until the appropriate fee, as specified in section 505.15 of this Part, is submitted. Completed permit applications should be submitted to the appropriate regional permit administrator.

(c) Before the Department issues an erosion area permit for a state agency activity within an area having an erosion hazard area local law or ordinance the Department must first make a finding that the standards and criteria of the local law or ordinance, adopted pursuant to § 34-0108 of the Act, have been met.

(d) The procedures of Part 621 of this Title govern the processing of permit applications under this Part and the modification, renewal, suspension, and revocation of erosion area permits.

(e) All regulated activities are subject to the review procedures required by the State Environmental Quality Review Act (SEQR), Article 8 of the Environmental Conservation Law. The applicant may be required to submit information necessary for compliance with SEQR in addition to information required under this Part or Part 621.

(f) Any erosion area permit may be issued with conditions and limitations as are necessary to ensure compliance with the policies and provisions of the Act and of this Part.

505.6 Standards for issuance of erosion area permits. An erosion area permit will be issued only if the Commissioner finds that the proposed regulated activity:

(a) is reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the proposed activity requires a shoreline location, and

(b) will not cause a measurable increase in erosion at the development site or at other locations, and

(c) will not adversely affect natural protective features, existing erosion protection structures, or natural resources such as significant fish and wildlife habitats and shellfish beds.

505.7 Restrictions on regulated activities within structural hazard areas. (a) Applicability. The regulated activities described below, when in

structural hazard areas, are subject to the standards of this section and the minimum setback requirements included in section 505.10 of this Part.

(b) New non-movable structures or major additions to existing structures. The constructon or placement of a non-movable structure, or major non-movable addition to an existing structure, is allowed within a structural hazard area only if the structure is protected by an erosion protection structure approved pursuant to this Part.

(c) Movable structures. Movable structures and their additions may be constructed or placed within a structural hazard area only if an erosion area permit has been granted. Permit requirements include the following:

(1) no permanent foundation is attached to the movable structure and any temporary foundations are removed at the time the structure is moved. Below grade footings will be allowed if provision is made for their removal.

(2) Notwithstanding the setback distances of section 505.10 of this Part, no movable structure may be placed or constructed such that the weight of that structure places an excessive ground loading on bluff.

(3) A plan for landward relocation of structures due to shoreline recession must be included with each erosion area permit application.

(4) Movable structures and appurtenances which have been located within an erosion hazard area, pursuant to an erosion area permit, must be removed prior to the time the receding edge reaches a distance from the structure equal to 2 times the long-term average annual shoreline recession rate established for that site. Debris from structural damage which may occur as a result of sudden, unanticipated bluff edge failure or erosion must be removed within 60 days of the damaging event.

(5) The last owner of record of property upon which a movable structure is placed is responsible for removing that structure and its foundation and appurtenances, unless some other binding financial agreement to do so has been made.

(d) An erosion area permit is required for the installation of publicly-owned or publicly-serviced distribution, transmission, or collection systems for gas, electricity, water, or wastewater. Systems installed on mainland shorelines must be located landward of the shoreline structures being served. Systems installed on coastal barriers such as barrier islands, spits, and bay barriers must not be located seaward of the structures fronting the ocean side of the barrier.

505.8 Restrictions on regulated activities within natural protective feature areas.

(a) Applicability. The regulated activities described below, when in natural protective feature areas, are subject to the restrictions of this section and the minimum setback requirements in section 505.10 of this Part.

(b) Shoals, sandbars, and nearshore areas. The following restrictions and requirements apply to all regulated activities in shoals, sandbars, and nearshore areas.

(1) Mining, excavation, and dredging, which permanently removes sand, gravel, or other unconsolidated material, is prohibited. However, erosion area permits for dredging may be issued for maintaining existing navigation channels, sand bypassing and artificial nourishment where such activities are publicly funded or undertaken.

(2) Erosion area permits for deposition of material on shoals, sandbars, and nearshore areas will only be issued when such project is publicly funded or undertaken and clean sand is used.

(3) An erosion area permit is required for new construction, restoration, or modification of existing docks, piers, wharves, or other similar structures. Normal maintenance or repair of such structures doesn't require an erosion area permit.

(4) Exception. The permit requirement of the preceding paragraph doesn't apply to docks, piers, wharves, or structures built on floats, columns, open timber, piles or similar open-work supports having a top surface area of 200 square feet or less, or which are emplaced in the spring of each year and removed in the fall.

(5) An erosion area permit is required for new construction, modification, or restoration of erosion protection structures including groins, jetties, seawalls, bulkheads, breakwaters, and artificial nourishment. Normal maintenance or repair of such structures doesn't require an erosion area permit.

(6) All development is prohibited in or on shoals, sandbars and nearshore areas, unless specifically allowed by subdivision 505.8(b) of this Part.

(c) Beaches. The following restrictions and requirements apply to all regulated activities on beaches.

(1) Excavation or mining, which permanently removes beach material, is prohibited.

(2) Erosion area permits for deposition of material on beaches will be issued only for expansion or stabilization of beaches; clean sand must be used.

(3) Beach grooming and clean-up operations don't require an erosion permit.

(4) An erosion area permit is required for new construction, modification, or restoration of existing docks, piers, wharves, boardwalks, and erosion protection structures. Normal maintenance or repair of such structures aren't subject to the permit requirements of this Part.

(5) Exception. The permit requirement of the preceding paragraph doesn't apply to docks, piers, wharves, boardwalks, or other structures built on floats, columns, open timber, piles, or similar open-work supports having a top surface area of 200 square feet or less, or which are emplaced in the spring of each year and removed in the fall.

(6) An erosion area permit is required for new construction, restoration, or modification of erosion protection structures, including groins, jetties, seawalls, bulkheads, breakwaters, and artificial nourishment. Normal maintenance or repair of such structures doesn't require an erosion area permit.

(7) The following provisions apply to the use of motorized vehicles on beaches.

(i) motor vehicles must operate seaward of the upper debris lines at all times. On those beaches where no debris line exists motor vehicles must operate seaward of the toe of the primary dune; and

(ii) motor vehicles must not travel on vegetation.

(8) Nothing within this Part prohibits any local government from adopting and enforcing a local law or ordinance which more strictly regulates or prohibits the use of motor vehicles on beaches. This applies

to any local government regardless of whether or not it has an approved erosion hazard area ordinance.

(9) Nothing in this Part authorizes trespass of motor vehicles on private lands.

(10) Shorebird nesting and breeding areas must not be distrubed.

(11) All temporary and permanent development is prohibited on beaches, unless specifically allowed by subdivision 505.8(c) of this Part.

(d) Bluffs. The following restrictions and requirements apply to all regulated activities on bluffs.

(1) The removal, excavation or mining of bluffs is not allowed except where:

(i) it is publicly funded or undertaken. Such activities are subject to the permit requirements of this Part; or

(ii) the minor modification of a bluff is done in accordance with conditions stated in an erosion area permit issued for the construction of an erosion protection structure; or

(iii) a bluff cut is made in a direction normal to the shoreline for the purpose of providing shoreline access. Such proposed excavation must be done in accordance with conditions stated in an erosion area permit.

(2) Vehicular traffic is prohibited on bluff faces.

(3) An erosion area permit is required for new construction, modification, or restoration of erosion protection structures, walkways and stairways. Normal maintenance or repair of such structures doesn't require an erosion area permit.

(4) All development is prohibited on bluffs unless specifically

allowed by subdivision 505.8(d) of this Part.

(e) Primary dunes. The following restrictions and requirements apply to all regulated activities on primary dunes.

(1) Primary dunes must not be mined, excavated, or removed.

(2) Clean sand obtained from excavation, dredging, or beach grading may be deposited on a primary dune, or on an area formerly a primary dune, to increase its size or restore it. Such deposition is subject to erosion area permit requirements.

(3) All development is prohibited on primary dunes, except elevated walkways and stairways to provide pedestrian access to the beaches.

(4) Planting and fencing, to stabilize or entrap sand to maintain or increase the profile of the dunes is allowed. Such activities don't require an erosion area permit.

(5) Vehicular traffic is prohibited on primary dunes.

(6) Foot traffic is prohibited on primary dunes. Pedestrian passage across primary dunes must utilize elevated walkways and stairways. Construction or placement of such elevated walkways and stairways is subject to erosion area permit requirements.

(f) Secondary dunes. The following restrictions and requirements apply to all regulated activities on secondary dunes.

(1) Secondary dunes must not be mined, excavated or removed.

(2) Clean sand obtained from excavation, dredging or beach grading may be deposited on a secondary dune, or an area formerly a secondary dune, to increase its size or restore it. Such deposition is subject to erosion area permit requirements.

(3) The construction or placement of a structure, or major addition

to an existing structure, requires an erosion area permit. Permit requirements include:

(i) the lowest floor of a new structure or major addition to an existing structure must be built on adequately anchored pilings at least four feet above the surface of the secondary dune, and

(ii) the space below the lowest floor must be left open and free of obstructions.

(4) Planting and fencing to stabilize or entrap sand to maintain or increase dunes, are allowed. Such activities don't require an erosion area permit.

(g) Barrier Islands, spits, and bay barriers must not be mined, excavated, removed, or modified such that the erosion protection afforded by them is diminished.

(h) Regulated Wetlands. Article 25 of the Environmental Conservation Law, the Tidal Wetlands Act, identifies the erosion and flooding damage protection from storm tides and waves provided by tidal wetlands. Article 24 of the Environmental Conservation Law, the Freshwater Wetlands Act, identifies erosion, flood and storm control benefits provided by freshwater wetlands. Because tidal and freshwater wetlands subject to regulation are protected and regulated for their erosion and storm control values by other Parts of this Title, erosion area permits aren't required for regulated activities within them as long as the policies, purposes, and permit requirements of 6 NYCRR Parts 661, 662, 663, and 664 are met.

(i) Non-regulated freshwater wetlands must not be filled, mined, excavated, modified, or otherwise disturbed such that the erosion protection afforded by them is diminished.

505.9 Erosion protection structures. Construction of erosion protection structures is expensive, often only partially effective over time, and may even be harmful to adjacent or nearby properties. In some areas of the coastline major erosion protection structures of great length would be required to effectively reduce future damages due to erosion. However, in those cases where a non-structural approach to reducing erosion damages isn't feasible, construction of an erosion protection structure might be warranted. In such cases, the construction, modification or restoration of erosion protection structures is subject to the following standards and requirements.

(a) An erosion area permit is required for construction, modification, or restoration of erosion protection structures. Normal maintenance or repair of such structures doesn't require an erosion area permit.

(b) All erosion protection structures must be designed and constructed according to sound engineering principles, which have demonstrated success in controlling long-term erosion. The protective measures must have a reasonable probability of controlling erosion on the immediate site for at least 30 years.

(c) A long-term maintenance program must be included with every permit application for construction, modification, or restoration of an erosion protection structure. That program must include specifications for periodic maintenance of degradable materials, periodic replacement of removable materials, and financial commitments to assure the accomplishment of these requirements.

(d) All materials used in such structures must be durable and capable of withstanding inundation, wave impacts, weathering, and other effects of storm conditions. Individual component materials may have a working life of less than 30 years only when a maintenance program ensures that they regularly will

be maintained and replaced as necessary to attain the required 30 years of erosion protection.

(e) The construction, modification, or restoration of erosion protection structures must:

(1) ensure that there won't be any measurable increase in erosion at the development site or other locations; and

(2) minimize adverse effects to natural protective features, existing erosion protection structures, and natural resources such as fish spawning and shellfish beds.

505.10 Setback requirements. (a) Regulated activities within structural hazard areas are subject to the following setback requirements and restrictions.

(b) Setback for movable structures within structural hazard areas.

(1) No movable structure, additions, or appurtenances thereto, may be placed closer to the receding edge than a distance equal to the elevation differential between mean low water and the bluff's receding edge, except:

(i) where the elevation differential is less than 15 feet a setback of 15 feet is required,

(ii) where the elevation differential is greater than 40 feet a setback of 40 feet is required.

(2) No movable structure, additions, or appurtenances thereto, may be placed within 25 feet of the landward toe of a primary dune.

(3) Where there are no bluffs or dunes present, no movable structure, additions or appurtenances thereto, may be placed within 25 feet of the landward limit of a beach.

(c) Setbacks for non-movable structures which are protected by approved erosion protection structures within structural hazard areas.

(1) Where structural protection has been constructed and is adequately maintained the setback requirement established for that section of shoreline will reflect the effectiveness of such protection. The setback requirement will continue to be applied to these protected areas as long as:

(i) the integrity of the structural protection is maintained, or restored at any time partial failure occurs, as part of a committed maintenance program, and

(ii) continued maintenance or restoration activities do not cause damage to adjacent or nearby properties or exacerbate erosion conditions thereon.

(2) If the Department determines that adequate maintenance is not being provided for an existing erosion protection structure, the Department will modify the recession rate for that section of shoreline and re-define the boundaries of the structural hazard area.

(3) Modification or restoration of an erosion protection structure, either to augment existing structures or to replace the existing structure with a new design, will be considered as a newly proposed structure. Where new erosion protection structures are approved and constructed the structural hazard area and setback requirements are determined by the Department based on:

(i) the anticipated stability and durability of the structures, and

(ii) commitment to a maintenance program for the proposed structures.

Section 505.11 Appeal of erosion hazard area designation. (a) Pursuant to section 34-0108(2) of the Act, any person who owns real property within a designated erosion hazard area identified pursuant to section 34-0104(3) of the Act, may appeal the designation of such real property.

(b) Erosion hazard area designation appeals may be made at any time after the final identification of the subject lands has been completed. The procedural steps leading to final identification of erosion hazard areas are outlined in section 34-0104(3) of the Act.

(c) Any person wishing to make an appeal pursuant to this section must complete an erosion hazard area designation appeal application and submit it to the Department. Appeal applications are available at Department regional offices and the Bureau of Flood Protection at the central office in Albany. Appeal applications aren't complete until the applicant provides all necessary information and the appropriate fee.

(d) The Department will decide such appeal within 30 days after receipt of a complete appeal application, and will adjust the erosion hazard area boundaries accordingly.

(e) The sole acceptable basis for an erosion hazard area designation appeal is technical information indicating that:

(1) the long-term average annual rate of shoreline recession was calculated incorrectly, or

(2) the subject area was erroneously identified as a natural protective area.

505.12 Emergency Activities. (a) The permit requirements of section 505.5 of this Part do not apply to emergency activities that are immediately

necessary to protect public health or safety, or to prevent damage to natural resources. Whenever emergency activities are undertaken, as allowed by this subdivision, damage to natural protective features and other natural resources must be minimized. Within two working days after the commencement of emergency measures, the person responsible for taking those measures must:

(1) notify the appropriate Regional Permit Administrator (see 6 NYCRR Appendix 1) and describe the emergency and the resources or life whose protection was sought, and

(2) describe the measures which were taken to secure such protection.

(b) After completion of the emergency measures, the Department may require such information in writing.

505.13 Bond. The Department may require a bond or other form of financial security if it determines that a person submitting an application for an erosion area permit has a record of non-compliance with the terms and conditions of permits issued by the Department. Such security must be in an amount and with surety and conditions, satisfactory to the Department to ensure compliance with the conditions stated in the erosion area permit.

505.14 Variances. (a) When an applicant can demonstrate that the strict application of the standards, development, restrictions, or other requirements of sections 505.7, 505.8, 505.9, 505.10 of this Part will cause practical difficulty or unnecessary hardship, they may be varied or modified, provided that the following criteria are met:

(1) the public benefits clearly outweigh the long-term adverse effects for any proposed activities and development where public funds are utilized; and

(2) no reasonable prudent alternative site is available; and

(3) all responsible means and measures to mitigate adverse impacts on natural systems in the area have been incorporated into the project design and will be implemented at the developers expense; and

(4) the development will be reasonably safe from flood and erosion damage; and

(5) the variance requested is the minimum necessary to overcome the practical difficulty or hardship which was the basis for requesting it.

(b) Any person wishing to make a request for a variance must do so in writing. The variance request must specify the standard, restriction, or requirement to be varied and how the requested variance meets the criteria established by paragraphs 505.14(a)(1), 505.14(a)(2), 505.14(a)(3), 505.14(a)(4), and 505.14(a)(5) of this Part. The burden of demonstrating that the requested variance meets these criteria rests entirely with the applicant.

(c) The regional permit administrator may on his own motion treat an application for a permit under this Part as a request for a variance and may request from the applicant the information required by this section.

Section 505.15 Fees. (a) Applications for erosion area permits and erosion hazard area designation appeals must be accompanied by a certified check or money order made payable to the Department of Environmental Conservation in the amount specified in subdivision 505.15(c) of this Part.

(b) If an application is withdrawn before it is determined complete, the fee will be returned to the applicant upon request.

(c) Fees for review of applications.

(1) Appeal of erosion hazard area designation, $50.

(2) Construction or placement of structures other than erosion

protection structures, docks, piers, and wharves, $40.

(3) Excavation, grading, mining, or filling:

(i) projects not exceeding 100 cubic yards, $25.

(ii) projects greater than 100 cubic yards, $50.

(4) Dredging:

(i) projects not exceeding 100 cubic yards, $25.

(ii) projects greater than 100 cubic yards, $50.

(5) Construction or modification of docks, piers, or wharves:

(i) docks, piers, or wharves on piles, $35.

(ii) docks, piers, or wharves on fill, $50.

(iii) all other docks, piers, or wharves, $25.

(6) Construction or modification of erosion protection structures:

(i) structures not exceeding 100 linear feet, $50.

(ii) structures greater than 100 linear feet, $100.

(7) All projects or activities not listed in paragraphs (1) through (6) above, $25.

(d) When a project involves two or more applications which are to be reviewed concurrently for which fees are required, the fee charged will be 80 percent of the total fee required or the highest single fee whichever is greater.

505.16 Severability. The provisions of the Act and this Part are severable. If any clause, sentence, paragraph, subdivision or part is adjudged invalid by a court of competent jurisdiction the effect of such order or judgment is confined to the controversy in which it was rendered. Such order or judgment doesn't affect or invalidate any other provisions of the Act or of their application to other persons and circumstances.

LOCAL WATERFRONT REVITALIZATION PROGRAMS

- DISCUSSION DRAFT -

DOS Part 601

Amendments to NYCRR, Title 19

for Purposes of Executive Law Article 42

Chapter XIII

Part 601

§601.1 Authority, intent and purpose. This Part is adopted pursuant to section 915 of the executive law to implement the optional local government waterfront revitalization program (LGWRP) provisions of the waterfront revitalization and coastal resources act. It includes:

(1) procedural requirements for voluntary participation by local governments;

(2) criteria for review of local programs by the secretary;

(3) procedural requirements for review and comment on each LGWRP submitted.

§601.2 Submission of LGWRP. (a) Every submission of a LGWRP to the secretary, in order to be deemed a completed submission eligible for approval, must be accompanied by a resolution of the legislative body providing for such submission. In those instances where two or more local governments are cooperatively submitting a LGWRP, resolutions from each of the participating

local governments shall be necessary before a submission is deemed complete and eligible for review by the secretary.

(b) Pursuant to the New York City Charter, the Board of Estimate, as the appropriate body, shall approve the New York City Program before it is deemed complete and eligible for review.

(c) Each LGWRP shall include, for purposes of a completed submission eligible for review by the secretary, all of the elements contained in section 915(4) of the executive law.

§601.3 Criteria. In order to approve a submitted LGWRP as eligible for the benefits of section 915 of article 42 of the executive law, the secretary must find: 1) that the LGWRP incorporates the criteria listed in section 915(5) of article 42 of the executive law to an extent commensurate with the circumstances of the local government or local governments seeking approval; and 2) that the LGWRP is consistent with the policies of article 42 of the executive law as contained in NYCRR, Title 19, Part 600, §600.5; and 3) after consultation with potentially affected state and federal agencies if necessary, that the LGWRP will not conflict with any applicable state or federal policy.

§601.4 Procedure for review. (a) Upon receipt of a completed LGWRP the secretary shall circulate the program to such parties as the secretary shall deem appropriate, which parties shall include: 1) every state agency (as defined in article 42 of the executive law) with programs identified in the submitted LGWRP as having the potential to affect the achievement of the waterfront revitalization program; 2) any adjacent local government with

contiguous coastal area; 3) the county wherein the LGWRP area is situated; and 4) the regional planning board, if any, wherein the LGWRP area is situated.

(b) Each agency shall have 60 days for review and comment before the secretary can render a decision as to the approvability of such LGWRP.

(c) Amendments to any approved LGWRP shall be reviewed in the same manner as any original LGWRP.

(d) Notice of disapproval by the secretary shall be issued in writing and shall include findings with respect to the criteria which the LGWRP fails to meet. Disapproval of a LGWRP shall be without prejudice and any local government may resubmit a LGWRP without regard to prior disapprovals.

§601.5 Approved programs. A LGWRP approved by the secretary shall be eligible for the benefits provided in article 42 of the executive law.

§601.6 (a) The secretary shall periodically review the administration and implementation of every approved LGWRP.

(b) Approval may be revoked at any time, upon notice to the legislative body of the participating local government, if the secretary finds that the policies and goals of the approved LGWRP are not being carried out in accordance with the terms of such LGWRP.

§601.7 Withdrawal. A local government may withdraw its approved LGWRP at any time as provided in section 915(10) of the executive law.

APPENDIX B

GUIDELINES FOR LOCAL WATERFRONT REVITALIZATION PROGRAMS

Part 1 - General Guidelines

Table of Contents

	Page
INTRODUCTION	662
GETTING STARTED	664
Assistance in Funding Local Program Development	
Technical Assistance and Advice	
Needed Tools	
CONTENT OF A LOCAL PROGRAM	665
Undertaking an Inventory and Analysis	
Determining Local Objectives and Applicable State Policy	
Identifying Waterfront Uses and Projects	
Identifying the Techniques for Implementing the Program	
Obtaining Local Commitment	
DIRECTIONS FOR SUBMISSION OF A LOCAL PROGRAM	671
BENEFITS OF AN APPROVED LOCAL PROGRAM	672
Consistency	
Project Funding	
Technical Assistance	

INTRODUCTION

The enactment of the 1981 Waterfront Revitalization and Coastal Resources Act established the first concerted statewide waterfront revitalization effort in the Nation. This law represents years of private and public effort. Development interests, environmental interests, civic groups, major cities and small towns each played a major role in shaping this law. The experiences of Boston, Baltimore, San Francisco and Seattle, as well as the experiences gained in preparing this law clearly indicate that waterfront revitalization cannot succeed through the efforts of any single entity, either public or private. Hence, the major theme for the Waterfront Revitalization Program is that of consensus building, thus fostering a strong private and public sector partnership. All interests that benefit from the waterfront and control the activities that occur must work together to achieve the single overriding purpose of this law - the advantageous use of the unique characteristics evident in each of the State's 240 waterfront communities.

A Waterfront Revitalization Program must be comprehensive. In addition, it must be recognized that to gain the community commitment to undertake the revitalization effort, the program must be focused and small enough to be grasped and accomplished within the foreseeable future, and at the same time big enough to make a difference in the community's attitude toward its waterfront. Further, a Waterfront Revitalization Program must be exciting enough to maintain the community's interest and momentum over a long period of time. Without this long term commitment a hodge podge of poorly executed projects with no lasting value may result. A Waterfront Revitalization Program must also be elastic enough to allow for and encourage change. The completed Waterfront Revitalization Program must express a vision of what the waterfront can become, and a pragmatic strategy for achieving that vision.

A Waterfront Revitalization Program will contain policies which for the most part either promote the beneficial use of coastal resources (development) or prevent the impairment of certain coastal resources (protection). The emphasis in each program will vary since all localities differ in terms of development, economy, population, natural environment and social make-up. Thus, each local program will be unique and hand- tailored to local conditions to best take advantage of what is present on the waterfront. At the same time, there are certain common requirements for preparing a program that must be observed. All programs must begin with an evaluation of the local waterfront - its assets and its liabilities. Such an evaluation may have already been undertaken in preparing an existing local plan and simply require refinement and updating. At the other extreme, a locality may be seriously looking at its waterfront for the first time. In either case, a locality should follow this and the other general steps listed below in preparing a program:

First, a community must see what's on the waterfront. It must identify all of the opportunities and problems, their interrelationships and complexities and understand what caused the waterfront to evolve into its present status.

Second, the locality must establish an approach for addressing the identified opportunities and problems, being mindful of the community's capabilities necessary to create the excitement and commitment needed for success, and the need to further those State coastal policies that apply.

Third, based on the above assessment of its waterfront the community should establish the geographic extent of the local program.

Fourth, the locality must devise specific solutions in terms of uses, projects, or procedures to solve the identified problems, or to take advantage of the identified opportunities.

Fifth, the locality should develop specific management, funding, legislative and program strategies for priority uses and projects. At the same time, the locality must use existing or new enforcement capabilities to ensure that at a minimum, nothing will occur to prevent the long term advantageous use of the waterfront.

Sixth, the locality must present a timetable and procedures for addressing potential waterfront opportunities and problems so that the community has the ability to cope with new problems as they arise.

In addition to funds being available to assist in the preparation and implementation of a Waterfront Revitalization Program, a major benefit of an approved local program is the requirement that State and federal agency actions must be consistent with the details of a program.

GETTING STARTED

The initiative for undertaking a local Waterfront Revitalization Program lies with the individual local government or governments. The State encourages such a program, but the State's Waterfront Revitalization Program is not dependent on their existence. Where undertaken, however, it is a valuable means of furthering the State's coastal policies and purposes in terms of local interests and needs.

Localities interested in undertaking a waterfront revitalization program should first contact:

Division of Local Government
and Community Services
Department of State
162 Washington Avenue
Albany, New York 12231

Such contact should be established at an early date. The Department of State can help an interested community in several ways:

1. Assistance in Funding Local Program Development.

   The Department of State expects to receive federal and State monies for furthering waterfront revitalization efforts. These funds will be available to match local cash or in-kind services on a 50-50 basis.

2. Technical Assistance and Advice.

   The Department has a staff of coastal specialists who are available to consult with municipal officials interested in undertaking waterfront revitalization. They will answer questions, suggest approaches, and provide needed services to launch the local program.

3. Needed Tools.

   In beginning a Waterfront Revitalization Program, a locality will require special maps and data. The Department possesses a wide range of resources of this nature which it can make available.

CONTENT OF LOCAL PROGRAM

The following outline describes in detail the steps to be taken in developing an approvable local Waterfront Revitalization Program under the 1981 legislation, with suggestions and examples for local guidance. Most of the steps will be recognized as familiar planning activities generally followed in the course of undertaking any land use or economic development program. Because each local government's coastal situation is different, the design of a local program will vary. Adherence to the steps below will assist a community in determining its own waterfront objectives and in determining which State coastal policies are relevant and should be considered and dealt with in its local program. The specific State policies and activities that must be incorporated in a waterfront program are discussed in Part II.

1. Undertaking an Inventory and Analysis

Before a community can design a local Waterfront Revitalization Program, it must first undertake an inventory and analysis of its existing waterfront conditions. Of assistance in this task is the State's Coastal Atlas, a copy of which is available to any interested coastal community. The atlas identifies the major coastal resources and circumstances which must be recognized in a local program. Such items as important agricultural land, significant historic sites, important wildlife habitats, and major scenic vistas are indicated on the atlas maps. The State has also identified certain coastal liabilities, such as erosion and floodprone areas, which may affect local programs.

Using the coastal atlas as a starting point, the local government should refine and supplement this information, based on a more intensive community study, particularly in the following areas:

(a) Existing natural, recreational, cultural, aesthetic, and historic resources not accounted for in the state atlas, but of local significance.

(b) Economic activities, particularly current or potential industrial and commercial uses dependent on a waterfront location.

(c) Current land and water uses.

Analysis of inventory and other data should follow to determine the existence and significance of problems, issues, and opportunities that are related to the waterfront.

This analysis may indicate that much of the local waterfront is already in stable uses, such as residential, and presents no problem. However, analysis may also indicate that some important uses, such as

agricultural lands, are threatened, and need local attention and solutions. Other waterfront areas may be identified as deteriorated, and provide the opportunity to promote new and more economically rewarding uses. These problem areas are the ones on which the local Waterfront Revitalization Program should concentrate.

2. Determining Local Objectives and Applicable State Policies

Identification of the waterfront problems and opportunities on which the community program must concentrate should be linked to a determination of which of the policies and activities described in Part II need to be incorporated in the local program. Here guidelines are provided for determining whether and to what extent a policy or activity is relevant to the circumstances of the locality.

Based on the above analysis and determination, the municipal waterfront program should set forth specific local objectives. In establishing the objectives of a local program, the community should keep the following factors in mind:

(a) be specific; general goals are not sufficient to provide direction to a program

(b) establish priorities; all problems and opportunities can't be addressed at once

(c) stay within the community's capabilities, both fiscal and social

(d) generate excitement and commitment

3. Defining the Waterfront Revitalization Area Boundary

A coastal area boundary has been designated for the entire State and is shown on the coastal area maps sent to each local government in 1981. The entire area within the designated boundary for the local government need not be included within the geographic area of a local Waterfront Revitalization Program. On the other hand, if it can be justified that the program's geographic area should be expanded to include land outside the designated state coastal area boundary, a recommendation should be made to the Secretary of State to revise the boundary accordingly.

Determination of the geographic area to be included within a local Waterfront Revitalization Program should be based on consideration of the following points:

Plot the geographic locations affected by coastal issues, problems, and opportunities found to be relevant and which are to be the basis for the determination of those policies and activities to be incorporated into the waterfront revitalization program.

Use easily recognizable lines such as cultural features (highways, streets, railroads, etc.) if at all possible to define the areal extent of the program.

Where the geographic location of the significant coastal issues, problems, and opportunities has been determined to be outside the designated State coastal area boundary, recommend to the Secretary of State that this boundary be amended to include these areas affected by significant coastal issues, problems, and opportunities.

The guidelines for program submission provide information on maps which a local government must submit with its program. These maps must depict the boundary lines for the land and water area of the Waterfront Revitalization Program.

4. Identifying Uses, Projects, and Procedures

The heart of a local Waterfront Revitalization Program consists of the identification of specific uses and projects proposed for the waterfront area. These must further each objective of the program and must be as specific as possible, considering the circumstances of the particular use or project.

While the proposed uses and projects should be long-term, this does not preclude attention to immediate problems nor staged implementation of a program so long as any major resources identified are adequately protected and major development opportunities are not allowed to be foreclosed. Also, proposed uses and projects can be identified by sub-areas that reflect neighborhoods or related uses or geography. The proposals should be very specific. Detailed sketch plans, preliminary cost estimates, and time schedules should be included so that implementation of the proposals can be furthered by an approved program.

Alternatively, a locality may choose to establish a procedural mechanism(s) (such as a local Coastal Commission that reviews and approves waterfront activities, or amendments to an existing procedure such as SEQR) to achieve all on some of the program's objectives. Such procedural mechanism(s) would be

appropriate where identification of specific uses or projects is not realistic, but where any uses or projects are proposed, these should meet certain standards. This approach can be taken for an entire program and may be most appropriate in a locality with an extensive and diverse waterfront. In that situation the approach may be supplemented by the identification of a few specific projects. In other localities the approach taken may concentrate on several specific uses and projects and supplement that approach with procedural mechanism(s) that meet the objectives not covered by identification of specific uses or projects.

5. Identifying the Techniques for Implementing the Program

The Waterfront Revitalization Program places great emphasis on implementation. In developing the specific management, funding, and program strategies, a locality may emphasize those priority uses and projects it has identified. However, at the same time it must also identify existing or new enforcement capabilities that ensure that, at a minimum, nothing will occur to prevent the long term advantageous use of the waterfront, or that would frustrate achievement of any identified local objective or relevant state policy.

Specifically, the State legislation requires a "description of proposed means for long-term management and maintenance of waterfront development and activities including organizational structures and responsibilities and appropriate land use controls." A further section requires that the local program provide "specification of the adequate authority and capability of the local government to implement the program."

A "description of necessary and appropriate state actions for successful implementation of the program" is also called for. What is necessary to meet these requirements is described below.

(a) Local programs should include a complete description of the various means that the locality will employ to implement its program. The description should clearly indicate how the various means will achieve each of the objectives or proposals contained in the program. Means of implementation is defined to include organizational structure, review procedures, financing, land use controls and other ordinances, etc. Part two contains a brief discussion under each policy or activity of various techniques available to local government for the given purpose. Localities are free to choose whatever means they feel suit their circumstances, provided that they can demonstrate that the means chosen are likely to be effective. Each

policy/activity discussion in Part two also contains guidelines for determining whether the means chosen are adequate to achieve the policy or cause the activity to occur.

(b) A local program should include a section which provides evidence that the community has the capability to achieve the objectives stated in its program. Capability refers to: 1) legal capability, i.e. the local laws and ordinances identified as part of the program are or will be in place prior to program approval (the full text of any local laws or ordinances should be appended to the program); 2) organizational capability, i.e. there is adequate staff to manage the program and a mechanism exists for coordinating the activities of municipal agencies within the waterfront revitalization area, and 3) financial capability, i.e. the projects and other program elements to be developed with local public funding are reasonable given the fiscal resources of the locality, and, to the extent private and other government financing are to be sought, that there is a likelihood that they can be obtained.

(c) While it is necessary for a locality to demonstrate that it can successfully undertake a Waterfront Revitalization Program, it is recognized that many of the funding, regulatory, and direct activities of state agencies will greatly influence the successful implementation of Waterfront Revitalization Programs. The process of achieving the required consistency of state actions with local programs can be facilitated by local governments identifying those specific State agency actions (including proposed actions or classes of actions) and programs which are likely to affect achievements of the local program, either in a positive or negative manner. Localities should describe how their program is affected and how each State program or action might be modified.

To aid localities in identifying programs, an appendix briefly describing the major State agency programs which may affect waterfront revitalization is attached. A locality should attempt to be as complete as possible in identifying such programs; however, failure to identify a program or action does not diminish the requirement that the program or State agency action be consistent with an approved local program. How consistency works is discussed in detail below. Localities may also wish to identify Federal actions which would affect achievement of the local program.

6. Obtaining Local Commitment

Finally, the local waterfront revitalization program must be geared to produce results. Once approved by the State, state agencies and federal agencies are forbidden to undertake action in conflict with the approved program.

Because such a program represents partnership efforts, a firm local commitment to the proposed program is expected before state action is taken on the submission. Local commitment requirements are satisfied by:

(a) Approval of the program by the mayor, supervisor and manager, if any.

(b) Attachment of a resolution by the local governing body formally approving the waterfront program and its transmittal to the Secretary of State for approval.

(c) Evidence of local support by both public and private agencies and general citizenry, including information on public meetings held for the purpose of informing residents of the proposals. Such evidence can be in the form of letters and/or resolutions by such groups as businessmen's associations, citizen improvement groups, and environmental groups affected. It is important that a local program have broad support from both development and preservation interests.

(d) Identification of objections to the proposal, including any letters or resolutions received in opposition.

While a local commitment is obtained only near the end of the process, the effort to obtain such commitment must begin at the inception of the development of the program.

DIRECTIONS FOR SUBMISSION OF A PROGRAM

There are two stages to the completion and submission of a local Waterfront Revitalization Program:

1. Draft Program Document. The required content of the local program was covered in the previous section. Once the first five of these items have been completed, 20 copies of the proposed program should be forwarded to the Department of State for initial review by the state agencies which may be concerned. The techniques for implementation section at this time may be proposals rather than finally enacted laws or ordinances, but the method of implementation must be made clear. The Local Commitment section need not be attached to this draft.

   The draft document must include maps at any appropriate scale which clearly identify the proposed program items. A summary map should also be prepared at a scale of 1:24,000. Items to be entered on these maps or map are:

   -- boundary of the state coastal area

   -- boundary of the area or areas to be included in the local Waterfront Revitalization Program

   -- inventory information prepared as part of the local program

   -- specific land and water uses and locations of projects proposed for the waterfront area.

   Copies of local legislation to be used to implement the program should be included if already enacted. A draft Environmental Impact Statement may also be required.

2. Final Program Document. After receiving Department of State clearance of the draft program, the final document should be submitted, again in 25 copies. The following additional items must be part of the final submission:

   -- any amendments or alterations required following Department of State review of the draft version

   -- copies of enacted ordinances or local laws to be employed in carrying out the program

   -- evidence of formal approval of the program by the local legislative body, and executive

   -- evidence of local support of the program

   -- identification of objections to the program, including any letters or resolutions received.

BENEFITS OF AN APPROVED LOCAL PROGRAM

Consistency

One of the major benefits and innovations of the waterfront revitalization act is the concept of "consistency". This provision aims to raise the goal of coordination between local government and the State and federal governments to a new level and at the same time provides the means to make it a reality. The premise behind the concept is as follows: if a locality develops a detailed Waterfront Revitalization Program which furthers the State's general coastal policies (and is not in conflict with other established state policy), then the State should adhere to the details of that program. (i.e., the State will not attempt to 'second guess' what is the best way to implement a particular policy at the local level). The process of program approval is to provide the State with an adequate opportunity to determine that a local program does further the State coastal policies and does not conflict with other established State policies.

The 'Consistency' provision will work as follows:

1. During the development of its local Waterfront Revitalization Program, a locality is encouraged to consult with State and federal agencies concerning aspects of mutual interests. The Department of State staff is available to facilitate such consulatation.

2. Before approving a local Waterfront Revitalization Program, the Secretary of State will consult with potentially affected State and Federal agencies. The Secretary will not approve a local Waterfront Revitalization Program if he/she finds it conflicts with an existing State or federal policy. When a conflict is found, the Secretary will attempt to resolve the differences. Prior to approving the program the Secretary must also find that the program is consistent with the policies and purposes of Article 42 and incorporates certain required activities. Upon receiving the draft program the Secretary will provide State and federal agencies likely to be affected by the program with copies. The following State and Federal agencies are the ones most likely to receive copies:

   -- U.S. Dept. of Commerce - National Oceanographic and Atmospheric Agency

   -- U.S. Environmental Protection Agency

   -- U.S. Dept. of Interior - National Park Service and Bureau of Fish and Wildlife

   -- U.S. Dept. of Transportation - U.S. Coast Guard

-- U.S. Dept. of Defense - Army Corps of Engineers

-- Federal Emergency Management Administration

-- U.S. Dept. of Housing and Urban Development

-- NYS Dept. of Environmental Conservation

-- NYS Office of Parks, Recreation, and Historic Preservation

-- NYS Dept. of Transportation

-- NYS Dept. of Commerce

-- NYS Energy Office

-- NYS Dept. of Public Service

-- NYS Office of General Services

-- Port Authorities, if located in that community

Other State and federal agencies will be sent copies of the draft program if the program has identified any actions of these agencies as necessary for successful implementation of the local program or if the Secretary finds that their programs may be significantly affected by the program.

3. Within sixty days of approving a local program, the Secretary will identify specific State permit, financial assistance, acquisition, and capital construction programs likely to affect the achievement of the local program. This identification will be based on the identification of State programs by the locality in its program, additional consultation with the locality and State agencies if necessary, and the DOS familiarity with State programs that affect the coastal area.

4. State agency programs so identified will, to the maximum extent practicable, be undertaken in a manner consistent with the approved local Waterfront Revitalization Program. Amendments to SEQR regulations intandem with new DOS regulations will provide the procedures for the State agency's consistency determination. Using the Environmental Notice Bulletin, A-95, and other procedures, if necessary, State agencies will provide local government with adequate information on a proposed action. The municipality is expected to evaluate proposed actions and identify any conflicts with its approved local program. Once notified by the locality of the potential conflicts,

the Secretary will confer with the State agency and the local government to modify the action so that it will be consistent with the approved Waterfront Revitalization Program.

5. The Secretary is also required by the Act to work with State agencies and seek additional means of implementing approved local waterfront programs. Where a local government has identified program elements which depend upon other than local funds and actions, the Secretary will consult with the appropriate State and federal agencies to explore the possibilities or programming of additional assistance that would further the implementation of the local program.

Project Funding

Financial assistance is provided to a local government for implementation of a local Waterfront Revitalization Program. Grants are available to a local government with an approved Waterfront Revitalization Program for research, design, and other activities which serve to implement construction projects identified in an approved program. Such grants can cover up to ten percent of the estimated cost of a construction project.

The allocation of funds to local governments for the implementation of Waterfront Revitalization Programs will reflect their initiative and interest in undertaking these tasks and other factors to assure fair and equitable distribution. Determination of what constitutes "initiative and interest" and "fair and equitable" will be based on consideration of the following points:

-- Extent to which a community has already taken steps to deal with waterfront opportunities and problems

-- Population of the community

-- Size of the waterfront area

-- Geographic location of the community (to ensure a balanced, statewide allocation of funds)

-- Immediacy and urgency of the waterfront opportunities and problems.

Technical Assistance

The Department of State is able to offer technical assistance to localities in the preparation of waterfront revitalization programs. A staff of coastal specialists will be on hand to answer questions, suggest approaches, and provide needed services such as making available maps and data helpful in preparing a local program.

Part 2 - Specific Guidelines

Table of Contents

	Page
DETERIORATED AND UNDERUTILIZED URBAN WATERFRONT AREAS	676
WATER DEPENDENT USES	679
CONCENTRATION OF DEVELOPMENT	684
MAJOR PORTS	688
SMALLER HARBORS	691
PERMIT SIMPLIFICATION	693
SIGNIFICANT FISH AND WILDLIFE HABITATS	695
COMMERCIAL FISHING	699
RECREATIONAL USES OF FISH AND WILDLIFE	701
FLOODING AND EROSION	703
PUBLIC ACCESS	707
RECREATION	711
HISTORIC RESOURCES	717
VISUAL QUALITY	720
AGRICULTURE	725

DETERIORATED AND UNDERUTILIZED URBAN WATERFRONT AREAS

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources... "(Section 912.1) and "to encourage the restoration and revitalization of ... man-made resources." (Section 912.6). The New York State Coastal Management Program declares that "all practicable efforts will be taken to restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for business, cultural, recreational and other compatible uses."

Urban communities must recognize that revitalization of their once dynamic waterfront areas is one of the most effective means of encouraging economic growth, without consuming valuable open space outside of these waterfront areas. Waterfront redevelopment is also one of the most effective means of rejuvenating or at least stabilizing residential and commercial districts adjacent to the redevelopment area. Local governments, through their Waterfront Revitalization Programs, have the primary responsibility for implementing this policy, in close coordination with state and f deral agencies.

Communities affected by this policy should also refer to the policy guidelines below on: Water Dependent Uses; Concentration of Development; and Expediting Permit Procedures.

I. Determining the degree to which this policy applies to each locality

This policy is directed at communities where the effects of a steady exodus over time from their waterfronts, of people, commerce and industry is underutilized, abandoned and often deteriorated waterfront sites. In determining whether this policy applies to a particular locale, reliance will be placed on information obtained from the waterfront resource inventory which each community is required to produce for its Waterfront Revitalization Program. In some larger coastal communities such as Buffalo, there should be no uncertainty as to its application; in small communities, it will be a matter of judgment, on a use-by-use basis.

II. Identifying the techniques available and suitable for implementing this policy

Most communities will find that, among the many policies which they may have to deal with in preparing Waterfront Revitalization Programs, this policy probably will require the most vigorous and imaginative deployment of the powerful tools at their disposal: legal, financial and political.

Implementation also will require the full commitment of the community's leaders and its residents, as well as the closest working relationship with other government agencies and private interests.

While implementation of such major development will depend heavily on private investment, attracting private investment will require the imaginative use of all of a community's legal and financial tools including: zoning techniques such as the creation of special waterfront districts; site plan reviews; permit procedures; building codes; the use of eminent domain powers; tax incentives; special benefit assessments or improvement districts; and capital facilities programming.

III. Determining whether a community's treatment of this policy is adequate

DOS recognizes that implementation of this policy is a long term project. Thus, a community's treatment of it will be reviewed in that context.

A. Because some communities will find significant levels of complexity of ownership, use and structural conditions in their waterfront redevelopment target areas, they should first prepare a set of data, including maps, sufficiently detailed to give precise information, on the current status of those areas. Without those data, redevelopment planning efforts would be fruitless.

B. The community should demonstrate that it has established, or will establish within a reasonable time, appropriate laws, ordinances or governmental initiatives in regard to waterfront redevelopment areas, in which direction and incentive is given to ensure that, where pertinent:

1. Priority is given to uses which are dependent on a location adjacent to the water;

2. Proposed actions will enhance existing and anticipated uses;

3. Proposed actions will serve as a catalyst to private investment in these areas;

4. Proposed actions will improve the deteriorated condition of a site, and at a minimum, must not cause further deterioration;

5. Proposed actions will lead to development which is compatible with the existing or planned character of the areas, with consideration given to scale, architectural style, density and intensity of use;

6. Proposed actions will have the potential to improve the existing economic base of the community and, at a minimum, must not jeopardize this base;

7. Proposed actions will improve adjacent and upland views of the water, and, at a minimum, must not affect these views in an insensitive manner;

8. Proposed actions will improve the potential for multiple uses of the site.

WATER DEPENDENT USES

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that a local waterfront revitalization program must incorporate "the facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location such as but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture." (Section 915.5.a.) This requirement, more specifically, is established "to ensure the beneficial use of coastal resources, all practicable efforts will be taken to encourage and facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters."

There is a finite amount of waterfront space suitable for development purposes. Consequently, while the demand for any given piece of property will fluctuate in response to varying economic and social conditions, on a statewide basis the only reasonable expectation is that long-term demand for waterfront space will intensify.

The traditional method of land allocation, i.e., the real estate market, with or without local land use controls, offers little assurance that uses which require waterfront sites will, in fact, have access to coastal waters. To ensure that such "water dependent" uses can continue to be accomodated, a community should avoid undertaking, funding, or approving non-water dependent uses when such uses would preempt the reasonably foreseeable development of water dependent uses, and should utilize appropriate programs to encourage water dependent activities.

I. Determining the degree to which this policy applies to each locality

Rural coastal communities will be the least affected by this policy although their desire to prepare a local Waterfront Revitalization Program probably reflects a certain degree of pressure on their shorefronts. The greatest need for this policy will be found in locales in or near poplulation centers, where the competition for waterfront land is usually more intense. The water dependency concept, however, is so fundamental to the proper management of waterfront resources, that most communities will respond to this policy in their programs.

II. Identifying the techniques available and suitable for implementing this policy

Because "water dependency" is a comparatively new approach to meeting development needs, the processes and techniques for implementing it are described here in great detail.

Water Dependent Uses and Facilities

The following uses and facilities are considered as water dependent:

1. Uses which depend on the utilization of resources found in coastal waters (for example: fishing, mining of sand and gravel, mariculture activities);

2. Recreational activities which depend on access to coastal waters (for example: swimming, fishing, boating);

3. Uses involved in the sea/land transfer of goods (for example: docks, loading areas, pipelines, short-term storage facilities);

4. Structures needed for navigational purposes (for example: locks, dams, lighthouses);

5. Flood and erosion protection structures (for example: breakwaters, bulkheads);

6. Facilities needed to store and service boats and ships (for example: marinas, boat repair, boat construction yards);

7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);

8. Uses that rely heavily on the waterborne transporation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near to shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);

9. Uses which operate under such severe time constraints that proximity to shipping facilities becomes critical (for example: firms processing perishable foods);

10. Scientific/educational activities which, by their nature, require access to coastal waters (for example: certain meteorological and oceanographic activities); and

11. Support facilities which are necessary for the successful functioning of permitted water dependent uses (for example: parking lots, snack bars, first-aid stations, short-term storage facilities). Though these uses must be near the given water dependent use they should, as much as possible, be sited inland from the water dependent use rather than on the shore.

Water-enhanced Uses

In addition to water dependent uses, uses which are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water dependent uses. A water-enhanced use is defined as a use that has no critical dependence on obtaining a waterfront location, but the profitability of the use and/or the enjoyment level of the users would be increased significantly if the use were adjacent to, or had visual access to, the waterfront. A restaurant which uses good site design to take advantage of a waterfront view, and a golf course which incorporates the coastline into the course design, are two examples of water-enhanced uses.

"Temporary" Non-Water Dependent Uses

If there is no immediate demand for a water dependent use in a given area but a future demand is reasonably foreseeable, temporary non-water dependent uses should be considered preferable to a non-water dependent use which involves an irreversible, or nearly irreversible commitment of land. Parking lots, passive recreational facilities, outdoor storage areas, and non-permanent structures are uses or facilities which would likely be considered as "temporary" non-water dependent uses.

Choice of Sites

In the actual choice of sites where water dependent uses will be encouraged and facilitated, the following factors should be considered.

1. Consistency with other coastal policies -- the designation of a site as appropriate for water dependent uses will have to be consistent with other policies. Particularly relevant would be those policies calling for development where environmental considerations are favorable, and where the concentration of development would be reinforced. The siting of water dependent uses would also have to comply with all policies relating to specific coastal resources -- the existence of wetlands, fish and wildlife habitats, important agricultural lands, and beaches and other erosion and flood hazard areas, would therefore have to be taken into consideration.

2. Competition for space -- competition for space or the potential for it, should be indicated before any given site is promoted for water dependent uses. The intent is to match water dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a water dependent use area. The choice of a site should be made with some meaningful impact on the real estate

market anticipated. The anticipated impact could either be one of increased protection to existing water dependent activities or else the encouragement of water dependent development.

3. In-place facilities and services -- most water dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water dependent uses, consideration should be given to the following factors:

   a) The availability of public sewers, public water lines and adequate power supply;

   b) Access to the area for trucks and rail, if heavy industry is to be accommodated; and

   c) Access to public transportation, if a high number of person trips is to be generated.

4. Access to navigational channels -- if commercial shipping, commercial fishing, or recreational boating are planned, the locality should consider setting aside a site, within a sheltered harbor, from which access to adequately sized navigation channels would be assured.

5. Compatibility with adjacent uses -- water dependent uses should be located so that they enhance, or at least do not detract from, the surrounding community. Considerations such as the protection of nearby residential areas from odors, noise and traffic should be made. Affirmative approaches should also be employed so that water dependent uses and adjacent uses can serve to complement one another. For example, a recreation-oriented water dependent use area could be sited in an area already oriented towards tourism. Clearly, a marina, fishing pier or swimming area would enhance, and in turn be enhanced by, nearby restaurants, motels and other non-water oriented tourist activities.

6. Preference to underutilized sites -- the promotion of water dependent uses should serve to foster development as a result of the capital programming, permit expediting, and State and other local actions that will be used to promote the site. Nowhere is such a stimulus needed more than in those portions of the State's waterfront areas which are currently underutilized.

7. Providing for expansion -- a primary objective of the policy is to create a process by which water dependent uses can be accomodated well into the future. Localities should therefore give consideration to long-term space needs and, where practicable, accommodate future demand by identifying more land than is needed in the near future.

Promoting Waters Dependent Use Areas

In promoting water dependent uses the following kinds of actions should be considered:

1. Favored treatment to water dependent use areas with respect to capital programming. Particular priority should be given to the construction and maintenance of port facilities, roads, railroad facilities, and public transportation within areas suitable for water dependent uses.

2. When areas suitable for water dependent uses are public owned, favored leasing arrangements could be given to water dependent uses.

3. Where possible, consideration might be given to providing water dependent uses with property tax abatements, loan guarantees, or loans at below market rates.

4. Local planning and economic development agencies should actively promote water dependent uses. In addition, a list of sites available for non-water dependent uses should be maintained in order to assist developers seeking alternative sites for their proposed projects.

5. Local, state and federal agencies should work together to streamline permitting procedures that may be burdensome to water dependent uses. This effort should begin for specific uses in a particular area.

6. Local land use controls, especially the use of zoning districts exclusively for waterfront uses, can be an effective tool of local government in assuring adequate space for the development of water dependent uses.

III. Determining whether a LWRP's treatment of this policy is adequate

Although the techniques for dealing with this policy are set forth in very specific details above, the newness of the process requires adoption of a flexible approach to evaluation of a community's treatment. Nevertheless, certain key elements described must be addressed. (1) Identify Water/dependent, Water Enhanced, and "Temporary" Non-water Dependent Uses which are appropriate to the community's present stage of development. (2) Prepare a projection of possible future demands by those and anticipated new water dependent uses and facilities. (3) If necessary, select sites where water dependent uses will be encouraged and facilitated. (4) Establish laws or ordinances to promote and to safeguard those sites as locations for water dependent uses and facilities.

CONCENTRATION OF DEVELOPMENT

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is state policy "to encourage the location of land development in areas where infrastructure and public services are adequate." (Section 912.7)

By its construction, taxing, funding and regulatory powers, government has become a dominant force in shaping the course of development. Through these government actions, large scale development in the coastal area will be encouraged to locate within, contiguous to, or in close proximity to, existing areas of concentrated development where infrastructure and public services are adequate, where topography, geology, and other environmental conditions are suitable for and able to accommodate development, and where development will not have significant adverse effects on the achievement of other coastal policies.

The above policy is intended to accomplish the following:

- strengthen existing residential, industrial, and commercial centers
- foster an orderly pattern of growth where outward expansion is occurring
- increase the productivity of existing public services and moderate the need to provide new public services in outlying areas
- preserve open space in sufficient amounts and where desirable
- foster energy conservation by encouraging proximity between home, work, and leisure activities

I. Determining the degree to which this policy applies to each locality

This policy applies to every community.

II. Identifying the techniques available and suitable for implementing this policy

The first step a community should take in implementing this policy is to analyze its waterfront area. This is necessary because, for any action that would result in large scale land development or an action which would facilitate or serve future large scale land development, the community should make a determination as to whether or not the

proposed action is within, contiguous to, or in close proximity to an area of concentrated development where infrastructure and public services are adequate. Communities should use the following guidelines in analyzing their waterfront areas and in making that determination.

1. Cities, built-up suburban towns and villages, and rural villages in the coastal area are generally areas of concentrated development where infrastructure and public services are adequate.

2. Other locations in the coastal area may also be suitable for such land development, if three or more of the following conditions prevail:

   a. Population density of the area surrounding or adjacent to the proposed site exceeds 1,000 persons per square mile;

   b. Less than 50% of the buildable sites (i.e., sites meeting lot area requirements under existing local zoning regulations) within one mile radius of the proposed site are vacant;

   c. Proposed site is served by or is near to public or private sewer and water lines;

   d. Public transportation service is available within one mile of the proposed site; and

   e. A significant concentration of commercial and/or industrial activity is within one-half mile of the proposed site.

3. The following points shall be considered in assessing the adequacy of an area's infrastructure and public services:

   a. Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;

   b. Development's water needs (consumptive and fire fighting) can be met by the existing water supply system;

   c. Sewage disposal system can accommodate the wastes generated by the development;

   d. Energy needs of the proposed land development can be accommodated by existing utility systems;

   e. Stormwater runoff from the proposed site can be accommodated by on-site and/ or off-site facilities, and

f. Schools, police and fire protection, and health and social services are adequate to meet the needs of the population expected to live, work, shop, or conduct business in the area as a result of the development.

Exceptions are made in recognition that certain forms of land development may and/ or should occur at locations which are not within or near areas of concentrated development. Thus, this coastal development policy does not apply to the following types of land development projects and activities:

1. Economic activities which depend upon sites at or near locations where natural resources are present, e.g., lumber industry, quarries.

2. Land development which by its nature is enhanced by a non-urbanized setting, e.g., a resort complex, campgrounds, second home developments.

3. Land development which is designed to be a self-contained activity, e.g., a small college, an academic or religious retreat.

4. Water dependent uses.

5. Land development which because of its isolated location and small-scale has little or no potential to generate and/or encourage further land development.

6. Uses and/or activities which because of public safety considerations should be located away from populous areas.

7. Rehabilitation or restoration of existing structures and facilities.

8. Land development projects which are essential to the construction and/or operation of the above uses and activities.

Because this policy explicitly requires a positive approach to land use by "encouraging" concentration of development, the techniques used to implement it should be so constructed. That is, communities should use incentives and disincentives to attract appropriate development to the areas identified above. Zoning ordinances, permits, site pre-clearing, capital budgets and other similar techniques can be used to achieve that goal.

III. Determining whether a community's treatment of this policy is adequate

A community which has identified areas meeting the criteria listed in II above and which can demonstrate that it has established or will establish a reasonable incentive/disincentive mechanism so as to encourage development in such areas should be deemed to have met the requirements of the policy.

MAJOR PORTS

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to encourage the development and use of existing ports ..... so as to reinforce their roles as valuable components within the state's transportation and industrial network". (Section 912.2). Therefore, "All practicable efforts will be undertaken to promote the development and use of the State's major ports as centers of commerce and industry, emphasizing the siting, within port areas, of land use and development which is necessary to, or in support of, the water-borne transportation of cargo and people."

The general approach which communities should adopt to meet the requirements of this policy is one which recognizes the importance of port operations by, at a minimum accommodating them, and as far as possible stimulating them, so that they may continue to contribute to the economic wellbeing of the locale and of the State.

I. Determining the degree to which this policy applies to each locality

The aim of this policy is to promote the development of the State's major ports - New York, Buffalo, Oswego, Ogdensburg and Albany. Thus, with the exception of the discussion below on proposals for new major ports, only communities whose actions might affect those five ports need observe this guidelines section. Those communities should also refer to the guidelines on Water Dependency, Concentration of Development, and Expediting of Permit Reviews, all of which have significant implications for port development.

II. Determining whether a LWRP's treatment of this policy is adequate

First, a distinction must be made between public and private port operations. All five ports have facilities operated by public agencies established by the State legislature such as the Albany Port District Commission and the Niagara Frontier Transportation Authority. The special character of those agencies is noted below.

DOS recognizes that jurisdictional constraints may prevent communities from implementing certain of the guidelines presented below.

A. In regard to both public and private port areas, a community's treatment of this policy will be considered adequate if it can demonstrate in its decisions:

(1) In evaluating and acting upon proposed projects within or abutting port areas, the overriding consideration is the maintenance and enhancement of essential port activity which will have precedence over other non-port related activities.

(2) Dredging to maintain the economic viability of the port will be considered an action of major state or regional benefit if need is shown and it can be demonstrated that environmental impacts would be at an acceptable level.

(3) Landfill projects for port related activities in near-shore areas will be regarded as an acceptable activity within port areas provided adverse environmental impacts are minimized and strong economic justification is demonstrated.

(4) Non-port related activities proposed to be located in or near a port area will be sited so that they will not interfere with normal port operations.

(5) In the programming of capital projects affecting ports, high priority will be given to those that promote the development and use of the port.

B. Two additional guidelines are directed at the community's treatment of public port agencies. First, when not already restricted by existing laws or covenants, and when there is no major public benefit to doing otherwise, surplus public land or facilities should be offered for sale, in the first instance, to the local public port agency. Second, particularly where there is limited access to the waterfront, the community should negotiate with the public port agency to provide opportunities for public access insofar as this does not interfere with the day-to-day operations of the port and its tenants do not incur unreasonable cost.

C. Commercial shipping may be hindered or damaged by floating debris in the ports' waterways. Because the major source of this hazard is deteriorating waterfront buildings, piers, barges and other vessels, the community should enact laws or ordinances which would ensure the upkeep of those structures and vessels and prevent their abandonment.

D. All coastal communities should be aware that any proposals in their LWRP's for the development of new major ports will be assessed in terms of the anticipated impacts on: (a) existing New York State major ports; (b) existing modes of transportation; and (c) the surrounding land uses and overall neighborhood character in the area in which the proposed port is to be located.

III. Identifying the techniques available and suitable for implementing this policy

Before addressing discrete techniques for implementing those guidelines, a major port community should ask if it has established an effective means of coordination with port agencies, owners and operators so that implementation of the policy is carried out in an informed way rather than reactively. For example, port operations have been viewed as such an integral part of its overall waterfront activities that the City of Buffalo has joined recently with the Niagara Frontier Transportation Authority and other public and private interests to form a Waterfront Planning Board to help determine the future of that city's waterfront. Formal structures such as Buffalo has established may not be necessary in all communities but the principle is worth considering.

Implementation of this policy may be achieved by exercise of the community's police powers including zoning, building codes and other permit procedures, and planning functions, and through its capital budget to assure compatible development in areas adjacent to ports.

Smaller Harbors

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is state policy "to encourage the development and use of ..... small harbors including use and maintenance of viable existing infrastructures". (Section 912.2). Therefore, "All practicable efforts will be taken to strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional activities which have provided such areas with a unique identity."

This policy recognizes that the traditional activities occurring in and around many smaller harbors throughout the State's coastal area have contributed much to the economic strength and attractiveness of harbor communities. However, in many instances, sight has been lost of these values. Thus, community efforts should center on promoting and facilitating such desirable activities as recreational and commercial fishing, ferry services, marinas, historic preservation, cultural pursuits, and other compatible activities which have made those smaller harbor areas appealing as tourist destinations and commercial and residential areas. Particular consideration shall be given to the visual appeal and social benefits of smaller harbors which, in turn, can make significant contributions to the State's tourism industry.

I. Determining the degree to which this policy applies to each locality

Many locales will have no difficulty in identifying themselves as smaller harbor communities as, for example, Greenport and Freeport on Long Island. Some will be more substantial than others. In general, however, this policy applies to communities with a rich mix of active traditional uses such as commercial fishing, recreational boating and fishing, boat building and repair, and a resource base of natural amenities and historic buildings. Competition is keen for waterfront space in those communities and time-honored activities are threatened with displacement by new uses, many of which are incompatible with the harbor's distinctive character.

II. Identifying the techniques available and suitable for implementing this policy

The most important tools available to small harbor communities are, of course, those delegated to them under the police powers. Imaginative use of zoning and building codes to create commercial marine districts, to restrict building heights, and to set design

standards, for example, will help achieve the purposes of the guidelines. Some communities may decide to establish harbor improvement districts where agreement can be reached among private and public interests to share the cost of necessary upgrading of amenities.

III. Determining whether a LWRP's treatment of this policy is adequate

In developing its local waterfront revitalization program, a community will have a wide range of methods to develop or enhance its small harbor area. The adequacy of the approaches it chooses will be ascertained by evaluating how it proposes to achieve the following:

(1) Give priority to those traditional or desired uses which are dependent on or enhanced by a location adjacent to the water.

(2) Ensure that proposed activities will enhance or not detract from or adversely affect existing traditional and/or desired anticipated uses.

(3) Ensure that proposed activities will not be out of character with, nor lead to development which would be out of character with, existing development in terms of the area's scale, intensity of use, and architectural style.

(4) Ensure that harbor area structures are not abandoned or allowed to deteriorate.

(5) Ensure that proposed actions will not adversely affect the existing economic base of the community - e.g., waterfront development revolving around a residential complex might be inappropriate in a harbor area where the economy is dependent on tourism and commercial fishing.

(6) Ensure that proposed activities will not detract from views of the water and the harbor area, particularly where the visual quality of the area is an important component of the area's appeal and identity.

PERMIT SIMPLIFICATION

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that a local waterfront revitalization program must incorporate "means for long-term management and maintenance of waterfront development and activities, including organizational structures and responsibilities and appropriate land use controls." (Section 915.4.e). A significant elaboration of part of this requirement is that "all practicable efforts will be taken to expedite existing permit procedures in order to facilitate the siting of development activities at suitable locations."

I. Determining the degree to which this policy applies to each community

This policy applies to every coastal community seeking approval of a LWRP.

II. Identifying the techniques available and suitable for implementing this policy

To meet this requirement, a local government should determine if existing controls can be simplified in an effort to expedite desired development in areas suitable for such development. Further, the local government must identify those State and Federal permit programs requiring simplification in order to expedite the desired development (Section 915(5) (h)).

For specific types of development activities and in areas suitable for such development, state agencies and local governments participating in the Waterfront Revitalization Program, should, to the maximum extent practicable, coordinate and synchronize existing permit procedures and regulatory programs, as long as the integrity of the regulations' objectives is not jeopardized. These procedures and programs should be coordinated within each agency. Also, efforts should be made to ensure that each agency's procedures and programs are synchronized with other agencies' procedures at each level of government. Finally, regulatory programs and procedures should be coordinated and synchronized between levels of government, and if necessary, legislative and/or programmatic changes recommended.

When proposing new regulations, local government should determine the feasibility of incorporating the regulations within existing procedures, if this reduces the burden on a particular type of development and will not jeopardize the integrity of the regulations' objectives.

Permit simplification techniques range from simple redesign of a form to revamping of a complex review process. For example, the Department of Environmental Conservation and the Corps of Engineers, Buffalo District, now share the same application form for certain permits, thus reducing the public's paperwork load. The pre-clearing of sites suitable for development is another approach which a community may choose. "One-step shopping" and systems for keeping track of permit applications are other examples.

Preparation of a guide to development permits could be a most productive initial step: it would not only give assistance to developers and the public at large but also provide a preliminary basis for the community to review the permit process as a whole.

Local governments should note that the Act requires a local program to be approved by its legislative body. This approval will require local regulatory agencies to adhere to the program policies, which, if the program is approved by the Secretary of State, will be adhered to by State and Federal agencies. This adherence to one set of specific policies will provide the basis for improving the ease of obtaining permits. This requirement in conjunction with the requirement for all interests to be consulted during the program's preparation (Section 915(3)), lessens the time necessary for public review of individual actions when proposed, providing another means for expediting permits.

In addition, Section 916(1) (b) of the Act requires State agencies' actions to be consistent to the maximum extent practicable with approved local programs. Because local programs are, in part, a detailing of State policies, this will significantly increase the specificity of State policies, decrease the discretionary power of the regulator, increase the developer's understanding of approval conditions and provide a mechanism for expediting permits.

III. Determining whether a LWRP's treatment of this policy is adequate

DOS recognizes that permit simplification will not be achieved overnight. However, a community should at a minimum demonstrate that a review of local permit processes is underway. Recognition may also be given to earlier community improvements made in this policy area.

SIGNIFICANT FISH AND WILDLIFE HABITATS

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to conserve and protect fish and wildlife habitats identified by the Department of Environmental Conservation as critical to the maintenance or re-establishment of species or wildlife. Such protection shall include mitigation of the potential impact from adjacent land use or development." (Section 912.3) This policy recognizes that valuable fish and wildlife species cannot be protected and maintained without preserving their habitats.

A habitat is an area where there exists a unique combination of resources (food, shelter, living space, etc.) and environmental conditions (temperature, climate, salinity, etc.) which animals need for their survival. When man destroys a vital resource or alters an environmental condition beyond an organism's range of tolerance, he destroys the habitat.

Certain habitats, such as breeding grounds, nursery areas, and migratory routes, are special areas where fish and wildlife populations tend to congregate during various stages of their life cycle. Such areas must be identified and afforded special protection, since their loss would create a greater threat to the survival of a population than would the loss of areas where the organisms were less densely distributed.

While habitat protection is recognized as fundamental to assuring the survival of fish and wildlife populations, certain habitats are, however, more critical to the maintenance of a given population than others, and therefore merit a greater degree of protection. Such habitats exhibit one or more of the following characteristics:

(a) are essential to the survival of a large portion of a particular fish or wildlife population (e.g., feeding groups, nursery areas);

(b) support populations of rare and endangered species;

(c) are found at a very low frequency within a coastal region;

(d) support fish and wildlife populations having significant commercial and/or recreational value; and,

(e) would be difficult or impossible to replace.

In cooperation with the State's Coastal Management Program, the Department of Environmental Conservation has developed a rating system incorporating these five parameters.[1] This rating system is being used to evaluate each habitat identified in the inventory to assess its relative importance. Results of this evaluation will provide the basis for determining whether a habitat should or should not be designated a "significant habitat."

Once a habitat area is identified as significant, it will be mapped on the official New York Coastal Area Map. A narrative will be prepared detailing information on that particular habitat; e.g., description of the community of organisms; and a list of the types of actions that most likely would affect the habitat.

I. Determining The Degree To Which This Policy Applies To Each Locality

To determine whether a community must respond to this policy, it must simply consult the N.Y.S. Coastal Area Map to see if one or more significant habitats are located within or near the proposed boundaries of its local waterfront revitalization program boundary. In such instances, communities will be required to respond to this policy.

If a community recognizes a habitat which it considers important enough to warrant designation as a significant coastal habitat, then it should recommend in its LWRP to the Department of State that the habitat area be considered for such designation. The Department will, in turn, instruct the Department of Environmental Conservation to field check the area and apply the rating system to determine its relative significance.

II. Identify Techniques Available and Suitable for Implementing Policy

The techniques available and suitable for implementing this policy will be a function of the type of significant habitat requiring protection, and the degree of protection already being afforded to that area through existing regulatory programs.

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[1] The Development and Evaluation of a System for Rating Fish and Wildlife Habitats in the Coastal Zone of New York State. Final Report, January, 1981. (15 pp.)

In most cases, when a local response is needed, it will probably have to be a regulatory one. For example, municipalities may enact zoning provisions aimed at protecting identified habitat areas, such as open space requirements, prohibition of the removal of soil and vegetative cover essential to habitats, and regulations on the use and siting of buildings of activities which may have an adverse effect on nearby habitats or fish and wildlife resources.

Municipalities may adopt programs, where feasible, that permit an owner of land including or adjoining a habitat to transfer the development rights of the parcel to another parcel in the locality.

As part of local subdivision regulations, a developer may be required to employ the cluster design technique if his land includes or is adjacent to a significant fish or wildlife habitat. This approach would permit the developer to locate future residential construction away from an identified habitat, thereby reducing adverse effects.

As an alternative to a regulatory approach, a locality could acquire fee or less than fee interests in land for the protection of critical fish and wildlife habitats.

III. Determining Whether a LWRP's Treatment of the Policy is Adequate

A locality's treatment of this policy will be considered adequate if it: (1) has recognized the existence of any significant habitat(s) located within or near its program boundary; (2) described the habitat in a level of detail commensurate with that of the existing information on the particular habitat available at the Department of Environmental Conservation; (3) listed existing state regulatory programs already affording protection to the significant habitat (e.g. Fresh Water or Tidal Wetlands Act); (4) identified a need, if any, for additional local regulatory controls to preserve the habitat and proposed a means of implementing such controls; (5) identified likely adverse impacts associated with any of the proposed activities identified in their LWRP, and (6) identified and planned for the mitigation of these adverse impacts to acceptable levels.

Land and water uses or development shall not be undertaken or approved if such actions would destroy or significantly impair the viability of an area designated as a significant

coastal fish and wildlife habitat. When the action causes the elimination of a vital resource (e.g., food, shelter, living space) or a change in environmental conditions (e.g., temperature, substrata, salinity) beyond the tolerance range of an organism, then the action would be considered to "significantly impair" the habitat. Indicators of a significantly impaired habitat include but are not limited to: reduced carrying capacity, changes in community structure (food chain relationships, species diversity), reduced productivity and/or increased incidence of disease and mortality.

If a proposed action would significantly impair the habitat, and if no practical alternative exists, it may occur only if there were overriding regional or statewide public benefits resulting from the action, the action furthered achievement of one or more other coastal policies and if all reasonable measures to mitigate the adverse impacts on the habitat are applied.

COMMERCIAL FISHING

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is state policy "to conserve, protect and where appropriate promote commercial...use of fish...resources..." (Section 912.3). Therefore, State and local governments should "further develop commercial finfish, shellfish and crustacean resources in the coastal areas by encouraging the construction of new or improvement of existing on-shore commercial fishing facilities, increasing marketing of New York seafood products, maintaining adequate stocks and expanding aquaculture facilities: such efforts shall be made in a manner which insures the protection of renewable resources and the economic and recreational activities dependent on them."

A tremendous opportunity for expanding the State's commercial fishing industry was created with the passage of the federal Fishery Conservation Management Act of 1976. This law provides U.S. fishermen priority rights to harvest the millions of tons of fish previously being caught by foreign fishing fleets. To realize this development potential, New York must make adjustments in the harvesting, processing and marketing sectors of its fishing industry. The single greatest opportunity for local governments to play a role in commercial fishery resource development exists with the establishment of shore-side support facilities. At present, limited availability of docking, unloading and processing facilities impedes the growth of offshore deepwater fisheries. An insufficient number of boat ramps, inadequate catch transfer sites, and lack of shellfish processing and gear storage facilities limit development of the nearshore fisheries.

A second major opportunity for involvement by local governments in commercial fishery resource development is in the area of aquaculture. Today the market demand for aquaculture products (e.g., clams, oysters, striped bass) far outstrips current production levels of these high value seafood products.

I. Determining Degree To Which This Policy Applies To Each Locality

Coastal communities, particularly those located along New York's coast where commercial fishing is not being restricted due to toxic contamination of the fishery resource, are being encouraged through this Program to direct their energies in helping to foster growth of the State's commercial fishing industry. Communities which have established fishing ports or could accommodate new commercial fishing development activities as part of harbor development programs are those communities which would be in the best position to implement this policy.

II. Identify Techniques Available And Suitable For Implementing This Policy

Municipal zoning regulations can be used to provide increased utilization of commercial fin and shellfish. Marine commercial zones can be established in areas where such facilities as marinas, commercial docks, and fish processing plants would be appropriate. Such zoning would reduce competition for dock space between sport and commercial fishermen, and hence reduce the access problem for commercial fishing activities. Provision may also be made for the storage of fishing gear in residential areas.

In addition, municipalities have capital construction powers which might be used to provide infrastructural improvements necessary for commercial fishing. Roads, piers, docks, lighting, and sanitary sewers are all facilities that can be improved or constructed to aid the commercial fishing industry. Financing such infrastructure improvement projects could be achieved through the creation of a special improvement district and then taxing beneficiary property owners accordingly.

III. Determining Whether A LWRP's Treatment Of A Policy Is Adequate

A municipality's treatment of this policy would be considered adequate if: (1) the community has realistically assessed the potential for commercial fisheries development in its area of jurisdiction, (2) identified a practical and meaningful role it could play in promoting commercial fishery development, (3) identified a means of funding this development efforts and (4) made adjustment as needed in its zoning code to provide for such activities along its waterfront and (5) prevented incompatible development adjacent to existing on-shore support facilities which might ultimately force the future dislocation of that facility.

RECREATIONAL USE OF FISH AND WILDLIFE

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is State policy "to conserve, protect and where appropriate promote...recreational use of fish and wildlife resources..." (Section 912.3).

In New York the primary responsibility for managing the State's fish and wildlife rests primarily with the New York State Department of Environmental Conservation. Any efforts to increase recreational use of fish and wildlife, whether through private or public sector initiatives, will have to be done in accordance with existing state law and in keeping with sound resource management considerations. Such considerations include: biology of the species, carrying capacity of the habitat, public demand, costs, and available technology.

Recreational use of fish and wildlife resources is meant to include more than simply hunting and fishing activities. Promotion of other nonconsumptive uses of these resources such as bird watching, wildlife photography and nature study would also be considered desirable and appropriate objectives of a local waterfront revitalization program.

I. Determining degree to which this policy applies to locality

As part of its inventory of coastal resources, a local government should determine whether there exists valuable hunting or fishing resources or natural areas along its waterfront area. Next the coastal community should consult and cite existing Recreation Needs inventories prepared either locally or by state agencies[1] to assess and document the need to provide for increased opportunities for the recreational enjoyment of its coastal fish and wildlife resources.

[1] Examples of existing state publications include: NYS Office of Parks, Recreation and Historic Preservation State Comprehensive Outdoor Recreation Plan; NYS Department of Environmental Conservation's report, New York Angler Survey, 1976-1977, Final Report by Walter A. Krester and Lois Klatt (1981); Interests, Needs and Attitudes by New York State's Metropolitan Public in Relation to Wildlife, 1978 by Tommy L. Brown and Chad P. Dawson, for NYDEC.

Given the existence of the resources and the need for increased recreational use of these resources, a local government should respond to this policy in its local waterfront revitalization program.

II. Identifying techniques available and suitable for implementing the policy

The most important means by which local governments can assist with increasing recreational use of the State's fish and game resources is by either creating new access to them or by preventing land use development which will pre-empt existing access to these resources. Local governments may exercise their powers to acquire fee simple or less-than-fee-interests (e.g., easements) in land to provide for increased access to public fish and game resources. On the other hand, local governments could, through site plan review or planned unit development, induce a developer to provide for public access to public fishing and hunting areas in the event that such development activities would, otherwise, block public access to such resources.

III. Determine whether a LWRP's treatment of the policy is adequate

Municipalities may be encouraged to utilize their acquisition powers to provide for increased public access to recreational fish and game resources, within the limits of local fiscal capabilities. Municipalities will, however, be required to make a finding that their proposed LWRP will not pre-empt existing or future access to these resources. If such impacts are unavoidable then provisions must be made for new access opportunities which are at least equivalent to those being eliminated by the implementation of the proposed program.

FLOOD AND EROSION HAZARDS

Introduction

The Waterfront Revitalization and Coastal Resources Act: declares that it is state policy "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing..... shoreline erosion"; (Section 912.5) "to minimize damage to natural resources and property from flooding and erosion, including proper location of new land development, protection of beaches, dunes, barrier islands, bluffs and other critical coastal features and use of non-structural measures, whenever possible." In addition, Section 915.g. requires the "protection of sensitive ecological areas, including dunes.... and the protective capability of coastal land features."

The Department of State has refined these policies regarding coastal flooding and erosion to make them more specific and to be reflective of the underlying State legislation on Flooding and Erosion.

-- Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion

-- Activities or development in the coastal area will be undertaken so as to minimize their adverse effects upon natural features which protect against flooding and erosion

-- The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs

-- Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion nor flooding at the site of such activities or development or at other locations

-- Mining or excavation in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in such a manner as not to cause an increase in erosion of such land

-- In coastal erosion hazard areas, public funds shall be expended for activities and development, including the construction or reconstruction of erosion control structures, only where the public benefits clearly outweigh their long term monetary and other costs including their potential for increasing erosion and their adverse effects on natural protective features

-- Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible

Fortunately, except for Section 912.5/Policy 6.7, the framework is already established for treatment of the above policies in a community's LWRP: in the Coastal Erosion Hazard Areas Act (Article 34, Environmental Conservation Law), and in the National Flood Insurance Program in which community participation is required by Article 36, Environmental Conservation Law. Because Section 912.5/Policy 6.7 are not already covered by an existing means of implementation, the guidelines for its treatment are described in greater detail in paragraph II below.

I. Determining the degree to which these policies apply to each locality

Flooding and erosion are two of the most familiar phenomena in the coastal area but their severity, and thus their significance in the preparation of a LWRP will vary among communities. Therefore, it will be necessary first to establish in each community if flooding and erosion occur, to what extent, and where.

In the case of coastal flooding, data supplied by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program are the means to be relied upon in making that determination. Such data are included in Flood Hazard Boundary Maps and Flood Insurance Rate Maps. If a coastal community has been provided with those data, then the LWRP policy will apply in identified flood-prone areas.

In the case of coastal erosion, the Department of Environmental Conservation (DEC) is required by Section 34-0104 of Article 34, ECL, to identify coastal erosion hazard areas (CEHA's). Where such areas have been identified in a community, the LWRP policy will apply. In a community where DEC has not yet surveyed the coastal area, DOS will request that DEC make a preliminary determination, in consultation with the local government, as to the likelihood that there are CEHA's in the community's coastal area and indicate their probable location. If DEC finds that there is little likelihood that such areas are present, then the community's LWRP need not take account of this policy.

However, should DEC make a positive preliminary finding regarding CEHA's, then DOS will consult with DEC and the local government to make arrangements for formal identification of the CEHA's as soon as possible under the provisions of Section 34-0104 as noted above. Unavoidable delays in the formal identification of CEHA's caused by factors beyond the control of the local government need not prevent approval by DOS of a LWRP which meets all other requirements of Article 42. However, a timetable must be agreed upon by DEC, DOS and the local government for completion of that identification process. (See also II below).

II. Identifying the techniques available for implementing these policies

Implementation of the flooding and erosion policies can be achieved by the use of familiar tools developed under local governments' police powers. In communities with existing zoning ordinances, new provisions can be added as revisions. Where zoning has not been introduced as a planning instrument, building codes may be prepared to meet those requirements. In both cases, subdivision regulations should also be developed. Communities may also find the SEQR process a productive auxiliary device in treating the policies. Last, the policy which requires "the use of non-structural measures, whenever possible" may be incorporated in the procedures of the existing laws or ordinances dealing with flooding and erosion.

III. Determining whether a LWRP's treatment of these policies is adequate

a. A community's treatment of the policies (except Section 912.5/Policy 6.7) will be considered adequate if, where applicable as determined in I above, the community can demonstrate that it has enacted or will establish according to an agreed-upon schedule, the following:

(1) Flooding Local laws or ordinances which meet the regulatory requirements of the National Flood Insurance Program consistent with the most current flood data provided by FEMA. This means that where further data has been provided by FEMA which would enable the community to upgrade its regulation of identified flood hazard areas then it must do so by enacting the appropriate ordinances or laws.

(2) Erosion Local ordinances or laws to regulate development and activities in coastal erosion hazard areas which have been certified by the Commissioner of DEC according to Section 34-0105 of Article 34, ECL.

b. In both flooding and erosion hazard areas, the community's LWRP must also take into account the policy enunciated in Section 912.5/Policy 6.7 which requires "the use of non-structural measures, whenever possible" to minimize damage from erosion or flooding. Recognizing the high cost and potentially adverse impacts of such structural measures as groins, dams and bulkheads, this policy should be addressed by the community first by identifying "non-structural measures" appropriate to its shoreline, including: (1) Within identified coastal erosion hazard areas - (a) the use of setbacks as provided for in Section 34-0108 (Article 34, ECL); (b) the strengthening of coastal landforms by the planting of appropriate vegetation on dunes and bluffs, the installation of sand fencing on dunes, the reshaping of bluffs to reduce the potential for slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce run-off and internal seepage of waters. (2) Within identified flood hazard areas - (a) the siting of new development or activities outside the flood hazard areas to avoid the risk of damage; and (b) the flood-proofing of buildings or their elevation above the base flood level. Second, the community must have established procedures to ensure that non-structural measures are used "whenever possible." Such procedures must require that when property owners or governmental agencies propose to prevent or diminish damage from erosion or flooding by the use of structural measures, they must demonstrate clearly to the local government that it is not possible to use alternative non-structural measures which would afford a similar degree of protection. Satisfaction of this guideline can be obtained by requiring that those proposing such structures submit evidence including analyses of the sites, the circumstances involved and of the protection measures, in sufficient detail so that the local government can make specific findings regarding the reasonableness of the proposals. Obviously, the procedures must also give the local government the power to require the use of non-structural measures where they are found to be effective.

PUBLIC ACCESS

Introduction

Public access to both the recreational and aesthetic resources of the coast is a key element in the management of coastal areas. Development, private ownership of land, natural shoreline topography, inadequate public transportation, limited parking facilities, and non-resident restrictions are all factors which singly or in combination can restrict public access to existing recreation resources and to publicly owned lands and waters of the coastline at large. The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) addresses the public access issue by declaring that it is necessary "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing ..... diminution of ..... public access to the waterfront ...." and "to encourage and facilitate public access for recreational purposes." Given this general direction, State public access policies have been developed which say that:

(1) The level and types of access to public water-related recreation resources and facilities will be increased so that these resources and facilities may be fully utilized by all the public consistent with reasonably anticipated public recreation needs and the other coastal policies. In providing such access, priority will be given to public beaches, boating facilities, fishing areas, and waterfront parks;

(2) Access to lands underwater and to lands immediately adjacent to the shore that are publicly-owned will be provided and it will be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use, they will be retained in public ownership, except where it is not in the public interest to do so.

Article 42 gives additional direction to local governments wishing to develop Waterfront Revitalization Programs by requiring such programs to call for "the increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking, and picnicking."

I. Determining the Degree to Which the Policies Apply to Each Locality

Every locality desiring to prepare a Waterfront Revitalization Program has the potential to provide or increase access to its waterfront for water-related activities. The amount and type of access and the kind of water-related activities to be emphasized will depend upon a number of factors. These include: the amount, location, type, condition, and use of existing waterfront recreation facilities and parks; the location and type of existing residential, commercial, and industrial development; the location of public transportation; the natural

characteristics of the waterfront as they relate to potential recreation and access opportunities; and the types and location of specific uses and projects proposed to implement the local program objectives.

The initial inventory and analysis steps required of all localities wishing to prepare a program will reveal much of the information in the above factors about existing public access to the waterfront and the potential for maintaining or increasing access. Several different situations with respect to access are possible, depending upon the circumstances of the locality. For example, a locality with existing water-related recreation resources along its waterfront should show that existing access is sufficient or, if it is not, show how access can be improved. On the other hand, a community may be developed to such an extent that little or no waterfront recreation facilities exist and there is little prospect for their development. In this case, the potential for increased access must focus on taking advantage, in existing development and in every proposed specific use or project, of the opportunity to provide access to the waterfront -- even if it is just to an overlook from which to view the shoreline and its activities or the provision of a footbridge across a transportation facility to allow access to a city waterfront.

II. Identifying the Techniques Available and Suitable for Implementing the Access Policies

There are several methods available to localities for maintaining or increasing access to the waterfront. Those most suitable for a locality's particular situation should be identified in the waterfront program. The following methods should be considered:

(1) Regulation

There are a number of regulatory techniques available to localities to increase public access to the waterfront. They may (a) establish zoning districts, where appropriate, which prescribe water related uses to facilitate public access for recreation; (b) require provision, through the site plan or special permit approval process, for open space and waterfront access; (c) establish design criteria and standards for large planned developments which ensure provision of waterfront access; (d) require access to the waterfront in new residential subdivisions through subdivision regulations; or (e) require "in lieu" fees for the acquisition of public access at locations other than that of the planned subdivision.

(2) Land Acquisition and Capital Construction

A locality has broad powers to acquire and develop land for public purposes. These powers could be used to acquire fee or less than fee interests in land needed to increase public access to the waterfront as well as develop specific capital facilities to increase access.

III. Determining Whether a Local Waterfront Revitalization Program's Treatment of These Policies is Adequate

As stated above, communities have a variety of techniques available for maintaining and increasing access to the waterfront. The Department of State, in determining whether the techniques are adequate to meet the policy requirements of Article 42, will evaluate them against the circumstances of each locality. The following factors will be used to judge the effectiveness of the locality's proposals for meeting the policy requirements:

(1) The amount, location, type, condition and use of existing waterfront access areas.

These factors relating to a community's existing access areas will be reviewed in evaluating the effectiveness of its program proposals for dealing with access. The substance of the program proposals will vary from community to community, depending upon the characteristics of these factors. Obviously, if a community already has a large number of various types of access to the waterfront which are well-located, in good condition, and greatly used, its access needs are few and will be so reflected in its waterfront program. On the other hand, a community with access deficiencies, i.e., few access points, poorly-located, in poor condition, not well-used, etc., will be required to show in its program what it proposes to do to ameliorate the situation.

(2) The location and character of existing development and the degree of pressure for additional development.

The nature of existing development and its location will have a great influence on the provision of increased access. A highly developed waterfront will effectively prohibit many types of access from being provided, as will the type of development, i.e., a transportation facility running the length of the community along its waterfront. Conversely, a waterfront with little or no development could have many access opportunities if other factors are also favorable. Thus, a community's Waterfront Revitalization Program will have to recognize the nature of its development as it relates to the type of access being proposed. In the same fashion, the degree of pressure for additional development will particularly relate to the timing for increased access. Where development pressures are great, the timing for providing increased access must be such that opportunities are not foreclosed by development before action can be taken. Where there are few or no development pressures, timing will be a less important factor.

(3) The natural characteristics of the waterfront as they relate to potential waterfront access opportunities.

This factor will be judged against a community's proposal for increasing access to ensure that the proposals are realistic in terms of existing natural characteristics. Simply put, these characteristics must match the type of access being proposed. For example, it would make little sense to propose increased access for fishing where water is polluted and fishing is banned, as is the case along some sections of the Hudson River.

(4) The proposals in the program for specific uses and projects and the potential for maintaining or increasing access for each such proposal.

Each proposal for specific uses and projects in a community's waterfrontprogram should reflect the feasibility of increasing access to the waterfront. This will be specifically looked for in each program. For example, a proposal for redevelopment of an abandoned waterfront warehouse into a civic center would be expected to contain a proposal for increasing access to the waterfront.

(5) The fiscal capability of the locality measured against the cost of proposals for acquiring waterfront access areas and developing specific facilities.

The costs of proposed acquisition of land and development of facilities for increasing access must be realistic in terms of the fiscal resources of the community and the possibility of assistance from other sources.

RECPEATION

Introduction

Coastal areas are New York's most important outdoor recreation resource. Their appeal and significance creates several concerns. Principal among these is determining how the demand for coastal area recreation can be met while ensuring that other land and water use needs will be accommodated and that the natural resource base will be protected. More specific concerns include: conflicts with other uses; overuse of existing coastal recreation areas; deficiency of water-based recreation in urban areas; conservation of historic and cultural resources; the particular needs of recreational boating and fishing; and the desire to promote the private sector's role in recreation.

The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) addresses recreation issues by declaring that it is necessary "to achieve a balance between economic development and preservation...while preventing...diminution of open space areas..."; "to...promote...recreational use of fish and wildlife resources..."; "to encourage and facilitate public access for recreational purposes..."; and "to encourage the restoration and revitalization of natural and man-made resources."

The direction of these statements is amplified by state recreation policies which say that:

(1) To assure that beneficial use is made of coastal resources, water-dependent and water-enhanced recreation will be encouraged and facilitated, and will be given priority over non-water related uses along the coast.

(2) Large scale developments when located adjacent to the shore will provide for water-related recreation activities as a multiple use whenever such use is appropriate in light of reasonably anticipated demand for such activities, and the primary purpose of the development.

Article 42 gives additional direction to local governments wishing to develop Waterfront Revitalization Programs by requiring such programs to call for "the increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking, and picnicking."

I. Determining The Degree To Which The Policies Apply To Each Locality

Almost every locality desiring to prepare a Waterfront Revitalization Program has the potential to increase use of its waterfront for water-dependent and water-enhanced recreation activities. Because each locality's waterfront is different, the amount and type of activities possible will differ and will depend upon a number of factors. These include: the amount, location, type, condition, and use of existing waterfront water-related recreation facilities and parks; the location and type of existing and proposed residential, commercial, and industrial development; the location of public transportation; the natural characteristics of the waterfront as they relate to potential recreation opportunities; and the types and locations of specific uses and projects proposed to implement the local program objectives.

The initial inventory and analysis steps required of all localities wishing to prepare a program will reveal much of the information about the above factors and thus the potential for increasing water-related recreational opportunities. Several different types of situations are possible with respect to increasing water-related recreation activities, depending upon the circumstances of the locality. For example, a locality with existing water-related recreation facilities along its waterfront should show that these facilities are sufficient or, if they are not, show how and where additional facilities can be provided. On the other hand, a locality may be developed to such an extent that little or no waterfront recreation facilities exist and there would be difficulties in providing for many types of such facilities. In this case, providing more of these facilities would depend upon coming up with imaginative proposals for fitting in appropriate types of new waterfront facilities with existing development. A third situation might be one in which a community has a large amount of undeveloped waterfront land with no waterfront recreational facilities. If a large-scale development were proposed for the community's waterfront, the community's waterfront program would have to ensure that such a development provide water-related recreation facilities as a multiple use where appropriate.

II. Identifying The Techniques Available And Suitable For Implementing The Recreation Policies

There are several means available to localities for increasing water-related recreation facilities along the waterfront. Those most suitable for a locality's particular situation should be identified in the waterfront program. One of the means not described below but which can be used in conjunction with either one or both is the use of cooperative arrangements between a locality and private developers to provide recreational opportunities in connection with new developments. The following means should be considered.

(1) Land Acquisition and Capital Construction

A locality has broad powers to acquire and develop land for public purposes. These powers could be used to acquire the lands and develop the facilities needed to increase the amount of water-related recreation on the waterfront. A provision of State law provides that the State Office of Parks, Recreation and Historic Preservation can cooperate with communities in the development of recreation facilities.

(2) Regulation

There are several regulatory methods localities can use to provide for increased recreation:

(a) Zoning districts can be created, where appropriate, for the protection of natural resources such as wetlands or other features important for the development of certain kinds of recreation such as sandy beaches for swimming. These districts can also prescribe selected water-related recreational activities or require the provision of open space as a condition of approval of major new developments which would then be used for recreation.

(b) Flood plains or flood hazard districts can be created which permit parks, public and private marinas, boat launching sites, wildlife sanctuaries or other types of recreational uses not susceptible to substantial damage from floods.

(c) Transfer of Development Rights (TDR) is a potentially valuable tool which can be used to provide for open space for recreation while permitting the development which otherwise would occur on that land to occur elsewhere in the locality.

(d) Subdivision regulations can be used to require, as a condition of approval, the provision of lands for open space purposes where such developments occur in waterfront areas. Such regulations also allow, in lieu of providing land, payment of fees to the municipality to be used for purchase of parks and recreational land elsewhere.

(e) Municipalities have the power, under General Municipal Law (Article 18-A), to establish industrial development agencies which can be used, among other purposes, for the promotion, development, encouragement, and assistance of private sector activities to improve waterfront recreational opportunities.

(f) Local zoning or site plan approval ordinances may establish site design criteria and standards for large planned developments which can require the inclusion of recreation and open space use within such developments.

III. Determining Whether a Local Waterfront Revitalization Program's Treatment of These Policies is Adequate

As stated above, communities have a variety of techniques available for increasing water-related recreation facilities along the waterfront. The Department of State, in determining whether the techniques chosen are adequate to meet the policy requirements of Article 42, will evaluate them against the circumstances of each locality. The following factors will be used in judging the effectiveness of the locality's proposals for meeting the policy requirements:

(1) The amount, location, type, condition, and use of existing waterfront water-related recreation facilities.

These factors relating to a facility's existing water-related recreation facilities will be reviewed in evaluating the effectiveness of its program proposals for dealing with recreation. The substance of the program will vary from community to community, depending upon the characteristics of these factors. Obviously, if a community already has a large number of various types of water-related recreation facilities which are well-located, in good condition, and used by its citizens, its need for additional facilities may be few and will be so reflected in its waterfront program. On the other hand, a locality with deficiencies in water-related recreation facilities, i.e., few facilities with little variety in activities available; poor access in terms of public transportation; poorly maintained; not well-used, etc., will be required to show in its program what it proposes to do to ameliorate the situation.

(2) The location and type of existing and proposed residential, commercial, and industrial development and the degree of pressure for additional development.

The nature of existing and proposed development and its location will have a great influence on the provision of increased water-related recreation facilities. A highly developed waterfront will effectively prohibit many types of recreation facilities from being provided, as will the type of development, i.e., heavy waterfront industry, such as a steel mill may not be compatible with adjacent

waterfront recreation such as picnicking or swimming. On the other hand, a community with a sparsely developed waterfront may have many more opportunities for providing additional recreation facilities, if other factors are favorable. A community's Waterfront Revitalization Program will thus have to recognize the location and type of its existing development in its proposals for waterfront recreation facilities.

The degree of pressure for additional development will particularly relate to the timing for providing waterfront recreation facilities. Where development pressures are great, the timing for providing such facilities must be such that opportunities are not foreclosed by development before action can be taken.

(3) Proposals for large-scale developments to be located on the waterfront.

A community's Waterfront Revitalization Program should contain a procedure for ensuring that proposals for developments of this nature also contain recreation facilities as multiple uses where appropriate to the development and to other circumstances of the community.

(4) The natural characteristics of the waterfront as they relate to potential recreation opportunities.

This factor will be judged against a community's proposals for increasing recreation facilities to ensure that the proposals are realistic in terms of existing natural characteristics. Simply put, these characteristics must match the type of facilities being proposed. For example, a proposal for development of a beach for swimming must be reasonable in terms of the physical characteristics of the beach and the water to permit swimming.

(5) The proposals in the program for specific uses and projects proposed to increase recreation opportunities.

Proposals to increase water-dependent and water-enhanced recreation facilities will be specifically looked for in a community's Waterfront Revitalization Program. Such proposals will be expected to be given priority over non-water related proposals on the waterfront. The Department of State will also evaluate the proposals against the anticipated demand for them. This demand factor should be carefully developed to ensure that facilities will, in fact, be used by citizens of the community.

(6) The fiscal capability of the locality measured against the cost of proposals for acquiring waterfront lands for recreation and developing specific facilities.

The costs of acquiring land and developing facilities for waterfront recreation must be realistic in terms of the fiscal resources of the locality and the possibility of assistance from other public and private sources.

HISTORIC RESOURCES

Introduction

New York's coast is rich in structures, sites and areas of significance in the history, architecture, archeology and culture of the State. The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) recognizes the contribution of historic resources to the character and economic development potential of a community and requires the "promotion and preservation of ... historic and cultural ... resources as community amenities and tourist destinations", "the reuse of existing...building stock," and "the restoration and revitalization of ... man-made resources". Therefore, "all practicable means will be taken to protect structures, districts, areas or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities or the Nation".

I. Determining Whether And To What Extent This Policy Applies To A Locality

The amount of attention that a local program pays to historic resources will depend on the extent of these resources in a community. Some communities may retain along their waterfronts large areas of historic residential and commercial structures with few gaps or incongruous elements. Many other communities may have only one or two structures of historic interest scattered amongst more recent development. A few communities may retain little or no evidence of past history. Each community should, however:

A. Record in the local resource inventory structures, sites and areas of significance in the history, architecture, archeology, and culture of the community, State or Nation.

Structures, sites and areas that the Department of State and others consider to be of significance include:

-- a resource which is in a federal or State park established, among other reasons, to protect and preserve the resource

-- a resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places

-- an archeological resource which is on the State Department of Education's inventory of archeological sites

-- a resource that is a significant component of an Urban Cultural Park

-- a local landmark, park, or locally designated historic district

Where a structure, site or district is of historic significance but has not been designated in one of the above ways, the community should take steps to see that it is officially recognized at least at the local level.

II. Identifying Techniques Available For Implementing This Policy

New York State communities can protect historic resources in two general ways. They have substantial powers to regulate for the protection of historic and aesthetic resources, and they have broad powers to acquire real property.

There are two types of preservation regulations: those meant to apply to historic districts and those meant to apply to individual landmarks. The district approach applies where many or most of the buildings in a delineated area are of historic significance while the other, as the name indicates, is concerned with the preservation of individual buildings and possibly adjacent sites.

Generally a local historic preservation law establishes some procedure for nominating a district or landmark and then identifies the actions --- alteration, new construction, demolition -- which are subject to regulation. Also, the law usually contains standards for decisions made in reviewing proposed actions. The Department of the Interior's "Standards for Rehabilitation" and "Guidelines for Rehabilitating Historic Buildings" may serve as a good basis for detailed review standards. When permissible under State building and fire codes, these standards may be achieved in part by modifying local codes.

As mentioned above, communities can protect historic resources by acquiring interests in real property. Not only can they acquire full fee interests but also lesser interests. This is a valuable means of acquiring property to ensure its preservation while avoiding the cost of outright acquisition.

In addition to the local powers of regulation and acquisition, communities can encourage reuse of historic buildings by educating the public about federal tax incentives for historic rehabilitation. They can also operate programs to provide government grant monies to individuals for rehabilitating historic

structures. Such grant programs have encouraged substantial private investment in the State's older developed areas.

III. Determinating Whether Treatment Of The Policy Is Adequate

To be considered adequate a program should:

A. Provide assurance that significant historic resources will be protected

As described above, strong mechanisms are available to local governments for protecting historic resources. Depending on the extent of historic resources and the level of development pressure, a community's approach will vary. In many cases, adequate mechanisms are already in place; but in other cases, communities will need to strengthen their ability to protect single resources or a district.

B. Demonstrate how the community will encourage re-use of historic resources

Traditionally, certain historic resources have been preserved because of their association with historic personages or events. More recently, historic preservation activities have expanded to include buildings and areas that represent a particular historic era. The new historic preservation movement has sought to rehabilitate residential structures and adapt old commercial buildings to new uses. In addition to giving people a sense of time, place and meaning in terms of where they live and work, recent preservation projects have been beneficial for purely business reasons. For a start they have created jobs and trained new workers and are generally less costly per square foot than new construction projects.

To take advantage of the benefits of historic preservation and to encourage private sector involvement in the re-use of historic resources, a community can:

(1) prepare a detailed program of incentives and goals for re-use of specific resources which are especially suited to various types of adaptation, perhaps as part of a larger recreational, residential or commercial project, or

(2) at a minimum and as permissible, modify local codes and other regulations in order to facilitate appropriate adaptive re-use of historic structures.

VISUAL QUALITY

Introduction

State policies on the waterfront recognize not only the inherent value of coastal scenery but also its social and economic worth. The Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42) declares that "impairment of scenic beauty" should be prevented at the same time that coastal resources are being developed. The Department of State has elaborated upon this policy by setting out to "identify scenic resources of statewide significance in the coastal area" and by providing more specific direction to State agencies in order that they can "prevent impairment of the scenic beauty" of identified resources. The DOS is also guiding State and local agencies to "protect, restore or enhance" the general visual quality of the State's coastal areas. Article 42 gives additional direction in this regard to local governments wishing to develop local waterfront revitalization programs by strongly encouraging a community: (1) to promote and preserve "scenic, historic, cultural and natural resources as .... amenities and tourist destinations" and (2) to apply "local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites".

The DOS recognizes the great variation in the visual characteristics of communities throughout the coastal area. It also recognizes that resident attitudes towards visual quality vary greatly depending not only on a community's physical character but also on such conditions as major commercial and industrial activities, employment needs, and financial resources. In a resort town, residents may be very concerned about preserving the natural and historic features which attract tourists; while in a small city where industries have folded, residents are likely to be far more concerned about unemployment than about dilapidated structures degrading their waterfront. Nonetheless, the DOS is committed to protecting, restoring and enhancing the visual quality of the State's coastal areas. The Department expects each community, at a minimun, to assess the visual quality of its waterfront and to appropriately strengthen its capability for responding to potential visual impacts of future development.

I. Determining The Degree To Which These Policies Apply To Each Locality

A. Describe in general the natural characteristics of the community's coastal landscape and also the appearance of land uses along its waterfront.

Every coastal community can be described in terms of visual quality. One community may be more attractive overall than another, but almost every community has some visual feature which is worthy of being protected, restored or enhanced. An agricultural village or historic fishing town may be visually pleasant from one end of the coastal area to the other; but even a highly industrialized community may have a visually dynamic waterfront which can be observed from at least a few access points.

B. Record in the local resource inventory scenic resources of statewide significance.

The DOS will identify a limited number of scenic resources of statewide significance on the Coastal Area Map. These resources are unique in the State and of especially high quality. If a community believes that it contains a resource which should be designated on the Coastal Area Map, it may request as part of its local program that the map be amended to include this resource.

C. Identify in the local resource inventory scenic resources of local or regional significance

The local inventory should include more than the location and geographic limits of scenic areas of local or regional significance. It should also include a description of the important components of each area and how they combine to create its scenic quality. Depending on the community, important components would include natural elements, such as distinctive geological features or views of coastal waters, and also architectural and other man-made elements of aesthetic, cultural and historic value.

Identification of scenic areas in the inventory should be reinforced by indications that the public recognizes the scenic value of these identified areas. Such recognition may be demonstrated by identification of an area in previous inventories, by public ownership, by public park development, or simply by regular use of an area by residents who enjoy its scenic qualities. Public recognition can be further substantiated through a public opinion survey.

D. Identify in the local resource inventory specific degraded areas or general conditions which impair the visual quality of the entire waterfront.

The inventory of a community's waterfront should include areas that are visually degraded. In addition to the location and geographic extent of these areas, the inventory should describe the specific conditions, such as blighted piers and warehouses, which cause the unattractive appearance. The inventory should describe the relationship of these conditions to nearby land and water uses. Also, the inventory should identify degrading conditions, such as litter, billboards or junkyards, which affect the visual quality of the entire waterfront.

II. Identifing The Techniques Available For Implementing These Policies

Communities in New York can employ a wide variety of mechanisms to protect and improve visual quality. They can incorporate height and bulk restrictions or detailed site plan review provisions into zoning ordinances; allow clustering in subdivisions to preserve open space and scenic features; creat special districts to protect and promote historic, cultural and scenic elements; prepare separate ordinances to prevent the visual abuses sometimes caused by signs, parking lots, junkyards, etc., or acquire property, scenic easements, or development rights.

III. Determining Whether A Locality's Treatment Of These Policies Is Adequate

In many instances, coastal communities have already instituted one or more of the local mechanisms available for managing visual quality and thus need few, if any, additions to enable them to more effectively oversee the visual evolution of their communities. However, some localities have not yet incorporated measures for improving or protecting visual quality; such measures may be particularly important in areas where significant scenic resources remain unguarded or where visual degradation seriously discourages economic development.

A. Provide assurance that the community will prevent impairment of any scenic resource identified as being of statewide, regional or local significance

The DOS is particularly concerned that a coastal community containing or adjacent to a scenic resource of statewide significance incorporates measures in its local program to protect the resource; the Department has similar concerns about regional and local scenic resources. The following activities would be likely to impair scenic beauty:

-- removal of attractive vegetation

-- modification of existing landforms

-- demolition of attractive structures

-- addition of structures or other elements (signs, towers, etc.) which are inappropriate in terms of use, materials, form, or scale, and/or which may completely or substantially block views of coastal waters.

Where scenic resources have been identified, a local program needs to demonstrate that it can respond to proposed development activities so as to prevent, or at least minimize, their negative effects on the identified resources. The local program could require such protective measures as:

-- setting structures back from shorelines or in other inconspicuous locations to retain views to and from the shore;

-- clustering or orienting structures to retain views, save open space and provide visual organization to a development;

-- incorporating sound, existing structures (especially historic buildings) into the overall development scheme;

-- reroving deteriorated and/or degrading elements;

-- maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest;

-- maintaining or adding vegetation to provide interest, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters;

-- using appropriate materials, in addition to vegetation, to screen unattractive elements;

-- using appropriate building scales, forms and materials which are compatible with and add interest to the landscape.

Local governments can incorporate such measures into their general site plan or environmental quality review and approval procedures and then apply the measures carefully to actions which might affect identified scenic resources. Depending on the type of resource, local governments could go further to create special districts which would include the resource and perhaps adjacent areas. In these districts, more strict standards would prevail than elsewhere in the community.

B. Determine what actions are most appropriate for specific degraded and/or scenic areas of the community's waterfront

By planning in advance, communities can direct some development activities toward specific degraded areas in need of improvement. They can also steer development away from especially sensitive scenic areas or take advantage of certain areas as settings for compatible types of development.

C. Provide assurance that the community has adequate tools for responding to potential impacts on the general visual quality of its waterfront

The need for tools to govern general visual quality will vary depending on the character of a community's waterfront and on development pressures. In a rural or suburban community experiencing growth pressures, the need for detailed site plan review procedures may be greater than in a highly developed community with little room for growth. In some communities, only one type of development (the proliferation of signs, parking lots, mobile homes...) may be spoiling the appearance of the waterfront. In such cases, a community may need a separate ordinance or a special section in the zoning ordinance to deal with the offending activity.

AGRICULTURE

Introduction

Agricultural land that lies within the coastal boundary of a community may not be a significant percentage of the total agricultural land in that community. It can, however, be one of the most important and extensive land uses within a community's coastal area and, if so, is often characterized by a higher percentage of prime and unique farmland than is found elsewhere in the State. In addition, much of such agriculture is dependent on its coastal location. Thus, though the goal of preserving valued agricultural lands is Statewide in scope, the legislation includes a policy which, calls for "conserving and protecting agricultural land within the coastal area."

Given the Program's application to a narrow strip of land, implementing a policy of promoting agricultural use of land must, to be practicable, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use. Many other factors which influence the viability of agriculture in a given area, can only be addressed on Statewide or national basis.

I. Determing The Degree To Which This Policy Applies To Each Locality

Relative to the furthering of this policy, a locality wishing to prepare a LWRP will tend to fall into one of three situations. The more urban communities may have little or no agricultural land and need not address this policy at all. On the other hand, for many rural towns, agriculture is the principal industry of the coastal area; in these communities any waterfront revitalization program will have to recognize the primacy of agriculture, or even, if it chooses, have protection of agriculture as its major objective. The third situation is one in which agriculture is one of several activities along a town's shore; in this situation the community wishing to prepare a LWRP must avoid use of agricultural land or inhibiting agricultural production but need not make protection of agriculture a major focus of its program.

The agricultural land that is to be protected is the agricultural land which is mapped on the Coastal Area Map or in the Coastal Atlas. Localities may identify additional agricultural lands of local importance and include their protection in the program.

II. Determining Whether a LWRP's Treatment Of This Policy Is Adequate

In developing a local waterfront revitalization program, communities with important agricultural lands may choose from a variety of methods (cf. III below) to conserve and protect agricultural lands. The DOS, in determining whether the method(s) chosen by a community are adequate to meet the requirement of Article 42, will evaluate the method(s) chosen according to the likelihood of its (their) effectiveness in preventing conversion of agricultural lands to other uses given the circumstances of each locality. The factors that will be considered in judging effectiveness are: 1) the type of farmland that exists along the shore (e.g. prime farmland in orchards or vineyards, other prime farmland, other unique farmland, farmland of statewide importance, etc.), 2) the economic, social and environmental importance of farming to the community, 3) the extent of farming in the coastal area and surrounding areas, 4) the degree of urban development pressure, 5) recent rates of loss or increase of land in farms, 6) the fiscal resources of the community, and 7) support of the method(s) by farmers. In general, the more important, in terms of soil quality and coastal dependency of the crop, etc., the agriculture is and the more development pressure there is, the more rigorous the method(s) for conserving the land will have to be in order to be judged likely to be effective.

As part of their program to conserve agricultural land, communities must provide assurance that the agencies of the local government, as well as the public, will not undertake or approve actions which are directly or indirectly detrimental to the conservation of important agricultural lands.

III. Identifying The Techniques Available And For Implementing This Policy

Several methods for conserving valued farmland have been utilized or proposed. The principal ones are: public purchase and lease back; public purchase of development rights; transfer of development rights; zoning, either for exclusive agricultural uses, or very low density residential use; differential real estate tax assessment and other tax changes; and the Agricultural District program and law. Of these, the public purchase and lease back will generally not appear to be suitable both from the viewpoint of the responsible public agency and the farmer, for while it ensures preservation of agricultural land, the costs are too high for the approach to be widespread, and it removes the land from direct ownership of the farmer.

This technique is perhaps useful only with regard to a specific and very important farm when no other means are available. Farm value assessment is essential if farmers in the urban/rural fringe are to continue farming; however, of itself it is not sufficient to prevent conversion of farmland to urban use. New York law allows farmers who commit their land to agriculture for eight years to have their farms assessed for their agricultural value. This is a voluntary program but local governments may encourage its use. Localities should identify any such commitments.

The remaining methods have more direct application for the LWRP efforts to implement the policy of preserving agricultural lands in the coastal area.

Transfer of development rights is a relatively recent land use control technique. Its appeal is that it combines use of police power with partial compensation, thus avoiding the "taking issue". The technique has primarily been used as a way to preserve a valued low intensity or relatively uneconomic use of land (but which has high value for its physical, social or other economic characteristics) in areas where there is pressure from more intensive development. The public benefit derived from this technique is clear with regard to the land use or resource being preserved, for the land use or resource is preserved without requiring an economic sacrifice by the owner. The problems will come in choosing areas to which development rights will be transferred and assuring that there is a market for these rights in those locations. The Town of Southhampton has incorporated a form of transfer of development rights in its zoning ordinance for the express purpose of preserving agricultural lands. Such an ordinance is one method that towns, in which development pressure on agricultural lands is strong, may choose to adopt.

Public purchase of development rights is a similar technique, in that is based on the separation of development rights from landownership. Because it is not a land use regulation per se and there is not a location to which development rights must be transferred, it is a simpler approach; however, it requires large expenditures of public money. Suffolk County has pioneered in the application of this procedure to the preservation of agricultural land. The authority for Suffolk County's program is found in the General Municipal Law, Section 247, which allows local government to acquire full title or lesser interest in lands to be preserved as open space. Such a method is available to the other areas of the State if the fiscal resources are available. This is a severe limitation on an otherwise very effective procedure.

Traditional zoning ordinances can also be a method by which localities can preserve valued agricultural lands. While zoning districts in which only agriculture and its accessory uses are permitted are not common, they have been upheld by courts, particularly in California. Such an approach might be considered by some localities. A more common zoning technique in rural communities has been to permit agricultural activities in areas zoned for large lot residential use. While this zoning is not as effective as the above procedures, it can be utilized in some areas, depending upon the degree of development pressure and the existing development patterns. If zoning is to be the method by which a coastal community preserves its agricultural land, the frequency and nature of changes and variances must be kept to a minimum for the technique to be effective.

The Agricultural District Program is the principal procedure developed by the State to preserve agricultural lands. While it may be completely effective in preserving agricultural land only where development pressure is not extreme, its provisions, in combination with other methods, it is a useful component of any LWRP. These provisions of the Agricultural District Program include farm value assessment, prohibition of local ordinances which restrict farm activity beyond the requirements of health and safety, restrictions on the use of eminent domain, restrictions on the power of special service districts to assess levies on farmland. While a locality may not initiate agricultural districts, it can be instrumental in encouraging their formation.

Another method a community may use is the SEQR process. A locality could amend its SEQR regulation to more specifically require an assessment of an action's impact on the preservation of agricultural land.

WATER QUALITY
and
COASTAL DEVELOPMENT

Introduction

The WRCRA calls for "... a balance between economic development and preservation that will permit the beneficial use of coastal resources while -- preventing ... permanent adverse changes to ecological systems." More specifically the act requires that a local program include "protection of sensitive ecological areas, including but not limited to ... tidal and freshwater wetlands, fish ... habitats, ... Such protection will assure that land use or development will not affect such areas." Maintaining or achieving water quality is a major factor in realizing these and other benefits the coastal area has to offer. Conversely the type of desired land and water use should be reflected in the establishment of water quality objectives. Therefore, "State coastal area policies and approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over-burdened with contaminants will be recognized as a development constraint."

I. Determining Whether or to What Extent This Policy Applies to a Locality

Local governments should consult the New York Coastal Atlas to determine whether any waters within the proposed waterfront program boundaries are designated as "water quality limiting" or "effluent limiting." If any waters are so identified then they are over-burdened with contaminants and must be considered to create a constraint to new development or redevelopment activities. It will be imperative that the local government consult with the regional DEC Permit Officer to determine potential water quality impacts of the proposed program and to identify ways to mitigate these adverse impacts accordingly.

If a community's coastal waters are in either a higher or lower stream classification than seems necessary or appropriate in light of the community's desired land or water uses and a reasonable change in the classification could better accommodate those desired uses then the community should include recommendations for modifying stream classification in its local program.

II. Identifying Techniques Available For Implementing This Policy

From the locality's point of view, i.e., assuring that land and water uses are compatible with water quality objectives and that proposed land uses reinforce proposed water uses, the means for achieving this policy are traditional land use controls plus where appropriate controls on activities in or on the water. The other aspect of this policy, i.e. assuring that classification of coastal waters reflects proposed land and water uses of an approved program will be implemented as part of periodic reviews of stream classifications by DEC.

III. Determining Whether A Locality's Treatment of a Policy is Adequate

Localities should provide evidence that they have recognized existing water quality standards for their respective portions of coastal waters, considered the water quality impacts of their proposed program, and that they have consulted with technical water quality staff at DEC to identify way to avoid or mitigate these impacts. The community must adopt and implement regulatory controls to assure that development activities proposed in the local waterfront progtam will not further degrade the quality of their coastal waters.

The locality's program should identify those portions of their coastal waters where the classification is inappropriate in light of proposed land and water uses. They should recommend reclassification to a higher or lower class. For example, an area with potential for shellfish development that is presently classified 'B' should be recommended to be reclassified 'A' if that is reasonably attainable. Conversely if a portion of a locality's coastal waters classified 'A; is adjacent to area proposed for a major water dependent industry it may be appropriate to recommend that it be reclassified if this would facilitate development of the water dependent industry and no valuable resources are dependent on the higher stream classification.

OTHER WATER QUALITY ISSUES

Introduction

The Waterfront Revitalization and Coastal Resources Act declares that it is state policy, "to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing...permanent adverse changes to ecological systems." That is to say, the State of New York should assure that land and water use activities which occur along its coastal areas should not cause the destruction or impairment of coastal ecological systems. Aquatic systems such as ground water aquifers, tributaries, inlets, bays and estuaries would be included. While the maintenance and enforcement of water quality standards have been traditionally the State's responsibility, there exist several opportunities for local governments to play an active role in augmenting the State's efforts in preserving water quality. In particular, municipalities could focus their efforts in the following water quality problem areas: (1) treatment of sanitary wastes, (2) control of stormwater runoff and combined sewer overflows, (3) control of non-point sources of nutrients, organics and eroded soils, (4) treatment of vessel wastes, (5) treatment and disposal of solid wastes, and (6) preventing the contamination of groundwater supplies.

I. Determining Whether These Policies Apply to a Locality

Generally all communities which elect to develop LWRP's must consider and take effective steps to anticipate and mitigate the water quality impacts of any land and water use activities proposed in their LWRP.

In particular, a municipality's response to this policy will be contingent on the nature of the primary water quality problems which either already exist or would likely result with the implementation of the proposed LWRP should proper measures not be taken to avoid or mitigate potential water quality impacts.

For example, there are instances where conventional sewer collection and treatment systems are not servicing waterfront properties and where installation of such facilities proves too expensive to be practical. If the proposed activities of a local waterfront revitalization program are likely to result in the release of untreated sanitary wastes into coastal waters, then the community would be expected to require that suitable alternative treatment facilities be installed and operated. The level of treatment required would be contingent on existing state water quality standards and intended use of the waterfront (i.e., drinking water, swimming, boating, industrial water supply, etc.)

A critical need to manage surface runoff and control of non-point sources of nutrients, organics and eroded soils may exist in communities which: (1) have had to close their beaches or shellfishing areas due to pollution, (2) have been faced with chronic shoaling of their navigation channels, or (3) had major infestations of nusiance aquatic weed species choking their bays and inlets. The types of pollutants being carried into waters include coliform and pathogenic bacteria (untreated sewage); agricultural, lawn, and garden chemicals; animal wastes; petroleum residuals from streets and parking lots; road salt; garbage and assorted debris; and eroded soil. Therefore, communities experiencing any of the above problems would need to address this policy.

Municipalities which own and operate solid wastes management facilities (e.g., sanitary landfills, solid waste reduction or resource recovery facilities) located within the boundaries of their proposed LWRP must address potential groundwater and surface water pollution commonly associated with such facilities.

And, finally, communities dependent primarily on groundwater for their drinking water supply may need to regulate land use development activities which could degrade the water quality of their groundwater resources. Of particular concern are aquifer recharge areas since it is in these areas where the potential of groundwater contamination is the greatest. For example, seepage from septic systems located on top of recharge areas could cause an increase in nitrate and chloride concentrations to levels exceeding drinking water standards and thereby render drinking water supplies unfit for human consumption.

This list of water quality problem areas should be considered as being suggestive of the range and types of water quality problems local governments might consider as they prepare their LWRP's.

II. Identify Techniques Available for Implementing These Policies

Alternative sewage treatment systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost-effective in smaller less densely populated communities and for which conventional facilities are too expensive. Financing these facilities can

sometimes be achieved with use of state or federal funds. However, in the event these monies are unavailable, the community should have identified other means of securing needed funds, i.e., selling municipal revenue bonds, creating a special district and collecting user fees.

A variety of regulatory techniques could be adopted by communities to manage and control surface runoff. As appropriate, a municipality could adopt ordinances aimed at: controlling drainage and soil erosion from construction sites, pet control ordinances, controlled use of lawn fertilizer, and regulation of vegetation removal along streambanks or shore areas or other potentially suitable regulatory techniques available to local governments. In addition, municipalities could further policy implementation by altering their delivery of public services, e.g., improve street cleaning programs or reduce use of road salts.

Adoption of a special zoning classification, i.e., "Marine District" or adoption of a special sanitary wastes treatment ordinance are two means by which a municipality could regulate and prevent the discharge of vessel wastes into near-shore coastal waters.

While an outright ban on the construction of new solid waste management facilities within the coastal boundary could be enforceable through zoning restrictions, such an approach is not always feasible or practical. When siting a solid waste management facility near the waterfront proves necessary, or such a facility is already located there, then technological devices such as leachate collection systems must be installed as required in the solid waste management permit.

Through zoning, municipalities can limit the type and density of land use development on lands overlying an aquifer recharge area. If homes in a subdivision rely on septic tank systems to treat sanitary wastes, then the density of development may need to be controlled. If sewers are installed, then this density restriction becomes less necessary.

Municipalities are also authorized under Section 228 of Public Health Law to adopt and enforce a sanitary code, and thereby, prevent excessive nutrients from leaching into groundwater supplies. Furthermore, municipalities could consider adopting ordinances directed toward reducing animal wastes, use of domestic fertilizers, or restricting the sales of certain chemical cleaners used in septic systems and are known to have toxic residuals.

III. Determine Whether a LWRP's Treatment Of This Policy Is Adequate

A community's response to water quality issues will be dictated by the kinds of water pollution problems most prevalent in their coastal area of jurisdiction. The following criteria will be applied as appropriate to each individual situation.

A community must demonstrate how it will prevent the release of sanitary wastes into coastal waters which might result from any development activities recommended in the LWRP, particularly when conventional sewage collection and treatment facilities is neither economically or technically feasible. Installation of alternative treatment systems should be used when they are cost effective.

While most structural approaches (e.g., construction of retention basins, replacing combined sewers with separate sewers) to controlling the flow, storage and treatment of surface runoff is generally recognized as effective in reducing the discharge of pollutants into coastal waters, these approaches are, in most instances, not economically feasible, and will not be required of communities until affordable technology is developed. Therefore, a community's response could be considered adequate if upon submission of its local waterfront revitalization program either structural or nonstructural means (e.g., requiring best management practices for controlling erosion, and other regulatory controls as suggested above) of controlling surface water runoff are in place.

When a community has utilized its regulatory powers to require installation of vessel wastes treatment facilities as part of its harbor development plan, then its response to this policy will be considered adequate.

Any community which has a solid waste management plan approved by NYDEC pursuant to the NYS Solid Waste Management Act, or which has successfully obtained a construction or operation permit (pursuant to 6 NYCRR, Part 360) for a new facility proposed for construction within the coastal boundary, then it will have satisfied this policy. In instances where "midnight dumping" is a problem, municipalities should document the existence and magnitude of this problem and present a strategy for attempting to reduce or eliminate it altogether.

Specific standards by which one could assess a community's efforts to prevent groundwater contamination do not yet exist. In general, however, localities could exercise their police powers to limit the density of residential development in or near the vicinity of an aquifer recharge area.

APPENDIX C

FEDERAL-STATE CONSULTATION AND PLAN COORDINATION

Consultation Activities

The State's federal consultation process was initiated in 1975 with the identification of, and the establishment of contact with those agencies most likely to be affected by the Coastal Management Program. Those agencies were then invited to attend a Federal Coordination Workshop on October 6, 1976. Program information packets were sent to all agencies prior to the meeting. The workshop included presentations on New York's Program development activities, and exchanges of information and views on federal consistency, national interest, excluded federal lands and other requirements of the Coastal Zone Management Act pertaining to federal/state relations. Subsequent to that meeting, copies of several preliminary Program documents were mailed to federal agency contacts for review and comment: Goals and Objectives, Preliminary Statewide Boundary, and Geographic Areas of Particular Concern. As the State's Program development efforts gained momentum, a second federal agency workshop was held on September 15, 1977. Twenty-four federal agency representatives participated in discussions of both the content and alternative organizational approaches being developed for the State's Program as well as federal/state coordination concerns.

A major step in furthering the federal consultation process was taken when the March 1979 Draft New York State Coastal Management Program documents were sent for review and comment to all federal agencies with whom contact had been established (See Part Six of this document for a list of those agencies). Written responses received from ten federal agencies were evaluated by the Department of State and accommodated, where appropriate. The agencies' comments are on file at the Department of State.

Notices of public hearings held around the State on the Coastal Management Program were also mailed to federal agencies to afford them additional opportunities for comment.

At a less formal level, through participation in other workshops, committees, meetings on specific state and federal projects, and consultations on mutual concerns, Program staff has continued to maintain an information exchange with the federal agencies including updates on the status of the Program.

Plan Coordination

The State Coastal Management Program's Plan Coordination efforts have been ongoing since the inception of its development through the use of two approaches. First, the Department of State entered into contracts with State, regional, county and municipal governmental agencies to obtain data on coastal resources, issues and existing plans and programs which could be employed in Program development. The list of Agencies included all those designated under Sections 201 and 208 of the Clean Water Act at the state, regional and city level. Second, the 1979 Draft Coastal Management Program was submitted to all coastal area governments as well as to state agencies. Comments were received at public hearings and in writing, and if there were conflicts of a regulatory or programmatic nature, they were accommodated in the revised Program document or a mutual resolution negotiated. In December 1981, a second Draft Coastal Management Program was sent to state agencies for review. Comments received have been analyzed and no substantive conflicts found.

APPENDIX D

EXCLUDED FEDERAL LAND

(includes underwater lands)

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U.S. Maritime Administration	Merchant Marine Academy	Kings Point	Nassau	73.9
U.S. Corps of Engineers	COE property	Buffalo	Erie	212.3
	Buffalo Harbor Breakwater	Buffalo	Erie	174.5
	CK Channel Improvement	Glen Cove	Nassau	12.2
	Channel Improvements	New York	New York	7.9
	Harlem River Channel	New York	Bronx	160.6
U.S. Treasury Department	U.S. Bullion Depository	Highlands	Orange	4.9
Veterans Administration	V.A. Hospital	Fishkill and Wappinger	Dutchess	109.4
	V.A. Hospital	Cortlandt	Westchester	215.3
	V.A. Hospital	New York	Bronx	29.8
	V.A. Hospital	New York	Kings	17.1
	V.A. Hospital	New York	New York	6.4
U.S. Department of Agriculture	Plum Island	Southold	Suffolk	840.0
	Plum Island Terminal	Southold	Suffolk	9.5
	Circuit Breaker House	Southold	Suffolk	0.2
	Brookhaven National Laboratory	Brookhaven	Suffolk	10.2
U.S. Coast Guard - Ninth District	Alexandria Bay CG Station	Wellesley	Jefferson	27.0
	Braddock Point Light	Greece	Monroe	0.8
	CG Base Buffalo	Buffalo	Erie	29.59
	Cape Vincent Lt. Station	Cape Vincent	Jefferson	0.4
	Carleton Island Light	Clayton	St. Lawrence	1.68
	Chaumont Harbor Light	Lyme	Jefferson	0.1

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U.S. Coast Guard - Ninth District (continued)	Cherry Island Light	Lyme	Jefferson	0.1
	Dunkirk Light Station	Dunkirk	Chautauqua	3.9
	East Charity Shoal Lt.	Cape Vincent	Jefferson	0.9
	Fort Niagara Lt. Station	Porter	Niagara	1.10
	Galloo Island LS	Hounsfield	Jefferson	30.84
	Galloo Island CG Station	Hounsfield	Jefferson	3.4
	Grand Is. Range Rear Light	Grand Island	Erie	0.1
	Grand Is. Range Front Light	Grand Island	Erie	0.1
	Niagara Coast Guard Station	Porter	Niagara	2.50
	Niagara LBS Lookout Tower	Porter	Niagara	0.036
	Oswego Coast Guard Station	Oswego	Oswego	1.8
	Oswego Hbr. W. Prhd. LS	Oswego	Oswego	Off Shore
	Rochester CG Station	Rochester	Monroe	2.8
	Rochester LBS Dwelling	Rochester	Monroe	3.25
	Rochester Auxiliary	Rochester	Monroe	Permit
	Sackets Harbor Light	Hounsfield	Jefferson	0.23
	Sodus Outer LS (Dwelling)	Sodus	Wayne	3.4
	Sodus Point Station	Sodus	Wayne	0.28
	Stony Point Light	Henderson	Jefferson	0.33
	Strawberry Is. Rear Lt.	Buffalo	Erie	0.124
	Thirty Mile Pt. Lt. Station	Somerset	Niagara	3.3
	Tibbetts Point Lt. Station	Cape Vincent	Jefferson	2.96
Property under license to the U.S. Coast Guard - Ninth District	Easement - Galloo Island	Hounsfield	Jefferson	NA
	Aux. Station	Henderson Harbor	Jefferson	NA

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
Property under license to the U.S. Coast Guard - Ninth District (continued)				
	A/N - Niagara River	N. Tonawanda	Niagara	NA
	Buoy Storage	Oswego	Oswego	NA
	HF/FM Antenna Tower	Rochester	Monroe	NA
U. S. Coast Guard - Third District				
	Brooklyn Air Station	New York	Kings	90.2
	Bellport Station	Bellport	Suffolk	0.9
	Montauk Station	East Hampton	Suffolk	1.9
	Eatons Neck Station	Northport	Suffolk	10.6
	Fire Island Station	Bay Shore	Suffolk	137.7
	Fishers Island Station	Southold	Suffolk	4.4
	Moriches Station	Brookhaven	Suffolk	47.1
	Shinnecock Station	Southampton	Suffolk	10.0
	Reserve Group - Albany	Albany	Albany	NA
	Bar Beach Light	Hempstead	Nassau	0.7
	Cedar Island Light	East Hampton	Suffolk	0.4
	Cold Spring Harbor Light	Cold Spring	Putnam	0.7
	College Point Reef Light	New York	Queens	0.7
	Upper Hudson River Lights (18)	--	--	24.0
	Gangway Rock Light	Port Washington	Nassau	0.7
	Great Kills Lights	New York	Richmond	0.2
	Middle Hudson River Lights (13)	--	--	13.5
	Hart Island Light	New York	Bronx	0.7
	Horton Point Light	Southold	Suffolk	0.8
	Rockaway Station	New York	Queens	3.8
	Hudson City Light	Hudson	Columbia	0.2
	Kingston Flat Light	Kingston	Ulster	0.7
	Lawrence Pt. Ledge Light	New York	Bronx	0.7
	North Brother Island Lights (2)	New York	Queens	1.2
	Old Orchard Shoal Light	New York	Richmond	0.7

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U. S. Coast Guard - Third District (continued)	Port Chester Hbr. Ch. Light	Port Chester	Westchester	0.7
	Port Chester Light	Port Chester	Westchester	0.7
	Sand Spit Light	Sag Harbor	Suffolk	0.7
	Sands Point Light	Sands Point	Nassau	0.7
	Sunken Meadow Light	New York	New York	0.2
	Whitestone Point Light	New York	Queens	0.4
	Sag Harbor Light	Sag Harbor	Suffolk	0.7
	Flushing Bay Light	New York	Queens	0.7
	Lower Hudson River Lights (9)	--	--	5.0
	Mid Ground Fl. W. Ch. Light	Athens	Greene	0.7
	Turkey Pt. Lt. At. Station	Saugerties	Ulster	8.2
	Coney Island Lt. Station	New York	Kings	0.6
	Esopus Meadows Light	Esopus	Ulster	0.2
	Execution Rocks Lt. Station	New Rochelle	Westchester	0.2
	Latimer Reef Light	--	Suffolk	8.8
	Little Gull Isl. Lt. Station	Southold	Suffolk	1.0
	Montauk Pt. Lt. Station	East Hampton	Suffolk	2.2
	Orient Point Light	Southold	Suffolk	1.0
	Montauk Antenna Site	East Hampton	Suffolk	5.0
	Plum Island Light Station	Southold	Suffolk	3.0
	Race Rock Lt. Station (Fishers Island)	Southold	Suffolk	1.0
	Romer Shoal Light	New York	Richmond	1.0
	Saugerties Light Station	Saugerties	Ulster	1.0
	Stepping Stones Light	New York	Bronx	0.7
	Stony Point Lt. Station	Stony Point	Rockland	1.2
	Tarrytown Light Station	Tarrytown	Westchester	0.7
	Throgg's Neck Family Hsng. Site	New York	Bronx	0.4

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U. S. Coast Guard - Third District (continued)	Staten Island Rg. Re. Light	New York	Richmond	0.2
	Atlantic Beach Station	Long Beach	Nassau	0.8
	Short Beach Station	Freeport	Nassau	4.0
	Saugerties Lt. At. Station	Saugerties	Ulster	3.2
	New York MIO (Governor's Island)	New York	New York	1.7
	Support Center New York (Governor's Island)	New York	New York	205.0
	Fort Totten Station	New York	Queens	9.6
	W. Hampton Fam. Housing	Westhampton Beach	Suffolk	12.7
	Rosebank Fam. Housing (Staten Island)	New York	Richmond	8.3
	Mantauk Fam. Housing	East Hampton	Suffolk	3.6
	Staten Island Lt. At. Station	New York	Richmond	0.3
	St. George Base	New York	Richmond	5.8
U.S. Department of Health, Education and Welfare	USPHS Hospital	New York	Richmond	24.1
Federal Aviation Administration	Middle Marker (La Guardia)	New York	Queens	0.2
	Homing Beacon	Southampton	Suffolk	1.7
	Remote Comm. Air/Ground (Douglaston)	New York	Queens	1.1
General Services Administration	Federal Office Building	Albany	Albany	3.2
	U.S. Post Office - Courthouse	Albany	Albany	1.0
	F.D.R. Library	Hyde Park	Dutchess	16.3
	Disposal Center	Buffalo	Erie	12.4
	Federal Buildings (3rd Avenue)	New York	Kings	12.4

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
General Services Administration (continued)	Federal Building (Ryerson Street)	New York	Kings	0.7
	Federal Building (Washington St.)	New York	New York	1.2
	U.S. Mission to the U.N.	New York	New York	0.3
	Federal Office Building	New York	Richmond	1.2
	Pooseveltown Border Station	Massena	St. Lawrence	4.8
	Customhouse	Ogdensburg	St. Lawrence	1.7
	Peconic MHW Facility	Brookhaven	Suffolk	15.1
	Former U.S. Post Office	Huntington	Suffolk	0.6
National Parks Service	Vanderbilt Mansion	Hyde Park	Dutchess	211.0
	Home of FDR	Hyde Park	Dutchess	263.4
	Statue of Liberty	New York	New York	10.4
	Gateway NRA	New York	Queens, Kings, Richmond	16,655.0
	Gen. Grant National Memorial	New York	New York	18.0
	Sagamore Hill NHS	Oyster Bay	Nassau	85.0
	Fire Island National Seashore	Brookhaven, Islip	Suffolk	6,033.92
	Ellis Island	New York	New York	27.5
	Castle Clinton NM	New York	New York	1.0
U.S. Navy	Naval Support Activity	New York	Kings	43.34
	USN and MCRT	Buffalo	Erie	NA
	USN and MCRT (Fort Schuyler)	New York	Bronx	5.04
	USNRTC	Freeport	Nassau	2.03
	USN and MCRTC	Huntington	Suffolk	3.217
	USN and MCRTC	New Rochelle	Westchester	2.9
	USNRTC	Poughkeepsie	Dutchess	2.41
	USNRTC (Whitestone)	New York	Queens	NA
	Naval Air Station	New York	Kings	NA

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
U.S. Navy (continued)	Wilderness Point, Fishers Island	Southold	Suffolk	66.9
	Radio Ship Positioning Station	East Hampton	Suffolk	17.4
	USNRTC (Fort Wadsworth)	New York	Richmond	NA
U.S. Fish and Wildlife	Conscience Point NWR	Southampton	Suffolk	247.7
	E.A. Morton NWR	Southampton	Suffolk	187.3
	Amagansett NWR	East Hampton	Suffolk	36.0
	Oyster Bay NWR	--	--	3,117.0
	Seatuck NWR	Islip	Suffolk	10.4
	Lido Beach NWR	Hempstead	Nassau	22.4
	Wertheim NWR	Brookhaven	Suffolk	1,936.9
	Target Rock NWR	Huntington	Suffolk	80.1
U.S. Department of the Army (except Corps of Engineers)	U.S. Military Academy (parts)	Highlands	Orange	NA
		Philipstown	Putnam	NA
	Watervliet Arsenal	Watervliet	Albany	138.0
	Fort Hamilton	New York	Kings	177.0
	Fort Wardsworth	New York	Richmond	226.0
	Hart Island	New York	Bronx	NA
	Fort Totten	New York	Queens	NA
	Unnamed	Brookhaven	Suffolk	NA
	USARC Kingston	Kingston	Ulster	4.0
	ARARC Messena	Messena	St. Lawrence	5.0
	Manhattan Beach Housing	New York	Kings	5.0
	Nike NY 04, 05	NA	Rockland	115.0
	Nike NY 23	NA	Nassau	46.0
	Nike NY 24	Brookhaven	Suffolk	75.0
	Nike NY 25	Brookhaven	Suffolk	115.0
	Nike Niagara Falls 41	NA	Erie	182.0
U.S. Air Force	Montauk Air Force Station	East Hampton	Suffolk	307.65
	Ground-to-Air Transmitter	East Hampton	Suffolk	NA

AGENCY	NAME OF PROPERTY	MUNICIPALITY	COUNTY	TOTAL ACRES
Saint Lawrence Seaway Development Corporation	Area No. 1 - Easement	Sodus	Wayne	0.66
	Area No. 2 - Transferred Land	Cape Vincent	Jefferson	1.68
	- Easement	Cape Vincent	Jefferson	0.46
	Area No. 3 - Easement	Cape Vincent	Jefferson	0.05
	Area No. 4 - Easement	Alexandria	Jefferson	0.21
	Area No. 5 - Purchased Land	Alexandria	Jefferson	1.04
	Area No. 6 - Transferred Land	Alexandria Bay	Jefferson	0.30
	Area No. 7 - Easement	Alexandria	Jefferson	0.04
	Areas No. 8 and 8A - Purchased Land	Massena	St. Lawrence	134.42
	Area No. 9 - Purchased Land	Massena	St. Lawrence	2,758.76
	- Easement	Massena	St. Lawrence	81.38
	Area No. 10 - Purchased Land	Massena	St. Lawrence	7.31
	- Easement	Massena	St. Lawrence	1.05
	Area No. 11 - Purchased Land	Massena	St. Lawrence	2.48
	Area No. 12 - Purchased Land	Massena	St. Lawrence	25.04
	Letter of Agreement Land	Massena	St. Lawrence	0.57
	Area No. 13 - Purchased Land	St. Regis Reservation	Franklin	36.51
	- Easement	St. Regis Reservation	Franklin	52.06
	Area No. 14 - Easement	St. Regis Reservation	Franklin	4.50
	Area No. 15 - Easement	St. Regis Reservation	Franklin	4.01