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U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

WRITTEN STATEMENTS FROM PARTIES
WHO COMMENTED ON THE
NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT
AND THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT

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OFFICE OF COASTAL ZONE MANAGEMENT
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 20 1978

Ms. Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Ms. Cousins:

I am pleased to provide you, herewith, the Nuclear Regulatory Commission (NRC) staff's comments on the New Jersey Coastal Zone Management Program (Bay and Ocean Shore Segment) and its associated Draft Environmental Impact Statement.

We at NRC welcomed the opportunity for staff to discuss these comments with NOAA/OCZM and New Jersey CZM staff on June 12. As you now prepare the FEIS and attempt to deal with the comments of NRC staff and others, be assured of our willingness to discuss further any of these comments. You may call either Frank Young, Office of State Programs, at 492-7794 or Roy Voegel, Office of Executive Legal Director, at 492-7437.

Sincerely,

Robert G. Ryan, Director
Office of State Programs

cc: Richard O'Connor OCZM
David N. Kinsey, Chief
Office of Coastal Zone Management
Dept. of Environmental Protection
P.O. Box 1889
Trenton, NJ 08625

Joel R. Jacobson, Commissioner
New Jersey Dept. of Energy
101 Commerce Street
Room 204
Newark, New Jersey 07102

Enclosure:
As Stated

NRC Staff's Comments
On The New Jersey Coastal Zone
Management
Program (Bay and Ocean
Shore Segment.)

1. p. 145 a. Sections 7.4.12 and 7.4.13 are not given parallel treatment. The heading "Base Load Electric Generating Stations" is applied only to new or expanded non-nuclear fossil fueled plants. This is not accurate. Although fossil fueled plants may be base load facilities, they could also be cycling load facilities. Additionally, nuclear plants are generally base load facilities. We suggest that a single heading be "Electric Generating Stations" with a separate discussion of non-nuclear plants and nuclear plants. The second section number should be dropped.
- b. The use of the term "non-nuclear, fossil fueled plants", raises a question in our minds. Do they really mean the broad category of all "non-nuclear" plants or the narrower category of "Fossil Fueled" plants?
- c. Regarding Policy 7.4.13, it is suggested that, before approving a coastal zone management program containing such conditions, the OCZM carefully consider the question of whether they are consistent with the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 and/or the Coastal Zone Management Act itself. (see, for example, page 2 and reference 9 of the New Jersey Preliminary Policy Statement regarding Determination of the Need for Energy Facilities.)

p. 177 The Process for Continued Consideration of National Interest

Issues, paragraph 3, states that, "The Commissioner has interpreted "public welfare" to include a full consideration of national interests..."

We do not find assurance in either the N.J. law or the regulations that the "public" includes those beyond the State's border.

p. 186 Federal Consistency. We suggest changing the second sentence

to read: "They issue permits and licenses for activities such as... the construction and operation of nuclear power plants..."

p. 187 (2) This statement tends to equate national interest with national security. National interest is a broader concern. We suggest changing wording to: "The activity is clearly in the national interest and is carried out in a manner which minimizes conflict with the Coastal Resource and Development Policies."

5. p. 189 The NRC mission has been lumped under DOE. NRC should be separately stated as we are an independent Federal agency. It should read: "NUCLEAR REGULATORY COMMISSION Permits and licenses the construction and operation of nuclear facilities."

6. p. 203 section 2 states, "Under these policies, large scale energy production... must locate in the region outside the Segment's boundaries." Does this apply to nuclear power plants? Does this recognize the need for large quantities of cooling water? Where is the justification that keeps this from being an arbitrary exclusion of activities in the national interest?

7. p. 212 (paragraph 1) What is the time-table for DOE and DEP to investigate the feasibility of alternative energy production methods?

8. p. 212 (paragraph 2) The last two sentences assume that there is adequate water to support the energy facility inland and that an inland location will not result in coastal air and water quality degradation. It would appear to us that New Jersey could very well approach inland alternatives to coastal sites through the Memorandum of Understanding between DEP and DOE and the New Jersey Energy Act. They give New Jersey the same opportunity that Massachusetts seized so effectively. Rules of the Massachusetts Energy Facilities Siting Council (a state-wide agency, not limited to considerations of the coastal zone) require the following:

Rule 82.1 Candidate Site Evaluation and Comparison

(1) Where a facility is proposed for coastal siting, the lead company or petitioner must propose, evaluate, and compare alternative candidate sites. In the case of a facility which is claimed to be coastally dependent, at least two candidate sites in the coastal zone must be proposed, evaluated, and compared. In the case of a facility which is not coastally dependent, at least two candidate sites, one of which shall be inland, must be proposed, evaluated, and compared.

(2) Where a facility is proposed for inland siting, the lead company or petitioner must propose, evaluate, and compare at least two alternative candidate sites.

(3) The candidate site evaluation and comparison will include a comprehensive definition and explanation of the lead company or petitioner's site selection process. This will include a justification of the necessity for or advantage of coastal siting together with an explicit definition of the weighting process developed to compare candidate sites in accord with the evaluation matrix set forth in this rule.



Department of Energy
Washington, D.C. 20461

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Dear Mr. Knecht:

The Department of Energy (DOE) has reviewed the State of New Jersey Coastal Management Program, Bay and Ocean Shore Segment, and Draft Environmental Impact Statement. Our views on specific elements of the proposed program are based on the following four findings:

1. The program submitted requests approval for only a segment of the State of New Jersey, defined primarily by the State Coastal Area Facilities Review Act (CAFRA). This segment is essentially the South Atlantic shoreline of the State and excludes the northern New Jersey urbanized coastal areas and the Delaware River coastal estuary (See Figure 25, page 258).
2. The program does not include the integrated energy facility planning and siting process elements required by Sections 305(b)(8) and 306(c)(8) of the Coastal Zone Management Act (CZMA). Pursuant to authorities contained in CZMA Section 305(b), States are not required to meet these requirements prior to October 1, 1978 (See Secretarial Findings Index, page 232).
3. The State of New Jersey is concurrently developing a State Energy Master Plan. A State hearing draft of this plan is already completed and public hearings have been scheduled at intervals throughout the month of June. The integrated energy planning and siting policies of the State when filed will be consistent with the final master plan and will incorporate the principles for coordination of proceedings and resolution of disputes which are stated in the draft Memorandum of Understanding between the New Jersey Department of Energy and the New Jersey Department of Environmental Protection (See Draft Memorandum of Understanding, page 277).

2

4. The proposed program states Energy Use Policies, beginning at page 137, which indicate a general locational preference for siting of most energy facilities in the more urbanized (non-CAFRA) coastal areas which already contain extensive energy facilities as well as the labor market and social infrastructure to absorb the impacts of such facilities.

We would not object to approval of the proposed program segment, provided that proposed energy policies are revised in general conformance with DOE review comments. Discussions on this subject were begun at the May 25 program review briefing, and continued at a June 12 meeting between New Jersey officials and their Federal energy counterparts. We will be pleased to work with members of your staff and representatives of the State of New Jersey to prepare a final program segment and EIS document for further Federal review and will comment thereon as appropriate concerning final approval action.

We suggest that the remaining segments of the New Jersey program and the energy planning process elements be submitted concurrently for future review and approval action as program amendments. The geographic segments should contain the specific information on availability of facility sites which is essential to evaluation of the adequacy of the energy planning and facility siting process. Page 179 references a study undertaken by Rutgers University indicating that the State could provide this type of information. We will not be able to evaluate compliance with requirements of CZMA Sections 305(b)(8) and 306(c)(8) in the absence of specific, statewide geographic information for all State program segments.

The policies and findings of Policy 7.4.2, page 134; Policy 7.4.8, page 144; and the discussion of uses of regional benefit, page 192 are based on the finding that new Mid-Atlantic OCS oil production is not expected to require new refinery capacity. The program should reflect greater awareness, however, that the actual level of OCS oil and gas resources is a matter of great uncertainty and that production of oil and gas may be either much less or much greater than current expectations. The program should indicate flexibility to review refinery policies against future conditions and to evaluate proposals against actual resource production levels and refinery capacity needs which cannot be assessed at this time.

More specific geographic information is needed concerning Policy 7.4.7, beginning at page 141, for pipelines and associated facilities in order to select alignments which would be considered consistent with the CZM program. We

3

suggest that the State coordinate with the pipeline corridor selection studies which have been initiated by the Bureau of Land Management, Department of the Interior, relative to the Mid-Atlantic OCS lease sale. The results of such further planning should be reflected in the energy planning and facility siting process program elements to be submitted as program amendments.

The State should further define its policies and legal authorities with respect to recognition of energy facilities siting as uses of national interest and regional benefit. Consideration of national interests should include documentation that policies may not be limited by authorities restricting the State's concerns to limits of the social, cultural, economic, or environmental well-being exclusively of the citizens of the State of New Jersey. Specific examples include statements in Policies 7.4.13 and 7.4.14, pages 145 and 147, that propose to limit energy facilities to "the well-being of New Jersey residents" and to "only those developments necessary to meet the State's energy needs." We believe the statements should be deleted or carefully revised so that the policy statements do not seem to contradict intent to consider national interests.

Uses of regional benefit should apply as part of the management program to all energy facilities capable of meeting a test as providing benefits or services to more than one unit of local government (Sec. CFR Part 923.13) and within the scope of the definition of energy facilities contained in CZMA Section 304(5). We would be pleased to assist in re-drafting the statement at page 192 of the proposed program. DOE would recommend against approval for elements and segments of the New Jersey program which limited consideration of energy facilities as uses of regional benefit to a scope less than that defined in Section 304(5).

Regulations pertaining to implementation of the energy planning and facility siting process element should be made available for Federal review and comment when the program amendment is submitted for approval. A timetable should be established for promulgation of final regulations prior to final action approving the amendment.

Policy 7.4.13, page 145, fails to provide criteria in sufficient detail to allow evaluation for consistency with the licensing standards of the Nuclear Regulatory Commission. We recommend that the program be revised sufficiently to document that

the State's policies are not in conflict with the authorities of the Nuclear Regulatory Commission. Policy 7.4.13 should be redrafted to insure that land use regulation implementing the CAFRA authorities do not result in implied regulation of matters of nuclear safety, which are the responsibility of the Nuclear Regulatory Commission. In addition, the State should identify its authorities concerning assessments of need for power and related utility regulatory authorities and seek to avoid policies which would appear arbitrary and unreasonable unless applied in the context of the administrative record related to the siting of a particular facility.

We believe that New Jersey should modify the LNG policy stated in Policy 7.4.14, page 146, of the proposed program. The reference to a petition for issuance of siting criteria should be modified in the following respects:

1. Federal consistency should not be tied to a petition for rulemaking action for siting criteria to be issued by the Federal Energy Regulatory Commission. The Commission fully evaluates each project reviewed for licensing action and develops an administrative record specific to the project which would provide an adequate basis for consistency evaluation.
2. Recognition should be afforded to the relevant authorities of various concerned Federal agencies, especially the Departments of Transportation (DOT) and Energy (DOE). Actions by FERC are not the only Federal actions which may require consistency certification.
3. State concerns regarding consideration of safety in Federal regulatory proceedings and ongoing rulemaking actions related to LNG facilities should be stated in the appropriate participation forums provided in all regulatory and rulemaking actions.

DOT responsibilities are divided between the Coast Guard and the Office of Pipeline Safety Operations pursuant to a Memorandum of Understanding. The Coast Guard has responsibility for LNG facilities with regard to management of vessel traffic and various other matters pertaining to the facility between the LNG vessel and the last manifold (or valve) immediately before the LNG receiving tanks. (Reference: Coast Guard publication "Liquefied Natural Gas, Views and Practices, Policy and Safety," CG-478.) The Office of

Pipeline Safety Operations has responsibility for matters pertaining to an LNG facility beyond (and including) the last manifold valve immediately before the receiving tanks. (Reference: Advance Notice of Proposed Rulemaking, CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards, Federal Register, Volume 42, No. 77, April 21, 1977.)

Department of Energy responsibilities related to LNG facilities encompass the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (FERC). ERA is a direct administrative unit of DOE, headed by an administrator appointed by the Secretary. ERA has authority to issue opinions and orders granting permission to import LNG from foreign sources. FERC is established within DOE, pursuant to the DOE Organization Act, as an independent regulatory commission composed of five members appointed by the President. FERC has jurisdiction over certificates for construction and operation of interstate natural gas pipelines and associated facilities, including facilities needed to import LNG. FERC will file separate comments detailing its concerns regarding the energy policies stated in the proposed program.

DOE shares what seems to be the basic concern of Policy 7.4.14, page 146, that risks of LNG operations should be minimized. However, the policy as stated does not reflect specific consideration of the above stated elements of Federal authorities, regulations, and procedures. The energy planning process element should make a specific appraisal of the extensive consideration already given to safety and environmental concerns. If the State still has specific concerns, they should then be stated in the energy element for Federal review. In the interim, Policy 7.4.14 should be restated to indicate intent to make a further analysis of LNG issues.

We note at page 178 that the Federal Energy Administration has been listed twice among the list of agencies consulted on national interests in energy production and transmission.

There are several errors concerning the license and permit responsibilities of DOE at page 189. Regulation of nuclear power plants is a responsibility of the Nuclear Regulatory Commission. The Commission is not part of DOE and should be listed as an independent agency. The Economic Regulatory Administration has authority to issue orders concerning use of coal in power plants. There is, however, no agency within DOE or other element of the Federal Government that directly licenses construction of fossil fuel power plants. We suggest this section be amended as follows:

Department of Energy

Economic Regulatory Administration

- Orders granting permission for importation of liquefied natural gas

Federal Energy Regulatory Commission

- Licenses required for construction and operation of non-Federal hydroelectric facilities and associated transmission lines.
- Certificates required for construction and operation of interstate natural gas pipelines and associated facilities, including facilities needed for importation of liquefied natural gas.
- Permission and approval required for abandonment of natural gas pipelines and associated facilities.

Reference Figure 23, page 241 should be revised. The Department of Energy, through personnel in the New York Regional Office, did receive staff issue papers, receive Coastal Management Strategy, attend the November 21, 1977, meeting on this document, and meet individually with New Jersey DEP-OCZM staff during program development.

Please contact Mr. Emmett Turner, DOE Coastal Zone Management Coordinator, telephone 566-9179, to arrange any necessary details for further DOE comments and assistance.

Sincerely,

Dobie Langenkamp
Deputy Assistant Secretary
Oil, Natural Gas and Shale Resources



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

29 JUN 1978

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

IN REPLY REFER TO:

Honorable Robert Knecht
Acting Associate Administrator
National Oceanic and Atmospheric
Administration
Department of Commerce
Washington, D. C. 20235

Dear Mr. Knecht:

This Department has reviewed the New Jersey Coastal Management Program-Bay and Ocean Shore Segment and I offer the following summary of comments for your consideration.

We find no objection to approval by the Secretary of Commerce of the State's program segment and application for 306 administrative funds subject to the following clarifications and conditions. The State of New Jersey should be informed that any such approval should not be construed as HUD approval of this document for the purposes of meeting the Land Use Element of the 701 Comprehensive Planning Assistance Program (934 CFR 600.72). Such determination will be made in accordance with the procedures established in 24 CFR 600.73.

The plan should provide for assessing the accumulative impacts and efforts emanating from permits and developments drawing on the same or contiguous resources. Coordination and consistency procedures should be established for interfacing the State Guide Plan with other development plans, particularly those elements which effect housing, land use, seasonal housing and facilities.

We recommend that the preparation of the Delaware River and Hudson River/wetland segment of The New Jersey CZMP be fully coordinated with the State of Delaware, Pennsylvania and New York. We have been informed that the Delaware Valley Regional Planning Commission is assisting the State of Pennsylvania in the preparation of its plan and that the program will cover only the Pennsylvania side of the Delaware River from the Pennsylvania-Delaware State Boundary Line to the fall line at Morrisville, Pennsylvania. Since DVRPC has been recognized by the State of New Jersey for areawide planning purposes, we recommend that the State DEP-OCZM coordinate its CZM planning activities with that organization in order to achieve total coverage of the Delaware River.

2

The State CZM plan states that as their policy, "construction is acceptable in flood hazard areas if such construction conforms with applicable flood hazard reduction standards as adopted by the FIA in HUD (Federal Register, Vol. 41, No. 207, Part II, October 26, 1976)." This raises several questions and concerns:

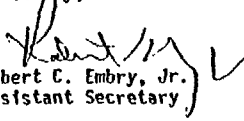
- a. Does the State plan to review a permit from a municipality to ensure that the municipality's flood plain management measures are met before approving the proposal?
- b. If so, will the State actually adopt regulations to accomplish this?
- c. If so, which State Agency will adopt and enforce these regulations?

Since FIA is carrying out a comprehensive mapping effort of the State's flood hazard areas, which is tailored to meet specific State standards, we recommend that Section 6.4.4.1 - "Flood Hazard Areas Definition" - reference the FIA mapping effort for the CAFRA area.

Finally, the reference of the FIA regulations in number 1 above, should include the phrase "as amended" after the citation to ensure that communities are not misled as to which are the latest FIA regulations in effect. In addition, the word "adopted" should be changed to "promulgated."

We appreciate the opportunity to comment on this segment of New Jersey's Coastal Zone Management Program.

Sincerely,


Robert C. Embry, Jr.
Assistant Secretary

cc: Kathryn Cousins, OCZM



DEPARTMENT OF TRANSPORTATION
REGIONAL REPRESENTATIVE OF THE SECRETARY
26 FEDERAL PLAZA
ROOM 1811
NEW YORK, NEW YORK 10007

2

Office of Coastal Zone Management
NOAA
Attn: Ms. Kathryn Cousins
Regional Manager, North Atlantic Region
3300 Whitehaven St., N. W.
Washington, D. C. 20235

Dear Ms. Cousins:

The agencies of the Department of Transportation have reviewed New Jersey's Coastal Management Program - Bay and Ocean Shore Segment and DEIS, and the following comments are offered:

1. We suggest that the final environmental impact statement discuss the effect of noise on activities and compatible land uses in the coastal zone. This important aspect apparently has been overlooked in the draft EIS.
2. Also, the plan should discuss provisions for controlling and cleaning up oil spills and other potentially hazardous materials, such as industrial chemicals, which could have a serious effect on the coastal environment.
3. Another condition for the construction of docks and piers (page 47) should be that the structure not obstruct navigation. Similarly, overhead transmission lines that cross waterways (page 49) should not interfere with navigation.
4. The requirement (page 187) to "notify DEP of all proposed activities or projects on federal lands which may have an impact on the Segment..." is not mandated by the Coastal Zone Management Act and will create a notification process for minor projects that do not require a consistency determination. The federal consistency regulations state: "Federal agencies shall provide state agencies with consistency determinations for all Federal activities significantly affecting the coastal zone" (15 CFR 930.34(a)). It should be noted that Federal agencies provide a consistency determination, not a notification, and only for projects with a significant impact.
5. New Jersey puts the burden on federal agencies to "alert all potential applicants for permits of the need to obtain a DEP consistency certification" (page 188). This will not be possible

for all bridge permit actions since the number of potential applicants in the private sector is virtually unlimited. However, the consistency requirements will be incorporated into our permit application procedures which are distributed to appropriate state agencies.

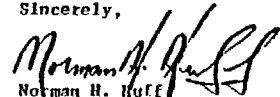
6. The DOT coordinates with the State Historic Preservation Officer, as required by regulations under the National Historic Preservation Act, for proposed DOT projects that affect properties listed on or eligible for the National Register of Historic Places. We would like to know the legal basis for this requirement and would appreciate an explanation from New Jersey of the procedures involved.

7. New Jersey misinterpreted one of our comments on the Coastal Management Strategy to be a suggestion that they become involved in commercial vessel safety (page 244). We only asked that they discuss aspects of their program other than land use regulation. In response to questions concerning federal consistency, New Jersey states on page 245 that the procedures in Chapter Five (5) "spell out who should make the consistency determination regarding various federal activities." That is not the case. Chapter Five (5) does not specify who will make the consistency determination for federal activities and development projects. Finally, we would like to reiterate the question that is not answered on page 246 concerning the procedures the state intends to follow to gain access to federal oceanfront lands.

8. Page 146, 7.4.14, Sec. b - CG 478 ING Views & Practices, Policy and Safety addresses this issue; continued R & D is ongoing.

The overall approach that New Jersey has taken in presenting their plan is excellent, and their staff should be commended for their perceptiveness.

Sincerely,


Norman H. Huff
Senior Staff Officer



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

19 JUN 1970

Mr. Sidney R. Galler
Deputy Assistant Secretary for
Environmental Affairs
Attn: Ms. Kathryn Cousins
Office of Coastal Zone Management
U.S. Department of Commerce
Washington, D.C. 20230

Dear Mr. Galler:

In response to your recent memorandum, we have reviewed the New Jersey Coastal Zone Management Program, Bay and Ocean Shore Segment and Draft Environmental Impact Statement and enclose our comments and recommendations at Enclosure 1. We concur in this document subject to incorporation of our comments in the final New Jersey Program.

Sincerely yours,

Perry J. Fliakas
Deputy Assistant Secretary of Defense
(Installations and Housing)

Enclosure

COMMENTS ON THE NEW JERSEY COASTAL MANAGEMENT PROGRAM (NJCMP)
AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

1. Chapter Two

Specific exclusion of federal lands from the boundaries of the coastal zone should be clearly stated. A reference to Appendix G is also recommended.

2. Chapter Three, Section 3.0

Recommend that federal exclusions be briefly discussed before listing the proposed uses of coastal resources that would come under state jurisdiction.

3. Chapter Five, Page 177, second full paragraph

Recommend that "non-federally owned land" be changed to "non-federally controlled land."

4. Chapter Five, Page 187, Federal Activities and Development Projects

that

This requires/federal agencies notify the N.J. Department of Environmental Protection (DEP) of all proposed activities and development projects which significantly affect the coastal zone. It would be advantageous for federal agencies to deal with these matters through the state's A-95 clearing house rather than dealing with another state agency. This would prevent duplication and reduce administrative time.

5. Chapter 5, page 187, Federal consistency

Consistency determinations are to be made by the Federal Agencies themselves and not the state, pursuant to NOAA's consistency regulations. Also, federal agencies are not subject to state permitting procedures in the absence of specific congressional mandate. Recommend this section be revised.

Enclosure (1)



REFPLY TO
ATTENTION OF:

DAEN-CWP-P

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

16 JUN 1978

U.S. Army Corps of Engineers
Comments on the New Jersey
Coastal Management Program - Bay and
Ocean Shore Segment and Draft
Environmental Impact Statement

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
Department of Commerce
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

We have reviewed the New Jersey Coastal Management Program Bay and Ocean Shore Segment and Draft Environmental Impact Statement. Generally, we find that the program segment is well-written, organized, and comprehensible. Although we are concerned with the restrictiveness of some policies, we recognize that it may be necessary to address them in part in this segment, and more fully in the course of completing the program.

We recommend that the inclosed comments be considered and revisions made prior to program approval.

Sincerely,

DRAKE WILSON
Brigadier General, USA
Deputy Director of Civil Works

1 Incl
As stated

Policies.

1. a. The policies relating to port development (7.7) appear to be quite restrictive. In addition, they are expressed in extremely general terms. The program states its intent to focus development and commerce at established sites to the maximum extent possible. Regarding ports, it states that new port facilities will be permitted only when a clear inadequacy exists, and then development must be on an adjacent site. While it is appropriate that development be encouraged in established areas, it should not necessarily be preempted from other sites. Also, the criteria used to determine inadequacy should be specified. We recommend that this policy be reconsidered both for this segment and more importantly in the context of the overall state program.

b. Industrial development is also discouraged (Policy 7.6) and will be considered only to the extent that a high ratio of jobs created to acres used is achieved and no conflict with resort recreation uses occurs. While jobs criteria is a useful and valid one, it is only one element in the determination of economic significance. It is also a very broad guideline and may not be sufficiently defined in this document to act as a performance standard.

c. Dunes - (policy 6.4.2)

Page 55, 1st paragraph. The statement on dune policy should further address dune protection. This comment supports one made earlier by the U. S. Department of Agriculture. Their comment is the first one listed on page 243 of the subject draft. We are aware that at least one community located in the New Jersey coastal zone has adopted an ordinance that permits excavation to lower the top elevation of dunes along the ocean. Work has been undertaken and completed in accordance with that ordinance, in a manner that increases the view along the ocean. Official statements have been made by that community and printed in the newspaper, reporting that sand at the top of the dunes is worthless. The statement on dune policy should be further addressed to emphasize the need for dune protection in the coastal zone area.

d. Policy 6.2.3.2 (p. 33) and Policy 6.2.7.2 (p. 37). The appropriateness of the last statement in each of these policies is questionable. There is no apparent justification for establishing policies for areas outside the coastal zone.

National Interest (p. 176, 182)

2. a. The national interest in port and industrial development is sufficient to warrant a more extensive discussion than that which is provided. This should be done in a manner consistent with expanded use policies discussed in comments 1 a and b above.

b. Page 182. The last of the major objectives of the national interest in recreation, should be revised to read as follows: "To accelerate the no-cost transfer of property identified as surplus and underutilized by the Federal agency."

Consistency.

3. a. Page 178, 1st paragraph. This is in conflict with the official Federal position that consistency determinations for direct Federal activities including development projects, will be made by the Federal agency. The following should be added, before the last sentence, "Consistency determinations will be made by the Federal Agency." The last sentence should be revised as follows: "DEP will review the proposal and consistency determination by the Federal agency for consistency with the Coastal Program, and will issue a statement of agreement if it finds that the Federal project or activity is consistent to the maximum extent practicable."

b. On page 187, under Federal Consistency, it should be clarified that Federal agencies are responsible for making consistency determinations for their activities.

c. On page 187, last paragraph, the consistency requirement is not clearly stated. As per S. 930.34, Federal agencies shall provide state agencies with consistency determinations for all Federal activities significantly affecting the coastal zone. Presumably, the cited "notification in writing" refers to a consistency determination. This should be clarified.

d. Page 188. The following should be added after the first sentence: "The Federal agency will make the consistency determination regarding direct Federal activities."

e. On page 189, it provides that DEP reserves the right to review other unlisted Federal permit and license applications which may significantly affect the coastal zone. It indicates that up to 45 days from the notice date of the Federal application is needed to determine if DEP will exercise this reserved option and first request information on such a proposal. The need for information to review for Federal consistency on unlisted activities should be determined and sought early in the review process.

f. The application of the CZMP on a state-wide basis relative to Federal consistency requirements for Federal assistance grants for chemical processing, mineral extraction, sewage treatment and solid waste disposal facilities is seriously questioned. Since the coastal zone of New Jersey accounts for only 17 percent of the area of the State, to assume that such facilities located in the remaining 83 percent of the State will have a direct or significant effect on the coastal zone will need to be fully supported, justified and documented in the subject CZMP.

Permits. (Page 189)

4. The listing of Corps of Engineers regulatory authorities should be revised as follows:

a. Permits to regulate the construction of any dam or dike across any navigable waters of the United States under Section 9 of the River and Harbor Act of 1899.

b. Permits to regulate the obstruction or alteration of, the construction of any structure in or over, and the excavation from or depositing of material in any navigable water of the United States under Section 10 of the River and Harbor Act of 1899.

c. Permits to regulate the transportation of dredged material for the purposes of dumping it in ocean waters under Section 103

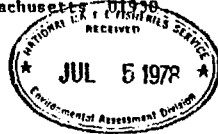
d. Permits for the discharge of dredged or fill material into the waters and adjacent wetlands of the United States at specified disposal sites under Section 404

5. Completing the Program (p. 197-199)

The Program document states that DEP will initiate a Development Potential Study that will identify the key siting factors for a wide range of coastal development activities. We strongly recommend that this study include consideration of port development and water dependent industry. Moreover, we would expect to see the results of this incorporated into the program policy as discussed in items 1 and 2, above.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Federal Building, 14 Elm Street
Gloucester, Massachusetts 01930



July 3, 1978

TO: Terry L. Leitzell, Assistant Administrator of Fisheries - F

THRU: Kenneth Roberts, Chief, Environmental Assessment Division - 53

FROM: *W.C. Gordon*
for William C. Gordon
Regional Director - FNE

SUBJECT: COMMENTS ON NEW JERSEY COASTAL ZONE MANAGEMENT PROGRAM AND DEIS

The Draft Environmental Impact Statement and Coastal Zone Management Program that accompanied your memorandum of June 20, 1978, has been received by the National Marine Fisheries Service for review and comment.

The statement has been reviewed and the following comments are offered for your consideration.

General Comments

The New Jersey Coastal Management Program, Bay and Ocean Shore Segment, has been improved since our review of the Discussion Paper. Many of our previous comments have been included in this document as a result of our meeting with the program staff April 5, 1978. It is our understanding that the CZM program will place a greater emphasis on fishery resources by: promoting interstate coordination of fishery management plans; characterizing the New Jersey fishery; inventorying living coastal resources; and eventually, through the Division of Fish, Game, & Shell Fisheries, preparing fishery management plans. Policy statements dealing with living marine resources have been clarified. We have no objection to approval of the program provided the program document explicitly defines "prudent and feasible" (see specific comments).

Specific Comments

Chapter Three: Coastal Resource and Development Policies

Many of the policy statements in this chapter include the words "prudent and feasible alternative". These words are somewhat vague. Additional

guidance should be provided to indicate acceptable activities and to provide for consistent permit decisions. We recommend that such wording (prudent and feasible) be eliminated from the document and replaced with clear, understandable instructions.

Page 24 - 6.2.4.2 Policies

This policy statement should consider juvenile anadromous fish which migrate in the autumn.

8.0 Resource Policies

Again we wish to recommend that more emphasis be given to policies which encourage wise management and utilization of commercial and recreational fisheries stocks and associated living marine resources.

RG:cam

cc: FNE
FNE6
FNE62J



UNITED STATES DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE P.O. Box 2890

Washington, D. C. 20250 20013

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, NW.
Washington, D.C. 20235

JUN 16 1978

Dear Mr. Knecht:

The New Jersey Coastal Management Program and Draft Environmental Impact Statement has been reviewed by several agencies in the U.S. Department of Agriculture (USDA). The following comments reflect the combined input of these agencies.

Page 50, Section 6.4.1.1. Suggest rewording of second line to read, ". . . bay and ocean shores that are eroding or that have a history of erosion . . ." Processes that shape the shoreline are extremely complex. Many shorelines that have aggraded recently were degrading earlier and are vulnerable in the future.

Page 51. Experience of Soil Conservation Service (SCS) indicates that the Sea Isle City area should be included in the high risk erosion areas list.

Section 6.4.1.2. Policy. Recommend last sentence in the first paragraph should be changed to read, "Development that contributes to further erosion of high risk areas is prohibited."

Page 58, 5th paragraph. The last two lines should be changed to read, ". . . 1:24,000), supplemented by flood prone areas as determined by soil maps contained in appropriate National Cooperative Soil Survey Reports."

Page 61, Section 6.4.7, Prime Forest Areas. The title of this section "Prime Forest Areas" may cause some confusion because "Prime Forest Land-Timber" as defined by USDA is based on growing capacity and is oriented to commercial timber production. It is a term that is now widely used as part of the Department's prime land protection program. Of course, New Jersey may call these areas anything it wishes, but we felt it advisable to point out this difference in definition. A copy of the USDA Prime Forest-Timberland definition is enclosed for your information. (See Attachment I.)

Pages 63, 64, Section 6.4.9, Public Open Space. This section and the description of the Division of Parks and Forestry on page 169 discuss the State parks' and State forests' role in contributing recreation, aesthetics, historic preservation, and wildlife protection. No mention is made of commercial forest products from State forests. Are State forests managed for multiple uses including production of forest products? Forest ecosystems are dynamic communities that are constantly changing

Mr. Robert W. Knecht

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because of growth, natural plant succession, insects, disease, fire, and wind. To maintain optimum forest environments for open space, recreation and other uses compatible with coastal zone objectives will require forest management. We did not find any discussion in the report for such need. We feel that protection alone is usually insufficient in maintaining forest lands for public use. Perhaps the report could discuss this need briefly under policies.

Page 64, Section 6.4.10.1, Definition. Add the following: K values may be found in most National Cooperative Soil Survey Reports available from soil conservation districts or in local Soil Conservation Service Technical Guides.

Page 65, Section 6.4.10.2, Policy. The reference to U.S. Soil Conservation Service should be changed to State Soil Conservation Committee. In addition, it should be recognized that under some conditions practical control measures may not produce a desirable level of control. In such cases, as determined by the State Soil Conservation Committee, development should be prohibited.

Section 6.4.11. "Prime Agricultural Areas" should be changed to read: "Prime and Unique Farmlands."

Section 6.4.11.1, Definition. This definition should be in keeping with the attached definition of Prime and Unique Farmland. (See Attachment II.)

Section 6.4.11.2, Policy. Recommend change to read: "Development of Prime and Unique Farmland for non-farming purposes is prohibited unless continual farming is . . ." The use of the word "discouraged" in lieu of "prohibited" causes uncertainty and makes land use plans ineffective.

Page 75, Section (d), Erosion and Sediment Control. The first sentence should be changed to read: "Surface water runoff is a well-documented, possible source of water quality degradation."

Page 82, Section 6.6.3.1, Definition. (Seasonal High Water Table.) This definition should be in keeping with SCS definition. (See Attachment III.)

Section 6.6.3.2, Rationale. This section should reflect the existence of perched water tables. The second sentence might be changed to read: "Shallow depths to water table (wet terraces) occur either close to surface water bodies or as perched water tables above relatively impervious soil layers."

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Page 84, Section 6.6.3.3, Information Requirements. Change first sentence to read: "Data on the distribution of these areas may be obtained from the National Cooperative Soil Survey available from the local soil conservation district, etc. . . ." Similar changes should be made throughout the text of the report.

Page 85, Section 6.6.4.1, Definition. The first sentence should be changed to read: "Soil permeability is the rate of vertical movement of water through the soil or a soil layer expressed in inches per hour."

Section 6.6.4.2, Rationale. This section should reflect the difference between soil infiltration and permeability.

Infiltration is the rate of water intake into the soil, and permeability is the rate of vertical water movement through the soil.

Section 6.6.4.3, Information Requirements. This section should indicate that infiltration rates can also be found in the National Cooperative Soil Survey Reports as well as permeability. Permeability cannot be accurately determined by percolation tests. Therefore, the sentence beginning, "Site survey data . . ." should be deleted.

Page 86, Section 6.6.5. Soil Fertility Factor should be changed to Soil Productivity Factor and Section 6.6.5.1 should reflect this change. Capability classes are not based on fertility, but rather on hazards to productivity.

Page 99, Section 6.6.9.2, Preparation. Line 14 should be changed to read: ". . . single soil survey atlas sheet on a map of the vege- . . ." The remainder of this section should reflect this terminology. Also there may be a problem with map scales. Soil survey atlas sheets are on scales of 1:15,840, 1:20,000, 1:24,000, or 1:31,680.

Page 116, Section 6.6.9.6.3, Soil Conservation. This terminology should reflect the soil resource. Suggest that the fifth line should read: ". . . most of a large area was acceptable for soil conservation"

Page 154, 3rd paragraph, 5th line. Note typographical error. Word should be "gabions."

Section 8.7.1, Policy. Recommend change in first paragraph to read: "Coastal development will be required to restrict soil loss and control soil erosion and sedimentation during the construction of development to the standards specified in the Soil Erosion and Sediment Control Act (Chapter 251, Public Law 1975) as administered by the State Soil Conservation Committee of the New Jersey Department of Agriculture."

Mr. Robert W. Knecht

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Page 155, Section 8.7.2, Rationale. Third paragraph should reflect techniques contained in the standards for Soil Erosion and Sediment Control in New Jersey. Fourth paragraph, first sentence, should be changed to read: "Applicants shall use the Universal Soil Loss Equation to calculate the maximum acceptable soil loss or erosion during the operation phase of the project." The Universal Soil Loss Equation can not be used to compute sediment loss without applying a delivery ratio factor. The equation computes the average annual erosion or soil loss in tons per acre per year. The equation can be used to compute sheet and rill erosion only; gully and other erosion must be determined by other means. We do not see the need for having the applicant make this determination. A requirement that unpaved areas be maintained in good vegetative cover should provide adequate protection from erosion.

Page 171. The paragraph entitled "Department of Agriculture" should be changed to read: "This Department through the State Soil Conservation Committee administers the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.)." The Act provides for the control of erosion during the construction phase of development.

Page 186. Change "Prime Agricultural Lands" to "Prime and Unique Farmlands." Also, in the last sentence of this paragraph, change "soil fertility" to "soil productivity."

Page 186, Forests. The first sentence should be changed to read: ". . . through consultation with the U.S. Forest Service."

Page 191. Under Department of Agriculture, Soil Conservation Service. Change to read: Watershed Protection and Flood Prevention. Also add: Resource Conservation and Development Program.

Pages 328 and 329. For each map, change the source of data sentence to read: "The source of data is the National Cooperative Soil Survey for Ocean County."

The Department of Agriculture appreciates the opportunity to review this report.

Sincerely,



R. M. Davis
Administrator

Enclosures

cc:
M. Rupert Cutler, Assistant Secretary for Conservation, Research and Education, SEC
John R. McGuire, Chief, Forest Service

May 25, 1977

USDA PRIME FOREST LANDS PROGRAM

OBJECTIVE

The objectives of the prime forest lands program are to (1) prevent our most productive forest lands from being irrevocably used for other purposes, and (2) to be advocates for the protection of prime forest lands. The overall objective of the Secretary's prime land program is to help protect and retain those lands that have the highest productivity for growing food, fiber, timber, and forage or for high values for other purposes.

Scope

The Department's prime lands program identifies prime lands so they may be considered when planning for other uses. The Prime Forest Lands Program could include several phases, i.e., timber, wildlife, recreation. The First Phase is the identification of prime timberlands. In the case of prime timberlands, the intent is to include "the demand for wood and the use of forest lands for timber production." Discussions leading to the policy statement centered around an overview of the Nation's biological base for growing timber, potential productivity as it relates to long-run timber supply, the extent of the timberland which actually is available for primary use in timber growing and harvesting, and the prospects and implications of further reductions in our most productive timberland areas.

The prime timberlands program will be directed only toward State and private forest lands. It will not apply to National Forest System lands because the NF land management planning system adequately identifies prime timberlands, and protection against irrevocable uses is fully provided by laws and regulations. This same rationale generally applies to other Federal forest lands.

Implementation

To meet the objectives of the Secretary's Policy Statement, we will have to:

1. Define criteria for prime forest land. (timber completed)
2. Develop an awareness and educational program.
3. Locate the Nation's prime forest lands.
4. Assist in the assessment of impacts.
5. Continue to improve the criteria and mapping over time.

Step 1 is the preparation of specific criteria for identifying prime forest lands. In the case of prime timberlands, a great deal of expertise from a wide area of concern has been utilized in their development. Most, but not all, viewpoints appear in the final definition and guidelines. The criteria are responsive to the Secretary's Policy Statement, are compatible with the SCS program for prime farmlands, and will enable us to use existing information. As we gain experience, especially during the pilot project phase, the criteria will be evaluated and modified as needed. A copy of the final "Prime and Unique Timberland--Definitions and Criteria" is attached.

Step 2 relates to our role as advocates for preserving and protecting prime forest lands. Through our regularly established S&PF and NF programs for coordination with other USDA agencies, States, county planning organizations and others, we will promote the prime forest land concepts. Where there are active State Forestry Committees and State Development Committees we will encourage and assist these organizations to carry out the program in their respective States. Informational and educational material to assist in this effort will be prepared. This phase of the implementation will generate a great deal of interest and interagency involvement. A similar SCS program for prime farmlands created a significant workload especially at the WO just to answer mail and congressional inquiries. Most of the interest was supportive of the program.

Step 3 will be the largest and most costly effort. For example, applying the guidelines to identify the prime timberlands will require the commitment and cooperation of the State Foresters. Fully financed, the effort will take 6-10 years. The program will begin on a project basis for selected counties in 18-20 States to test the guidelines and evaluate the effort needed for steps 2, 3, and 4. Counties will be mapped and the results reviewed by the States and the prime forest lands work group for changes that may be needed before implementing the full scale mapping program.

Step 4 will involve planners, land managers, and others dealing with lands identified as prime forest land and they will be seeking assistance in recognizing and evaluating impacts of proposed actions on these lands. CEQ now requires all Federal agencies to address impacts on prime farmlands in their EIS's and when the prime timberland mapping program gets underway, we expect that CEQ will also require that EIS's respond to impacts on these lands.

Step 5 recognizes the need for ongoing critique to improve the program.

PRIME FOREST LANDS - TIMBERPRIME AND UNIQUE TIMBERLAND--DEFINITIONS AND CRITERIAStandards

The national standard for classifying prime timberlands is based on timber growing capability and the threshold has been set at 85-cubic feet or more/ac/yr at culmination of mean annual increment (site 3 or better) in natural stands. This figure represents the growing capacity on about 34 percent of the commercial timberland as listed in Forest Resource Report No. 20, "The Outlook for Timber in the United States" 1974. These lands growing the threshold rate represent about 48 percent of the productive capacity of forest lands. Consideration was given to land having 120-cubic feet/ac/yr., but this higher standard would only constitute about 10 percent of the commercial timberland. This was considered an insufficient base to inventory and monitor significant trends and responses at the national level.

Definitions used are standard forest survey definitions. The 85-cubic feet/ac/yr. is a uniform forest survey site productivity class that is used to define annual growth at culmination of mean annual increment. This is a classification of forest land in terms of potential cubic-foot volume growth-per-acre at culmination of mean annual increment in fully stocked natural stands.

The threshold rate of volume is determined to be the net volume growth in cubic feet of growing stock. The bole is determined to be from a one-foot stump to a minimum 4.0-inch top diameter outside bark of the central stem or to the point where the central stem breaks into limbs (Forest Service standard).

DEFINITIONSPrime Timberland

Prime timberland is land that has soil capable of growing wood at the threshold growth rate and is not in urban or built-up land uses or water. Generally speaking, the program is aimed at land currently in forest, but should not exclude qualifying lands that could realistically be returned to forest.

Unique Timberland

Unique timberlands are lands which do not qualify as prime timberland, on the basis of producing less than 85 cu. ft./ac/yr. but are growing sustained yields of specific high value species or species capable of producing specialized wood products under a silvicultural system that maintains soil productivity and protects water quality.

Some examples of unique timberlands are lands supporting stands of Port Orford Cedar, pecan, myrtlewood, cypress, Atlantic white cedar, and black walnut plantations.

Timberland of Statewide Importance

This is land, in addition to prime and unique timberlands, that is of Statewide importance for the growing of wood. Criteria for defining and delineating these lands are to be determined by State forestry planning committees or appropriate State organization.

Timberland of Local Importance

In some local areas there is concern for certain additional forest lands for the growing of wood even though these lands are not identified as having national or Statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

CRITERIA

The definition of prime timberland considers only timber production. Identification of lands as prime timberland does not denote a single or dominant use. This designation does not preclude the use of these lands for other forest products and services, but only identifies the most productive forest lands on which the Country depends for present and future wood needs. Neither does this constitute a designation of any land area to a specific land use. Such designations are the prerogative of responsible officials.

The physical criteria chosen for identifying prime timberland are those that accurately measure the soil's ability and the climatic conditions present to grow wood products. As a guide, the soils capable of growing the threshold rate generally have the following soil characteristics as defined in USDA Soil Taxonomy: (See attachment 1 for explanation of soil terms.)

1. Soils that have an adequate moisture supply to sustain tree growth.

a. These are soils having aquic or udic moisture regimes. The are common in humid or subhumid climates that have well distributed rainfall or have enough rain in summer that the amount of stored moisture plus rainfall is approximately equal to or exceeds the amount of potential evapotranspiration.

b. Soils having xeric moisture regimes and available water capacity in excess of 6 inches (these soils normally have effective soil depth of 40 inches or more.)

2. Soils that have a soil temperature regime that is frigid, mesic, thermic, or hyperthermic. These are soils that at a depth of 20 inches (51cm), have a mean annual temperature higher than 32°F (0°C). In addition, the mean summer temperature at this depth in soils with a O horizon is higher than 47°F (8°C); in soils that have no O horizon the mean summer temperature is higher than 59°F (15°C).

3. Soils have adequate nutrient supply to permit establishment and sustain tree growth. Effective rooting depth generally is greater than 24 inches.

Characteristics such as severe and critical erosion hazards or high risk for mass failure may prevent harvest of some prime lands until an unforeseeable period in the future, but they do not normally affect the intrinsic quality of the land for growing trees. Advanced technology of the future will probably enable harvest of these areas without damage to the environment. Planners will have to consider current harvest technology and environmental impacts when using prime timberland information.

Economics is not considered part of the definition. Factors such as nearness to markets, transportation facilities, and timber values are useful in making land use decisions, but they do not affect the intrinsic quality of the land. These factors change with time and technology and were not included in the criteria. Planners will have to consider economic values when using prime timberland information.

The inventory will be done on a county basis using the same scale base maps that SCS is using for the prime farmland inventory: 1:50,000 for small counties in the East and 1:100,000 for larger counties in the West. Minimum delineation for mapping of prime and unique timberland and timberland of Statewide or local importance is 10 acres. This minimum is the same as that used by the SCS to map prime farmlands.

Local identification of these lands can be accomplished as follows:

1. For each State or local area refer to normal yield tables that list the minimum site indices associating with threshold rate annual growth. Where appropriate, simulated yield tables may be used in place of normal yield tables.

2. Use soil maps for constructing maps showing locations for prime forest lands.

3. Refer to soil surveys that list estimated site indices for each soil mapping unit.

This is a general approach for local identification of prime timberlands, and actual practice may identify gaps in our knowledge that must be filled by growth and yield research and by forest soil-site research. Even in view of these gaps, there is sufficient information and professional expertise throughout the Nation to proceed with the first inventory of prime timberlands.

APPENDIX 1

FREE THERMID

SOIL TEMPERATURE REGIMES

- FRIGID** - The mean annual soil temperature is higher than 0°C (32°F) but lower than 8°C (47°F), and the difference between mean winter and mean summer soil temperature is more than 5°C (9°F) at a depth of 50 cm (20 inches) or at a lithic or paralithic contact, whichever is shallower.
- MESIC** - The mean annual soil temperature is 8°C (47°F) or higher but lower than 15°C (59°F), and the difference between mean summer and mean winter soil temperature is more than 5°C at a depth of 50 cm (20 inches) or a lithic (coherent underlying material) paralithic (lithic like) contact whichever is shallower.
- THERMIC** - The mean annual soil temperature is 15°C (59°F) or higher but lower than 22°C (72°F), and the difference between mean summer and mean winter soil temperature is more than 5°C at a depth of 50 cm or a lithic or paralithic contact whichever is shallower.
- HYPERTHERMIC** - The mean annual soil temperature is 22°C (72°F) or higher and the difference between mean summer and mean winter soil temperature is more than 5°C at a depth of 50 cm or a lithic or paralithic contact whichever is shallower.

SOIL MOISTURE REGIMES

- AQUIC** - The aquatic moisture regime implies a reducing regime that is virtually free of dissolved oxygen because the soil is saturated by ground water or by water of the capillary fringe (See p. 54, Soil Taxonomy, Agriculture Handbook No. 436, for additional explanation.)

- UDIC** - The moisture regime implies that in most years the soil moisture control section is not dry in any part for as long as 90 days (cumulative). (See p. 55, Soil Taxonomy, Agriculture Handbook No. 436 for exceptions and additional explanations.)

- XERIC** - The xeric moisture regime is that typified in Mediterranean climates where winters are moist and cool, and summers are warm and dry. (See p. 57, Soil Taxonomy, Agriculture Handbook No. 436, for additional explanation.)

1/ The upper boundary of this control section is the depth to which a dry soil will be moistened by 1 inch of water in 24 hours. The lower boundary is the depth to which a dry soil will be moistened by 3 inches of water within 48 hours.

EFFECTIVE ROOTING DEPTH - The soil depth to which plant roots can effectively penetrate.

AVAILABLE WATER CAPACITY - The capacity of the soil to store water available for use by plants, usually expressed in linear depths of water per unit depth of soil.

ATTACHMENT II

LIR-3 (Rev. 2)

PART 657 - PRIME AND UNIQUE
FARMLANDS
Subpart A - Important Farmlands Inventory

Sec. 657.1 Purpose.

657.2 Policy.

657.3 Applicability.

657.4 SCS Responsibilities.

657.5 Identification of important farmlands.

Authority: 16 U.S.C. 390a-f, q; 7 CFR 2.62; Pub. L. 95-37; 42 U.S.C. 4321 et seq.

Subpart A - Important Farmlands Inventory

§ 657.1 Purpose.

SCS is concerned about any action that tends to impair the productive capacity of American agriculture. The Nation needs to know the extent and location of the best land for producing food, feed, fiber, forage, and oilseed crops. In addition to prime and unique farmlands, farmlands that are of statewide and local importance for producing these crops also need to be identified.

§ 657.2 Policy.

It is SCS policy to make and keep current an inventory of the prime farmland and unique farmland of the Nation. This inventory is to be carried out in cooperation with other interested agencies at the national, State, and local levels of Government. The objective of the inventory is to identify the extent and location of important rural lands needed to produce food, feed, fiber, forage, and oilseed crops.

§ 657.3 Applicability.

Inventories made under this memorandum do not constitute a designation of any land area to a specific land use. Such designations are the responsibility of appropriate local and State officials.

§ 657.4 SCS Responsibilities.

(a) State Conservationist. Each SCS State Conservationist is to:

(1) Provide leadership for inventories of important farmlands for the State, county, or other subdivision of the State. Each is to work with appropriate agencies of State government and others to establish priorities for making these inventories.

(2) Identify the soil mapping units within the State that qualify as prime. In doing this, State Conservationists, in consultation with the cooperators of the National Cooperative Soil Survey, have the flexibility to make local deviation from the permeability criterion or to be more restrictive for other specific criteria in order to assure the most accurate identification of prime farmlands for a State. Each is to invite representatives of the Governor's office, agencies of the State government, and others to identify farmlands of statewide importance and unique farmlands that are to be inventoried within the framework of this memorandum.

(3) Prepare a statewide list of:

(i) Soil mapping units that meet the criteria for prime farmlands;

(ii) Soil mapping units that are farmlands of statewide importance if the criteria used were based on soil information; and

(iii) Specific high-value food and fiber crops that are grown and, when combined with other favorable factors, qualify lands to meet the criteria for unique farmlands. Copies are to be furnished to SCS Field Offices and to SCS Technical Service Centers (TSC's). (See 7 CFR 609.3, 609.6.)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent States, including the States responsible for the soil series. Since farmlands of statewide importance and unique farmlands are designated by others at the State level, the soil mapping units and areas identified need not be coordinated among States.

(5) Instruct SCS District Conservationists to arrange local review of lands identified as prime, unique, and additional farmlands of statewide importance by Conservation Districts and representatives of local agencies. This review is to determine if additional farmland should be identified to meet local decisionmaking needs.

(6) Make and publish each important farmland inventory on a base map of national map accuracy at an intermediate scale of 1:50,000 or 1:100,000. State Conservationists who need base maps of other scales are to submit their requests with justification to the Administrator for consideration.

(b) Technical Service Centers. Field Representatives are to provide requested technical assistance to State Conservationists in inventorying prime and unique farmlands (see 7 CFR 609.2). This includes reviewing statewide lists of soil mapping units that meet the criteria for prime farmlands and resolving coordination problems that may occur among States for specific soil series or soil mapping units.

(c) National Office. The Assistant Administrator for Field Services (see 7 CFR 609.2) is to provide national leadership in preparing guidelines for inventorying prime farmlands and for national statistics and reports of prime farmlands.

§ 657.5 Identification of important farmlands.

(a) Prime farmlands.

(1) General. Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity,

acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

(2) Specific criteria. Prime farmlands meet all the following criteria: Terms used in this section are defined in USDA publications: "Soil Taxonomy, Agriculture Handbook 936"; "Soil Survey Manual, Agriculture Handbook 18"; "Rainfall-Erosion Losses from Cropland, Agriculture Handbook 232"; "Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 396"; and "Saline and Alkali Soils, Agriculture Handbook 69."

(i) The soils have:

(A) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include, but are not limited to, grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

(B) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(C) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality; and,

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 37° F (3° C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47° F (8° C); in soils that have no O horizon, the mean summer temperature is higher than 39° F (4° C); and,

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep; and,

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and,

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 6 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15; and,

(vi) The soils are not flooded frequently during the growing season (less often than once in 2 years); and,

(vii) The product of K (erodibility factor) x percent slope is less than 2.0, and the product of I (soils erodibility) x C (climatic factor) does not exceed 60; and

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59° F (15° C); the permeability rate is not a limiting factor if the mean annual soil temperature is 59° F (15° C) or higher; and,

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm).

(b) Unique farmland.

(1) General. Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) Specific characteristics of unique farmland.

(i) Is used for a specific high-value food or fiber crop.

(ii) Has a moisture supply that is adequate for the specific crop. The supply is from stored moisture, precipitation, or a developed irrigation system.

(iii) Combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

ATTACHMENT III

2

Seasonal High Water Tables

Definition. A seasonal high water table is a zone of saturation at the highest average depth during the wettest season. It is at least six inches thick, persists in the soil for more than a few days, and occurs within 60 inches of the soil surface.

Most water tables occur within the soil and are measured from the surface of the soil down to the free-water level. In swamps and marshes, however, the water table is above the surface of the soil much of the time and water table is measured from the surface of the water down to the soil surface.

Classification. Soils that have seasonal high water tables are classified according to depth to the water table, kind of water table, and time of year that the water table is highest.

Depth. Depth of seasonal high water table from the soil surface should be given in feet or half feet. The range in depth should reflect the year to year variation in average highest depth. Depth to water table within the soil should be recorded with the small number first, e.g., 2-3. Water table above the soil surface should be used for marshes and swamps and should be recorded with the large number first, e.g., 2-0.5.

Kind. Three kinds of seasonal high water table are recognized within the soil: apparent, perched, and artesian. Another kind is above the soil surface much of the time as in marshes and swamps.

Apparent water table is the level at which water stands in a freshly dug unlined borehole. It is influenced by the hydrostatic pressure of soil water and by pressure at greater depths penetrated by the borehole, water relations across impermeable layers, and other factors. In the absence of evidence that would permit greater specificity, therefore, the term apparent water table should be used for the level at which water stands in an uncased borehole after adequate time for adjustment in the surrounding soil.

Perched water table is one that exists in the soil above an unsaturated zone. A water table may be inferred to be perched on the basis of general knowledge of the water levels of an area, the landscape position, the permeability of soil layers,

and from other evidence. To prove that a water table is perched, it is necessary to observe the water levels in cased wells placed above, in, and below the less permeable layer. If the water in the well above the less permeable layer is consistently higher than the other two, the water table is perched.

Artesian water table is one that exists under hydrostatic head beneath an impermeable layer; when the impermeable layer has been penetrated by a cased borehole the water rises. The final level of the water in the cased borehole may then be characterized as an artesian water table.

Areas with water tables above the surface of the soil much of the time are characterized as marsh or swamp-marsh having herbaceous vegetation and swamps having woody vegetation.

Months. The months that the water table normally persists at the average highest depth range should be recorded, for example, December through April.

Measurements. Wells cased with perforated pipe are used to study the seasonal variation of free-water levels in soils. Several observation wells at different depths are needed at each site. Depth of water level is recorded periodically, usually every month or more frequently in the wet season. Methods are described in the Handbook of Soil Survey Investigations Field Procedures, USDA, SCS.

Estimates. Water tables and other evidence of wetness are observed during the course of the survey. The soil scientist observes the depth at which he first encounters free-water. This observation is especially valuable during the wet season. He checks the depth to water and the depth to gray mottles and records these observations in his field notes.

Soil scientists can make close approximations of the depth to a seasonal high water table at any time by observing the depth to low chroma mottles. The presence of gray mottles with chroma of 2 or less is evidence of a seasonal high water table in most soils. In some soils, 3 chroma mottles with values of 6 or 7 are indicators of wetness. The presence of clean bodies of sand and silt grains are also good indicators of water table levels in certain soils. A few soils have relic mottles which do not represent wetness under current climate and a few soils are wet without having low chroma mottles.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 21 1978

Significance of seasonal high water table. A seasonal high water table is an important criterion in a number of engineering and biological uses of soils. Its depth and duration influences the limitations of soils for septic tank absorption fields, shallow excavations, sanitary landfills, dwellings, and local roads and streets, and ease of excavation for roadfill and topsoil.

The water table also influences the growth of crops--a water table that is near the surface during the growing season is detrimental to most plants. Growing plants, however, tend to lower the water table through transpiration. A change in land use may drastically change the wetness of an area. For example, a change from trees to soybeans changes the transpiration rate and may cause a wetter soil condition. Changing land use from cropland, pasture, or forest to urban areas with streets and houses covering a much larger area not only decreases the transpiration by vegetation but also causes increased runoff. A wetter soil may result.

Mr. Robert W. Knecht
Assistant Administrator for Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven St. N. W.
Washington, D. C. 20235

Dear Mr. Knecht:

The Offices and Bureaus of the Department of the Interior have reviewed the draft New Jersey Coastal Management Program (NJCMP) - Bay and Ocean Shore Segment and the Draft Environmental Impact Statement (DEIS). Our detailed comments are included in the attachment to this letter.

We believe that this segment of the NJCMP is a potentially excellent program. The proposed coastal policies appear to adequately address the need to balance the protection of New Jersey's existing fragile coastal resources with the need to accommodate onshore facilities resulting from Outer Continental Shelf exploration, development and production activities. We note, too, that the innovative Coastal Location Acceptability Method (CLAM), which is the primary mechanism for implementing location policies, is intended to enhance the predictability of State permit decisions and to promote environmentally sensitive facility siting decisions. By administering three coastal permit programs to implement coastal policies within a single State agency and by adopting unified coastal policies through the State rule making process, New Jersey has demonstrated an exemplary approach to comprehensive coastal management.

The Department believes, however, that there are several remaining weaknesses in this segment of the NJCMP that should be addressed during the first year of program implementation. First, we are concerned that the proliferation of small development projects along the New Jersey coast which are not subject to State permitting authority will result in cumulative adverse environmental impacts affecting ground and surface water quality, soil erosion rates, and fish, wildlife and endangered or threatened species habitat. We recommend that New Jersey develop and describe in the final program the procedure it will use to minimize adverse cumulative impacts during program implementation. We believe that an effective approach to minimize adverse cumulative impacts would be for the State to establish a monitoring and evaluation system and a technical assistance program for local governments. This program would assist communities in developing or refining ordinances and in enhancing enforcement and inspection procedures related to cumulative impacts.



A second related concern is that New Jersey's regulated wetlands may suffer adverse impacts from runoff and siltation resulting from activities occurring on adjacent lands. We recommend that the State develop and describe in the final program the procedure it will use to provide runoff and siltation protection to regulated wetlands. We believe that an effective approach to this problem would include: (1) State monitoring of the biological integrity of these wetlands, (2) the establishment of a buffer zone surrounding the wetlands, or the development of a procedure to identify, modify or suspend activities harmful to the wetlands which occur on adjacent lands, and (3) the provision of State technical assistance to local governments to assist in minimizing the impacts local land and water use decisions will have on these regulated wetlands.

Finally, we note that while New Jersey has completed a number of resource inventories, additional work should be initiated to build a more comprehensive data base related to subaquatic vegetation, artificial reefs, fisheries, surfclam and shellfish areas, and fish, wildlife and endangered or threatened species habitat. One immediate benefit of this additional inventory work will be to provide the information necessary for New Jersey to develop more explicit coastal policies to protect endangered or threatened species including shortnose sturgeon, peregrine falcon, bald eagle and a number of marine mammal and turtles.

We look forward to working with your office on the NJCMP. Please call John Dane (343-8875) or Paul Stang (343-7258) of our staff if you have questions regarding our comments.

Sincerely,



Larry E. Mcierotta
Deputy Assistant Secretary --
Policy, Budget and Administration

Attachment

Specific Comments on the New Jersey Coastal Management Program (NJCMP)
and Draft Environmental Impact Statement (DEIS)

Authorities

It is our understanding that the New Jersey approach to coastal management corresponds to the technique described in Subsection 306 (e)(1) of the Coastal Zone Management Act of 1972 as amended (CZMA) - direct State land and water use planning and regulation. The Division of Marine Services of the Department of Environmental Protection (DEP) administers the three coastal permit programs which will be used to implement the coastal policies: the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, and the riparian statutes. The coastal policies appearing in Chapter 3 of the program will be formally adopted as substantive DEP rules prior to Federal approval of the program. Adoption of these rules will ensure that DEP decisions issued under the three permit programs are consistent with the coastal policies.

This enforcement mechanism is commendable. Although three different laws are to be used for implementation, each will be administered by the same division of the same department in accordance with one set of coastal policies. Because the policies will be given the status of rules, further "networking" through an executive order or interagency agreements seems unnecessary. The use of one set of unified, consolidated policies, which are formalized through the rule-making process, is an exemplary approach to comprehensive coastal management.

Proposed energy facilities, while subject to the three regulatory programs described above, are treated in a slightly different manner than other facilities in this segment of the NJCMP. When an energy facility is proposed for a site within the CAFRA area, the New Jersey Department of Energy (DOE) must prepare an Energy Report. According to the draft interagency agreement between DEP and DOE, formulation of this report must be based on the coastal policies and the Energy Master Plan (to be prepared by DOE by July 1978).

If the DEP decision regarding the siting of the energy facility differs from DOE's Energy Report, DOE may convene the Energy Facility Review Board (EFRB). This Board is composed of the Director of DOE's Division of Energy, the Commissioner of DEP, and a third member appointed by the Governor. This Board may affirm, reverse, or modify the DEP decision. We have several concerns regarding this arrangement.

1. One assumes from the terms of the draft interagency agreement that the ability to convene the EFRB is provided in the Department of Energy Act (N.J.S.A. 52:27-1 et seq.). Since the text of this law is not included in the program or the appendix, it is difficult to distinguish between statutory requirements and voluntary agency agreements. We suggest that a copy of the Department of Energy Act be included in the final NJCMP.

2. Because the EFRB makes the final decision regarding the siting of any energy facility, it is important to know the extent to which the Board is obligated to make this final determination consistent with the coastal policies.

Under New Jersey law, we question whether the EFRB is required to base its decision to affirm or reverse an agency action on the administrative record and consistent with the criteria and standards set forth in the laws and regulations establishing the permit process. Hopefully, the Board cannot go beyond the record and conduct its own "de novo" review. Such discretion could result in decisions which are inconsistent with the coastal policies. We request that the State explain in the final program whether it will establish operating policies and procedures to be used by the Board in reviewing permit decisions.

3. The DOE is responsible for completing an Energy Master Plan by July, 1978. According to the draft NJCMP, the Plan will become "a primary resource for energy facility siting decisions by DEP" (p. 171). Given the significance of this Plan, more information concerning its creation and adoption would be useful. It would be particularly appropriate to describe, in the final NJCMP the procedures for adoption of the Plan and the opportunities available for input by the public and various governmental entities.

Cumulative Impacts

The Department is concerned that the proliferation of small development projects along the New Jersey coast which are not subject to State permitting authority will result in cumulative adverse environmental impacts affecting ground and surface water quality, soil erosion rates, fish and wildlife and endangered species habitat. These development projects include housing developments of less than 25 units which are exempt from the CAFRA permit process.

While we understand that most small development projects will be subject to some local land use regulation, the effectiveness of these local efforts in minimizing cumulative impacts will vary depending on their ordinances, and their enforcement and inspection procedures. Accordingly, we recommend that the State describe in the final program the procedure it will use to minimize cumulative impacts during program implementation. One effective approach to minimize cumulative impacts would be for the State to develop a monitoring and evaluation system combined with a program to provide technical assistance to local governments to refine or develop ordinances and to enhance existing enforcement and inspection procedures. Another technique that may be useful in controlling cumulative impacts would be to selectively locate State public infrastructure investments in communities which attempt to minimize cumulative environmental impacts that may result from their land and water use decisions.

Inland Boundaries - Wetlands

The Department notes that the NJCMP proposed inland boundary encompasses the statutory coastal area defined by CAFRA, and 3750 acres of mapped, regulated wetlands landward of the CAFRA boundary. While we commend New Jersey for the inclusion of these vital resource areas, we are concerned that these wetlands may not be provided adequate State regulatory protection from runoff or siltation resulting from activities occurring on adjacent lands.

We recommend that the State develop and describe in the final program the procedure it will use to provide runoff and siltation protection to regulated wetlands. One effective approach to this problem would include State monitoring of the biological integrity of these wetlands, and the establishment of a buffer zone surrounding the wetlands, or the development of a procedure to identify, modify or suspend activities occurring on adjacent lands which are harmful to the wetlands. We also recommend that the State consider providing technical assistance to local governments to assist them in minimizing the impacts local land and water use decisions will have on regulated wetlands. Selective extension of the inland boundary may also be appropriate during the first year of program implementation to provide coverage to unmapped wetlands or to selected portions of the Pine Barrens aquifer which may benefit from additional management protection.

Resource Inventories - Endangered Species

The Department understands that New Jersey has conducted selected resource inventory work in a number of areas including estuaries, wetlands, beaches and through a case study of Cape May. A listing of inventories has been compiled in the publication entitled "An Environmental Inventory of the Coastal Area". While the work to date has been commendable, we recommend that the State conduct additional inventory work in the first year of program implementation to enhance its resource data base regarding subaquatic vegetation, artificial reefs, fisheries, surfclam and shellfish areas, and fish, wildlife and endangered or threatened species habitats. This improved information base, generally, will be of substantial value in coastal resource protection decision making and should be provided to permit applicants during preapplication meetings.

One immediate benefit of this additional inventory work will be to provide the information necessary for New Jersey to develop more explicit coastal policies to protect endangered or threatened species including the shortnose sturgeon, peregrine falcon, bald eagle and a number of marine mammals and turtles. In this regard, we recommend that procedures for the protection of these endangered or threatened species be more thoroughly discussed in the final program.

New Jersey has expressed an interest and commitment to conserve its natural resources by entering into a cooperative agreement with this Department's Fish and Wildlife Service to protect and conserve threatened and endangered species and their habitats. We believe the program should address this agreement and identify the coordination mechanism to be used by the DEP and the State Fish and Wildlife agencies to assure conservation of these resources.

Finally, we recognize that the State has undertaken extensive mapping of coastal wetlands and other features and will soon develop a map on special water areas. It would be useful to provide a list of resource maps New Jersey will use for program implementation in the Appendix of the final NJCMP. The State should also consider including larger maps in the final program to more clearly delineate coastal features such as wetlands, habitats and boundaries.

Policy Development - Conflict Resolution

Although future changes to the NJCMP are mentioned on page 199, the final program should more completely describe an ongoing process for State policy development and refinement, including a discussion of which State agencies will be involved in this policy process. Another important aspect of the program which needs additional clarification is how the State proposes to handle broad conflicts which may arise between general goals and objectives of State agencies with differing missions. What conflict resolution mechanisms will be used? Under what circumstances?

Policies

1. Outer Continental Shelf

Outer Continental Shelf (OCS) Gas and Oil Exploration and Development Policy 7.4.2 encourages OCS-related facilities to locate in developed areas where infrastructure and labor markets exist. It notes that services related to OCS development may locate in Atlantic City. Policy 7.4.3 - Onshore Support Bases - encouraged OCS support activities to locate outside of the Bay and Shore segment. Some clarification should be provided here to more explicitly detail which facilities are recommended for the Bay and Shore Segment and which should be directed to the other New Jersey segment.

2. Mining

The industrial-commercial use policy for mining (7.6.2) found on page 148 states that: "Mining is acceptable only in sites immediately adjacent to current mining operations, provided that reclamation plans are acceptable." This proposed policy does not recognize that existing deposits are eventually depleted, or that mining operations may be discontinued due to lack of subsurface ownership, existing local zoning, incompatible adjacent development or for other reasons.

Mineral deposits may or may not be located adjacent to existing operations. A policy designed to restrict new mining to sites adjacent to existing operations may be unreasonable where mineral deposits do not exist on adjacent sites or where other environmental or land use considerations have limited the expansion of existing mining activity. In the case of construction materials, the principal materials mined and used in New Jersey coastal areas, new mining operations must be initiated to replace depleted deposits. Where expansion to adjacent sites is not possible, the program's mining policy must be flexible enough to accommodate new development at non-adjacent sites in coastal areas. If this policy is not altered, there will be instances where needed construction materials will be transported from more distant sites, substantially increasing construction costs.

The New Jersey Bureau of Geology and Topography may be able to provide assistance with respect to delineating new coastal mining areas and to recommend ways of minimizing soil erosion, water quality, wildlife disturbance and visual blight problems. This Bureau should be listed on page 164 and their functions should be described.

3. Flood Hazard Areas

Flood Hazard Areas policy 6.4.4.2 discussed on page 59 must be clarified to indicate that it is directed toward fluvial flood hazard areas and toward the coastal floodplain. Presidential Executive Order 11988, dated May 24, 1977 directed each Federal agency, to take floodplain management into account when formulating water and land use plans, and to provide leadership and take action to reduce the risk of flood losses. Since much of the Bay and Ocean Shore Segment is subject to flooding the policy should specifically address construction in floodprone coastal areas.

4. Pipelines

Subsection (f) of the State Pipelines and Associated Facilities Policy 7.4.7 should be revised to reflect that pipeline corridors shall also avoid wetlands of value to fish and wildlife.

5. Saltwater Marshes

We recommend that the State develop a regulatory mechanism to insure that saltmarsh mosquito control activities will comply with the approved coastal resource policies during the first year of program implementation. The Wetlands Act presently excludes mosquito control from State regulation. This recommendation was previously provided to the State in the Fish and Wildlife Service December 20, 1977 letter on the New Jersey STRATEGY document.

6. Tanker Terminals

The Tanker Terminals policy 7.4.11, implies that the State will encourage such facilities to locate in the Port of New York and New Jersey and in the Delaware River Port Authority area (p. 145). The encouragement of such facilities in the other segment of the NJCMP and near the heads of estuaries may result in substantial adverse environmental impacts to the State's entire coastal zone. The State should reexamine the policy to assure its coordination with the State Master Energy Plan.

National Interest

New Jersey proposes to fulfill the CZMA requirement related to continued consideration of the national interest through the CAFRA permit program. The State maintains that language in CAFRA referring to the "public health, safety and welfare" gives the permitting agency the authority to consider the national interest. Commitment to this interpretation is evidenced by the specific policies that address national interest resources and facilities and by the strong statement in the draft interagency agreement between DOE and DEP which recognizes the CAFRA language as sufficient authority to consider the national interest in the siting of coastal energy facilities. The State should use this unambiguous language in the final interagency agreement which should be in effect prior to Federal approval.

We note that even though the State can adequately consider national interest, there exists no mechanism which the State can use to insure that local governments take such factors into consideration when making siting decisions concerning certain energy facilities. For instance, an oil refinery or an LNG facility which has obtained every State permit could be excluded by the local government and such an exclusion could not be prevented by the State. The document does not indicate whether the State has the opportunity to participate or intervene in local proceedings involving such permit decisions in order to raise national interest considerations.

While we realize that the siting of certain facilities in the Bay and Ocean Shore segment of New Jersey may be unlikely, the Department believes that the State should develop and describe a process whereby the State may exercise standing to at least raise relevant national interest considerations in local proceedings.

Areas for Preservation or Restoration

That portion of the document which discusses APR's describes various State agencies and their respective authorities to purchase or protect certain areas. For example, through the Green Acres program, the DEP can purchase land or provide grants to local governments for land purchase or park development. What is needed in the final NJCMP is a more complete description of the process and the criteria that the State will use to designate APR's.

Special Management Areas

The Department endorses the designation of wetlands, wet sand beaches and the Higbee Beach - Pond Creek Meadow Area as geographic areas of particular concern. These areas are important and deserve special protection. However, the final document should more clearly explain how this designation will prevent the piecemeal development of the Higbee Beach - Pond Creek Meadow Area. Further, we recommend that buffer zones be developed around GAPC's.

Federal Consistency

On page 189, we note that the State proposes to review permits and licenses for geological and geophysical exploration on the OCS. These permits cover such activities as collecting seismic, gravity, and magnetic data, collecting grab samples of the sea bottom, drilling shallow holes into the sea bottom for engineering tests, and drilling deep test holes off structure, in areas unlikely to contain hydrocarbons, for the purpose of defining the regional geologic section. All these activities take place prior to a lease sale. We do not believe that any of these activities, most of which are conducted many miles offshore, potentially effect the coastal zone. The large volume of permits for such activities may present an administrative burden to the State, and they may wish to reconsider this listing.

Additional Comments

Page 49. The reasons for allowing cable routes in high risk erosion areas and not pipelines should be clarified. Trenching which is applicable to pipelines may also be required for underwater cable routes.

Page 43, 6.3.6.14 and 6.3.6.16. Cable routes and pipeline routes may be similar enough to cover in one category. The different treatment in Figure 5, p. 45 between cable and pipeline routes may not be justified in terms of water acceptability.

Page 181. We commend New Jersey for identifying Sandy Hook as a national recreational resource. The Sandy Hook beaches depend upon the littoral drift of sand from the south. This natural process has been impeded by the placement of groins south of Sandy Hook along the New Jersey coast. The resulting erosion affects Sandy Hook beaches and threatens its continued existence as a peninsula. Littoral drift action has also resulted in the accumulation of trash and debris on Sandy Hook. We believe that the program should recognize the role of littoral drift and groin placement and should develop techniques to maintain the integrity of Sandy Hook.

Page 185. The responsibility for administering the National Historic Preservation Act of 1966 as amended has been changed from the National Park Service to the Heritage Conservation and Recreation Service. This should be changed under the section "Historic Sites and Districts and Areas of Unique Cultural Significance."

Page 188. The document states that management of national wildlife refuges and proposed acquisitions will be subject to Federal consistency determinations. Significant changes in wildlife refuge management practices will be subject to consistency only if they have a "spillover" impacts. The document should be changed to reflect this.

Also attached for your consideration are additional comments received from the Heritage Conservation and Recreation Service.



United States Department of the Interior

HERITAGE CONSERVATION AND RECREATION SERVICE
WASHINGTON, D. C. 20240

IN REPLY REFER TO:

ER-78/391

JUN 13 1978

Memorandum

To: Assistant Director, Office of Policy Analysis
From: Director, Heritage Conservation and Recreation Service
Subject: New Jersey Coastal Management Program Bay and Ocean
Shore Segment (NJCMP/BOSS) and Draft Environmental Impact
Statement (DEIS)

This is in response to your request of May 3, 1978 for review and comment on the subject documentation. Our comments are presented as 1) "general", and 2) "specific", which address issues and recommended changes by section for the NJCMP/BOSS and DEIS.

1. General Comments

The State of New Jersey is the most highly populated state/square mile in the Nation. Its coastal areas are heavily used for recreation/tourism drawing thousands of annual visitors from neighboring Canada and the Philadelphia and New York City metropolitan areas. Although heavily developed, the coastal areas maintain an attraction for recreation use and opportunities and have retained a surprising amount of natural and cultural attributes in spite of the use, development, and population density.

The NJCMP/BOSS is basically a sound and comprehensive document in consideration of the magnitude of social, natural, and cultural resource complexities which had to be addressed and resolved. The program is fairly descriptive in its policy direction; however, specifics for eventual implementation could be strengthened. Perhaps implementation procedures can be refined as the program progresses and more situation experiences are confronted. Overall, the management program has sufficiently addressed our areas of interest and expertise, namely recreation, conservation, and preservation. Nevertheless, appropriate recommendations have been offered for consideration in program improvement as well as technical changes for clarity and accuracy.

We were pleased with referenced program coordination with New Jersey's Statewide Comprehensive Outdoor Recreation Plan and the Nationwide Plan effort. However, the Statewide Comprehensive Historic Preservation Plan and Survey should be consulted for program coordination and preparation, and referenced in the appropriate sections if utilized.

We believe the State's decision to carry out the coastal management program by "direct state controls" is a wise approach. This view is taken because: 1) the multitude of political subdivisions would be too vast to effectively monitor; 2) the social, cultural, and natural resources are diverse in New Jersey; 3) existing state laws can provide an "umbrella" of overall protection and control; and 4) effective ongoing "public participation" program provides opportunities for local citizen input into the decision-making process.

The eventual effectiveness and success of the NJCMP/BOSS will depend on the implementation procedures and strong enforcement. To be successful the subject program should be fully coordinated with existing legislation and other agency programs and plans i.e. Statewide Comprehensive Outdoor Recreation Planning process, Statewide Comprehensive Historic Preservation Plan and Survey, NJ Natural Areas System Act, State and Federal wild and scenic rivers "Acts", NJ Wetlands Act, Clean Waters Act, etc. Many of these plans and programs are highly interrelated and inseparable, and without interagency coordination and public participation, program effectiveness would be limited.

2. Special Comments

A. NJCMP/BOSS

a) Shipwrecks and Artificial Reefs (6.2.7.1. Definition, page 37)

It is recommended this section be expanded to include the specific listings of known shipwrecks and artificial reefs. In addition, the "National Register" should be noted as a source of information for shipwreck identification besides the referenced publications.

b) 6.2.7.2 Policies (page 37)

The last sentence of second paragraph should be expanded to read as follows: "Federal management of shipwrecks outside of the coastal boundary should be consistent with state policies (and federal historic preservation legislation) developed for shipwrecks within the boundary."

c) 6.2.8.2. Policy (page 38)

The second sentence should be expanded to read ". . . habitat areas, species areas, research areas, recreational, esthetic, (by adding) and cultural/historic areas."

d) "Water Acceptability Table", (page 45)

Under item "4, Docks and Piers" the water categories have been assigned a "C" (Conditionally Acceptable) or "D" (Discouraged) classification. We believe many of the "C" categories should be denoted as "E" (Encouraged) with individual project selection and approval made within sensible and reasonable environmental discretion. The reasoning for our view is that the northeast coastal area, and particularly New Jersey, is practically void of public recreational fishing/crabbing piers. These recreational activities are very popular in New Jersey. Nevertheless, most productive fishing/crabbing is confined to boats and crabbing to private docks and piers. Jetties and small private piers do provide some recreational benefits, however, the jetties were designed primarily for protection purposes and the private areas serve a limited number of the public. The jetties are usually located at inlets where boat traffic is heavy and often of insignificant length to allow the recreationist a quality experience in productive waters. Of significant importance is the recreational opportunities that would be afforded to the handicapped, elderly, and financially disadvantaged through selective public pier construction.

e) "Historic Resources" 6.4.5. (page 60)

6.4.5.1. Definition

We note this section makes reference to the "National Register of Historic Places" and its administration by National Park Service (NPS). This reference and all others in the coastal program should be changed in accord with the transfer of duties and responsibilities between ICRS and the NPS.

6.4.5.2. Policy

It is recommended this policy statement be expanded to require consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officer should proposed development be adverse to cultural resources.

6.4.5.3. Rationale

The first sentence makes reference to "representative and unique historical and archeological (cultural) resources . . ." It is unclear as to what constitutes "representative" or "unique". We recommend these references be more clearly defined.

f) "Beaches Policy", 6.5.1.4. (page 71)

Under "(b)" it is stated "Development with paving and structures is prohibited on beaches, unless the proposed development has no prudent or feasible alternative on a non-beach location."

The elimination of paving automatically restricts those individuals confined to wheelchairs from using the sandy beaches. In addition, recreational support facility development such as comfort stations are necessary structures where public use is encouraged. We also note these policies are in direct conflict with the policies stated on page 135, "7.3 Resort/Recreational Use Policies, 7.3.1. and 7.3.2." These sections encourage facilities for the "physically handicapped" and recreation in the development design. It is therefore recommended the "Beaches Policy" section on page 71 be changed to coincide with the "Rationale" under "Resort/Recreational Use Policies" on page 135 and 136.

g) "6.11 General Location Policy" (page 131)

Item "(c)" should be expanded to read ". . . preserve, protect and enhance the natural environment" (by adding) "and cultural resources".

h) 7.5 Public Facility Use Policies (page 147)

Under item 7.5.5. "The construction of bicycle and foot paths, in residential projects, and fishing catwalks and platforms on new or improved bridges is required." We commend the inclusion of these requirements. The paths will provide needed recreational opportunities while aiding energy conservation efforts. Additionally the catwalks and platforms will increase recreational fishing/crabbing opportunities and complement the recommended action in the aforementioned discussion of docks and piers under the "Water Acceptability Table."

i) "Division of Parks and Forestry" (page 169)

This section should be expanded to describe in more detail the responsibilities of the Office of Historic Preservation and include appropriate reference to the Statewide Comprehensive Historic Preservation Plan and Survey.

j) "Recreation" (1st paragraph, page 181)

This section has two (2) incorrect statements. Reference was made to "the Historic Preservation Act (P.L. 89-665)." This should read "Historic Preservation Act of 1966, as amended." In the last sentence it is stated ". . . Bureau of Outdoor Recreation and its successor National Heritage Program." Reference to "its successor" should be changed to "Heritage Conservation and Recreation Service."

k) Historic Sites and Districts and Areas of Unique Cultural Significance (1st paragraph, page 185)

There are three (3) changes required in the paragraph as follows:

- (1) In referring to "The national interest in historic sites and districts . . ." this should be changed to read "The national, state, and local interests in archeological and historic sites and districts."
- (2) Reference to the Natural Historic Preservation Act of 1974 should be changed from "(P.L. 93-29)" to "(P.L. 93-291)".
- (3) Reference to the "National Historic Preservation Act of 1966 (Executive Order 11593)" should be changed to "National Historic Preservation Act of 1966, as amended." Executive Order 11593 is an incorrect reference.

l) Areas of Preservation and Restoration (last paragraph, page 196)

It is stated in the second sentence "The Commissioner of DEP, the State Historic Preservation Officer, may approve nominations of publicly or privately owned areas and sites for inclusion on the Register." (emphasis added). In the case of the National Register the SHPO "submits nominations" for consideration to the "Keeper of the Register" who determines if approval should be granted. This differentiation in responsibilities should be corrected.

B. Draft Environmental Impact Statement

The subject statement is relatively brief and not specific in consideration of the content and significance of the program. It would be improved if it were expanded to reflect more detail on the anticipated effects of program actions and policies. However, having been incorporated in the NJCMP/BOSS document, the reviewer gains a collective and ample picture of the total program and related impacts. We therefore do not recommend expansion of the statement unless it eventually becomes an independent document.

for *Meg Maguire*
Chris Thermal Detapote



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

112 West Foster Avenue
State College, PA 16801

June 28, 1978

Mr. David Kinsey
Department of Environmental Protection
Division of Marine Services
P.O. Box 1889
Trenton, N.J. 08625

Dear Dave:

Enclosed is a copy of a statement presented by Edward Perry at the June 13, 1978 public hearing on New Jersey's Coastal Management Program held in Toms River, New Jersey.

Sincerely yours,

Edward Perry

Edward Perry
Environmental Planner

Enclosure



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
112 West Foster Avenue
State College, PA 16801

2.

My name is Edward Perry, I am an Environmental Planner with the U.S. Fish and Wildlife Service at State College, Pennsylvania. Because of the Service's broad-based responsibility for managing, enhancing and conserving fish and wildlife resources, we have reviewed New Jersey's Coastal Management Program in some detail. These comments represent the official views of the Fish and Wildlife Service at this time and not necessarily those of the Department of the Interior, as yet. An official conformation copy of these comments will be forthcoming within two weeks.

One of the major strengths of New Jersey's Coastal Management Program is that it recognizes the importance of protecting existing valuable coastal resources for fish, wildlife and recreational purposes. The Service fully supports this objective and we will work with New Jersey to provide assistance during the implementation of their coastal program. We are also particularly pleased with the first basic coastal policy, which is to protect the coastal ecosystem.

Although the program is oriented toward coastal resource protection, there are a number of weaknesses that should be corrected to strengthen the coastal resources protection element of the program. For example, despite the fact that the Coastal Zone Management Act and CAFRA State law require an inventory of natural coastal resources, we believe that the inventory has not been fully completed. New Jersey has published a separate publication entitled: An Inventory of the New Jersey Coastal Area. However, in our opinion, this document is simply a listing of bibliographic materials and does not fully meet the inventory requirements of both State and Federal law.

A suitable inventory should have identified and mapped areas of unique or vulnerable habitat, critical habitat for endangered species, important recreational areas, areas where development is dependent on access to coastal waters, areas of significance for commercial or industrial development, urban concentration areas, high hazard areas from storms, erosion, floods, etc., prime fishing sites, important forest areas, anadromous fish pathways, special wildlife habitats and other coastal areas suitable for development or preservation. Much of this information is already available. These areas should have been mapped and incorporated into the Coastal Location Acceptability Method (CLAM) process.

To plan for the future, it is essential to know what resources are available, in what quantity and quality, and where they are located. A comprehensive inventory would have fulfilled this need. Because these inventories have not been fully completed, we believe the CLAM process lacks an adequate data base. Although CLAM appears to be an excellent mechanism for evaluating permits, CLAM does not go into effect until a permit is applied for. Because of the lack of a complete coastal resources inventory and adequate mapping, permit applicants will not be knowledgeable of where important coastal resources are located until they actually go through the permit process. Maps that clearly show the most important coastal areas would serve to guide development and increase the predictability of the permit process. We therefore recommend the basic coastal resource inventory be completed.

A second weakness of the program is that it fails to address the cumulative impacts of small development projects. For instance, housing developments of less than 25 units are not subject to the CAFRA permit process.

Another concern relates to the Location Policies. Although the rationales behind the Location Policies are excellent, we believe some of the policies need strengthening by the elimination of ambiguous words and vague phraseology. It is the Service's opinion that it is especially important to prevent further habitat destruction in Special Water Areas in New Jersey.

Our review of the program reveals it fails to provide a buffer zone around Geographic Areas of Particular Concern. We are pleased that wetlands located inland of the CAFRA boundary and within the coastal zone boundary are designated as GAPC's. However the shoreline uses adjacent to these coastal wetland GAPC's are not regulated by the program. Thus, some uses can be expected to cause significant adverse impacts to this resource of national interest. We therefore recommend that buffer zones be established around all GAPC's and that uses within the buffer zone be regulated by the Coastal Management Program.

Despite these weaknesses, we believe this coastal management program is a significant step toward wise use of a finite resource base. With some modifications, it can be the plan that will enable New Jersey to grow and prosper while preserving a heritage of national significance for its citizens, now and in the future.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

Class. ER-2

26 JUN 1978

Ms. Kathryn Cousins
Regional Manager, North Atlantic Region
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Ms. Cousins:

We have reviewed the draft environmental impact statement (DEIS) on the New Jersey Coastal Management Program (NJCMP)-Bay and Ocean Shore Segment, and offer the following comments for your consideration in preparing a final environmental impact statement (FEIS). Detailed comments are attached.

The NJCMP-Bay and Ocean Shore Segment is a significant attempt to provide a systematic guide for developers and others interested in New Jersey's coastal zone. Several deficiencies have, however, been identified and should be addressed in the FEIS.

The EPA is concerned that the NJCMP-Bay and Ocean Shore Segment does not incorporate policies reflecting the need to integrate the air and water requirements established pursuant to the Clean Water Act (CWA) and Clean Air Act (CAA). Required by section 307(f) of the Coastal Zone Management Act (CZMA) and section 923.44 of the implementing regulations, this matter is not mentioned on the summary table (p.232) which guides users of the DEIS to the NJCMP's requirements for approval.

In addition to complying with applicable effluent limitations and water quality standards, EPA urges the NJCMP to incorporate other elements of the CWA, including the environmental guidelines for dredged and fill materials being developed pursuant to section 404(b), the regulatory aspects of 208 plans, and section 403 ocean discharge criteria. The NJCMP, and its coastal policies, must also be able to incorporate any subsequent changes to the CWA (or CAA) or revisions to water quality standards, 208 plans, (and state implementation plans established pursuant to the CAA).

-2-

The NJCMP must detail the efforts being made to coordinate its coastal planning with applicable water and air quality planning. Documentation of this coordination is notably lacking in the DEIS. Further, the potential of the air and water quality programs to assist the NJCMP in controlling development and protecting significant coastal resources has not been fully realized. The mutual benefits from these programs can only be realized through close cooperation.

The EPA is also concerned that the coastal policies relating to air and water quality have been made without due consideration of the conditions in the other segments and without coordination with the other segments. The EPA strongly recommends that the NJCMP's coastal policies, particularly those encouraging facility siting in other segments, carefully consider the air and water quality implication on all other segments of New Jersey's coastal zone and inland areas.

The EPA urges the NJCMP to include regional water treatment plants within the definition of facilities in the national interest. Because section 307(f) of the CZMA mandates the incorporation of the requirements of the CAA and CWA into the plan, the FEIS for the NJCMP must also provide that, in the siting of national interest facilities, the national interest is not used to evade the air and water quality requirements.

Further, the NJCMP's language preceding the list of licenses and permits (p. 188) appears to imply that only activities which must also obtain a state permit are subject to consistency. Echoing the internal activities of a state is not the sole intent of the consistency provision.

The EPA generally commends the NJCMP for its coastal policies guiding major developments and activities affecting wetlands and riparian lands. The municipality has primary jurisdiction over local matters, i.e. those affecting only one municipality. However, as admitted in the DEIS, this could cause cumulative impacts to more than merely one municipality. The FEIS should consider use of a mechanism to prevent such impacts. In addition, housing developments with less than 25 units, and commercial facilities are not subject to the NJCMP's coastal policies. The cumulative impacts of a series of small developments can significantly affect air and water quality, wetlands, groundwater resources, and overall esthetic values. The policies also provide no means of controlling activities outside of, but significantly affecting, the coastal zone.

The EPA is not satisfied that the NJCMP-Bay and Ocean Shore Segment has adequate authorities to insure that development will be in conformity with coastal policies. Because the NJCMP's management system is designed around the Coastal Area Facilities Review Act (CAFRA)--from which commercial facilities and housing developments of less than 25 units are excluded--significant cumulative impacts of small scale developments would be ignored. In addition, because it is primarily intended for CAFRA-type facilities, the NJCMP provides very little guidance to local governments regarding developments not covered by the NJCMP, i.e. housing less than 25 units and

DETAILED COMMENTS

commercial facilities. The NJCMP's management system also appears to have no means of insuring that the actions of other state agencies, outside of the Department of Environmental Protection (DEP), will be consistent with coastal policies. Even in the case of the Department of Energy (DOE), which is finalizing a draft memorandum of understanding with DEP, there is currently no assurance that its actions, or the allocation of CEIP funds (which are administered by DOE), will be consistent with coastal policies.

In light of these concerns and in accordance with EPA procedures, the DEIS has been rated ER-2, indicating our environmental reservations (ER), and our need for additional information (2).

We remain very interested in assisting New Jersey to develop a wise management strategy for its coastal zone. Please contact this office at (212) 264-8556 if we can be of help.

Sincerely yours,

Michael Bonchonsky

Michael Bonchonsky
Acting Chief
Environmental Impacts Branch

Enclosure

Integration of the Requirements of the Clean Air Act and Clean Water Act

The New Jersey Coastal Management Plan (NJCMP) does not specifically reference the need to incorporate the requirements of the Clean Air Act (CAA) and Clean Water Act (CWA). This incorporation is required by section 307(f) of the Coastal Zone Management Act (CZMA) and the implementing regulations, 15 CFR section 923.44. Further, in the summary table of findings, necessary for program approval (referenced to the applicable pages in the NJCMP), the incorporation of air and water quality requirements is not included as one of these findings. Because these requirements are not referenced in this summary table, NJCMP staff and reviewers of the program could be given the misleading impression that the requirements of the CAA and CWA do not need to be incorporated. This should be corrected in the FEIS.

The EPA recommends that the NJCMP's discussion on page 7 of the importance of water quality to the coastal ecosystem should also include air quality and the interrelation of the two to the vitality of the coastal ecosystem.

The NJCMP also fails to address the cumulative air and water quality impacts of small-scale residential and commercial growth in the coastal zone.

Water Quality

Much to EPA's satisfaction, the coastal resource and development policies within the NJCMP-Bay and Ocean Shore Segment will contribute to the maintenance of New Jersey's coastal water quality. We fully support the NJCMP's general policy to protect the coastal ecosystem, and to prohibit or discourage uses that would contribute to the violation of applicable surface and groundwater quality standards. We must, however, express our concern over the NJCMP's failure to fully coordinate efforts with EPA.

The NJCMP states that "In addition to the Water Areas policies presented here, proposed coastal development must also comply with applicable state and federal effluent limitations and water quality standards" (p. 39). This statement, supportive of EPA programs on its face, gives rise to a basic issue that we feel must be resolved before program approval can be granted. Compliance with applicable effluent limitations and water quality standards does not fully satisfy CZMA section 307(f)'s mandate that the "requirements" established pursuant to the Clean Water Act (CWA) be incorporated into CZM programs. Such a narrow interpretation of "requirements" runs contrary to the intent of Congress which envisioned "effluent controls, emission controls, and land use regulations to control air and water pollution" as "requirements." The NJCMP's consideration of only limitations and standards does not meet the statutory intent. The EPA believes that other elements of the CWA, such as the environmental guidelines for the discharge of dredged and fill materials to be developed pursuant to section 404(b) of the CWA, the regulatory aspects of 208 plans, and section 403 ocean discharge criteria, must also be incorporated in the NJCMP. In addition, the NJCMP should state that any subsequent changes in CWA requirements or revisions to water quality standards will be incorporated in the plan.

The EPA urges the NJCMP to detail those efforts that are being made to coordinate its coastal zone planning with the water quality planning being conducted by the Division of Water Resources pursuant to section 208 of the CWA. At present, the NJCMP only includes the statement that the "two programs will be coordinated and made consistent." (p. 168) Specific efforts must be made, and documented, to ensure that both the NJCMP and applicable 208 plans have consistent policies regarding growth and development in the coastal zone, and that resources to be protected by one program will not be degraded by the other.

The EPA recommends that the coastal plan explicitly state that coastal planning activities must be coordinated with 208 planning for both point and non-point sources. The NJCMP should detail in the FEIS the benefits that can accrue from effective coordination between these two programs. Because the CAFRA permit process does not appear to extend to most non-point sources of pollution and because it deals primarily with moderate to large scale development, it is important that, at least until the 208 processes are in place, the NJCMP make certain that point and non-point sources are not allowed within the coastal zone if they would interfere with achievement of the goals being established in the 208 plans. Steps toward developing a close working relationship with the Division of Water Resources should thus be documented in the FEIS.

We urge coordination of those policies relating to the disposal of dredged and fill material. Pursuant to section 404(b)(1) of the CWA, EPA is developing environmental guidelines to govern the discharge of dredged or fill materials. The NJCMP makes no mention of these guidelines when it sets out those policies which will govern dredged spoil disposal in the coastal zone (p. 47). These guidelines are requirements of the CWA and should, therefore, be incorporated in the NJCMP.

The EPA notes the failure of the NJCMP to include sewage treatment plants among the listed national interest facilities, the siting of which must be given adequate consideration by the program. Although they are included as uses of regional benefit, (pp. 192-193), section 923.52 of the administrative regulations, which govern the approval of state coastal management programs, specifically includes regional water treatment plants as facilities in which there may be a national interest in planning or siting. For this reason, EPA believes that sewage treatment facilities, the construction of which is funded by the federal government under section 201 of the CWA, should be added to the list of national interest facilities.

Commercial and industrial development criteria should be revised to include a consideration of waste compatibility between the proposed industry and the receiving treatment facility.

Drinking Water

The EPA notes a general lack of consideration in the NJCMP resource policies of the protection of underground sources of drinking water. Resource policy 8.5.1 (p. 152) on groundwater use strives to prevent salinity intrusions and

the significant lowering of the water table, but does not identify other potential contaminants of drinking water. This policy should be revised to make the overall protection of groundwater quality a central program concern. In this regard, the value of sole source aquifers should be specially noted. Underground injections and other activities which might impact sole source aquifers should be carefully regulated. To aid in this regulation, reference should be made to the national primary and secondary drinking water standards which are being developed pursuant to the Safe Drinking Water Act. The policy on groundwater should also clearly recognize the potentially adverse cumulative and secondary impacts which may be induced by coastal growth and development.

Solid Waste

The NJCMP incorporates most of EPA's concern regarding the planning for and disposal of solid waste. We do suggest, however, that use policy 7.5.7 be altered to reference the guidelines being developed pursuant to the Resource Conservation and Recovery Act (RCRA). These guidelines will establish criteria for acceptable solid waste disposal sites. Such incorporation, which seems to be indicated in resource policy 8.16.1 (pg. 161), would further the goals of both the NJCMP and the solid waste management program. Similarly, EPA urges an overall effort to coordinate the policies and procedures of the NJCMP with those of the Solid Waste Administration's solid waste management plan. If such efforts are already underway, this fact should be mentioned in the NJCMP.

The EPA urges that "solid waste" be entered in the NJCMP as a national interest alongside air and water (see Chapter 5, pp. 182, 183). A paragraph here on waste management would keep solid waste considerations on an important level and maintain the consistency of waste considerations in the plan. Proposed paragraph: Solid Waste. The New Jersey Coastal Program supports the attainment and maintenance of proper solid waste management. National interest for waste management is currently being formulated in rules and regulations under RCRA. The federal prohibition of open dumping, restrictions on disposal site locations in wetland, floodplain and critical habitat areas, and requirements for disposal of non-hazardous and hazardous wastes will support and strengthen New Jersey's solid waste laws. The DEP's Solid Waste Administration will assume the major responsibility in enforcing federal requirements on solid waste.

The policy on solid waste (8.16.1, pg. 161) should include examination of proposed coastal zone projects in terms of waste type and volume expected, disposal method employed, and effects on disposal sites.

The EPA requests that "solid waste standards" be incorporated into the present policy on power plants: "New or expanded non-nuclear fossil fueled plants will be...consistent with applicable air and water quality standards" (7.4.12, p. 145). An amendment would also be needed on p. 130.

The NJCMP provides for a location policy that utilizes an eight step process for determining the acceptability of a proposed project. In the illustrative example of the step process, mapped areas encompass the project site and its surrounding area. Yet in a discussion of the requirements for

mapping, special areas are asked to be identified only on a proposed site. How much of the surrounding area, if any, is expected to be represented on maps and incorporated into the decision process for approval of the proposed project?

Does the policy on steep slope development (6.4.10.2, p. 65) apply to proposed sanitary landfill operations?

Air Quality

The EPA finds the NJCMP-Bay and Ocean Shore Segment's policy on air quality preliminarily acceptable, provided that several revisions are incorporated into the FEIS. The EPA's comments concerning consistency of prevention of significant deterioration permits are included in the discussion of Governmental Affairs.

The EPA recommends that the policy on air quality more clearly recognize that both the location and type of facilities within the coastal zone can have various direct (through their emissions) and indirect (through emissions from induced secondary developments) effects on coastal air quality. We urge that more specific procedures for coordinating the NJCMP and the state implementation plan (SIP) be developed because the controls established by the SIP potentially represent a major factor controlling the pattern, type, and intensity of coastal growth, and because, as discussed below, facilities encouraged to develop outside of this segment of New Jersey's coastal zone may be subject to stringent air pollution controls. Specific procedures must also be included to insure that the coastal policy on air quality is flexible enough to be modified to meet revisions to the state implementation plan or to amendments to the Clean Air Act. (p. 157).

As discussed below, EPA is concerned that the coastal policies relating to air and water quality for this segment have been made without consideration of the conditions in the other segments and without coordination with the other segments. Because much of industrialized New Jersey has or could have air quality problems, EPA strongly recommends that the NJCMP clearly lay out the location of nonattainment areas in all segments of New Jersey's coastal zone. Each segment must be included because several policies of the Bay and Ocean Shore segment, particularly those relating to industrial growth, as discussed below, are encouraging growth in the other segments of the state, the NJCMP's for which have not yet been completed. The EPA strongly suggests that the Bay and Ocean Shore segment not develop policies concerning the siting of industrial and energy facilities in a vacuum; they should carefully consider the air (and water) quality implications of these policies on the present air (and water) quality conditions within all segments of New Jersey's coastal zone.

The NJCMP-Bay and Ocean Shore Segment's discouragement of industrial growth--- such as pipeline coating yards and the prohibition of new major pumping and ancillary facilities (gas processing plants, oil storage terminals, and booster terminals)---and its encouragement of this growth in the other segments may tend to exacerbate existing air (and water) quality problems. The EPA recommends that the potential adverse effects of this policy be analyzed for the entire coastal zone in the FEIS.

The EPA suggests that the air quality policy (p. 157) be modified as follows:

"Coastal development shall conform to all applicable state and federal emissions regulations, ambient air quality standards, prevention of significant deterioration criteria, nonattainment criteria, and other regulations or guidelines established pursuant to the federal Clean Air Act, as amended in 1977. Revisions to the SIP or amendments to the Clean Air Act will be reflected in the coastal policies, as necessary."

The EPA also encourages that the NJCMP include in the rationale for its air quality policy a discussion of the possibility for emission tradeoffs to allow the siting of new facilities in nonattainment areas of New Jersey's coastal zone.

The EPA supports the NJCMP's transportation policies which call for a shift to car pools and other modes of transportation besides the automobile to reduce emissions (p. 157). The EPA urges the NJCMP to explore how the protection offered by a Class I designation can protect significant coastal areas in addition to Brigantine National Wildlife Refuge.

The EPA specifically recommends that the NJCMP reference the air quality implications of OCS oil and gas development. Both onshore facilities and fixed structures on the OCS are subject to the requirements of the CAA and cannot be permitted if they would hamper the attainment and maintenance of National Ambient Air Quality Standards (NAAQSs).

Finally, EPA finds the lack of mention of specific coordination procedures between the NJCMP and the NJ SIP, implemented by the Division of Environmental Quality, inadequate (p. 157-158, 169). This should be corrected in the FEIS.

General

The EPA encourages the NJCMP-Bay and Ocean Shore Segment to develop specific policies on noise and pesticides within the coastal zone and procedures for coordinating with the Division on Environmental Quality.

Coastal Policies

The EPA finds a vast majority of the NJCMP policies guiding major developments covered by CAFRA, and both the major and minor development covered by the Wetlands and Riparian Programs, to be commendable. Moreover, EPA commends the NJCMP for the overall organization of the policies. The three tiered screening process consisting of Coastal Location Acceptability Method (CLAM) policies, use policies, and resource policies is a convenient system for both program staff and coastal developers. The definitions, policy statements, and rationales are clear and should provide much guidance.

The EPA, however, finds that many developments are not covered under the coastal permitting programs--namely those developments too small to be considered under the CAFRA program and particularly those which may be located adjacent to wetlands or riparian lands---and will not, therefore, be subject to the coastal management policies. Because these smaller developments, particularly a series of small developments, can have significant impacts on wetlands, riparian lands, and coastal waters---especially when viewed from a cumulative perspective---EPA requests clarification of how the NJCMP will address these developments and their impacts. The issue of cumulative impacts by small development activity, particularly on the attainment and maintenance of air and water quality standards, represents a serious EPA reservation concerning the NJCMP policies.

On the subject of using the coastal policies to guide small scale development, EPA notes the NJCMP statements that the "(c)oastal policies could,... because of their comprehensive nature, be used to guide other decisions not strictly subject to the New Jersey Coastal Program." (p. 11), and that "... the policies will serve as a basis for determining the consistency of actions proposed by federal, state and local agencies with the Coastal Program." (p. 23) While these potentials theoretically exist, EPA does not see any indication that the policies will actually be used or adopted by local agencies for application to small scale developments. The NJCMP must have a measure of control over these small, but cumulatively significant, developments. We urge treatment of this critical aspect by developing provision for substantive input into local planning and decision making. The EPA suggests that the planned Estuarine Study and the Development Potential Study (p. 197) address, in part, the effects of certain smaller scale development and alternative mechanisms to monitor and control impacts. The EPA urges that, from these studies, policies on individual development types that are individually small, but cumulatively significant, be developed and added to the Use and Resource Policies. Moreover, EPA recommends that NJCMP develop CLAM policies that specifically address development that would take place on lands immediately adjacent to wetlands and riparian lands. The EPA would be very willing to work with the NJCMP on this problem.

Examples of small scale development that may be significant and with which the EPA has strong concerns are construction on dunes and installation of septic tanks. The EPA requests, for example, clarification of how the NJCMP would prevent individual housing construction on coastal dunes. Although the dune policies are commendable (6.4.2.2, p. 55), EPA finds that the Coastal Program has no way of stopping small developments on dunes. Because several individual housing developments on dunes may be no less damaging than a single large one, the NJCMP should be able to regulate small, as well as large, developments in this critical resource area. Septic tanks, which are by nature small scale (and would not be subject to the NJCMP unless they are to be located in a wetland or riparian land area), can also have considerable water quality impacts if placed near a water body. Again, the NJCMP should develop a means to control these developments. Moreover, the cumulative air quality impacts of a series of small developments have not been addressed. The EPA strongly urges that the NJCMP be revised to include the legal authority to regulate and plan for such uses. In sum, EPA desires

clarification on the procedures for controlling the impacts of small scale dune developments on water and air quality, as well as the impacts of small developments adjacent to coastal waters, wetlands, and riparian lands. The EPA notes that septic tanks are mentioned on page 84 and the reader is referred to the resource policies. We cannot, however, find any specific reference to septic tanks in the resource policy section despite the statement that they are discussed separately. We urge clarification of this matter.

The EPA commends the NJCMP for its stipulation that new marinas provide adequate marine sanitation pump out stations. The encouragement that marina expansion dredging be in a non-wetland area (i.e., dry land) is also commendable. However, if harbors are dredged into dry land areas with only a narrow entrance to water bodies, the resulting harbor could serve as a pollution trap for oils and chemicals associated with routine boat maintenance and marine operation. Moreover, poorly flushed marinas can produce substandard water quality with low dissolved oxygen levels. New marinas dredged into dry land areas must be designed to avoid such a potential. The EPA urges that the NJCMP espouse policies that avoid the creation of deep dead-end marina harbors with poor flushing characteristics.

The EPA commends the NJCMP policy concerning solid waste conservation and recycling (p. 147). This is a major problem area concerning which EPA welcomes positive policy statements encouraging foresighted solutions that are environmentally and conservationally beneficial.

On the other hand, EPA takes exception to the broad policy statement concerning recreation (7.3.1, p. 135). Although EPA appreciates the escalating demands for coastal recreation, it does not believe that highest priority should necessarily be reserved for "those uses that serve a greater, rather than lesser, number of people (p. 135). While EPA recognizes the recreational benefits of resorts such as Atlantic City, it would not recommend that the entire New Jersey coast be developed in this fashion simply because it provides a maximum number of recreational opportunities. The EPA recommends that this policy reflect the need for a diversity of recreational experiences, including high, middle and low density types. The importance of preserving certain low density recreational areas cannot be underestimated, especially because many such areas are rapidly disappearing.

The EPA is particularly pleased with the Water Acceptability Table (p. 45). It is a well thoughtout expression of coastal policies. The only concern that EPA has with this table relates to two of the entries under Boat Ramps. The EPA requests clarification on why the NJCMP discourages their placement adjacent to medium depth back bays, yet conditionally accepts them for shallow semi-enclosed bays and shallow back bays (p. 46).

The EPA is concerned about a NJCMP policy that appears to encourage development on the Central Barrier Island Corridor (6.4.3.2, p. 55) because many are already heavily developed. Although EPA appreciates the rationale that encourages "infill projects" and "discourage(s) extension of development on barrier islands" (p. 57), EPA is concerned that New Jersey's barrier islands

will become high density development areas. This would not only create intense pressure on the quality of the air and of bay water due to chronic pollution from high density use, but would also aggravate already dangerous conditions associated with the evacuation of large numbers of people through narrow access routes in times of emergency (such as hurricanes). These policies do not seem to reflect consideration of increased costs of providing public services to the increasing numbers of people on barrier islands. The carrying capacity of these areas, and the impacts and costs of exceeding it, must be recognized in the coastal policies.

The EPA commends the NJCMP's Public Facility Use Policy (7.5, p. 147) which conditions new or expanded public facility development on need and the unavailability of alternative technologies for meeting the need.

The EPA is pleased to see that the NJCMP policies address the important issue of beach access. However, the EPA strongly urges the NJCMP to change its beach policy from one that discourages development that unreasonably restricts access to beaches to one that prohibits such development. Unreasonable restriction of beach access should be grounds for denying such development. The EPA would also like the NJCMP to add a clarification statement concerning its policy on the construction of hotels and restaurants along retained water's edges (6.5.3.3, p. 78). While EPA concurs with the DEIS provided that these facilities are constructed on existing retained water's edge areas, the EPA urges that a qualifying statement be added stating that installation of retaining structures (e.g. bulkheads, revetments, etc.) at the water's edge for the purpose of constructing hotels or restaurants is prohibited because these facilities are not water dependent uses.

The EPA strongly supports the NJCMP policy discouraging development in flood hazard areas (6.4.4.2, p. 59) and wetlands (6.5.1.2, p. 69). In support of this policy, EPA urges the Coastal Program to reference President Carter's Executive Orders on Floodplain Management (Executive Order 11988) and on Wetlands (Executive Order 11990), as well as the guidelines for implementing these orders (published in the Federal Register on Friday, February 10, 1978, Part VI of Vol. 43, No. 29, pp. 6030-6055). This reference would add a national dimension to these coastal resource and development policies. Similarly, EPA supports the NJCMP policy concerning historic resources (6.4.5.2, p. 60), but urges reference to the complementary responsibilities and activities conducted by the Department of Interior's Heritage Conservation and Recreation Service (HCRS). A statement in the rationale (6.4.5.3) expressing the intention to coordinate with the HCRS in activities of mutual interest would be desirable.

The EPA supports the NJCMP policy encouraging development that creates open space. The EPA recommends, however, that the NJCMP state how it will implement this policy. For example, a provision of the Clean Water Act of 1977 requires state 208 programs to include an element concerning the "...identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential

use of lands associated with treatment works and increased access to water-based recreation" (FWPCA section 208(b)(2)(A)). A statement should be added to the rationale (6.4.9.3, p. 64) expressing the intent of the NJCMP to coordinate and work with the state 208 agency on this matter in coastal areas. The EPA also recommends addition of a similar statement concerning the intent of the NJCMP to coordinate and work with the state's Green Acres Program (described on page 169) concerning the identification, establishment of acquisition priorities and actual acquisition of open space lands in the coastal zone.

Effectiveness Of The Management Scheme

The EPA is not satisfied that the NJCMP has adequate legal authorities to control development in a manner that will adequately reflect and conform with the established coastal policies. The deficiencies identified below should be addressed in the FEIS.

The NJCMP - Bay and Ocean Shore Segment uses a networking system that relies on the Coastal Area Facility Review Act (CAFRA), wetlands and waterfront development (riparian) programs, a shore protection program, and the regulatory activities of New Jersey's Department of Energy (DOE). The management system for CAFRA-defined facilities, and for those developments subject to the other authorities, is notable in many respects. The policies for coastal location, use, and resources provide developers and others with a systematic means of determining whether a proposed project will or will not be approved in a particular area of the coastal zone and the types of conditions, if any, that would obtain. This system provides assurance to the developer and to EPA that air and water quality requirements are factored into the decision. The EPA notes that the coastal policies will be adopted as administrative rules, increasing the predictability of decisionmaking.

The NJCMP legal authorities are, however, unsatisfactorily limited. The coastal policies serve as substantive standards for only the selected uses defined in the management system. This is very important because the CMP's management system is designed primarily around CAFRA which appears to regulate only moderate to large scale industrial and residential developments. The EPA is concerned that CAFRA does not address commercial facilities or many smaller-scale developments and that the threshold of 25 units for housing developments is much too high. Because the Bay and Ocean Shore Segment of New Jersey's coast is not as heavily industrialized or densely populated as other New Jersey coastal areas, the cumulative, incremental impacts of a series of small developments--commercial and residential--can be very damaging not only to air and water quality, but also to the quality and appeal of the coastal environment generally. While the NJCMP notes that many of these decisions are local in nature, the coastal program provides no system to assure that local governments plan for and regulate the impacts of such growth in a manner consistent with the state coastal policies. These policies are binding primarily on CAFRA-type facilities; they are not applicable to local decisions. The coastal program must do more than, as it states on page 2,

"serve as guidance to municipal, county, and regional agencies with coastal decisionmaking responsibilities." The EPA suggests that the NJCMP supplement its control of land and water uses in the coastal zone, to be attempted only through Technique B of CZMA section 306(e)(1)---direct state land and water use planning and regulation---with one of the other techniques that can reach those more local activities. The EPA suggests that Technique A---local implementation based on state criteria and standards---be investigated for inclusion into the program. If revised to reflect local needs, the NJCMP's policies on location, use, and resources could serve as criteria and standards for local implementation.

The NJCMP-Bay and Ocean Shore Segment also provides no assurances that other state agencies -- outside of DEP -- with the exception of New Jersey's Department of Energy (DOE) (discussed below), will be legally bound by coastal policies. While the program states that the actions of other state agencies will also follow the coastal policies to the maximum extent permitted by law, no mechanisms for ensuring this consistency, such as an executive order binding state agencies to act consistently with coastal policies, are provided. The NJCMP must address this deficiency in the FEIS.

Questions also arise concerning the emerging relationship between New Jersey's DEP and DOE. The EPA supports the efforts of these two state agencies to coordinate overlapping responsibilities, as evidenced in the draft memorandum of understanding (MOU) between them. The EPA finds, however, that a number of revisions must be made to this agreement before it is finalized. Further, the CMP should not be approved until the MOU is finalized, and then, only if the agreement will be binding on both agencies.

The relationship between the NJCMP and the Energy Master Plan being prepared by DOE should be firmly established. The following issues should be dealt with in the final MOU: (1) how will conflicts between the Energy Master Plan and the energy facility planning process (which must be submitted to OCZM by October 1, 1978) be resolved?; (2) will DOE be bound by the Master Plan or by the NJCMP's policies when the two conflict?; (3) will the Energy Master Plan supercede DEP's licensing authority over energy facilities under CAFRA?; and (4) will the Energy Master Plan incorporate the NJCMP's coastal resource and development policies?

The NJCMP and the MOU fail to discuss the criteria which will guide the Energy Facility Review Board when it is called upon to resolve a DEP coastal energy facility permit application appealed by DOE. While the MOU appears to bind DOE to the NJCMP's coastal resource and development policies -- they "agree to accept" them, at least until the Energy Master Plan is adopted -- no similar assurance is found in the draft MOU in regard to the Energy Facility Review Board. No standard is provided. The EPA believes that Board decision must be guided by, and consistent with, the NJCMP's coastal resource and development policies.

The EPA also notes that the MOU provides for DOE's acceptance of the NJCMP policies only in the case of the siting of energy facilities in the coastal zone. As noted above, all actions of all state agencies should be consis-

tent with coastal policies. Significantly absent is DOE's distribution of funds under the CZMA's Coast Energy Impact Program (CEIP) which appears not to be guided in any way by considerations relevant to the state's coastal program, despite the direct application of these funds in the coastal zone. Regulations issued by the OCZM, however, clearly subject the CEIP to the federal consistency requirements (15 CFR section 930.90). Therefore, the MOU should be amended to clearly reflect the fact that allocations of CEIP funds should be consistent with the goals and policies of the NJCMP. This fact is already reflected in the body of the NJCMP (p. 171). These concerns should be addressed in the FEIS.

Even if this segment of New Jersey had adequate authorities, the other segments, which are not subject to CAFRA, may not. While EPA recognizes that this DEIS addresses only the Bay and Ocean Shore Segment, NEPA reviews must look to the future when the segments must be linked. If the other segments lack authorities to implement their programs, many problems and conflicts may arise. It is suggested that the FEIS discuss the authorities that the other segments will rely on and the procedures for combining the segments, with a timetable.

The EPA also finds that the present management system does not appear to have either authorities or the policies which reflect the need to manage activities outside of, but adjacent to, the defined coastal zone of this segment -- CAFRA and wetlands boundaries. The potential for inland development to adversely affect the coastal zone may be significant and should be addressed in the FEIS.

The EPA is concerned about the NJCMP - Bay and Ocean Shore Segment's approach to Areas of Particular Concern (APC). First, EPA does not agree that the "availability of State legal authorities to promote desired uses of the areas" is a valid criteria for APC designation (p. 194). Rather APCs should be designated based on an inventory of coastal resources to determine which areas need special management. That is, the management system should be tailored to meet the areas; areas should not be designated because of the existence of a management system.

Because of New Jersey's strong wetland program, the designation of wetlands as a generic APC is commended (pp. 194-195). The EPA questions, however, how areas of wet sand beaches conveyed by a "riparian grant" can be managed as an APC (p. 195). The EPA desires clarification of this point in the FEIS. As noted above, the NJCMP must address how activities adjacent to wetlands, but outside the coastal zone, will be controlled.

The EPA also requests clarification of the disposition of the public nominations for APCs. In reading this section, we are left with the impression that simply too many nominations were received, so the program failed to respond to any of them. Because the public was asked to provide nominations, a good faith effort should be made to evaluate these sites and designate significant areas as APCs.

The FEIS should identify situations where the processes established pursuant to the CAA and CHA can be used to complement APC protection -- such as the

designation of Class I areas mentioned under air policies above and the protection of sensitive areas by the 208 planning process.

It is unclear whether a listing of state programs that relate to parks, species preservation and historic places constitutes the type of criteria specified in section 306(c)(9) of the CZMA for designating areas for preservation or restoration. It also appears that restoration of specific areas is not mentioned. The adequacy of this element in meeting the requirements of the CZMA must be addressed in the FEIS.

The NJCMP should insure that the siting of uses for regional benefit must not affect applicable air and water quality requirements, established pursuant to section 307(f) of the CZMA.

Governmental Affairs

The EPA believes that the NJCMP's definition of the national interest represents an admirable effort in bringing together a diverse, and occasionally conflicting, collection of interests. All but one of the facilities and resources that OCZM has stated to be in the national interest are included in the NJCMP's definition. As mentioned earlier, regional water treatment plants were, for some reason, excluded and should be added before program approval is granted; with this exception, however, the definition is one with which EPA is satisfied. Of particular note is the inclusion of resources, including air, water, wetlands, and recreation, in which there may be a national interest. The national interests in resource protection and coastal development can, in this way, be more fully analyzed.

The NJCMP must provide, however, that the siting of national facilities cannot be balanced against the national interest in meeting air and water quality requirements established pursuant to the CAA and CWA.

While the NJCMP seems to have reached a happy medium concerning the definition of the national interest, it has, unfortunately, failed to provide for the adequate consideration of this interest in the planning for and siting of facilities which are necessary to meet requirements that are other than local in nature. The NJCMP states that the "CAFRA permit procedure will serve as the process for assuring continued consideration of planning for and siting of facilities which may be in the national interest." (p. 177) Despite contentions to the contrary, two of the five categories of facilities described in the NJCMP are not required to obtain a CAFRA permit -- national defense and recreation. Nor is a CAFRA permit required when one of the defined resources will be significantly affected, unless the proposed facility is on the restricted list of CAFRA facilities. Thus, the NJCMP provides no opportunity to consider the defined national interests in regard to these facilities or to apply CLAM and the other coastal resource and development policies. The EPA considers this a serious program deficiency and one which must be remedied before the FEIS is issued.

Because EPA supports, with a few exceptions, the NJCMP's Coastal Resource and Development Policies, it also accepts, with little reluctance, the program's use of these policies as the basis for making federal consistency determinations. There are, however, a number of elements within the NJCMP's consistency framework which EPA feels require revision and/or clarification.

Although the functioning of the CMA and CAA permit systems is to be left unimpeded, the NJCMP should assist in the protection of coastal air and water quality. The federal consistency provisions could be advantageous in assuring that federally conducted or sanctioned activities do not detract from those values. For example, air quality, water quality, and the quality of underground sources of drinking water could all be fostered if the NJCMP's consistency provisions were more broadly applied to potentially harmful federal activities and development projects. In this regard, EPA believes that the NJCMP should state that its list of federal activities and development projects subject to consistency is not exclusive and that other activities and projects may also be reviewed for consistency. Such a statement already accompanies the NJCMP's list of federally licensed and permitted activities, and federal assistance to state and local governments. Moreover, two particular federal activities, the construction of Coastal Guard stations and OCS lease sales, should be added to the list of federal activities and development projects because of their potential impact on the coastal zone.

Clarification is needed concerning the federal licenses and permits that are subject to the NJCMP's consistency provisions. The language preceding the list of licenses and permits (p. 188) appears to suggest that only those activities which must also obtain a state permit are to be subject to consistency. Such an approach would be neither in keeping with the requirements of the CZMA, nor most protective of coastal air and water quality. Accordingly, EPA requests that the NJCMP state unambiguously that a federally licensed or permitted activity may be subject to consistency whether or not it requires a state permit. Consistency is intended to supplement, and not merely echo the internal authorities available to protect a state's coastal zone. The EPA would also like to note a significant omission in the NJCMP list of federal licenses and permits subject to consistency -- those licenses issued by the Nuclear Regulatory Commission for the construction and operation of nuclear power plants.

The EPA seeks clarification of the intended geographic scope of the NJCMP's consistency provisions. While we fully support the proposition that effective protection of coastal resources cannot be limited to only those activities occurring within the state's defined coastal zone, some discernible criteria must be provided so that federal agencies and applicants for federal licenses will be on notice as to whether a particular activity is subject to the federal consistency provisions. The NJCMP provides no such standard.

Finally, EPA requests an explanation for setting aside three facility types for which federal assistance is provided to state and local governments --

chemical or petrochemical processing, transfer or storage; mineral extraction; and sewage treatment and disposal factors -- and subjecting them to the consistency provisions wherever in the state they may be located. (p. 191) While fully aware of the potential coastal impacts of the three facilities which have been singled out, and, in particular, the EPA assisted sewage treatment and solid waste facilities, the reasons for such a broad expansion of the reach of consistency in regard to these and no other activities are not apparent. No distinctions should be drawn unless an environmentally sound reason for this action can be presented in the NJCMP.

The DEIS Itself

The draft environmental impact statement (DEIS), in its Summary of Environmental Impacts, claims that approval of the NJCMP-Bay and Ocean Shore Segment will strengthen the Department of Environmental Protection's regulation of activities in the segment's coastal zone and thus, "will continue to minimize many of the detrimental environmental effects associated with coastal development and will have a positive long-range impact on the productivity of natural resources." (p. 201) This DEIS fails to point out, however, what difference approval of the NJCMP really means to DEP. The basic programs relied upon -- CAFRA and those for wetlands and riparian lands -- will not be altered by program approval.

The DEIS also does not adequately discuss the tradeoffs and impacts involved in the general policy of concentrating development. While this policy may have many positive effects, because it is one of the major foundations of the plan, the DEIS should examine its implications in more detail. In particular, the impacts of this policy on areas with existing air and water quality problems should be explored. For example, while EPA agrees with the DEIS's statement that the impacts of water runoff from roads and parking lots, disposal of dredge spoil, air quality degradation and local costs for wastewater treatment facilities can be reduced by concentrating recreational activities in already developed areas, this is not necessarily true if the already developed areas are having trouble attaining or maintaining air and water quality standards. The policy also does not insure that a variety of recreational experiences is preserved.

Similarly, the DEIS does not discuss the impacts and tradeoffs involved in encouraging industrial (including energy) growth into the other segments of New Jersey's Coastal Zone. Again, while EPA recognizes that there may be many positive benefits of such a policy, these have not been analyzed in the DEIS. While the DEIS's finding (p. 203) that the policy of requiring most large scale energy facilities and heavy industrial uses to locate in other areas will "conserve and protect the key renewable natural resources and recreational amenities..." of this segment, an analysis of the impacts of this reallocation of impacts on New Jersey's other renewable resources and recreational amenities is left unexplored. The DEIS also does not analyze the impacts of segmentation, particularly what may happen if the other segments where growth

is being encouraged do not have adequate authority to implement the program or, for other reasons, the segments fail to unify into a total program.

The EPA also questions the DEIS's analysis of the impacts of the coastal policies on New Jersey's barrier islands. Their limited carrying capacity and their susceptibility to natural hazards are treated lightly. The DEIS's analysis of use policies is also inadequate (p. 202). The DEIS mentions that these policies only apply to regulated uses (generally major development) and that other uses will still be subject to local land use decisions. While the DEIS mentions that "...residential or commercial developments that may not be detrimental individually could well have cumulative impacts are not discussed in the NJCMP, the DEIS provides no analysis of the effects of the program ignoring such a crucial component. As noted above, the DEIS does not analyze how the system suggested by the NJCMP will be any different in terms of regulating uses and leaving other decisions to the local governments than the system that now exists. Similarly, the cumulative impacts of sub-threshold housing decisions are not adequately discussed (p. 210). The DEIS mentions that problems such as uncontrolled sprawl with its attendant impacts, can occur. The DEIS states that the local governments must bear the major responsibility for ensuring that these adverse impacts do not occur as a result of their decision (p. 210), but does not analyze either the means the NJCMP provides local governments for doing this or the effectiveness of those means.

The EPA is concerned that the DEIS does not analyze the draft memorandum of understanding between the DEP and DOE, particularly how DOE (in its allocation of CEIP funds) will be consistent with the coastal program and thus the attainment and maintenance of air and water quality standards.

The EPA finds that the potential impacts of adjacent activities which may affect the coastal zone are not analyzed. The adequacy of the system to cope with these stresses should be covered in the FEIS.

The EPA is concerned that the DEIS has not addressed the impacts of the state's federal consistency and national interest provisions and how state agencies outside of DEP (including DOE) will be legally bound by the coastal policies. These oversights should be thoroughly examined in the FEIS.

The EPA finds the discussion of alternatives generally adequate with one exception. We urge that the effects of 305 1/2 funding on the NJCMP Bay and Ocean Shore Segment's efforts to improve their program be analyzed separately.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
June 19, 1978

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Mr. Knecht:

Transmitted herewith are the Federal Energy Regulatory Commission (FERC's) staff comments on the proposed New Jersey Coastal Management Program -- Bay and Ocean Shore Segment (NJCMP-BOSS) and Draft Environmental Impact Statement (DEIS).

These comments address several topics and are intended to aid in further development of the NJCMP-BOSS.

While New Jersey has made a conscientious beginning in the development of the NJCMP-BOSS to produce a well-balanced and reasonable program, we find the policy on LNG siting to be unacceptable. In addition, more attention needs to be given to agency name clarification, maps, national interest, and Federal consistency.

We appreciate the opportunity to review the NJCMP-BOSS and OCZM-DEIS and look forward to reviewing the revised document.

Sincerely,

Carl N. Shuster, Jr. - Ph.D.
Coordinator, Coastal Zone
Management Affairs

Enclosure

cc: Honorable Charles Warren
Mr. David Kinsey

Comments by
Federal Energy Regulatory Commission Staff
On the Proposed
New Jersey Coastal Management Program
(Bay and Ocean Shore Segment)
and
Draft Environmental Impact Statement

Agency Name Clarification

The Federal Power Commission (FPC) became the Federal Energy Regulatory Commission (FERC) when the U. S. Department of Energy (DOE) was activated on October 1, 1977. FERC and DOE should be identified separately. The Federal Energy Regulatory Commission is considered an "arm of Congress" and retains nearly all of the vested responsibilities previously administered by the FPC, hence its designation as an independent regulatory commission within DOE. The specific responsibilities administered by FERC that are applicable to the NJCMP-BOSS are identified later under the heading of Federal Consistency.

The Commission has been referred to in the report by the following names: FPC on page 178, former FPC on page 181, FERC (former FPC) within the DOE on page 181, and formerly FPC under the heading of DOE on page 241. We suggest use of the term FERC (formerly FPC) in all cases.

The report uses the names of New Jersey Department of Energy, U. S. Department of Energy, and the Department of Energy. The Department of Energy refers to either New Jersey Department of Energy (for example, page 192) or U. S. Department of Energy (for example, page 191). A clarification of uses is needed.

NJCMP-BOSS Maps

It is impossible to determine the precise CAFRA boundary shown on the maps of New Jersey Coastal Zone (see pages 14 and 258). As soon as these boundaries are official, a set of the U.S.G.S. annotated topographic maps should be sent to the FERC so that applications to the Commission can be reviewed for determination of Federal consistency.

National Interest

In the revised regulations defining the national interest, the OCZM requires States to consider several different facets of the coastal zone, including resource protection and recreation, as well as energy facility location. New Jersey's determination

that "resort/recreation uses shall have priority in the Bay and Ocean Shore Segment over all other uses" is a justifiable choice; however, if national interest considerations are to be balanced, the State must insure also that appropriate and necessary energy facility sites are not preempted. To support such determinations, the State should supply to Federal agencies, or as an appendix to the final NJCMP-BOSS, the basic reports such as the Rutgers University study referenced on page 179 which reportedly concludes that suitable sites for oil and gas facilities are available along the Raritan Bay and River.

Natural Gas Facilities

Use Policy 7.4.9 for Gas Processing Plants on page 144 may increase coastal zone disruption rather than decrease it as intended. While it is true that these plants may be excluded from the coastal zone with little detrimental effect, the policy of locating them "the maximum feasible distance from the shoreline" may not be appropriate. Once the OCS gas has been processed, the transmission of the same volume of gas requires far less pipeline capacity. Therefore, a plant's increased inland distance, as promoted by this policy, will result in a greater environmental disruption due to pipeline construction than would occur with a processing plant closer to the coast. In addition, a location nearer the coast would minimize the costs of constructing chemical and salt water return lines. Further information on this subject is available in the New England River Basins Commission's Factbook: Onshore Facilities Related To Offshore Oil and Gas Development, November, 1976.

The State's policy on liquefied natural gas (LNG) facility siting is unacceptable. Coastal management programs obviously were not intended to be a vehicle to circumvent Federal agency rulemaking processes, as New Jersey is attempting to do. The May 1976 petition to the Federal Power Commission by the State of New Jersey (Delaware, New York, and Pennsylvania) for the issuance of siting criteria (RM76-13) is still under consideration by the Federal Energy Regulatory Commission. Any decisions to be made on this petition will not be influenced by Use Policy 7.4.14(c) of the NJCMP-BOSS. Therefore, this policy statement should be reconsidered.

Two other requirements are also established under Use Policy 7.4.14. These requirements are similar to those established by California under the original Section 30261(b) of the California Coastal Act, and to which we previously objected. The State has not established who will determine when "(a) rigorous and consistent siting criteria are established," and "(b) the risks inherent in tankering . . . and transferring LNG onshore have been sufficiently analyzed and minimized." We maintain that these requirements have been fulfilled by the Federal Energy Regulatory Commission, most recently by our siting and safety analyses of the Point Conception, California, LNG terminal as proposed in FERC Docket No. CP75-83-2.

Finally, the State says that LNG terminals are acceptable only at sites remote from population centers, contravening its previous determination of the national interest in recreational uses for this segment. If the appropriate Federal agency (in this case, FERC) has fulfilled the requirements for LNG siting and safety suggested in the NJCMP-BOSS, then any siting decisions should be made by that Federal agency. The State should revise and clarify this section in order for the program to be acceptable.

Federal Consistency

On page 189 the information identified under the Department of Energy needs to be corrected. FERC is an independent regulatory commission; it does not speak for DOE, nor does FERC expect DOE to speak for it in these matters. The State of New Jersey and applicants for licenses and permits will have to deal directly with FERC to minimize time constraints in future coordination. Therefore, the following should be identified:

FEDERAL ENERGY REGULATORY COMMISSION

Licenses required for non-Federal hydro-electric projects and associated transmission lines under Section 4(e) of the Federal Power Act (16 USC 797(e)).

Certificates required for the construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

The permission and approval required for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

DEPARTMENT OF THE AIR FORCE
PERMANENT PLANNING, EASTERN REGION (40 USAF)
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ATLANTA, GEORGIA 30303

JUL 5 11 57 AM '78

DIV. OF MARINE SERVICES

27 June 1978



REF ID: A66011

ROVI

New Jersey Coastal Management Program, Bay and Ocean Shore Segment
and Draft Environmental Impact Statement

State of New Jersey
Department of Environmental Protection
Division of Marine Services
P. O. Box 1889
Trenton, NJ 08625

1. We have completed our review of the subject document and offer
the following comments:

a. Page 13, Inland Boundary - Bay and Ocean Shore Segment.
The definition of New Jersey's Coastal Zone Boundary should be
amended to indicate that federally owned or controlled lands are
excluded (Federal Coastal Zone Management Act of 1972, as amended,
section 304 (1)).

b. Page 186, Federal Consistency. The New Jersey Coastal
Management Program should specifically state that federal agencies
make consistency determinations. As written, this is an implied
action for federal agencies.

c. Page 187, Federal Activities and Development Projects. In
the first sentence of this section, after the wording "New Jersey
Department of Environmental Protection" add the following: "through
the A-95 clearinghouse review process." In accordance with the
final published OCZM regulations concerning federal consistency, a
federal agency may provide information in any manner it chooses.
Section 930.34, Federal Agency Consistency Determination, Federal
Register, 13 March 1978, "The Federal agency may provide the state
agency with this information in any manner it chooses so long as
the requirements of this subpart are satisfied." The Air Force
supports the Department of Defense position that the A-95 process
be utilized for consistency notification.

2. Please contact Major Walter L. Gray at 404-221-6776 if you have
any questions concerning our comments.

Robert L. Wong
ROBERT L. WONG
Chief, Environmental Planning Division

Cy to: ADC/DEV
MAC/DEV
NCB/DEV



Atlantic County

EXECUTIVE OFFICES

CHARLES D. WORTHINGTON, EXECUTIVE

741 GUARANTEE TRUST BUILDING
ATLANTIC CITY, N. J. 08401
(609) 348-0700

June 16, 1978

Mr. David Kinsey
N.J. Office of Coastal Zone Management
P. O. Box 1889
Trenton, N.J. 08625

Dear David:

Enclosed are comments prepared by my office and the County Division of Plan-
ning, regarding New Jersey's Coastal Management Program, Bay and Ocean Shore
Segment.

If you have any further questions or comments, please do not hesitate to con-
tact me or Gene Ely of our County Planning division.

Sincerely,

Charles D. Worthington
CHARLES D. WORTHINGTON
County Executive

cdw/c

enclosure

COMMENTS BY ATLANTIC COUNTY EXECUTIVE CHARLES D. WORTHINGTON

on

NEW JERSEY'S COASTAL MANAGEMENT PROGRAM, BAY & OCEAN SHORE SEGMENT

Atlantic County would like to take this opportunity to thank the Department of Environmental Protection for the chance to comment on its proposed Coastal Management Program. We are particularly appreciative of the financial support awarded to coastal counties by the DEP which, in part, has enabled us to devote the valuable time of our planning staff to review the Coastal Management Program and offer our comments.

We hope that this financial support will be continued in the future so that the productive State-County cooperative relationship that has been developed may be maintained. In fact, we would like to suggest here that provisions be made in the Coastal Management Program to permanently establish County offices for Coastal Zone Management. These offices could perform the following functions:

1. Encourage and stimulate public participation
2. Advise municipalities on pending applications for permits under the Coastal Management Program
3. Actively promote the adoption of local development ordinances which are consistent with the policies of the Coastal Management Program
4. Serve as local watch dog to ensure that developments which require state permits are following the procedural requirements for permit applications
5. Perform preliminary review functions including the pre-application conference

The Department of Environmental Protection is to be commended for the work that has gone into its Coastal Management Program. Coastal zone management in New Jersey has come a long way since the Interim Density and Land Use Guidelines for the Coastal Zone. However, as with many things that have come far, there is still a way to go with some aspects of the Coastal Management Program.

Past criticism of DEP's administration of the Coastal Area Facilities Review Act has centered on the arbitrariness of decision-making with respect to permit

approvals. While this criticism has been answered fairly well by the Location, Use and Resource Policies of the Coastal Management Program, there remain areas of vagueness with regard to some of the policy statements in the management program. Without going into unnecessary detail, we would like to cite some specific instances of the vagueness to which we refer.

POLICY STATEMENTS NEED FURTHER CLARIFICATION

1. On page 133, housing policy 7.2.5, which deals with barrier-free design states "development of more than 250 units without barrier-free design in some of the units prohibited ...". A policy to require barrier-free design in housing developments should be able to indicate to developers how many units should be equipped with barrier-free design. A developer should be able to include these standards from the initial planning stages of his development so that last minute changes will not cause delays and drive up costs unexpectedly.
2. On page 134, housing policy 7.2.6 which deals with housing and public transit states "the development of housing at locations and densities that contribute to public transit feasibility is encouraged". In order to demonstrate what type of development will be encouraged, some specific criteria which outline what densities and locations contribute to mass transit opportunities should be included.
3. On page 134, housing policy 7.2.8 which deals with the conditional acceptability of high-rise structures lists the following two conditions:
 - 1) high rise structures must be separated from coastal water by at least one public road or an equivalent park distance;
 - 2) high rise structures must not have an adverse impact on traffic and air quality.Is the Boardwalk considered a public road in this case? What is meant by "an equivalent park distance"? What are the standards for judging when an impact, particularly with respect to traffic, becomes adverse?
4. On page 142, energy policy 7.4.7 which addresses pipelines and associated

facilities, lists several conditions which such facilities must meet to be acceptable. Included is the following:

"Ancillary facilities shall be protected by adequate visual, sound and vegetative buffer areas".

What are the standards against which the visual and sound barriers shall be evaluated for their adequacy?

5. On page 144, energy policy 7.4.9 which deals with gas processing plants:

"Gas processing plants shall be located the maximum feasible distance from shoreline".

Who will determine what the "maximum feasible distance" is? We would like to strongly recommend that someone at DEP should be developing a capability to determine, independently of oil company advice or judgment, what these distances are.

6. On page 148, public facility policy 7.5.11 states the following:

"Waste water treatment systems that recharge the groundwater with highly treated effluents are encouraged, provided that consistently high quality effluents and acceptable recharge techniques are demonstrated".

Does the phrase "highly treated effluents" refer to a specific level or type of sewage treatment and if so, what is it? The standards for defining what qualifies as "consistently high quality effluent" and "acceptable recharge techniques" should be spelled out as well.

7. Finally, and probably most important from Atlantic County's perspective, DEP needs to clarify its stance with respect to onshore support bases in Atlantic City. On page 140 in the use policies section, it is stated rather explicitly that support bases belong in the urban waterfront which is already industrialized. Atlantic City is singled out as an example of where support bases should not be located. However, on page 204 in the discussion of the probable impacts of the Coastal Management Program, you make the following statement:

"An exception may be made for limited areas near Atlantic City to serve as onshore bases for oil and gas exploration and development of outer continental shelf resources."

If you are planning to allow support base development in Absecon Inlet, we would appreciate your coming out and saying so directly in a policy statement, not in a backhand comment in a discussion of other issues. Atlantic County's position has been that some limited opportunities do exist for onshore support activity to locate in the county. However, there are no opportunities for a full-scale support base operation which do not involve the use of wetlands or dredging of channels to some degree. We would appreciate knowing on what basis exceptions will be made to allow support bases in Atlantic City.

We would like to acknowledge at this point that efforts to increase the level of detail of standards in the policies sections are being planned, including a major Estuarine Study and Development Potential Study. We want to go on record as supporting these efforts, as well as suggesting the need for one area of further study.

At several points in the Coastal Management Program document, the point is made that recreation-oriented uses of the coastal zone will be given priority because of the importance of the tourist industry to the state's economy. We feel that it's very important that the economic impact of tourism be quantified in a study of New Jersey's tourist industry. We feel this is particularly important when it comes to evaluating alternative uses of the coastal zone, such as floating nuclear plants and offshore oil for their economic impact.

Having commented on the need to clarify some of your policy statements, we would like to point out some policies which we feel need to be changed:

QUESTIONABLE POLICY STATEMENTS

1. On page 135, policy 7.3.2 which deals with recreation/resort uses says the following: "Recreation areas shall be incorporated in the design of residential and industrial development to the maximum practicable".

We question the wisdom of and the need for mixing recreation and industrial development. It seems to us that almost any recreational experience would be diminished greatly by its proximity to industrial development. Is the recreational need so critical that such incompatible uses must be combined? We think not.

2. On page 139, the General Energy Facility Siting Policy states: "Energy facilities will be approved only after review by DEP and the New Jersey Department of Energy, to insure the protection of both the built and natural environment of the coast and public health, safety and welfare, to the maximum extent feasible."

While the use of the maximum extent feasible proviso is understandable in legal context in most cases, it is totally inappropriate here. Your policy statement says that if the lives of 100 people (any number for that matter) came out on the short end of a cost-benefit analysis that would be acceptable. We would hope that public health, safety and welfare are protected to the maximum extent possible in New Jersey.

3. On page 147, public facility policy 7.5.5 states "Construction of bicycle and footpaths in residential projects is required."

Requiring bike paths and footpaths in all residential developments is not fair to home buyers. A home-owner in a 25-unit development is going to pay proportionately more than one in a larger development the same or perhaps less amenity (a bike path in a 25-unit development is going to be relatively uninteresting). Perhaps contributing to a community fund for recreation/open space could be an acceptable alternative where bikeways are impractical.

Related to this issue of funding public improvements is the cost of regulation and who pays for it. This issue is inadequately addressed in the section on probable impacts of the proposed action. For example, the requirement to provide barrier-free design imposes an additional expense on the homeowners of that development. Why should a particular group of homeowners be singled out to bear the burden of providing a desired public amenity? A community-wide mechanism

to pay for such desired public amenities should be developed to avoid imposing unfair burdens on homeowners which drive up the cost of housing and put home ownership out of reach of many, if not the majority of New Jersey residents.

4. Another issue that is brought up in Part III, Probable Impacts of the Proposed Action on the Environment, is that of the cumulative impact of a number of small projects which are not subject to the policies and regulations of the Coastal Management Program. Quite correctly, you point out that these impacts could be as great or greater than that of one large project. Very recent events have pointed out that developers are finding ways to avoid coastal regulations by developing several smaller projects instead of one large project. It goes without saying that there exists a need for administrative mechanisms to close these loopholes. In the meantime however, while these mechanisms are being developed, we would like to strongly recommend that DEP-OCZN adopt a posture of actively lobbying with municipalities where this type of development is taking place to ensure that local planners are aware of and consider the cumulative impacts of several small-scale projects.

LOCATION POLICIES

For our final comments on the Coastal Management Program, we would like to return to the policies section of the document, in this case the location policies. The Coastal Location Acceptability Method (CLAM) is, for the most part, a well-developed, relatively easily understood methodology for evaluating the developability of coastal zone locations. We do, however, take exception to the use of one variable in the equation which determines land acceptability.

The Regional Growth Potential Factor, which classifies the coastal zone into Growth Areas and Limited Growth Areas, is particularly inappropriate for the situation facing Atlantic County today. The use of historic development trends to identify where higher-density development should occur may be satis-

factory in areas where development pressures have been relatively consistent through the years, but Atlantic County is unique in that its economic outlook was literally altered overnight.

Further, the areas that have been identified as Growth Areas in Atlantic County: Absecon, Linwood, Northfield, Pleasantville and Somers Point, are almost completely developed. What vacant land remains is broken up in small parcels scattered throughout existing development and thus not easily adapted to accommodating higher densities.

Based on the amount of vacant land available in these communities, they would be able to accommodate only a small portion of the population growth that we have projected as a result of casino gambling. There is an urgent need to accommodate development in other municipalities in the County. For these reasons, we strongly recommend that the portion of Egg Harbor Township in the coastal zone, particularly the area known as West Atlantic City, bordering the Black Horse Pike, be designated a Growth Area under the Coastal Management Program. We would also strongly recommend that the eastern portion of Galloway Township, which is serviced along Pitney Road by a trunk sewer line as part of the coastal region sewer system, be designated a Growth Area.

With the growth pressures facing Atlantic County, it is incumbent that higher densities be encouraged throughout the County so that open spaces and agricultural lands may be preserved. We hope that DEP-OCZM recognizes these growth pressures, and accepts our recommendations in these matters.

CONCLUSION

In conclusion, despite the largely negative comments in this statement, DEP must be congratulated for the work that has gone into its Coastal Management Program. This document is a large step forward from past efforts towards its stated aim of providing information in understandable terms to citizens, interest

groups, and public agencies about the use of coastal resources. We also heartily endorse DEP's decision to develop a flexible planning methodology for decision-making rather than attempting a conventional land use plan-type document which designates in zoning-like fashion specific places for specific land uses.

In today's rapidly changing and multi-faceted coastal zone environment, a flexible decision-making tool is a necessity for dealing with land use issues. Perhaps some of our criticism is, in fact, the result of our inexperience in dealing with such a planning strategy. Regardless of the basis for our comments, we wish to state for the record that we support DEP's basic concept of coastal zone management, and we want to encourage the Secretary of Commerce to grant expeditious approval of New Jersey's Coastal Management Program for the Bay and Ocean Shore Segment.

We look forward to continuing the close and productive working relationship that we've had for the past two years with DEP's Office of Coastal Zone Management.

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Report on the Coastal Management Program
Bay and Ocean Shore Segment and Related
Documents: Task 1.0 State/County Coastal
Coordination Project

Prepared by William G. Hengst, Consultant to
The Camden County Environmental Agency

June 30, 1978

I. Introduction

This report contains the results of Camden County's review of the Office of Coastal Zone Management's planning documents. This report was prepared by the consultant, following his review of the documents, in addition to reviews by the staff of the Camden County Environmental Agency. Three documents were covered in this review: (1) Coastal Management Strategy for New Jersey CAFRA Area, September 1977, (2) Nominated Areas of Public Concern in the New Jersey Coastal Zone, December 1977, and (3) New Jersey Coastal Management Program Bay and Segment and Draft Environmental Impact Statement, May 1978 (referred to hereafter as the Bay and Ocean Segment). Because of the cumulative nature of the OCZM's planning process and likely regulatory status of portions of the latter document, our review has concentrated on its contents.

Several words of caution are appropriate. This report contains only the comments of the consultant and staff of the Environmental Agency. We are sharing this report with municipal officials and other persons in Camden County interested in or potentially affected by coastal zone planning. During the next several months we will meet with these officials and persons to discuss the proposed coastal zone program in Camden County. Given the widespread distribution of the Bay and Ocean Segment to municipalities, an interested person or official may generate comments on these planning documents, independent of the public participation process initiated by the Camden County Environmental Agency.

This report is organized into two sections. The first section contains comments on the Bay and Ocean Segment, beginning first with some general procedural questions, followed next by questions on the substance of this document, and concluding with comments which resulted from applying the CLAM technique to an actual site in Camden County. The second section contains a discussion of the applicability of the policies in the Bay and Ocean Segment to a coastal zone program in Camden County. This discussion is preliminary. It includes comments in response to policies recently proposed by Hudson County. The Hudson County proposal constitutes the first attempt by a non-CAFRA county to adapt the policies in the Bay and Ocean Segment to a more urbanized environment. The Hudson County proposal therefore is of interest to Camden County.

Two questions are of primary interest to local reviewers of the OCZM's planning documents:
What will be affected? i.e. the policies and regulations proposed for the coastal zone.
Where will these policies take effect?
Most of this report responds to the first question. The second question raises the issue of boundaries. Our

comments regarding boundaries are contained in the first section of the report, in response to the material on boundaries contained in the Bay and Ocean Segment. We have not begun a detailed analysis of the boundary for Camden County as we have not received from the OCZM either a map or a description of its proposed boundary. We anticipate receiving such information shortly and focusing on boundary issues as we analyze municipal plans and land use regulations for their consistency with the proposed coastal policies. We would anticipate that as this work progresses and as we interface more with officials and interested persons, the boundary question will become clear.

II. Comments on the Bay and Ocean Segment

1. The Earlier Planning Documents

We have no questions or substantive comments regarding the two planning documents published earlier by the OCZM (i.e. Coastal Management Strategy for New Jersey CAFRA Area and Nominated Areas of Public Concern in the New Jersey Coastal Zone).

The second document lists the water areas, tidal wetlands, shore, and woodlands along the five principal rivers and streams of Camden County (Delaware River, Pennsauken Creek, Cooper River, Newton Creek, and Big Timber Creek). These areas were nominated by the Camden County Environmental Agency and Mr. James T. Johnson for preservation. This designation seems to have served no other purpose than to bring to the OCZM's attention local concerns for certain areas. The main goal of the OCZM's coastal planning effort in Camden County should be to determine how the preservation of these areas will be ensured through the policies of New Jersey's coastal zone management program. We consider the basic task of the State/County Coastal Coordination Project in Camden County to make more explicit the policies and limitations which will guide the attainment of this goal.

2. Procedural Questions and Recommendations Regarding the Bay and Ocean Segment Document

Several procedural questions regarding the application of the policies and standards contained in this document need clarification. Will the Coastal Resource and Development Policies (Chapter Three of the document) replace the requirements for an environmental impact statement, as described under Sections 6 and 7 of the Coastal Area Facility Review Act (hereafter referred to as CAFRA)? We assume that an applicant, seeking permission to develop within the coastal zone, must obtain approval both under OCZM's policies

as well as under municipal and county land use regulations. Will denial of development approval by either level of government prevent proceeding with the project? Or, will either of these approvals take precedence over the other? The standards to be assigned to proposed developments, ranging from prohibited to encouraged, could imply a state over-ride of local decisions. Answers to these questions are basic to the implementation of the proposed policies. We recommend that language be inserted in the document prior to Chapter Three which clarifies these kinds of procedural issues.

Two further procedural questions arise with respect to CLAM: (1) Within the special water areas, supposing more than one special water area condition occurs in the same area, how does OCZM propose to resolve conflicting standards? Would development encouraged in an area with shipwrecks take precedence over the determination that development in the same area ought to be discouraged due to submerged vegetation? (2) What types of commercial development activity are intended to be covered under the development potential criteria (pp. 91-92)? CAFRA applies primarily to industrial facilities. The document appears to be silent as to the kind and scale of commercial development to be governed by the development potential factors.

3. Substantive Questions and Recommendations Regarding the Bay and Ocean Segment Document

Substantive comments on the document follow, organized according to the page on which the item discussed appears in the document.

page 21: The term encouraged, what will be the procedural difference between a determination by OCZM that the development should be encouraged as opposed to acceptable? The definition of encouraged seems to imply that projects with "certain extra desirable characteristics" might be judged encouraged when they contain some features which otherwise would make it less than acceptable. The implication is that projects with extra desirable characteristics will be balanced against their less desirable features. Although not stated, this latitude for interpretation is implied; the definitions here need to be tightened to indicate how tradeoffs would occur.

page 32: We commend the policies for surf clam areas because they might prohibit development which would result in the condemnation of surf clam stocks. Perhaps the adoption of this policy will prevent the placement of a sewerage outfall along the Atlantic Ocean, such as that completed by the Atlantic County Sewerage Authority resulting in the condemnation of contiguous surf clam beds.

page 34: Why not restrict development which restricts downstream movement within finfish migratory pathways? The policies for finfish migratory pathways should be expanded to cover temporary construction or disturbances during migratory periods. Dredging activities, for example, should not be allowed during these periods.

page 35: When will DEP complete its additional surveys of submerged vegetation? In the interim, we feel that requiring all applicants to survey this resource may be asking too much of all applicants. OCZM should require surveys only by applicants whose projects affect water areas known or suspected by DEP to contain submerged vegetation. Given the current information gap for this special water area, we feel the policy, as written, places an undue burden on applicants. If this policy is included in the non-CAFRA counties, OCZM should expedite its additional surveys.

page 36: The standard of "suitable" for the reuse of dredge spoils is insufficient. What criterion will be used to define suitability?

page 37: Are dredging activities prohibited in areas of shipwrecks? Perhaps the concept of a buffer surrounding shipwrecks should be employed so activities such as dredging can occur in their vicinity yet at a safe distance so as not to disturb this underwater feature.

page 45: We have these questions regarding the Water Acceptability Tables: (1) In the open bay, why is maintenance dredging in waters 18'+ depth impractical? (2) In the open bay, what is the reasoning for filling activity in waters 0' to 6' being conditionally acceptable, rather than discouraged or prohibited? (3) The categories of water depths used for the ocean and open bay might be redefined to include a fourth range (18' to ??') in order to distinguish between some activities which might be acceptable in relatively deep waters as opposed to very deep waters. The 18'+ category seems too inclusive.

page 51: Why is development in high risk erosion areas which will contribute to further erosion discouraged instead of prohibited? How are areas that will erode in the mid-term future (less than 50 years) predicted? A reference to the source for prediction ought to be given.

page 53: Who will conduct the cost-benefit studies of the feasibility and beneficiaries of shore stabilization? What kinds of information will be required? Is it reasonable to require this kind of study for all development proposed in high risk erosion areas?

page 55: What will be the state's policy on barrier islands after a residential structure is destroyed by a natural disaster? If changes in this coastal feature

occurred, might this not cause a redefinition of the water's edge? Could the house be replaced at the same location if the former location now was defined as a more restricted area?

page 58: More precise definitions of the floodway and flood hazard area are needed. Until the DEP completes its program for delineating all streams in the state, we are unclear how working definitions of these areas are determined. Are the flood areas defined by U.S. HUD for flood insurance to be followed? How are different limits as defined by HUD and the Corps of Engineers resolved? What is the difference between flood hazard areas and flood prone areas? Both terms are used in the text.

page 61: How is development that adversely affects prime forest areas defined? To what extent and at what limits will off-site impacts be included? Are there not other prime forest areas besides white cedar stands which ought to be included in the prime forest category?

page 62: The buffer area to ensure continued survival of endangered or threatened species needs a better definition. A buffer to maintain the wintering, breeding, and migrating of wildlife could be extensive. We recommend that the OCZM consider a stronger policy which would prohibit development disturbing the nesting areas of rare and endangered fauna and the habitats for rare and endangered flora.

page 64: Under the policy for open space, we recommend that the OCZM consider that before development of additional campgrounds is acceptable sufficient demand must be demonstrated by the applicant. This requirement would be similar to the requirement for boat ramps on page 46 of the document.

page 66: We recommend that the definition of bogs be expanded to include their common vegetative characteristics; the definition, as written, is so inclusive that an abandoned gravel pit could qualify as a bog.

page 67: We like the concept of buffers along stream channels and stream heads, but would like clarification on the rationale for why the alternate definitions for the stream head and the stream channel buffers are set at 300' and 50' respectively.

page 69: We question the inclusion of Wetlands under water's edge areas instead of under special water's edge areas. Inclusion in the latter, and hence under step 3 of CLAM, would ensure a higher priority for preservation, in keeping with the policies of the Wetland's Act.

page 72: The definition of the upper water's edge is

difficult to comprehend, as it appears in the text, because its variations are described in a series of phrases, connected in one long sentence by the words "either" and "or." The definition should be clarified by simplifying the sentence structure. The same comment applies to the definition of the water's edge areas which appears on pages 68 and 69. Also on page 72, what is the rationale for a buffer of 50' as opposed to a buffer of 40' or 75'?

page 76: What is the rationale behind the alternate definition for the inland limit of the retained water's edge as 100'?

page 79: This comment pertains more to the policy in flood hazard areas (p. 59). In our application of CLAM to a specific site in Camden County, we found no specific policy which addressed land filling activity within flood hazard areas. The policy speaks to the dumping of solid wastes within the delineated floodway but not to filling within the entire flood hazard area nor to other types of fill, such as clean fill. We question whether there ought not be a specific policy for filling activity in flood hazard areas due to the potential effect of this activity on the floodwater-storage capacity of the overall floodplain.

page 84: We question the requirement that soil borings must be conducted for all developments at the application stage. The size of the parcel and intensity of the proposed development ought to be considered in determining which applications require soil borings.

page 88: We question the sole emphasis on forested areas for determining the vegetation index factor. Successional meadows provide greater benefits for wildlife habitation than do forested areas. Other vegetated areas, such as meadows, ought to be factored into the high and medium index factor.

page 90: It is unclear whether the infill criteria apply only to high potential residential development or to shopping, school, and marina development as well. We recommend that these criteria apply to all these uses.

page 91: We commented earlier, under procedural questions and recommendations, on the uncertainty regarding the kind and scale of commercial development to be governed by CLAM. Here for instance, if commercial uses ranging from a 5,000 square foot neighborhood store to a 250,000 square foot shopping center are covered, the criteria should vary for different scales of development. A neighborhood store, for example, does not need to be near a highway intersection.

page 93: Are campgrounds of all sizes to be included? We question whether a backpacking campground should be included

under these criteria. We question inclusion of direct access to a paved public road as a criterion for high potential development.

pages 113 and 115: When portions of a site must be planted with vegetation in order to meet coverage requirements, we question limiting these planting materials to mature forest species. If the required percentage of forest does not exist on the site, but there does exist natural vegetation of other kinds (i.e. old fields or thickets), it would seem just as beneficial, and perhaps more beneficial in some instances, to retain these areas of natural vegetation rather than to require the planting of native mature forest species. The policy, as stated in the document, might cause the replacement of some natural areas with a single species of sapling-size trees.

page 125: What is meant by the term flood prone area? Is this the same as the flood hazard area?

page 144: The confines of the Delaware River Port need to be defined for purposes of the energy use policies. We interpret the policies for storage sites as permitting their location inland from the coastal zone and ports providing they do not contribute unacceptably to the degradation of air or water quality.

page 147: We question the requirement that bicycle and foot paths must be constructed in all residential projects. In some instances they may not be feasible or fit with the development scheme or with surrounding development patterns. The chief concern should be to insure conformity so that the design of pathways relates to a sub-regional network for bicycle and pedestrian movement.

page 148: Regarding mining, how is immediately adjacent defined? What branch of the state government enforces mining reclamation policies?

page 153: Under runoff policy in intensive development areas, how are treatment facilities defined? The requirement for separate treatment of storm water runoff, where on-site retention ponds are not feasible, is very stringent. We commend OCZM's intent but suggest that further clarification of the level of treatment is needed in order to indicate compliance requirements. Further guidance as to effluent standards under item (e) is needed.

page 154: What will constitute unacceptable groundwater pollution?

page 156: Among the new vegetative plantings to be used in the inner coastal or southern outer coastal plains, we believe that two of the recommended species are not indigenous. Therefore, we recommend the following changes: the gray birch

instead of the white birch, deletion of the eastern hemlock.

page 158: We recommend that the policy regarding public services be expanded to make it clear that applicants must not only demonstrate through agreements that additional demands for services can be met, but that prior to obtaining such agreements the applicant has estimated what the additional demands will be. This is an essential step prior to obtaining agreements which should be spelled out in the document to preclude the making of agreements based upon insufficient information. This kind of information, in effect, is part of the secondary impact analysis which the applicant must perform. See comments below.

page 159: Regarding the policy for scenic resources and design, we recognize the difficulty of defining visual compatibility beyond the categories of scale, height, materials, etcetera. We recommend the inclusion of additional language in the document to better define what OCZM intends by visual compatibility, thereby removing the enforcement of this policy solely on the basis of subjective, individual taste.

page 159-160: The policy regarding secondary impacts lacks sufficient detail to guide the applicant and insure that the intent of measuring and mitigating against secondary impacts is protected. This section should be expanded to indicate what types of off-site impacts must be addressed by the applicant. The OCZM might consult the document Secondary Impact of Regional Sewerage Systems, Volume 1, June 1975, prepared by the New Jersey Department of Community Affairs, for further guidance.

page 160: The policy on buffers and compatibility seems to confuse the responsibilities which rest with municipalities, through their land use regulations, with the state's interest in ensuring that development in the coastal zone is compatible with the coastal ecosystem. Use of buffering requirements under these policies to ensure that incompatible uses are more harmonious seems to extend beyond the state's concerns. Buffering requirements should be designed to ensure that different areas of the coastal ecosystem are not harmed by the development of adjacent land.

page 162: The policy for neighborhoods and special communities is too broad and might be used to prevent desired development in the coastal zone. This policy might be invoked to prevent the development of low- and moderate-income housing in a particular ethnic neighborhood through the argument that such development would affect the neighborhood adversely. We recommend this policy either be excluded from the document or that it be rephrased. Communities with unique historical, as opposed to ethnic, characteristics might be encouraged as areas to be preserved.

page 210: It is acknowledged here that the proposed coastal zone policies will limit the number of new housing units constructed in the coastal area and thereby will "increase the price of housing." The text continues: "This cost should be offset by the policy encouraging construction of low and moderate income housing." This assessment of the trade-off seems naive and inaccurate. Although the OCZM proposes to "encourage" low and moderate income housing developments which contribute to a municipality's fair share, this alone does not ensure that this housing will be built. Costs for this housing probably will increase also due to coastal zone policies. The provision of low and moderate income housing will continue to depend upon special state and federal financing programs. The OCZM's housing policies, as now written, contain no provisions to contribute materially to the supply of low and moderate income housing. On what basis does the OCZM justify its conclusion?

It might be valid if the state altered the policies and simplified the processing requirements for low and moderate income housing developments in the coastal zone to reduce their attendant costs. In the absence of this or some other modification to its housing policies, this conclusion appears to be invalid.

page 260: Clarification regarding which municipalities in Camden County lie within the preliminary proposed coastal zone boundary has awaited the receipt of more detailed maps from the OCZM. Based upon an analysis of OCZM's maps of the proposed boundary, received just prior to completing this report, the following corrections should be made to the list of municipalities on this page of the document.

Deleted: Audubon Park Borough
Oaklyn Borough

Added: Audubon Borough
Camden City
Magnolia Borough

4. Analysis of the Coastal Location Acceptability Method, CLAM

In order to become more familiar with the Coastal Location Acceptability Method (CLAM hereafter) and its suitability to Camden County, a specific development proposal along the Delaware River was analyzed, using CLAM. A short summary of this analysis and the results follow.

A. The Site

The site lies in Pennsauken Township, bounded roughly by the Delaware River back channel and tidal flats, River Road, and the Penn Central right-of-way. It is owned by the Vineland Construction Company, which uses a portion of the site for industrial activity and proposes to reclaim approximately 30 acres by landfilling with inert demolition-construction waste.

The site was chosen for analysis because the Vineland Company's proposal is current and descriptions and maps of the proposal were available to the Environmental Agency. Application of CLAM to this particular site served two purposes: (1) testing CLAM as part of task 1.0 of the State/County Coastal Coordination Project, and (2) enabling the Environmental Agency to further its evaluation of the suitability of the Vineland Company's proposal. Assuming a Delaware River coastal zone is promulgated by the state, in accordance with the preliminary proposed boundary, this site would lie within the coastal zone.

B. Application of CLAM: Description of the Findings

Step 1: Special Water Areas

Secondary sources listed in Appendix I for shellfish beds, surf clam areas, and prime fishing areas were not readily available. It was assumed that none of these special water areas would be found on site. The site itself extends into the Delaware River and includes a sizeable area of water. The recommended secondary source for finfish migratory pathways was not readily available. Since the Delaware River is known to receive fish migrations, the possible incidence of a pathway within the water portion of the site was noted. Lacking special source data, the occurrence of submerged vegetation within the water portions of the site could not be determined. The navigation channel designated in the Delaware River lies outside the site, since the site is east of Petty's Island. Two shipwrecks, identified as sites S2 and S3 in the environmental inventory of Camden County prepared by Jack McCormick & Associates, exist along the eastern banks of the Delaware River in the vicinity of the site. According to aerial photographs examined, these appear to be slightly downstream from the site. Designated marine sanctuaries were not applicable.

Step 2: Water Areas

Water use proposed by the Vineland Company includes filling activity of a small portion of the upstream course of a small creek. N.B.: This creek does not appear on the U.S. Geological Survey maps but does appear on a 1974 aerial photograph used in the analysis. According to the Water Acceptability Table and policy description on page 48 of the document, this activity is prohibited.

Step 3: Special Water's Edge and Land Areas

None of the following special areas appeared to be applicable to the site:

- high risk erosion areas
- dunes
- central barrier island corridor
- specimen trees
- prime forest areas
- bogs

The following four areas had relevance to the site and are discussed below:

- flood hazard areas
- wildlife habitats
- steep slopes
- stream head

Most of the site lies within the 100-year flood plain, as defined by the Corps of Engineers. Since the development activity proposed for the site involves land filling, this might raise the future elevations of the site so as to be no longer within the flood plain. According to the policies for flood hazard areas the depositing of solid waste is prohibited. Wildlife habitats occur on-site in the Wetlands areas along the tidal flats and off-site in the adjacent Fisherman's Cove. Along part of the eastern portion of the site steep slope conditions occur from the bluff supporting the rail right-of-way downward to the site. As described above, a small stream exists on-site. This raised the question whether such a small tidal stream would be affected by the stream policies. Are these policies designed to cover small streams which occur on man-made lands? In this instance, the required buffers would extend beyond the actual drainage area.

Step 4: Water's Edge

The Wetlands along Fisherman's Cove define the lower water's edge there. No distinct edge occurs along the area of the site bounded by the open waters of the Delaware River back channel. An upper water's edge here was defined by the 50' distance criterion.

Step 5: Land Areas

The Soil Conservation Service has not mapped this portion of Camden County, thus seriously limiting the information necessary for this portion of the CLAM procedure. We therefore did not have data for depth to seasonal high water table, soil permeability, and soil fertility. We could construct a vegetation index based upon the aerial photograph and knowledge of surface conditions of the site. A strip of high vegetation was identified along the back channel and along the cove. Medium vegetation characterizes the remainder of the site.

Under the commercial and industrial development criteria, the site meets all criteria for high development potential. The site lies within the regional growth area.

Step 6: Composite Map

We constructed a land factor composite map. In order to do this we made several assumptions regarding the soils conditions. We assumed low soil fertility and medium permeability for the entire site because most of the land area is composed of former dredge spoils materials. We assumed wet terrace conditions for those areas falling within the upper water's edge. We defined uplands as those areas landward from the upper water's edge.

Step 7: Location Acceptability Map

We constructed a location acceptability map which contained three distinct zones, as follows:

1. upland, med. permeability, low soil fertility, med. vegetation, high development potential, growth potential.
2. wet terrace, med. permeability, low soil fertility, med. vegetation high development potential, growth potential.
3. wet terrace, med. permeability, low soil fertility, high vegetation high development potential, growth potential.

Step 8: Determination of Location Acceptability

Consulting the land acceptability tables yielded the following findings for the three zones:

1. high density development
2. medium density development
3. medium density development

We noted that development in the second and third zones must comply with special construction standards for wet soils. We noted, however, that these standards (p. 121) do not address filling activities in the wet terrace. CLAM likewise does not address land filling activity within the floodplain

or flood hazard areas. Depositing of solid waste is prohibited. If the state's definition of waste includes "inert demolition/construction waste, then the proposed activity would be prohibited on most of the site.

Conclusion

Application of CLAM to this particular site yielded incomplete results largely due to the fact that the policies are silent regarding land filling within the flood plain. (See comments on page 6 of this report.)

III. Coastal Zone Policies for Camden County: Preliminary Considerations

The comments in this section relate to policies for a coastal zone program along the Delaware River and related tributaries in Camden County. These comments constitute a further response to the contents of the Bay and Ocean Segment and to the contents of the draft coastal management strategy prepared by Hudson County. These comments constitute a response to these two documents by the consultant and do not necessarily represent the views of the Camden County Environmental Agency or any other local planning agency. During the period which remains for work under the State/County Coastal Coordination Project further effort will be directed toward recommending coastal zone policies for Camden County.

1. Comments in Response to the Bay and Ocean Segment

On page 202 of the Bay and Ocean Segment, the following statement appears:

In particular, development will be restricted in areas with a high potential to degrade water quality. The costs associated with these policies will be a trade-off of coastal natural resources for inland resources, which are more abundant.

We assume that in the Delaware River coastal zone the same goal-to restrict development from areas with a high potential to degrade water quality-will be sought. Attainment of this goal will require different policies than proposed for the CAFRA area due to the more urbanized nature of the Delaware River coastal zone. Camden County's Delaware River waterfront is crucial to its industrial economic base just as the waterfront in the CAFRA area is crucial to a tourist-recreation economic base. However, as the water quality of the Delaware River improves and locations in Camden County for recreation and open space become scarcer, the importance of the Delaware

River waterfront and waterfronts along related tributaries as resources for recreation will increase.

The challenge to planners in devising coastal zone policies for Camden County and the other urbanized areas of New Jersey is to strike a balance between the twin needs of an industrialized and port-related economic base and an increasing demand for recreation use of the water and waterfront areas. A blanket use policy advocating the priority of resort/recreation uses over all other uses, as appears in the Bay and Ocean Segment (p. 135) will not work here. Policies for portions of the coastal zone in Camden County might have recreation and open space as the highest priority use. Other portions, such as the areas zoned and planned for industrial use along the Delaware River, must have industrial activity as their highest priority. Here, planning might focus on maximizing visual and physical access to the water for recreational activity, wherever industrial use of the waterfront can occur in harmony with recreational use. Thus the philosophy behind the policies for the CAFRA area of encouraging certain developments to locate inland from the coastal zone will not wash in Camden County nor in the other urbanized areas of New Jersey. Here, development within the urbanized waterfront must be encouraged, guided by policies which ensure protection of a less pristine, but still functioning, coastal ecosystem.

Special water areas within the Delaware River coastal zone will need new categories. Among the eight categories defined in the Bay and Ocean Segment, migratory pathways, navigation channels, and prime fishing areas probably are found most often. Shellfish beds rarely exist. We recommend, as a new category, areas which support migratory waterfowl. Such areas would occur both in special water areas and special water's edge areas.

Much of the land along the Delaware River in Camden County that is within the 100-year flood plain has been developed. Much of the industrialized waterfront in Camden City, for example, lies within this flood plain. Coastal policies for Camden County, therefore, cannot discourage development within these urbanized portions of flood hazard areas, as long as water quality standards are observed.

In the context of Camden County, several considerations occur with regard to the policies for land areas, expressed in the Bay and Ocean Segment. The categories for development potential factors should be expanded. Criteria for other recreation areas, besides campgrounds, should be included, such as marinas, active recreation areas, and nature conservation areas. Distinct criteria for

port development should be included under industrial development.

According to the preliminary draft of the State Development Guide Plan, all of Camden County contained within the preliminary proposed coastal zone boundary is considered a growth area. We recognize that the regional growth potential factor seeks to distinguish at a state-wide, macro-scale two regional growth strategies. As such, the strategy does not address micro-growth policies within a county or potential growth policy distinctions for older or distressed cities. It fails to distinguish between growth being encouraged in Camden City, characterized by redevelopment, infill, excess infrastructure capacities, and high densities, versus growth being encouraged in Gloucester Township, characterized by undeveloped or raw land, limited infrastructure capacities, and low densities. The state's development strategy discusses the unique problems of New Jersey's large cities and their need for additional financial assistance, but it fails to distinguish growth policies for these areas from those for outlying, satellite locations. Although the Department of Community Affairs, the author of this report, may not choose to revise its strategies to address this distinction, the OCZM might refine the regional growth potential factor in Camden County and other urbanized areas of New Jersey to distinguish between areas suitable for high density, multiple-use development from those areas suitable for low density growth.

The consultant reviewed the draft coastal management strategy prepared by Hudson County and submitted his comments to the Environmental Agency. The Agency will forward its comments directly to Hudson County. In addition to recommending specific use and resource policies appropriate to Hudson County and possibly other areas more urbanized than the CAFRA area, the Hudson strategy questions the boundary criteria and the CLAM procedure employed by OCZM there.

Regarding boundaries, we will be interested in seeing how Hudson County defines the inland extent of its coastal boundary. In the Bay and Ocean Segment, OCZM has followed the first cultural feature inland to coastal waters in defining boundaries. Yet, in its earlier report, Alternative Boundaries for New Jersey's Coastal Zone, OCZM suggested for urban areas "a specialized coastal zone boundary suited to existing management constraints and the status of the built environment may well be appropriate for this portion of New Jersey's shoreline." This report suggested two alternatives for defining the coastal zone in urban waterfront areas: (1) land and water use activities that occur in coastal waters or require the use of coastal waters, or (2) all

waterfront parcels of land, vacant and undeveloped included, that occur immediately upland from coastal waters.

Drawing the boundary to coincide with cultural features simplifies the task of boundary definition and mapping. We suspect that, in urban waterfront locations, this approach may tend to include land with uses unrelated to or not affecting the water or exclude land similiarly related. In such instances, definition of the boundary based on land uses and the line of property ownership may be superior to definition according to cultural features.

The Hudson strategy recommends discarding the CLAM procedure in built-up urban locations and relying more on the use and resource policies. This may be valid, but CLAM still seems useful in those portions of Camden County where a natural shoreline or natural water's edge conditions stillexist. Coastal zone policies in Camden County might allow for both approaches: the Hudson strategy, or its substitute yet to be devised, in land areas previously built upon and the CLAM approach for those areas not previously built upon.

What emerges from these preliminary considerations is the conclusion that there may well be a need in Camden County for two distinct sets of coastal zone policies: one set might apply to the highly urbanized, previously developed areas; the second set might apply to the undeveloped and still open areas along the Delaware River and its tributaries.

STATEMENT
of
CAPE MAY COUNTY PLANNING BOARD

to
U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OFFICE OF COASTAL ZONE MANAGEMENT

on
STATE OF NEW JERSEY COASTAL MANAGEMENT
PROGRAM BAY AND OCEAN SHORE SEGMENT

and
DRAFT ENVIRONMENTAL IMPACT STATEMENT

June 13, 1978

INTRODUCTION

At the outset, we wish to thank the NOAA-OCZM and the New Jersey DEP-OCZM for the opportunity to comment on this significant stage of the New Jersey Coastal Program for the Bay and Ocean Shore Segment. The policies of the Coastal Segment represent a significant commitment of human effort, time and financial resources which have evolved over the past four years. Even though it is not a final step, the document culminates a multi-year effort which was submitted to public scrutiny time after time and has been tempered by the various constituencies it will govern.

I. COASTAL PROGRAM

We strongly endorse the four basic coastal policies which are the touch-stone of the Coastal Program. In short, these objectives include:

- (1) Protection of the coastal eco system
- (2) Concentration rather than dispersal of development with strong emphasis on open space preservation
- (3) Development and implementation of an explicit decision-making process (Coastal Location Acceptability Method - CLAM)
- (4) Protection of the public health, safety and welfare.

We particularly endorse those policies which recognize and protect the fragile natural resources of the coast, those which constitute an explicit and rational decision-making process which, in turn, will remove much of the uncertainty that surrounds the current "ad hoc" CAFRA decision-making process, and the energy policies which accommodate energy development consistent with the four foundation policies. And, finally, we enthusiastically applaud the resort/recreational use policies and the priority of such uses in the bay and ocean segment of the coast.

If the Coastal Program has a singular significant defect it is that it fails to disclose the cumulative impacts of its own implementation. It remains unclear as to how many people or developments the Coastal Program would permit within the Bay and Ocean Shore Segment. Likewise, CLAM fails to distinguish between the best possible use of the land at a given site and the other uses it would permit. Given these uncertainties it is also impossible to comprehend where the people will be, what kinds of services and facilities they will require, and the impacts they will cause to air and water resources. While the water and air resource policies call for conformance with all applicable state and federal standards, the Coastal Program does not yet contain a mechanism by which to adjudicate the cumulative impacts of incremental CLAM decisions. While we recognize that our current concern for environmental problems and quality has sprung from our past failures to look ahead; solutions to these deficiencies must be found. We recognize that the New Jersey DEP is aware of these problems and has begun to develop scopes of work and let contracts to solve them.

However, because CLAM is not yet fully tested, we urge that the case study appendix (Appendix N) be expanded in the FEIS with respect to both geographical location of the sites studied and the nature of developments analyzed. Case studies involving motel or recreational development proposals on barrier islands and adjacent to water areas, for example, would help to clarify the multitude of implications CLAM holds for both developers and environmentalists.

II. BOSS - EIS

Today, we are called upon not only to speak to the Coastal Program itself but also to the environmental impact of its implementation. As noted above the deficiency of the Segment to clearly specify its cumulative impacts reflects itself within the EIS. Where the impacts are, as yet, unknown, the impacts cannot be fully and meaningfully assessed.

Secondly, the EIS does not appear to take a hard look at the impacts the implementation of the Coastal Program will have in non-CAFRA areas. Upon approval, it would seem that non-CAFRA areas adjacent to the CAFRA border would be subjected to intense development pressure which in turn may generate impacts in adjacent CAFRA areas. Likewise, developments of twenty four units or less will not come under the jurisdiction of the Coastal Program but could, on a cumulative basis, have greater impact on the Coastal Zone. Observations in Cape May County indicate that both of these "exceptions" could have a significant impact on the Coastal Zone. While these issues have been raised in the EIS adequate solutions are not proposed.

CONCLUSION

This concludes our prepared testimony. Attached is a third portion of this statement for the record that deals with technical issues surrounding the Coastal Management Program - Bay and Ocean Shore Segment. Thank you. If you have any questions I would be pleased to respond.

III Bay & Ocean Shore Segment - Technical Issues

1. Section 6.4 (p. 50) - Special Water's Edge & Land Areas - Previously filled wetlands in close proximity to the water or water's edge areas are an anomaly in the CLAM process. We urge that a special policy be developed that clearly states how the permeability factor should be weighed. That policy should also reconcile itself with the policy at 6.5.1.3 (p 71) regarding restoration of degraded wetlands. Criteria defining "degradation" should be developed.
2. Section 6.3.5.2 (p. 41) - Channel Types - The definition and classification of tidal streams is missing and is, therefore, unclear.
3. Section 6.4.1 (pp. 50-51) High Risk Erosion Areas - The document classifies six areas in Cape May County as "high risk erosion areas". The County Planning Board and the Army Corps of Engineers have identified four additional areas which should be added to the list:
1) South Cape May Area of Lower Township; 2) A portion of Stone Harbor Point; 3) Townsends Inlet shore front in Avalon; and 4) the Sea Isle City Beach.
4. Section 6.6.7.2.1 (pp. 89 - 90) Marina Development Potential Criteria - Explicit instructions should be included here indicating that the residential development criteria apply to marinas.

5. Section 6.6.7.3 (pp. 91-92) - Commercial & Industrial Development Criteria - The definition of "commercial" is unclear and should be stated. Secondly, the "low potential" criteria (6.6.7.3.3) appear to apply only to industrial development; "low commercial" criteria should be developed.
6. Section 6.6.7.5 (p. 94) - Energy Facility Criteria - The "interim development potential" classification of energy facilities as "moderate" pending completion of a joint DEP/DOE study is an unfounded presumption which directly contradicts the four basic foundation policies of the coastal program, the "coastal dependency test" (p. 211) and the mandate of the Statute in its call for "wise use of the land and water resources of the coastal zone." Given the break-neck pace that typifies DOE's completion of studies and the fact that energy companies and utilities plan capital improvements at least five years in advance, it would appear to be wiser to classify energy facilities on an interim basis as "low". The pending joint study in no way leads to the "moderate" classification. In the interim, no substantial burden or delay will be caused to utilities.
7. Section 6.6.9.6.5 - Development Level Summary - The acceptable land coverage percentages should be clarified and amplified by the addition of the range of densities by sub-area category. Without such specific information, the full implications of CLAM remain unclear or unknown.

8. Section 7.3.4 - (p. 136) - The definition of "existing resort-oriented areas" is unspecific and unclear.
9. Section 7.3.9 - (p. 137) - The definition of "dry land" is unspecific and unclear.
10. Section 7.4.13 (b) - (p. 145) - The nature and extent of the evidence that constitutes "clear proof" of "need and vital importance" should be specified in a detailed and comprehensive statement. Likewise, at 7.4.13 (c), the information requirements leading to the required "assurance" should also be specified.
1. Chapter 6 - (p. 195) - Wet Sand Beaches - The recreational potential and public access needs to bayshore as well as ocean front beaches should be recognized and added to the Program.
12. Part III - (pp. 203 -204) - Impacts on New Development and Land Values - We specifically recommend inclusion of "Exhibit 2" of "Business Prospects under Coastal Zone Management" prepared by Real Estate Research Corporation for NOAA (March, 1976) in the FEIS as it neatly summarizes the generally positive economic effects of coastal zone management.
13. Part III - (p. 204) - Resorts/Recreation - The section fails to note that the growth of tourism is not exclusively dependent on Atlantic City; demand for recreational opportunities will also spur growth and development.

Some mention should also be made of increasing recreational tourism opportunities on the mainland areas of the coastal zone. Campgrounds, golf courses and seasonal housing theme could also complement the existing ocean-orientation of the industry and improve the tax base of adjacent mainland communities.

14. Part III - (p. 211) - (3.) Energy - This section indicates the possible siting and permitting of gas processing plants and pumping stations in the coastal margins upon a showing of "technical and economic reasons." Explicit criteria should be stated.



CAPE MAY COUNTY PLANNING BOARD

June 19, 1978

David N. Kinsey, Chief
Division of Marine Services
Office Coastal Zone Management, DEP
P.O. Box 1889
Trenton, N. J. 08626

Dear Mr. Kinsey:

This letter is an amplification of comments submitted in testimony at the June 13, 1978 Public Hearing on the N. J. Coastal Management Program Bay and Ocean Shore Segment and Draft Environmental Impact Statement.

Upon further review and case study exercises, it was noted that the N. J. Coastal Management Program B.O.S.S. Chapter 3, does not address the marina-recreation development along the Intra-Coastal Waterway. Also the document does not delineate policy specifically dealing with the dredging channels necessary to support the marina uses.

It is recommended that: (1) policies concerning the siting of marinas on the Intra-Coastal Waterway tidal channels and lagoons be developed; and 2) tidal channels and lagoons be more explicitly defined and policies to be applied toward new and maintenance dredging developed and use; and 3) the definition and policies become part of the final rules and regulations as adopted by Department of Environmental Protection.

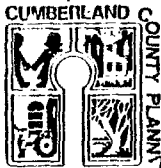
If you have any questions concerning the comments please contact our office.

Sincerely,

Elwood R. Jarmer
Director

ERJ:jd

cape may court house, new jersey 08210-609-465-7111



CUMBERLAND COUNTY PLANNING BOARD 800 EAST COMMERCE STREET - BRIDGE TON, NEW JERSEY 08302 - PHONE: 609-451-8000

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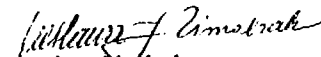
June 30, 1978

Mr. David N. Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Dept. of Environmental Protection
State of New Jersey
P.O. Box 1889
Trenton, N.J. 08625

Dear David:

Enclosed please find Cumberland County Planning Board comments and suggestions on "State of New Jersey Coastal Management Program Bay and Ocean Shore Segment".

Sincerely,


Czeslawa Zimolzak
Senior Planner

CZ/dlm

Enclosures

STATEMENT ON: STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT

Draft Environmental Impact Statement, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, May, 1978 pp. 350

Chapter Three: Coastal Resource and Development Policies
(pp. 19-163)

This chapter is of great importance to the public because it specifies coastal policies for proposed development under CAFRA, Wetlands and riparian statutes. While it provides useful guidelines, shows much thought, pays attention to details, and in many ways succeeds at creating order out of potential chaos, the CLAM methodology as proposed does have some problems and loopholes. It is also time consuming for researchers; it doesn't say who will pay the money nor does it provide the tools for its research. It errs in the direction of overgeneralization and open-endedness in some cases. This could lead to a series of private/public/county/state/federal conflicts, resulting in litigation, delay and increased costs. These problems will inevitably cause confusion and dismay on the part of those who own and use the lands involved. Many may justly conclude that corporations and wealthy vested interests will circumvent regulations through loopholes, while small individuals may suffer from overstrict interpretations. Certainly large corporations can better afford the necessary site research, than can small landholders.

The repair and maintenance of structures and improvements already existing within the area has presented problems to date. The work does not clarify that situation.

CLAM Methodology - Suggestions; Comments:

Figure 5 . . . , the Water Acceptability Table (p. 45) is excellent. There might be some question of categorization when applied to an individual's area, but that will always occur. It provides firm, rational guidelines in easy-to-use table form.

Figure 6, (p. 52) leaves much to be desired. Titled High Risk Erosion Areas, it really refers to High Risk Beach Erosion Areas. Streams shown in heavier print give some vague

implication of riverine erosion "power" - a cartographic misconception, I am sure was not intended. Coasts and streams are shown, not areas. How far back from the shore do such areas extend? The implication of the accompanying key is that only developed areas of Cumberland County beach are such high-risk erosion areas, yet the entire Bay Shore is encompassed by the line and designation number one. In fact erosion risks are greater northwest of Egg Island than southeast of it. Category "m" of areas to be designated as high-risk erosion, - is their available data on "high, long term erosion rates"? If so, where can it be obtained?

Section 6.4.5. - Historic Resources - (p. 60)

The category of historical resources remains a big question mark. Not what are they, or which things are historical, but what does development (or a lack of it) do for their preservation? Development, unregulated, might destroy Greenwich. On the other hand, a lack of development appears to be destroying historic structures in Port Norris and Maurice town. In particular in Port Norris, such structures are being abandoned. A policy of "no development" is no guarantee of preservation. "What kind of Development" is more crucial in terms of preserving a historical resource.

The "Cape May syndrome" is fine for Cape May County. No new development may fit their needs and desires admirably. Cumberland, too, does not desire boom type growth or wanton destruction of the area's environment. We do wish, however, some development. People, too, are a resource.

A recent N.Y. Times article, by the way, shows abandoned and decaying historical structures in an area of no development. It also hints at current conflicts based on contradictory goals, programs and guidelines.

There are no easy answers, but the whole methodology and proposal indirectly suggests that there may be such an answer, by proposing stringent controls arrived at on the basis of loose, ill-defined guidelines.

Section 6.5.2. - Upper Water's Edge (pp. 72-81)

The upper water's edge guidelines don't seem to exclude much development at all, if closely examined. If you need direct water access, have no alternative (the same thing, said in a different way), have no trees over 10 feet tall and are next to somebody else's existing development - you can build. That is wide open - those guidelines are easily met. On the other hand, developmental acceptability criteria appear to be unnecessarily stringent, demonstrating a lack of consistency at the very least and suggesting over-regulation of uses contemplated in less critical areas.

Step 5 - Section 6.6.3. (pp. 82-84) - Depth to Seasonal High Water Table.

This criterion is difficult to determine. The study provides two guidelines for determining this factor. Soil Survey Maps and the general hint that "It typically occurs in the early spring after snow melt". In North Jersey, yes, where there is considerably snow. Heavy snows are rare in coastal South Jersey, and melting is intermittent. There is almost never any great spring thaw. Seasonal high water often comes in summer after long periods of soil saturation downpours, at which time the water table is almost at the surface. Local clay lenses occur frequently and can occur over areas ranging from a few square yards to many miles. Soil Survey maps are highly generalized and provide limited data on subsoil conditions. Here, as all over coastal South Jersey, test borings will be necessary, conditions may vary greatly over a single field or even a single acre. Who will provide personnel and money for such intensive testing?

Section 6.6.4 (pp. 85,86) - Soil Permeability Factor

There is no provision made for assessing the factors of percolation and upward movement of soil waters through capillary action. Existing farmland is often irrigated, changing local soil water balances. The charting of hard pans is virtually impossible and active pan formation is occurring in some local areas. Locally supplies (eg. Thornthwaite system potential evapotranspiration) data might be helpful, but is such detail and the aim of the methodology?

Section 6.6.5 - Soil Fertility Factor (pp. 86, 87)

Soil fertility is also a questionable criterion in developed agricultural areas. Years of farming, plowing, fertilization and irrigation have greatly modified soil structure and fertility. Only in undeveloped areas are soil maps of great utility. Abandoned or fallow farmland could well be categorized as of low fertility because of its original designation; yet be very fertile after years of re-making by farm use - only to be abandoned under economic pressures. Again, site testing of an intensive type is required.

Section 6.6.6 - Vegetation Index Factor (pp. 87, 88)

Existing vegetation - What exists there now? Is it original, so called "natural vegetation"? Is it colonizing species, likely to change with time? Is it climax vegetation? Is it man planted? Is it vegetation which has developed in response to edaphic changes which resulted from man made changes in the local environment? The basic question remains: "Is vegetation a reliable indicator of soil fertility and water conditions?" Should the use of vegetation data be limited to only certain, highly reliable indicator types and those types with commercial value or to botanical rarities? Does vegetation act as an indicator of anything not divulged by and mapped with criteria 1, 2 and 3? Slope might be a more important factor. Propensity for land to erode is important, not just shoreline erosion.

Section 6.6.7 - Development Potential Factors (pp. 89-95)

The whole idea of developmental potential raises immense controversy. Obviously, any area not already developed has potential for development. There is such a thing as overdevelopment. Its problems and destructive potential for the environment may be even greater than that of certain types of dispersed development. Access to roads, sewerage and water are valuable aids. What of access to other forms of transportation, - like pipelines and navigable waterways? Are these the only measures of developmental potential?

4

Doesn't this sort of reasoning reinforce the "accidents" of past municipal boundary and incorporation decisions to a great extent? If the Bridgeton area is to expand, it must be expansion largely outside its current municipal boundaries.

Much of the potential for Bridgeton's expansion into non-coastal zone areas conflicts with agricultural land use. Cannot rational, productive development occur within that coastal zone? Must Bridgeton be relegated to stagnation or economic decline? Which resource is more important, coastal area or agricultural land? The upland area Southwest of Bridgeton (Hopewell) has great growth potential in terms of road, water, and sewerage access, yet it is relegated to "limited growth". Status, nowhere near the coast and often well above the 20 foot contour, it has been included in the coastal zone. Townships like Downe and Commercial are almost entirely within the coastal zone; they are thereby effectively relegated to a status of little or no development.

Both developmental potential and regional growth type are arbitrary and unclear categorizations. Much more effective guidelines are needed. What, exactly, is "limited growth"? What are the limits? How can a decision be arrived at without definitions of these terms and without guidelines?

The hypothetical case used in the report is good. The problems are tough. No one area can duplicate average conditions or anticipate all problems. The methodology will be difficult to evaluate until multiple, factual cases are done. This does not mean the example has no value. It is excellent, and provides fine guidelines for other studies. However, a better methodology and sharper guidelines could be evolved from multiple case studies.

There is overall confusion in this methodology in terms of what is general guideline and what is site specific. We are asked to use general source data to come up with site specific decisions. That cannot be done well, fairly or accurately. On the other hand, tests are time and money consuming. It seems that more money and a comprehensive data collection program are necessary before this proposed methodology can work.

5

This is one of the weakest sections of the methodology. A whole host of factors, ranging from time/distance, to economic need of area residents, to industrial locational requirements, to amenities and energy supplies are not ever considered. While roads, sewers and water supplies are important, they are not always paramount in any locational decision. Water can be easily available over much of the coastal plain, goods may not necessarily move by road, but rather by some other mode, and sewage can be handled by acceptable alternatives to the traditional central treatment plant; or can be piped away to an existing disposal plant in another municipality under contract arrangements. Even when on-site and water supply, sewage disposal are not permissible, near by, economic solutions may be available. How far away can one be from such supplies/facilities and still be considered acceptable? There are no guidelines.

The whole idea of the concept of infilling (p. 92) is open to question. Many metropolitan/regional planners hold that infilling can compound congestion and create a host of other problems. It is not some universal good, some unquestionably desirable goal to be attained. The evolving "false front" facade of development along roads in rural N.J. with its preexisting set of electric and phone lines, may be more economic (as well as more environmentally sound) than infilling.

Section 6.6.8 - Regional Growth Potential Factor (pp. 96-99)

Regional growth types? These may have been arbitrarily determined. The Monmouth County shore area is categorized as a "growth area". It is already intensely packed with people and development. How much more development potential is there in the area? If industry is relegated to locations in that County's coastal zones, will it drive current residential development into the interior of the county, - putting more pressure on the land resource? The development potential areas (p. 96) are limited to Bridgeton and Millville for this County. For Millville, this is fine. The municipality has large areas of undeveloped land. Only a tiny fraction is designated as part of the coastal zone. Bridgeton is virtually built to its borders.

When one views the case study as a pattern for developing other case studies, it is excellent. If viewed as the ultimate source of all information and answers, it cannot rationally supply them. If the Water Acceptability Tables (Fig. 58) are good, the Land Acceptability Tables (Fig. 18) are not. They are exact in appearance, and, as we are told, they contain every permutation and combination of the six factors. They are missing a lot of cogent factors, both physical as well as cultural. Much additional information must be supplied before such a table could be used rationally. The physical environment, to say nothing of the machinations of mankind, cannot be successfully categorized in just 6 characteristics.

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July 5, 1978

Mr. David Kinsey
State of New Jersey
Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Management
P. O. Box 1889
Trenton, NJ 08625

Dear Mr. Kinsey:

Cumberland County Freeholder Director Charles Fisher has asked me to submit in his behalf the enclosed statement. He has checked the comments with the other six Cumberland County Freeholders and received their support. It is the view of the Board of Freeholders that the proposed regulations with regard to the wetlands-CAFRA-riparian areas will have exactly the opposite effect your staff foresees. The proposed regulations, if adopted unchanged, would encourage only large projects.

Cordially,

(Signature)
James H. Ogilvie
Public Relations Officer
County of Cumberland

jlh

Enclosure

VIEWS OF
DIRECTOR CHARLES FISHER,
CUMBERLAND COUNTY BOARD OF
CHOSEN FREEHOLDERS,
BRIDGETON, NEW JERSEY,
WITH REGARD TO "COASTAL RESOURCE
AND DEVELOPMENT POLICIES."

The Cumberland County Board of Chosen Freeholders does not want to see the wetlands along Delaware Bay turned into an industrial complex. Such development, however, is highly unlikely for a number of reasons. The shallowness of the waters immediately off-shore, the oyster beds and the nature of the wetlands themselves, would discourage the construction of heavy structures which would be ecologically undesirable.

Your regulations proposed in "Chapter Three: Coastal Resource and Development Policies," however, may prove to be counter-productive and actually encourage the wrong type of economic activity. The regulations you propose will make the process of getting permits complex and expensive. Only the very largest -- and most undesirable -- projects will be attempted.

Historically, most of the businesses in the wetlands of Cumberland County were modest when they started. Marina operators, for instance, might have provided space for a dozen small boats in their first year. As they proved their management abilities and developed satisfied customers, they grew -- again gradually. The same can be said for sandmining businesses, restaurants, and farmers.

Your proposed regulations would discourage this great American practice of a person going into business in this area in a small way. The cost for the studies required by your regulations would be prohibitive for most people. And there is no certainty that the proposals would be approved at the end of the process.

A few additional docking areas in the wetlands of Cumberland County, for instance, would not adversely affect the ecology of Delaware Bay in a measurable manner.⁹ The present health regulations we have -- aside from CAFRA -- would minimize most conditions you might consider undesirable. The competitive free enterprise system would quickly separate the efficient from the inefficient, the successful from the unsuccessful. Those boating areas occupied by the unsuccessful operators -- in most cases -- would deteriorate into their original state.

Your regulations would not prohibit development of wetlands. But the number and complexity of these regulations would permit only the largest -- and most destructive -- projects to consider undertaking the procedure. A marina operator, for instance, would have to plan a facility for hundreds of boats in order to justify the risks and expenses involved. The very size of his operation, if approved, might well prove to be more destructive of the environment than the same number of boat slips scattered over many miles and maintained by many different people.

Again, we are bothered most by the fact that you are driving the small entrepreneur out of the area, absolutely precluding such a person from undertaking a business here.

Would it not be possible for proposed development of the wetlands below a designated geographic and/or dollar size to use a simplified permit system? Must everyone go through the complete application procedure?

Unless you develop some way which allows the smaller entrepreneur to operate, your regulations may have the further effect of eroding our property tax base in CAFRA areas. Municipalities with a few large tax-paying property owners may be more subject to undue pressures than those with many smaller businesses.

Let's keep private initiative by individuals of modest means alive. The wetlands of Cumberland County have survived nicely with this practice since the first colonists came here 300 years ago. Your regulations may well do more to change the environment than protect it.

Thank you for this opportunity to give this view.

STATEMENT ON
"CHAPTER THREE: COASTAL RESOURCE
AND DEVELOPMENT POLICIES"
OF COASTAL MANAGEMENT PROGRAM OF CUMBERLAND COUNTY
BY DR. PHILLIP FHELON,
CHAIRMAN,
CUMBERLAND COUNTY ECONOMIC DEVELOPMENT BOARD.

The Cumberland County Board of Chosen Freeholders established an agency nine years ago specifically charged with broadening the economic base here. This Cumberland County Economic Development Board is an outgrowth of that initial agency.

Unfortunately, in recent years, we have had to spend almost as much time attempting to save what industrial base we have here as we have in expanding it. Your proposals as outlined in "Chapter Three: Coastal Resource and Development Policies," probably will force us to spend even more time in a defensive instead of an aggressive posture.

The proposed regulations outlined in your May, 1978, "Draft Environmental Impact Statement" are too long for us to cover point-by-point. There are, however, a number of areas which "jump out" at us as we read it and, we hope, that pointing to them will identify some of the fears we have about many of your proposals.

The very voluminousness of the regulations you propose will discourage many good business people from even attempting to start operations here. Most of them would have to hire expensive specialists to prepare the appropriate impact statements and fill out the permit requests.

While we applaud the attempt to combine and simplify the bureaucratic regulations of several agencies, we are convinced that the present document will not achieve the objective of a reasonable, forthright, and manageable system.

Paragraph 4.5: Why "encourage" only the use of solar as a source of energy when other sources years ahead may prove to be more desirable. Your position will discourage efforts to find the best possible energy sources by concentrating efforts upon solar.

Also, why encourage specifically low cost housing? In the long run, is this not perpetuating the low economic levels which have discouraged the economic expansion of these areas. By encouraging only low cost housing, you are consigning the area to a backward economic status forever.

Paragraph 5.0: Putting the decision-making process into three layers, as you propose, will make any economic development of coastal lands possible only for the largest firms and proposals. The small home-grown entrepreneur, who has been the backbone of Cumberland County for 300 years, will be unable to continue functioning.

(Here, we also must inject the comment that your regulations will "lock in" land uses almost forever. It is our view that land uses should change as the economy, the state of scientific development, and our knowledge of the area and world in general develop.)

Paragraph 6.2.5.2: The prohibition against dredging of submerged vegetation beds for energy pipelines would preclude a possible use of some higher coastal areas for a purpose least disruptive of the environment: that of a tank farm or similar storage facility for gas and oil which might be discovered in the Baltimore Canyon. This action would put Cumberland County out of the running for such a facility even though we might benefit economically from it.

Paragraph 6.2.6.2: Since dredging is not a natural action but man-made, the recommendation that land disposal be used discourages such activity because "suitable areas" are rarely close to the channels you wish to widen and/or deepen.

Paragraph 6.3.8.2: It is virtually impossible to create new boat ramps which would not in some way affect subaqueous vegetation. Other restrictions on boat ramps appear equally preposterous.

Paragraph 6.3.8.13: The restriction on bridges will make a proposed crossing of the Cohansey River south of the city of Bridgeton considerably more expensive. The new regulations also would probably delay its start and completion.

(We hesitate to make any judgment on the proposed Seabreeze Bridge, linking southern New Jersey with Delaware. This route is vitally needed for the economic development of Cumberland County. Your requirements will delay and, possibly, prevent its completion.)

Paragraph 6.4.1-(m): How do you measure "high long-term erosion rates?"

Your "specific examples" would appear to preclude any development of the Delaware Bay shoreline of Cumberland County -- as mentioned in Paragraph 6.4.1.2.

Paragraph 6.4.9.3: Your assumption that open space can "retain contiguous farmland" was certainly not reached in consultation with farmers. Recreational facilities adjacent to farms frequently have a detrimental effect upon agricultural activities.

Paragraph 6.4.11.1: To limit prime agricultural lands (classified I and II) to agricultural use without the permission of the property owner can be counter-productive to your long-range intent.

Paragraph 6.4.11.3: Although we in Cumberland County who live adjacent to farms appreciate the quality of "locally-grown food," many farmers are no longer able to compete even in the nearby metropolitan areas with foods grown on the huge factory-farms of the South and West. This is another regulation which may hinder rather than help the economy of Cumberland County in the long run.

Paragraph 6.5: Your regulations with regard to wetlands will have the effect of eliminating small competitors for proposals in the area. The result will be that only the largest, most disruptive, and, quite likely, the most ecologically undesirable projects will work their way through your permit system. The reason for this is that only developers of large operations have the financial wherewithal to invest in such developments. The typical small businessman who has contributed so much to Cumberland County in the last 300 years no longer will be able to compete.

Paragraph 7.4.2: This board most strenuously objects to your comment: "To minimize the impact of needed facilities (to support O.C.S. activities), DEP encourages the location of O.C.S.-related facilities in developed areas where the infrastructure and labor market already exist to absorb such activity." In other words, you are precluding Cumberland County from participating in what may well be the largest single new economic opportunity to come to the state of New Jersey in a generation.

Paragraph 7.4.4: We are disturbed that you suggest that platform construction yards requiring large tracts of land be assigned to Salem, Gloucester, and Camden Counties rather than areas along lower Delaware Bay, such as Cumberland County. We have the most suitable sites for this activity. Our economy needs such activity more than adjacent counties do.

Paragraph 7.6.2: To limit mining to areas presently used in the fashion or immediately adjacent not only is economically undesirable, but it may prove to be to the long-term disadvantage of the nation's total economy. Mining is a major occupation in Cumberland County. Our first industry, glass in particular, developed here because of the distinctive sands we have. Prohibitions such as you propose would drive glass manufacturers to other areas where mining would be less expensive and less complicated.

Again, comment must be directed toward the complexity and inflexibility likely to occur as a result of the regulations you have developed. For 300 years, this area has managed its affairs quite well without all this red tape. Your actions are likely to bring about changes far more disruptive than those which would occur otherwise.

**COOPERATIVE
EXTENSION SERVICE
COOK COLLEGE**

Additionally, the economic growth of Cumberland County may well be impeded with adoption of these regulations in their present form. We strongly recommend in concert with the recent actions of Governor Brendan Byrne that at each level, the agency have 30 days to act -- or the proposal is automatically approved, and that, in no case, may an applicant be held up by either the state or federal procedures for more than 90 days.

June 16, 1978

Mr. David Kinsey
Dept. Environmental Protection
Office of Coastal Zone Management
Division of Marine Services
P. O. Box 1889
Trenton, NJ 08625

Dear Mr. Kinsey:

Please include the enclosed statement in the hearing record of the June 13, 1978 Public Hearing for New Jersey's Coastal Management Program, Bay and Ocean Shore Segment held at Bridgeton, New Jersey.

Thank you.

Sincerely,

Harry H. Fries
County Agricultural Agent &
Professor of Agricultural Extension

dff

Enclosure

**COOPERATIVE
EXTENSION SERVICE
COOK COLLEGE**

Re: Section C 13:19-5 Chapter 185 Laws of 1973 (CAFRA)

Section C 13:19-5 should be amended to exclude from the specified "Permit to construct facility" procedures all activities necessary for the continuance of agricultural production on lands situated in the area subject to the CAFRA Act. These activities include drainage ditch maintenance, sluice gate maintenance, repair and replacement, levee and dyke repair and maintenance, and repair of storm, flood or frost damage to agricultural land-water control structures or equipment.

In addition, other existing legislation concerning agricultural land presently inactive agriculture production should be modified to exclude activities necessary to maintain these lands as productive agricultural areas. It is suggested that the state and federal responsibilities over the environmental integrity of the coastal, wet lands and riparian lands be protected by a simplified procedure for activities on agricultural lands such as:

The agricultural land owner will contact the local Soil Conservation Office to inform them of any activity they plan to insure the continuation of agricultural production in the area. The Soil Conservation Service shall, either by on-site inspection, or with historic knowledge of the site and its needs approve or disapprove the verbal or written plan of activity. The local Soil Conservation Service will then notify the appropriate state and federal agencies of the activity that was undertaken and at their discretion (the agencies involved) they may inspect the site to insure that it does not pose a threat to the environment of the coastal zone, wet lands, or riparian lands.

Activities found to be in conflict with the environment of the area would be cited in detail to the land owner and a hearing held if necessary to resolve the conflict between the environmental aspects and the needs of continuing agricultural production.

The elimination of red tape for agricultural producers whose only aim is to protect and preserve their land for food production for the residents of the state seems to be a worthy cause if it can be done within the context of the aims of CAFRA to optimize the value of coastal lands for the citizens of the state. At present, unique crops are grown on lands in the coastal area that meet specific needs of the market. For instance, lettuce from California this past April was selling for over \$1 a head locally. When Cumberland County production (located in the Cedarville, Fairton area) came in in May the price dropped down to 35¢-40¢ a head. Without this local competition New Jersey residents will be at the mercy of California and Florida producers.

COOPERATING AGENCIES: RUTGERS UNIVERSITY - THE STATE UNIVERSITY OF NEW JERSEY, THE U.S. DEPARTMENT OF AGRICULTURE, AND THE CUMBERLAND COUNTY BOARD OF CHOSEN FREEHOLDERS.

A procedure as outlined in Section C 13:19-5 that can run to over 90 days time, and require hundreds of dollars per permit, will insure that local farmers will not be able to make timely-economical repairs to their water control facilities and will go out of business.

Harry H. Fries
County Agricultural Agent &
Professor of Agricultural Extension

MIDDLESEX COUNTY PLANNING BOARD

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June 14, 1978

DOUGLAS S. POWELL
Director of County Planning

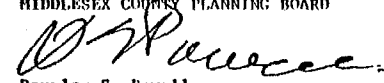
FRANK J. RUBIN
Counsel

PATRICIA A. LYCOSKY
Secretary

the end of June, the Planning Board would request your Office to accept the enclosed Statement as our initial assessment of the Coastal Program. The Planning Board Staff is available to further discuss the contents of this review at your request.

Sincerely yours,

MIDDLESEX COUNTY PLANNING BOARD


Douglas S. Powell
Director of County Planning

DSP:sm

Enclosure

cc: LR/MC 208 Policy Advisory Committee

Mr. David Kinsey, Chief
Office of Coastal Zone Management
N.J. Department of Environmental Protection
P.O. Box 1889
Trenton, N.J. 08625

Re: Draft Environmental Impact
Statement, State of New Jersey
Coastal Management Program-Bay
& Ocean Shore Segment

Dear Mr. Kinsey:

The enclosed statement relative to the Draft Environmental Impact Statement entitled State of New Jersey Coastal Management Program - Bay and Ocean Shore Segment dated May 1978 was endorsed as a preliminary statement and approved for transmittal by the Middlesex County Planning Board at their meeting of June 13, 1978 and is being transmitted to you for inclusion in the public record.

Secondary statements made in accordance with our DEP-OCZM contract will follow by July 1, 1978. The key concerns we will be addressing in the review of this document are to consider the following points:

- evaluate the accuracy of materials presented in the Bay & Ocean Shore document for the coastal zone.
- address the applicability and adequacy of the State Program's overall management system to the Northern Waterfront areas, which includes most of Middlesex County's coastal zone.
- review the implementation proposals for the delineated coastal zone boundary.

The Middlesex County Planning Board appreciates this opportunity to review and comment on this draft E.I.S. Pending completion of our full evaluation by

STATEMENT
OF THE COASTAL MANAGEMENT TASK FORCE
OF THE LOWER RARITAN/MIDDLESEX COUNTY
WATER QUALITY MANAGEMENT PROGRAM
POLICY ADVISORY COMMITTEE
ON THE
STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT

JUNE, 1978

In November, 1977 the 208 Lower Raritan/Middlesex County Water Quality Management Program's Policy Advisory Committee (PAC), a citizen and municipal advisory group, created a Coastal Management Task Force to review the Report entitled: Coastal Management Strategy for New Jersey, CAFRA Area, dated September 1977 and issued by the New Jersey Department of Environmental Protection (NJDEP). The PAC authorized that the Task Force transmit a statement on behalf of the PAC to the State for the record of the hearings scheduled on that Report. That statement was submitted to the Office of Coastal Zone Management on December 14, 1977 in response to DEP's call for comments on the Strategy.

This new statement which is a revision and extension of the December Statement is being submitted now by the Task Force in light of the revisions made to the Strategy and incorporated into the Draft Environmental Impact Statement dated May, 1978 and entitled State of New Jersey Coastal Management Program, Bay and Ocean Shore Segment.

The Lower Raritan/Middlesex County Coastal Management Task Force recognizes that separate and distinct planning approaches must be taken to manage both the urban and industrialized coastline of New Jersey and the tourist and recreationally-oriented areas of the resource and development policies of the State Management Program are intended to be implemented through existing laws and agencies. The Task Force continues, however, to be concerned about the impacts of an imbalanced coastal zone policy on the coastal area of Middlesex County since the added protective measures afforded the CAFRA zone tend to push energy facilities to other areas, such as the remaining non-CAFRA coastal portions of the Middlesex County area. Thus for the State to propose implementing the coastal policies before the northern waterfront and Delaware waterfront areas are adequately addressed would tend to result in the concentration of coastal dependent energy facilities in these other coastal areas not yet covered by such policies. Affected municipalities in Middlesex County may well include: the Cities of Perth Amboy and South Amboy; the Borough of Carteret; and the Townships of Edison, Sayreville and Woodbridge. These municipalities will feel siting pressures first for various coastal dependent energy facilities as noted in the Middlesex County Planning Board report

entitled Policies for Handling the Impacts of Offshore Oil in Middlesex County, (January, 1978.) More recently, Middlesex County has been identified by the U.S. Department of Interior as one of three New Jersey counties likely to receive the heaviest impacts from offshore oil and gas exploration and development in the Atlantic Ocean. The Department projected that Middlesex County would be the landfill site for three gas pipelines servicing the present exploration field in the Atlantic. The Department also assumed that a gas-processing plant would be required on the land side of that beachhead. The shoreline of Middlesex County's Raritan Bay area was chosen because it is the site of an existing 26-inch diameter, high-pressure gas pipeline built by the Transcontinental Gas Pipe Line Corp. in 1968. The pipeline enters Raritan Bay within the Morgan section of Sayreville near Cheesequake Creek and was the cause of community protests when it was installed to supply gas to Long Island 10 years ago.

The Task Force remains unsatisfied with the coastal zone boundary delineated in the revised management program. The policies within the Bay and Ocean Shore Segment do not provide the needed protective measures afforded to the CAFRA zone to the two municipalities of prime concern in this case, Sayreville (Morgan Section) and South Amboy, which exhibit residential and recreational characteristics similar to those in much of the CAFRA region.

Local input on extending the CAFRA boundary to include the Raritan Bay coastal areas of Sayreville and South Amboy from the Cheesequake Creek to the Victory Bridge has been initiated and supported by municipal officials. At the public meeting held in December 1977 to receive comments on Middlesex County's Offshore Oil Report, both the Mayor of South Amboy, J. Thomas Cross, and the Industrial Chairman of South Amboy, Thomas Levandoski expressed the need for the State's Strategy to include and therefore protect their waterfront property. They felt there was a loophole in the Strategy to protect their land, which is not very dissimilar from the Cheesequake area, from energy facility siting pressures.

Specific Recommendations

1. Extension of the CAFRA boundary.

As a result of these concerns the recommendation to extend the CAFRA boundary to include the Raritan Bay coastal zone of South Amboy and Sayreville was submitted to the State by this Task Force fully expecting the State to seriously consider this motion. It did not. The Ocean and Bay Shore Segment of the Management Program does not reflect a positive response to the Task Force recommendation, nor does it give any indication that the State recognizes our concerns and that they will be addressed in the near future. Despite the State's omission and disregard of the recommendation made in December to extend the CAFRA

boundary, the Lower Raritan/Middlesex County Task Force wishes to continue once again, to strongly recommend that the CAFRA boundary be extended to include the Raritan Bay coastal areas and Raritan River estuary to the Victory Bridge and to ask DEP-OCZM to specifically include this recommended boundary change in this Coastal Management Program document.

2. Coordination of the Lower Raritan/Middlesex County 208 and WRA with Coastal Zone Management Program Development and Implementation.

One of the procedural principles used to shape the management system was that mechanisms be created to insure that decisions on coastal land and water uses be made at the most local level of government practicable. Steps toward the creation of such a framework have already begun in the Lower Raritan/Middlesex County 208 area. The Lower Raritan/Middlesex County Water Resources Association (WRA) is in the process of being formed as the centerpiece of the water resources management program for Middlesex County which would coordinate the powers of local, regional and state government in determining and protecting water quality with the implementation of the policies outlined in the recently adopted 208 Water Quality Management Plan Report. At the present time, a Lower Raritan/Raritan Bay Basin Council is being organized and is expected to be fully established by mid-fall 1978. The design of this basin council is to address a wide variety of concerns, largely focusing on coastal zone management and energy facility siting issues in Middlesex County. The 208, PAC and Water Resources Association continue to urge that the 208-WRA process be more fully incorporated into the State coastal management process. We suggest that any future documents include the expression of a more detailed understanding and awareness of the evolving Lower Raritan/Middlesex County 208 and WRA policies and programs especially as they pertain to the expected Lower Raritan/Raritan Bay Basin Council. The 208-WRA is interested; we want to get involved.

The Task Force therefore, would like to make the recommendation that the 208-WRA be involved in the design of a sensible and implementable coastal zone management program for the non-CAFRA areas of Middlesex County. The State should actively support the 208-WRA as the prime agency for coordination of water quality and water use management in the non-CAFRA areas. In this manner, the basin councils of the 208-WRA could act as the forum through which concerns would be addressed at the local level, without necessitating the State to extend its authority into the non-CAFRA areas. In the next phase of the coastal program, the 208-WRA must be involved and integrated into the process of developing a meaningful coastal zone management program. To this extent, the State's management program would be assured of being consistent with the 208-Water Resource's Association areawide management policies to protect and improve the quality of water in the non-CAFRA areas of Middlesex County's coastal zone.

MIDDLESEX COUNTY PLANNING BOARD

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DOUGLAS S. POWELL
Director of County Planning

FRANK J. RUBIN
Counsel

PATRICIA A. LYCOSKY
Secretary

June 30, 1978

Mr. David Kinsey, Chief
Office of Coastal Zone Management
N.J. Department of Environmental Protection
Post Office Box 1889
Trenton, New Jersey 08625

Dear David:

The enclosed statement represents the preliminary comments of the Middlesex County Planning Board Staff in their review of the Coastal Management Program - Bay and Ocean Shore Segment. The review also constitutes fulfillment of Task 1 as per our 1978 State/County Coordination Project.

The comments, once again, are preliminary and have not been approved nor adopted by the County Planning Board.

Sincerely yours,

Deborah Malek
Middlesex County Planning Board Staff

DM:tn
Encl.

cc: Coastal Counties
Mr. Hyman Center
Mr. John Bernat, Jr.

PRELIMINARY STATEMENT
OF THE
MIDDLESEX COUNTY PLANNING BOARD STAFF
ON THE
STATE OF NEW JERSEY
COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT
JULY 1, 1978

Introduction

The Middlesex County Planning Board appreciates the opportunity provided by the New Jersey Department of Environmental Protection to comment on the coastal management program identified in its Draft Environmental Impact Statement. The establishment of basic policies is necessary to meet energy facility development that will potentially impact the lives of all people living, working and visiting the coast of New Jersey. It is imperative, therefore, that principles be established which form the foundation of strategies that are capable of being implemented with a minimum of social, environmental and economic impact in order to fulfill the coastal resource and development policy requirements of the Federal Coastal Zone Management Act.

It is within this framework that we have reviewed this Draft Environmental Impact Statement and prepared the following comments.

I. COMMENTS ON POLICY OBJECTIVES OF THE COASTAL PROGRAM

The Middlesex County Planning Board fully endorses and supports the four basic coastal policies of the State Coastal Management Program - Bay and Ocean Shore Segment. They are as follows:

1. To protect the coastal ecosystem.
2. To concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort-oriented development, and encourage the preservation of open space.
3. To employ a method for decision-making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers the development.
4. To protect the health, safety and welfare of people who reside, work and visit in the coastal zone.

Furthermore, the Board is in complete agreement with the Coastal Resources and Development Policies and the Coastal Management Decision-Making Process the Department of Environmental Protection and the Department of Energy will use in managing activities in this Coastal Program Segment to conserve resources and achieve a balanced use of the Bay and Ocean Shore region of New Jersey's coast.

Towards the end of actually implementing the above goals, the Middlesex County Planning Board feels that the three-stage screening process, identified through Location Policies, Use Policies and Resource Policies, is an acceptable way of increasing the predictability of coastal decisions by adding more specificity to the decision-making process for the coastal zone delineated in the boundary. As such, the Township of Old Bridge, the only municipality in Middlesex County covered in the Segment, would appear to be directly protected from adverse environmental impacts generated as a result of unmanaged coastal growth and development.

II. SUGGESTIONS FOR CHANGES IN THE SEGMENT

The Middlesex County Planning Board recognizes that separate and distinct planning approaches must be taken to manage both the urban and industrialized coastline of New Jersey and the tourist and recreationally-oriented areas of the New Jersey coast. The Planning Board also recognizes that the coastal resource and development policies of the State Management Program are intended to be implemented through existing laws and agencies. The Board continues, however, to be concerned about the impacts of an imbalanced coastal zone policy on the yet undeveloped coastal areas of Middlesex County, especially in Sayreville and South Amboy, which exhibit residential and recreational characteristics similar to those in much of the CAFRA region. Our concerns are highlighted by the fact that Middlesex County has been identified by the U.S. Dept. of Interior as one of three New Jersey counties likely to receive the heaviest impacts from offshore oil and gas exploration and development from Lease Sales 40 and 49 in the Atlantic. The Department's projections indicate that Middlesex County would be the landfall site for three gas pipelines servicing the present exploration field in the Atlantic. The Department also predicted that one gas-processing plant would be required on the land side of that beachhead. The shoreline of Middlesex County's Raritan Bay area was chosen because it is the site of an existing 26-inch diameter, high-pressure gas pipeline which enters Raritan Bay within the Morgan section of Sayreville near Cheesequake Creek and was the cause of community protests when it was installed to supply gas to Long Island 10 years ago.

By not incorporating these two municipalities, N.J. D.E.P. may very well have preempted the policies within the Bay and Ocean Shore Segment from providing Sayreville and South Amboy directly the needed protective measures

2.

afforded similar areas in the CAFRA zone. (Unregulated and unmanaged development adjacent to the CAFRA area in Old Bridge may also cause indirect impacts there that contravene established coastal policies for that area as well.) Lack of this protective mechanism forces Sayreville, South Amboy and the remaining Non-CAFRA coastal areas of Middlesex County to rely upon existing legal authority to control and manage coastal zone development on their waterfront. Riparian permits, and to a limited extent the Wetlands Act, are currently the only means of achieving this end in the County. Wetlands and riparian permits are not sufficient to manage coastal activities outside the CAFRA area since they cover only that area up to the mean high water line. We are even more concerned over the fact that D.E.P. does not have a general riparian lands policy to guide coastal development other than reacting to individual applications on a case-by-case basis. To add to this dilemma, Middlesex County faces the real possibility of losing large tracts of wetlands to unregulated coastal development. The fact that small sections of wetlands have been delineated and mapped by the N.J. D.E.P. and presently are under the protection of the Wetlands Policy is, in our opinion, insufficient and does not meet the objectives of the Wetlands Act. Large stands of the tidal wetlands still exist along the Raritan River and the South River, which to this date have not been mapped, despite numerous attempts by this Planning Board to encourage the completion of this mapping effort by D.E.P.

Given the situation described above, only the coastal lands presently regulated under the Riparian Lands Act through the Riparian Lands Management Section of N.J.D.E.P., in addition to the designated wetlands covered by CAFRA in Old Bridge Township, can be protected to some extent against the adverse environmental impacts of unregulated and unmanaged coastal development. Therefore, location and use decisions made through the CIAM evaluation

3.

process will have no protective or positive impact on the non-designated wetlands in Middlesex County. In instances involving development on designated wetlands, then, areas inland of the mean high water mark could not effectively utilize CLAM nor depend upon this decision-making process to protect coastal vegetation. The potential loss of vegetated wetlands due solely to an incomplete wetlands mapping effort on the part of D.E.P. is particularly disturbing to Middlesex County in light of D.E.P.'s pronounced policy encouraging both the restoration of wetlands as well as the creation of new wetlands in non-sensitive areas. These remedial actions, in our opinion, would be unnecessary if a more assertive and proprietary posture was employed by D.E.P. to promote the delineation and mapping of valuable coastal wetland vegetation in the Non-CAFRA area while they remain capable of contributing to the physical stability of the entire coastal zone and environment.

As a result of these concerns, the Middlesex County Planning Board wishes to continue, once again, to strongly recommend that the CAFRA boundary be extended to include the coastal areas of Raritan Bay and the Raritan River estuary to the Victory Bridge and to ask DEP-OCZM to specifically include this recommended boundary change in the final Coastal Management Program document.

III. APPLICABILITY AND ADEQUACY OF THE OVERALL MANAGEMENT SYSTEM TO THE NON-CAFRA AREAS OF MIDDLESEX COUNTY

In estimating the utility of CLAM to the waterfront areas of Middlesex County, the evaluation process was applied to the coastal area of the Borough of Sayreville as a test case. The study revealed that the acceptability policies of CLAM would approve the waterfront area of Sayreville for moderate intensity development, provided wet soil construction standards are met and flood prone standards are satisfied. Accordingly, the Use policies, or the second step in the screening process, identified that new or expanded coastal-dependent industrial and commercial development would be encouraged at or adjacent to existing industrial and commercial sites. Sayreville fits into this category as its industrial base already includes Jersey Central Power and Light Co.'s Werner generating station and National Industries on its waterfront. It would appear then that both the Location and Use Policies would designate the undeveloped coast of Sayreville as appropriate for moderate-intensity industrial development.

Problems arise however with the third step of the screening process, or the Resource Policies, which serve as standards to which proposed development must adhere. The Resource Policies, as defined in the Segment, (on air, water, runoff and buffers) would not adequately address the fact that heavily developed areas in Middlesex County, as well as in similarly developed areas throughout the State, already suffer the highest levels of environmental pollution. These areas are the very areas to which D.E.P. proposes to concentrate development. Yet, very little evidence is exhibited in the Segment which justifies how or the manner in which this concentrated development will occur nor the type of system D.E.P. plans on employing to

manage urban development in the Northern Waterfront.

The following comments outline the inadequacies of the Coastal Program Resource Policies which become apparent in our review as they were applied to the Non-CAFRA areas of Middlesex County.

Comments on Resource Policies

Air Quality - The Coastal Program's Air Quality Policy to control coastal development by mandating conformance to all applicable state and federal emissions regulations, ambient air quality standards, and deterioration criteria established to meet requirements of the Federal Clean Air Act as amended in 1977 is not sufficient enough to reduce the level of pollutants in Middlesex County currently in contravention i.e., hydrocarbons and carbon monoxide. As Middlesex County is a non-attainment area and requires an air quality maintenance plan, D.E.P.'s policy to concentrate rather than disperse development necessitates a more detailed understanding of the emission offset policy and perhaps a greater assessment of the secondary impacts likely to be generated as a result of exercising this policy.

Surface Water - The Surface Water Use Policy states that the anticipated surface water demand of a facility shall not exceed the capacity of the local potable water supply system or reserve capacity. The primary objection to this policy is that it is much too locally defined. Rather it should be viewed as a regional water supply program, incorporating the recommendations of the State Water Supply Master Plan, adopted County and Regional "208" Water Supply elements.

Water Quality - A policy which requires coastal development to be in conformance with all applicable State surface and groundwater quality standards, as established and administered by D.E.P.'s Division of Water Resources, should also reflect the water quality management policies of

adopted water quality management plans developed under New Jersey Statute PL 1977, Chapter 75.

IV. SUGGESTIONS FOR CHANGES IN THE PLANNING PROCESS

In order to assure that D.E.P. adequately addresses itself to the concerns of local levels of government for the protection and preservation of the natural, historic and economic attributes of the New Jersey coast the following recommendations are made:

- 1) Increase coordination on coastal decision-making between state and local governments.

D.E.P. should specifically address the need to develop intergovernmental coordination mechanisms which would act as the foundation on which to build the intra-federal State/County/municipal government partnerships necessary to effectively and wisely manage the coastal resources of New Jersey.

Toward the end of actually implementing coordination and full participation among federal, state, county and municipal governments, the Middlesex County Planning Board recommends that present coordination activities between N.J.D.E.P. - OCZM and other governmental agencies continue. Given that strategies to manage coastal development in sections of the State outside the Segment have just begun to be addressed, state-county coastal coordination, particularly during the formative stages of program development for the Northern Waterfront is particularly encouraged.

- 2) Coordinate the Lower Raritan/Middlesex County "208" and WRA with Coastal Zone Management Program Development and Implementation.

One of the procedural principles used to shape the management system for the Segment was the creation of mechanisms to insure that decisions on coastal land and water uses be made at the lowest level of local government practicable. Steps toward the creation of such a framework have already begun in the Lower Raritan/Middlesex County "208" area. The Lower Raritan/Middlesex County Water Resources Association (WRA) is in the process of being formed as the centerpiece of the water resources management program for

Middlesex County which would coordinate the powers of local, regional and state government in determining and protecting water quality with the implementation of the policies outlined in the recently adopted "208 Water Quality Management Plan Report." At the present time, a Lower Raritan/Raritan Bay Basin Council is being organized and is expected to be fully established by Mid-fall 1978. The design of this basin council is to address a wide variety of concerns, largely focusing on the coastal management process. We suggest that any further documents include the expression of an understanding and awareness of the evolving Lower Raritan/Middlesex County "208" and WRA policies and programs especially as they pertain to the expected Lower Raritan/Raritan Bay Basin Council.

The Middlesex County Planning Board, therefore, extends the recommendation that the "208"-WRA be involved in the design of a sensible and implementable coastal zone management program for the Non-CAFRA areas of Middlesex County. The State should actively support the "208"-WRA as the prime agency for coordination of water quality and water use management in the Non-CAFRA areas. In this manner, the basin councils of the "208"-WRA could act as the forum through which concerns would be addressed at the local level, without necessitating the State to extend its authority into the Non-CAFRA areas. In the next phase of the coastal program, the "208"-WRA must be involved and integrated into the process of developing a meaningful coastal zone management program. To this extent, the State's management program would be assured of being consistent with the "208"-Water Resource Association's areawide management policies to protect and improve the quality of water in the Non-CAFRA areas of Middlesex County's coastal zone as well as being consistent with the objectives and policies of the national legislation.



Lower Raritan/Middlesex County

208

Water Quality
Management Planning Program

Middlesex County Planning Board · 401 Livingston Avenue · New Brunswick, New Jersey 08901 · 201-246-6016

June 30, 1978

David Kinsey
Chief
Office of Coastal Zone Management
NJ Department of Environmental Protection
P.O. Box 1889
Trenton, NJ 08625

Re: Draft Environmental Impact Statement
State of New Jersey Coastal Manage-
ment Program - Bay and Ocean Shore
Segment

Dear Mr. Kinsey:

The Lower Raritan/Middlesex County Water Quality Management Program Policy Advisory Committee (PAC), at its meeting of June 22, 1978, unanimously requested that the attached Statement of the Coastal Management Task Force of the Lower Raritan/Middlesex County Water Quality Management Program be accepted as the statement of the full PAC for the record of the Public Hearings on the above noted document.

The PAC appreciates the opportunity to review and comment on the work of the New Jersey Coastal Management Program and the PAC will continue to closely follow the Coastal Management Program's activities.

Thank you for your consideration of our comments.

Sincerely yours,

John Runyon
John Runyon
PAC Chairman

JR/jj
attachment
cc: Mr. Joseph Wiley, NJDEP
Mr. Charles Durfor, USEPA

STATEMENT
OF THE COASTAL MANAGEMENT TASK FORCE
OF THE LOWER RARITAN/MIDDLESEX COUNTY
WATER QUALITY MANAGEMENT PROGRAM
POLICY ADVISORY COMMITTEE
ON THE
STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT

JUNE, 1978

In November, 1977 the 208 Lower Raritan/Middlesex County Water Quality Management Program's Policy Advisory Committee (PAC), a citizen and municipal advisory group, created a Coastal Management Task Force to review the Report entitled: Coastal Management Strategy for New Jersey, CAFRA Area, dated September 1977 and issued by the New Jersey Department of Environmental Protection (NJDEP). The PAC authorized that the Task Force transmit a statement on behalf of the PAC to the State for the record of the hearings scheduled on that Report. That statement was submitted to the Office of Coastal Zone Management on December 14, 1977 in response to DEP's call for comments on the Strategy. This statement is being submitted now by the Task Force in light of the revisions made to the Strategy and incorporated into the Draft Environmental Impact Statement dated May, 1978 and entitled State of New Jersey Coastal Management Program, Bay and Ocean Shore Segment.

The Lower Raritan/Middlesex County Coastal Management Task Force recognizes that separate and distinct planning approaches must be taken to manage both the urban and industrialized coastline of New Jersey and the tourist and recreationally-oriented areas of the New Jersey coast. The Task Force also recognizes that the coastal resource and development policies of the State Management Program are intended to be implemented through existing laws and agencies. The Task Force continues, however, to be concerned about the impacts of an imbalanced coastal zone policy on the coastal area of Middlesex County since the added protective measures afforded the CAFRA zone tend to push energy facilities to other areas, such as the remaining non-CAFRA coastal portions of the Middlesex County area. Thus for the State to propose implementing the coastal policies before the northern waterfront and Delaware waterfront areas are adequately addressed would tend to result in the concentration of coastal dependent energy facilities in these other coastal areas not yet covered by such policies. Affected municipalities in Middlesex County may well include: the Cities of Perth Amboy and South Amboy; the Borough of Carteret; and the Townships of Edison, Sayreville and Woodbridge. These municipalities will feel siting pressures first for various coastal dependent energy facilities as noted in the Middlesex County Planning Board report

entitled Policies for Handling the Impacts of Offshore Oil in Middlesex County, (January, 1978.) More recently, Middlesex County has been identified by the U.S. Department of Interior as one of three New Jersey counties likely to receive the heaviest impacts from offshore oil and gas exploration and development in the Atlantic Ocean. The Department projected that Middlesex County would be the landfall site for three gas pipelines servicing the present exploration field in the Atlantic. The Department also assumed that a gas-processing plant would be required on the land side of that beachhead. The shoreline of Middlesex County's Raritan Bay area was chosen because it is the site of an existing 26-inch diameter, high-pressure gas pipeline built by the Transcontinental Gas Pipe Line Corp. in 1968. The pipeline enters Raritan Bay within the Morgan section of Sayreville near Cheesapeake Creek and was the cause of community protests when it was installed to supply gas to Long Island 10 years ago.

The Task Force remains unsatisfied with the coastal zone boundary delineated in the revised management program. The policies within the Bay and Ocean Shore Segment do not provide the needed protective measures afforded to the CAFRA zone to the two municipalities of prime concern in this case, Sayreville (Morgan Section) and South Amboy, which exhibit residential and recreational characteristics similar to those in much of the CAFRA region.

Local input on extending the CAFRA boundary to include the Raritan Bay coastal areas of Sayreville and South Amboy from the Cheesapeake Creek to the Victory Bridge has been initiated and supported by municipal officials. At the public meeting held in December 1977 to receive comments on Middlesex County's Offshore Oil Report, both the Mayor of South Amboy, J. Thomas Cross, and the Industrial Chairman of South Amboy, Thomas Levandoski expressed the need for the State's Strategy to include and therefore protect their waterfront property. They felt there was a loophole in the Strategy to protect their land, which is not very dissimilar from the Cheesapeake area, from energy facility siting pressures.

Specific Recommendations

1. Extension of the CAFRA boundary.

As a result of these concerns the recommendation to extend the CAFRA boundary to include the Raritan Bay coastal zone of South Amboy and Sayreville was submitted to the State by this Task Force fully expecting the State to seriously consider this motion. It did not. The Ocean and Bay Shore Segment of the Management Program does not reflect a positive response to the Task Force recommendation, nor does it give any indication that the State recognizes our concerns and that they will be addressed in the near future. Despite the State's omission and disregard of the recommendation made in December to extend the CAFRA

boundary, the Lower Raritan/Middlesex County Task Force wishes to continue once again, to strongly recommend that the CAFRA boundary be extended to include the Raritan Bay coastal areas and Raritan River estuary to the Victory Bridge and to ask DEP-OCZM to specifically include this recommended boundary change in this Coastal Management Program document.

2. Coordination of the Lower Raritan/Middlesex County 208 and WRA with Coastal Zone Management Program Development and Implementation.

One of the procedural principles used to shape the management system was that mechanisms be created to insure that decisions on coastal land and water uses be made at the most local level of government practicable. Steps toward the creation of such a framework have already begun in the Lower Raritan/Middlesex County 208 area. The Lower Raritan/Middlesex County Water Resources Association (WRA) is in the process of being formed as the centerpiece of the water resources management program for Middlesex County which would coordinate the powers of local, regional and state government in determining and protecting water quality with the implementation of the policies outlined in the recently adopted 208 Water Quality Management Plan Report. At the present time, a Lower Raritan/Raritan Bay Basin Council is being organized and is expected to be fully established by mid-fall 1978. The design of this basin council is to address a wide variety of concerns, largely focusing on coastal zone management and energy facility siting issues in Middlesex County. The 208, PAC and Water Resources Association continue to urge that the 208-WRA process be more fully incorporated into the State coastal management process. We suggest that any future documents include the expression of a more detailed understanding and awareness of the evolving Lower Raritan/Middlesex County 208 and WRA policies and programs especially as they pertain to the expected Lower Raritan/Raritan Bay Basin Council. The 208-WRA is interested; we want to get involved.

The Task Force therefore, would like to make the recommendation that the 208-WRA be involved in the design of a sensible and implementable coastal zone management program for the non-CAFRA areas of Middlesex County. The State should actively support the 208-WRA as the prime agency for coordination of water quality and water use management in the non-CAFRA areas. In this manner, the basin councils of the 208-WRA could act as the forum through which concerns would be addressed at the local level, without necessitating the State to extend its authority into the non-CAFRA areas. In the next phase of the coastal program, the 208-WRA must be involved and integrated into the process of developing a meaningful coastal zone management program. To this extent, the State's management program would be assured of being consistent with the 208-Water Resource's Association areawide management policies to protect and improve the quality of water in the non-CAFRA areas of Middlesex County's coastal zone.

Statement on the
NEW JERSEY COASTAL MANAGEMENT PROGRAM-BAY & OCEAN/SHORE SEGMENT
and DRAFT ENVIRONMENTAL IMPACT STATEMENT of
May, 1978

Prepared by:

The Monmouth County Planning Board
1 Lafayette Place, Freehold, New Jersey 07728
July 1, 1978

Prepared under the terms of contract to the New Jersey Department of Environmental Protection, Office of Coastal Zone Management, with financial assistance under the provisions of Section 305 of P.L. 92-583, Coastal Zone Management Act of 1972.

The Monmouth County Planning Board appreciates the opportunity to comment on the revised Coastal Management Program and applauds the Department of Environmental Protection for preparing a balanced, comprehensive plan for the wise management of coastal resources. The Planning Board reviewed the Program as originally proposed in September, 1977, and continues to support the Department's basic policies, which favor the protection of the coastal ecosystem, the energy-efficient concentration of development and preservation of open space, and the redevelopment and reuse of existing developed areas. We also like the emphasis on coastal- or water-dependence in particularly sensitive land and water's edge areas and the high priority assigned to recreational and resort-oriented uses.

The revised Program is greatly improved. It is much better organized and states clearly which uses are acceptable and which are prohibited in various categories of water, water's edge, and land types. If a use is conditionally acceptable, it outlines the criteria required for approval. The Coastal Location Acceptability Method (CLAM) used to determine development suitability for a specific use has been transformed from an obscure methodology to a planning process useful to the developer and planner alike. It is an approach which considers both the sensitivity and development potential of a site. The Program seeks to limit administrative discretion and increase the predictability of the decision-making process. CLAM will help achieve this goal. By preparing a composite map of the onsite land and water subareas and consulting the Bay and Ocean/Shore Segment to determine permitted uses and applicable standards before the preapplication conference, the developer can save considerable time and expense by avoiding the need for major redesign.

Many have expressed the view that the DEP lacks an adequate data base and inventory of sensitive areas for intelligent coastal decision-making. The federally-funded mapping project to commence after Program approval will identify development-suitable areas throughout the State's coastal zone and will permit a more positive, creative planning effort by the DEP.

The Planning Board supports the Special Water Areas guidelines under the Location Policies concerning shellfish beds, surf clam areas, prime fishing areas, finfish migration pathways, submerged vegetation, navigation channels, shipwrecks, and marine sanctuaries.

While we are in general agreement with the uses permitted in the basin and channel Water Areas, particularly those favoring beach nourishment, several revisions are suggested. The maintenance dredging of lakes and ponds should be conditionally acceptable rather than prohibited. While we strongly oppose the wholesale channelization of streams, stream clearance should also be regarded as conditionally acceptable, and mosquito control commissions and agricultural operations exempt from the permit requirement. In Monmouth County, a Drainage & Waterways Agency coordinates stream cleaning work and assists the Mosquito Control Commission with its permit applications. The county mosquito commission should operate under revocable authority according to DEP guidelines. Farmers would continue to cooperate with the local Soil Conservation District in developing best management practices.

We also recommend that the channel construction of dams and impoundments be discouraged rather than prohibited to permit the development of public potable

water supplies and, in extreme cases where a nonstructural approach is impractical or unfeasible, flood control structures.

The general prohibition against filling in coastal waters should not include the grading and planting of new wetlands in nonsensitive water areas, which is encouraged in the Program. The Planning Board supports continuation of the requirements that degraded wetlands be restored as a development mitigation measure and, in comments on nonresidential applications in the past, has generally recommended the replacement of destroyed wetlands even in existing developed areas. We are pleased that only water-dependent uses will be permitted on the coastal wetlands, in a policy which prohibits further residential development on the wetland areas. The DEP should complete its delineation of the State's wetlands and coordinate its permit program with the Army Corps of Engineers.

Most of the Special Water's Edge and Land Areas policies provide an added measure of protection for the unique and sensitive or unstable areas (including prime agriculture lands) which are not in the more general categories.

The High Risk Erosion Areas policies will prohibit development in the most hazard prone areas of the coast and discourage occupation of the areas in a 50-year erosion zone. Development is prohibited on the coastal dunes and inside stream heads, circular areas at the origin of the streams, when it would interfere with their natural discharge function.

The Barrier Island requirements should be more closely correlated with the Erosion policies. The present Program would permit continued high-density development across virtually the entire width of the barrier, from the upper wetlands boundary to the back of the seawall in a Central Barrier Island Corridor. While facility siting would remain subject the erosion rules, a more cautious approach should be taken. The definition of dunes as "formations of partially stabilized, vegetated, drifting sand..." suggests that the eastern boundary of the Central Corridor in natural areas, at the foot of the most inland dune, has been defined inadequately. Undeveloped barrier islands should remain in their natural state.

Of floodplains in general the Program states: "Intensive development of floodplains leads to increased runoff, reduction in flood storage capacity, increased size and frequency of downstream flooding, erosion of stream banks and downstream deposition of sediments with consequent reduction in estuarine productivity." The Monmouth County General Development Plan designates floodplains as conservation and drainage areas, and the Planning Board agrees that non water-dependent uses should not be permitted on the Upper Water's Edge. Although the Upper Edge corresponds closely with the flood-prone area, the two areas are not the same, and the Flood Hazard policies for the Segment based upon the State stream encroachment and Federal flood insurance laws, which have not been very effective in limiting floodplain development. The Federal flood insurance program, in fact, increased encroachment by subsidizing new homeowners locating in the floodplain. Hopefully, approval of the Bay and Ocean/Shore will result in improved Federal consistency with the Upper Water's Edge policies of the Program, and will stimulate better control at the State level after a more extensive delineation of the coastal streams.

While the need to protect the quality of the groundwater and to promote aquifer recharge is discussed under the Resource Policies, there are no location policies for the outcrops of important aquifers.

The Land Acceptability factors consider the development constraints and advantages of the natural and built-up environment. Special care should be taken to insure that the sensitivity definitions for the vegetation index do not reward the clearance of forested land, particularly on fertile soils in cases where development is not contemplated for some time and, hence, not clearly associated with development under Ch. 251 (Soil Erosion and Sediment Control Act).

Development Potential criteria will help to prevent sprawl and unneeded development by considering the site's proximity to roads, railroads, water supply and sanitary sewer facilities, schools, and similar uses (infill characteristic).

The Planning Board supports the housing Use Policies including those concerning high rise construction, which is prohibited east of the ocean front road or equivalent park distance. The county's General Development Plan designates these areas for public or quasi-public use. For this reason, and because five-story, four-story and even single-family detached units have the same effect of preventing uninterrupted or uninhibited visual and physical access to the beach, the prohibition should be extended to all non-recreational development of the ocean front. Applications for high rises on the block west of the ocean highway should be reviewed with particular care, especially in low-density, low-profile communities which, in any case, do not meet the stated conditions for acceptability under the Management Program. The CAFRA permit section should make a special effort to identify areas in the more urban resort communities where such development would be encouraged and should spell out the probable consistency impacts of the Program with respect to Federal decisions for these areas.

The Planning Board is encouraged by the Resort/Recreational Policies which stress that those facilities which are approved shall provide equal opportunity access to large numbers of people and offer the full range of services or opportunities appropriate to the use. Marinas approved on wetlands should use the land as efficiently as possible by employing such techniques as vertical dry-dock facilities, use of summer parking areas for the winter storage of boats and the construction of sales and snack bar facilities as second stories over water-dependent uses.

The Planning Board agrees with the DEP's contention that onshore energy facilities associated with offshore oil development should be located outside the Segment in existing, built-up areas. Although the DEP permit process requires simplification, the Planning Board feels that the DEP should possess the power to veto unacceptable siting decisions by the DOE. In addition, the DOE should not overrule siting decisions made at the local level unless such policies are clearly obstructionist and interfere with the location of a pipeline or other corridor. The Program's position on nuclear power plants is supported by the Board of Chosen Freeholders in a 1976 resolution urging the prohibition of future plants "within or without the State or in its adjacent land and sea areas as being...detrimental to the health, safety and well-being of the people..."

The Planning Board has long favored the nonstructural approach to shore protection and is pleased by the document's preference for beach nourishment over groins.

As the CLAM Method involves both the advantages and disadvantages of a site, mining operations should not be exempt from the Location Policies.

A number of the Resource Policies have considerable merit: the provision for silt removal in detention basins, use of native species in landscape plans to promote fertilizer and water conservation, consideration of aesthetic values, concern for the worker environment in industrial/commercial sites, and use of barrier-free design for the handicapped in developments of 250 or more units.

The guidelines should specify the type of treatment required for the stormwater runoff from the pavement on intensely developed sites. The DEP demonstrates flexibility in permitting more concentrated building coverages (with no change in the minimum vegetated areas) where pervious pavements are employed, thus fostering a more efficient use of land on suitable sites.

In some cases, the cluster developments favored by DEP involve higher densities than those allowed by the township on subareas of the project site. The Department's willingness to provide a rationale for the cluster concept before the municipal body demonstrates a cooperative spirit. The inclusion in the Program of sample site plans for the various residential density types and plans for improved mapping will help the developer. Monmouth County already has a Development Suitability Map and Unique Areas Inventory, (in the Natural Features Study) which is presently being updated. Although we agree that the wetlands should be designated as a generic Geographical Areas of Particular Concern, those areas previously nominated should continue to receive special consideration.

The adoption of a single set of administrative rules for the CAFRA, wetlands, and riparian elements of the Coastal Management Program is a step toward simplifying the review process. The Planning Board does not favor decision-making on development applications by a single group but does believe that only one application should be required for any proposed project. The DEP would then circulate the application among its various divisions.

The preapplication conference provides an excellent opportunity for the developer and DEP to explore new technologies and design concepts on suitable lands. The Program, for example, encourages the use of renewable sources of energy. The sea breezes of the coast could be harnessed for wind energy. The road system of the solar-heated subdivision could be oriented primarily in the east-west direction, with solar easements provided for each unit; and the basements, roofs, and parking lots (covered) of public facilities and shopping centers would provide areas for heat storage and solar collection.

One of the significant obstacles to the concentration of development and preservation of open space in the past has been the DEP's general unwillingness, even in the nominated Geographic Areas of Particular Concern, to deny CAFRA applications (although the required performance standards usually result in better projects). To channel development to some areas, one must prohibit it in others. By defining more clearly what constitutes an effective use and increasing the predictability of CAFRA decisions, the new policies, improved cooperation, suggested alternatives, better mapping, and the preapplication conference will all help to avert the difficult decision to deny proposals that are not infill. Farmland preservation schemes, lowered wetlands assessments, and TOR would reduce the importance of the taking issue.

In cumulative impact of residential construction on the coast of less than 25 units remains a problem. A strict application of the Public Facility policies will help to guide such development in the future. The Planning Board is presently evaluating the appropriateness of existing coastal zone boundaries and adequacy of the State legislation and will forward recommendations to the Office of Coastal Zone Management.

The Planning Board has worked with OCZM staff on a number of projects and appreciates the cooperation shown in the past. The present State-County Coordination Project, which requires a review of local master plans and zoning ordinances and meetings with local officials, should also help to provide for sound development

which respects the natural environment on the coast.

The Planning Board sees the Bay and Ocean/Shore Segment as a major step in achieving this goal, and looks forward to continued progress in the future.

STATEMENT OF
ALAN W. AVERY, JR., ASSISTANT PLANNER
OCEAN COUNTY PLANNING BOARD

CONCERNING

PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT
AND
DRAFT ENVIRONMENTAL IMPACT STATEMENT

AT A
PUBLIC HEARING OF THE
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
JUNE 14, 1978

Good evening, I am a staff planner with the Ocean County Planning Board and part of my responsibilities with the County involve coastal zone planning. I am here to read a statement on behalf of Steven L. Pollock, Acting Planning Director. Mr. Pollock had a previous commitment which prevented him from attending tonight's hearing. This statement generally highlights concerns regarding the Coastal Management Program for the Bay and Ocean Shore Segment. It is anticipated that more detailed comments will be prepared and submitted to the New Jersey Department of Environmental Protection on behalf of the Ocean County Board of Chosen Freeholders and the Ocean County Planning Board; and under the terms of the State-County Coastal Coordination Project agreement, these comments will be submitted previous to the July 5, 1978, deadline.

Ocean County has long supported the goal of protecting and preserving the complex and sensitive environmental areas associated with the bay and ocean shore. The part of Ocean County affected by the policies proposed in the Bay and Ocean Shore Segment is one of rare natural beauty and bountiful resources. However, the coastal

region of the County has been and no doubt will continue to be the scene of powerful and often contradictory pressures for development.

The Bay and Ocean Shore Segment of the Coastal Zone Management Program addresses many of the development and conservation issues of concern to the County. For the first time, the State has made a clear effort to develop policies regarding some very troublesome issues, such as development of wetland areas and other areas of environmental concern, oil and gas pipelines, and related energy facilities including the siting of nuclear generating plants. In concept, a management system based on the location, use and resource policies should allow for a clear definition of the development potential of a specific parcel of land. It should facilitate permit applications, and eliminate much of the administrative discretion in making permit decisions. At the same time, a management system that provides and sets guidelines for development proposals based on environmental concerns should result in better planned, more environmentally sound development. Based upon preliminary review, it appears that the State has accomplished a great deal toward this end.

We also applaud the efforts made by the New Jersey Department of Environmental Protection to involve municipal and County government in both the development of the proposed policies and in their implementation. This involvement has been achieved by the opportunity to comment on the Coastal Zone Management Program at public meetings and public hearings as well as at working meetings such as those held by the State-County Coastal Coordination Program. We firmly support, and will cooperate with, the New Jersey Department of Environmental Protection's effort to involve and

consider local and County input in CAFRA, wetlands and riparian permit decisions.

While we generally support the efforts of the Coastal Zone Management staff, there are, however, certain issues that we feel must be addressed prior to formal adoption of the Bay and Ocean Shore Segment.

First, and probably most important from the standpoint of land use planning and coordination with County and local planning, is the absence of a comprehensive land use plan that clearly delineates the spatial distribution of acceptable uses under the plan, and identifies areas that are suitable or unsuitable for development. A composite map showing the key locations and use restrictions listed in the report is absolutely essential. The absence of such a map severely limits the ability of local and County government to specifically evaluate the impacts of the Bay and Ocean Shore Segment on their respective zoning or comprehensive development plans and to identify areas where conflicts between local and State concerns might arise. Until such time as the spatial impacts of the proposed program are identified, it is impossible to adequately evaluate the socio-economic issues raised by the program.

Also, the Coastal Zone Management Program will serve as a policy reference for State review of plans and proposals of regional impact. It is difficult to see how this program with its emphasis on site specific considerations, will adequately consider the regional impacts of, for instance, 208 Areawide Water Quality Plans and projects submitted for A-95 review.

A second area of concern is the institutional arrangements between local, County and state programs. These relationships

must be better defined. The Coastal Program was supposedly based on the principle that the program would, and I quote, "Consider only coastal resource and coastal land and water use decisions of greater than local significance, and create mechanisms to insure that decisions on coastal land and water uses are made at the lowest practicable level of government, consistent with these guiding principles." End quote. Local decisions of municipal impact only should be made at the local level. The Department of Environmental Protection should focus only on coordinating policies and decisions of clearly statewide concern. Nowhere is it apparent that the Coastal Program considers local concerns as reflected in local and County zoning and master plans. It is also difficult to relate decisions on neighborhood shopping, or school sites, or restrictions based on these factors to statewide concern.

A third area of concern is the designation of growth areas. The Coastal Program emphasizes the concentration of development in Ocean County essentially to an area north of Lacey Township and east of the Garden State Parkway, excluding the barrier beaches. Restricting growth to this area conflicts with the proposed State Development Plan Guide prepared by the New Jersey Department of Community Affairs, the Ocean County Concept Plan, prepared by the Ocean County Planning Board and the Ocean County 208 Water Quality Plan. Each of the four plans was federally funded, each define growth areas, but with the exception of the two plans prepared by Ocean County, none correspond. Furthermore, neither the criteria used to designate the growth areas in the Coastal Program nor the reasons for the differences between the two development plans prepared by state agencies is addressed in the draft.

Growth areas for Ocean County, as defined in the 208 Plan were based on the following eight considerations:

- (1) all environmental factors considered by the Coastal Program
- (2) present development trends
- (3) location of approved, but unbuilt, subdivisions
- (4) existing and proposed availability of sewers
- (5) existing and proposed availability of water
- (6) existing land uses
- (7) existing municipal zoning
- (8) specific locational considerations such as transportation, and market and labor areas.

Using these factors, it was possible to define growth areas and to determine that sufficient acreage was available in these areas to accommodate the expected population increases in Ocean County without impacting environmentally sensitive areas and in an efficient, logical development pattern.

The Coastal Program limits growth areas to ten municipalities in Ocean County, six of which are essentially developed. A serious question arises as to whether there is sufficient amounts of developable lands in these growth areas to accommodate projected population increases without impacting or infringing upon environmentally sensitive areas, or radically altering the density and characteristics of existing communities.

The rationale behind the limited designation of growth areas is to encourage the consolidation of residential and other land use development in areas where services such as electric, water, sewer and other infrastructures are in place, thereby reducing the costs and environmental impacts resulting from the extensions of services

into undeveloped areas. In Ocean County, this policy of concentration has the potential to create more environmental problems than the orderly, managed expansion of development into environmentally suitable areas.

A good example of these potential problems would be in the area of groundwater. One hundred percent of Ocean County's potable water supply comes from groundwater. Concentration of development may have potential long term serious impacts on groundwater. Policies which will increase withdrawal rates in areas where aquifers are already developed to some extent, and already experiencing localized problems need to be carefully evaluated.

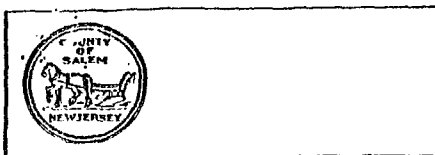
Planned future growth in the northwestern sectors of the County as well as balanced growth in the eastern regions of the County could serve to equalize withdrawals and help mitigate these problems. It appears that this growth pattern would be restricted under the Coastal Program.

Therefore, before formal approval is given to the Bay and Ocean Shore Segment of the Coastal Zone Management Program, we recommend that the following actions be taken:

1. A map be prepared by the New Jersey Department of Environmental Protection showing the spatial distribution of land uses and land suitable or unsuitable for development as defined by the Coastal Program.
2. Additional time be provided for local and County evaluation of this map.
3. Additional consideration be given to local and County plans, especially in considering the designation of growth and limited growth areas.

In closing, I would like to commend the New Jersey Department of Environmental Protection for soliciting public comments and

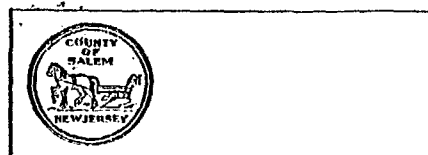
addressing many of the concerns of Ocean County. Ocean County looks forward to working closely with the New Jersey Department of Environmental Protection to assure the protection of our bay and ocean shore areas. The Planning Board staff welcomes the opportunity to provide additional input to the Coastal Program as it continues to be refined. I would like to thank you for the opportunity to present comments concerning the Bay and Ocean Shore Segment at tonight's hearing. I trust that these comments will assist the New Jersey Department of Environmental Protection in its review of the proposed Coastal Program.



SALEM COUNTY PLANNING BOARD
Courthouse, Salem, New Jersey 08079

609-935-4477

THOMAS C. CROSSLAND, JR., Chairman



SALEM COUNTY PLANNING BOARD
Courthouse, Salem, New Jersey 08079

609-935-4477

THOMAS C. CROSSLAND, JR., Chairman

July 11, 1978

David N. Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Dept. of Environmental Protection
P.O. Box 1889
Trenton, New Jersey 08625

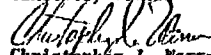
Dear David,

Enclosed are additional comments on the Bay and Ocean Shore Segment. These comments are in addition to our previous comments on this Segment and on the Strategy document.

Generally, the document is an important step toward a more rational decision-making process in the issuance of coastal permits. However, we continue to believe that the document does not provide enough direction, and thereby, manage the coastal zone, and that the document has a number of policy and technical weaknesses. In addition, the document does not outline a definitive role for County government which is clearly needed to recognize regional differences and to lower the level of permit decision-making. Nevertheless, despite various critical comments, we recognize that this planning document is better researched than various "master planning" efforts of other State agencies.

I do hope that these comments and further County involvement in the development and implementation of the program, will eventually create a program and process that is satisfactory to both the State and this County.

Sincerely Yours,


Christopher J. Warren
Acting Planning Director

CJW/cwc

New Jersey
Coastal Zone Management Program
Bay and Ocean Shore Segment
Draft BIS
Salem County Planning Staff Comments

The Salem County Planning Staff comments are listed below on the Bay and Ocean Shore Segment of the Coastal Zone Management Program. These comments add to previous comments on this document and the strategy document. An effort has been made to consolidate previous discussions and to drop issues which are no longer relevant.

Coastal Management Strategy Policies

The Salem County Planning Staff endorses the basic coastal policies with a few reservations. As was mentioned in our Strategy comments, we believe that the second policy means that development will occur in a concentrated manner and not that major new development must be contiguous to existing settled areas. Our previous comments that certain facilities (nuclear plants, LNG) be excluded from this policy has been heeded. However, a policy statement somewhere in the document should discourage such clustering without extensive safeguards.

The County Planning Staff believes that a rational decision-making mechanism should be employed which relates to the advantages and disadvantages of development as stated in the third policy. However, we also believe that OCZM's responsibility to manage the coast does not end with such a method.

If the intent of the Office of Coastal Zone Management is to manage the coast, the office should review its existing authority and mechanisms to determine if it can truly direct and control the coast's growth. The basic flaws in this coastal management program are that the incremental, small scale development may not be controlled, the cumulative impacts of development are not seriously addressed since the regional constraints to development are not considered, and the program does not provide enough direction or encourage the best use of the land. A conceptual land use plan for the coast may have helped better achieve these objectives. Better yet, a procedure should be developed by DEP to affirm County plans as the conceptual policy for the area. The integration of County plans and the State program has not been adequate to date but the coastal coordination program should help address this problem.

Coastal Zone Boundary

1. The development of a coastal zone boundary is an important element of the coastal zone planning process. The Federal Coastal Zone Act of 1972 states that the coastal zone "extends inland from the shorelines only to the extent necessary to control shoreland, the uses of which have a direct and significant impact on the coastal waters (italics added).

In the publication, Alternative Boundaries for New Jersey's Coastal Zone, the language was carefully examined and several alternatives were discussed. This County Planning Staff's position on a coastal zone boundary have been iterated at various times in the development of the coastal program. From the outset, this planning staff has opposed the use of the CAFRA boundary since we do not believe that it is an appropriate fulfillment of the Federal Coastal Zone Act's definition. The extension of the boundary to the Upper Wetlands did eliminate a Strategy comment on its shortcomings but the continued use of cultural features as a boundary line makes the coastal zone too inclusive in many areas of the coast.

The Office of Coastal Zone Management should have developed a boundary based upon sound planning principles irregardless of whether the coastal zone was within or beyond the existing CAFRA line. Implementation of the program would have been based upon available powers (two-tier approach). The merits of the State's attempts to manage the coast would have been more clearly established if consistent environmental criteria had been used for boundary delineation.

2. During the development of a coastal zone program, Salem County has repeatedly mentioned its concern with the ramifications of the Delaware Coastal Zone Act. The Delaware Coastal Zone Act prevents the siting of heavy industry, bulk transfer facilities, and may also preclude all types of docking facilities on the New Jersey side within a twelve mile arc of New Castle, Delaware (excepting out the Port of Wilmington). As mentioned in this County's OCS study, there are precedents upon which to base our concerns. As a matter of fact, the original LNG terminal proposal on Oldmans Creek in Gloucester County was determined by Delaware to be a prohibited use under their Coastal Zone Act in 1971 and a permit was denied. Although this issue was not pursued by New Jersey and in that case the prohibition may have been fortunate, the fact remains that industrial development in New Jersey was affected by Delaware's action.

The Salem County Planning Staff understands the complexity of the issue and is appreciative of OCZM's goal of addressing the matter. The mentioning of the issue in the Coastal Management Program is a step in the right direction. However, we do not believe that the Office of Coastal Zone Management has made a concerted effort to assist this County in the pursuit of a better understanding of this issue. As you know, Delaware opposed the involvement of a regional interstate planning agency on this issue and has left the County little recourse in the absence of State support. The County Planning Staff has had discussions with Dave Hugg and Nathan Hayward of the responsible Delaware planning division but has made little progress toward a cooperative arrangement.

It is our opinion that New Jersey Coastal Zone principles should be required of all new industry rather than the blanket prohibition of certain uses under the Delaware Act. Therefore, the State should pursue interstate cooperation through a bistate compact or other arrangement as referred to in Section 303(d) of the Federal Coastal Zone Act. OCZM should more vigorously pursue this issue during the later segment of this management program.

Location Policies

Coastal Location Acceptability Method (CLAM)

Our previous comments were quite critical of the Coastal Location Acceptability Method (CLAM) which is the foundation of the management program. This method is the principal means of determining where development should occur and the intensity of such development. Although a considerable amount of effort has been spent refining this process, we continue to maintain that CLAM has a number of important weaknesses.

The intent of the method is to promote predictability and reduce the amount of discretion present in permit decisions. However, a developer would need to undertake an extensive analysis to determine the intensity of development that would be permissible. This analysis may entail extensive site specific information which a developer would be unwilling or unable to gather prior to owning a parcel outright or acquiring an option. A generalized graphic composite for the coast would help eliminate the problem and should have been developed prior to program approval if the public was to be properly informed of the program's impact.

The technical soundness of the method is also subject to question. First, we tend to disagree that the stated six factors are the principal location factors and that each is relevant to a particular development proposal. There may be other factors such as bearing capability which may be relevant to a particular application. Moreover, the acceptable development definitions do not apply to all types of uses and seem to be particularly relevant to residential development. The factors are not particularly relevant for locating certain types of industrial facilities.

In addition, the reasoning behind some of the intensity determinations is dubious. For example, certain areas of the coast have low water tables but excessively drained soils. These areas are particularly sensitive to groundwater contamination yet the acceptability table indicates moderate intensity development is acceptable. Although the soils information of a specific application may reveal this excessive permeability problem, the situation is widespread and therefore should be noted. Despite statements to the contrary by the OCZM staff, our analysis indicates that it is difficult to review the reliability of the intensity determinations because of the number of classes. In addition, since information must be categorized, there is a loss in the quality of information present in the tables. However, at least an attempt has been made to express the decision-making process.

Use Policies

Although we have disagreed with the specific wording in the nuclear power plant policy, there are two important points relating to nuclear policy that has not been emphasized in previous comments. First, how will OCZM control population density around nuclear power plants? Or more specifically, what is the status of the existing moratorium around nuclear plants since there is no mention of land use controls in this document? In addition, what are the location policies for nuclear power plants? Although the document states that no new plants will be permitted unless...., there are no set criteria for evaluating the merits of alternate sites if these criteria were met.

Resource Policies

A concern of this County that has been expressed before is the control of dredge spoils disposal operations. Although mention is made in the acceptable water use section on the prerequisite conditions for ocean dumping of dredged material, there are no procedures established to control the effects of improper land disposal of dredge material. In this County, there are obvious situations where federal actions in the disposal of dredged material on excluded lands have "spillover impacts" upon the coastal zone. We believe it is D.E.P.'s responsibility to prevent these impacts. Therefore, the management program should require the submission of disposal site plans by the Army Corps of Engineers to verify that their operations are not significantly affecting coastal resources.



OFFICE OF
ANNE N. SZELAG
BOROUGH CLERK

Borough of Carteret

MIDDLESEX COUNTY

New Jersey

June 21, 1978

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

I am enclosing a certified copy of Resolution #78-92, adopted by the Mayor and Council of the Borough of Carteret, County of Middlesex, State of New Jersey, at a Regular Council Meeting held Tuesday Evening, June 8, 1978, stating its agreement with the studies to be made concerning the New Jersey Coastal Management Program. However, the Governing Body of the Borough of Carteret is also stating it is unalterably opposed to the expenditure of State or Federal funds for Shore and Bay Maintenance unless the New Jersey shore is open to the public.

Very truly yours,

ANNE N. SZELAG,
Municipal Clerk

ANS/mr

Enclosure

c.c. Senator Clifford P. Case
Senator Harrison A. Williams
Congressman Edward J. Patten
Governor Brendan T. Byrne
N.J. State Senator John G. Gregorio
N.J. Assemblyman Thomas J. Deverin
N.J. Assemblyman Raymond Lesniak
John Weingart, Assistant Chief DEP/OCZM
Middlesex County Board of Chosen Freeholders
Middlesex County Planning Board
c/o James Fong, Energy Systems

NJSOEP/OCZM

RESOLVED BY JUDITH GREENBERG, SECRETARY
LAWRENCE BROWNIE PLANNING BOARD
MEMBER BOARDERS OF THE STATE OF NEW JERSEY
ON COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT

APPROVED BY CIVIC LEADERSHIP GROUP, BORDENTOWN, NEW JERSEY
BORDENTOWN AND BORDENTOWN, BORDENTOWN, NEW JERSEY
TUESDAY, APRIL 17, 1978, AT 7:30 P.M.

The people of New Jersey's Office of Coastal Zone Management
work to meet in attendance to formulate a program that will
protect the "special areas" of our state. They were given the
the assignment to establish authority over the reckless growth
and sprawl in our "special areas", along with assuming the re-
sponsibility of coordinating their plan with those of local
governments and area agencies throughout the coastal regions of
our state. This is not an insurmountable task, but it must
involve dedicated people. Therefore, my comments should not be
construed as criticism of the professional performance of the
State's OCZM staff, or the dedication of OCZM administrative
officials. Instead they should be a reflection of the need for
improvement, and review of the program's impact, cast on the
participation and citizens of the coastal areas.

78-92

Date of Adoption JUNE 8,

WHEREAS, the New Jersey Department of Environmental Protection
and the National Oceanic and Atmospheric Administration intend to conduct
a public hearing to review the New Jersey Coastal Management Program
Bay and Ocean Shore Segment; and

WHEREAS, New Jersey's coast is a fragile and coveted resource
facing conflicting opportunities and pressures, and these hearings will
provide the opportunity for all to participate in making decisions to
conserve this resource and achieve a balanced use of the bay and ocean
shore region of New Jersey's coast.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED that the
Governing Body of the Borough of Carteret is in full agreement with the
studies to be made concerning the Coastal Management Program. The Governing
Body of the Borough of Carteret, however, is unalterably opposed to the
expenditure of state or federal funds for shore and bay maintenance unless
the Jersey shore is opened to the public.

Adopted this 8th day of June
19 78 and certified as a true copy of an
original on June 14, 1978
Annen N. Szilag
ANNEN, SZELAG, Borough Clerk

The question of whether the program is sound enough to fully protect the coastal regions can be left. If implemented as proposed in Part of New Jersey Coastal Management Program Regional Ocean Council, along with current legislation being implemented under authority of the Federal Water Pollution Control Act there will be no argument. However, it is debatable whether the policies set forth under the coastal laws of New Jersey are legislatively necessary, and do they exceed a reasonable definition of the Federal Coastal Zone Management Act of 1972. There is also the question has the state cooperated and participated with local governments throughout the development process as congress intended.

In order to have the program approved by the U.S. Secretary of Commerce the State must show evidence they have the legal authority to exert control over land and water uses in the "essential" areas. For this purpose Coastal Planning submits Riparian Law and Statutes, the Wetlands Act of 1970, and Coastal Area Facility Review Act of 1972. It is here we take exception with Coastal Planning, for its and numerous documents issued by NJ/OCZM have failed to address the policies set forth under Riparian and Wetlands laws.

Unfortunately, this has cast a shadow on the success of the State's program for a negative attitude has developed on the part of most of the citizens who live and earn their living in the coastal regions of Cumberland County. The files of our U.S. Congressmen and Senators, along with State legislators will confirm this. Numerous Township complaints are on file with NOAA/OCZM NJ/OCZM, but briefly I will point some of them out for the record tonight.

The State Office of Marine Land Management has created an elaborate scheme for the control of waterfront areas. As a result of my continuous communication with people in these areas I have a growing concern with the lack of coherence and integration of the environmental quality of the law and the regulations. In addition to causing confusion and unnecessary delays the procedures operate at great disadvantage to those who seek help due to the law.

Permits required include such things that require the drilling a well in a filling, or replacing a board on a pier without one technically violates state law. Municipalities and citizens are technically made a person a violator of state law if they take emergency repairs to protect their property.

In not defining situations such as these the State is presented with broad powers of police enforcement that can be used indiscriminately on our citizens who are unsuspecting of the hidden dangers of it all.

The CAZMA boundary line includes lands that do not have a critical relationship with coastal wetlands and waters. Large portions of the zone appear to have been included for the preservation of farmland and historical areas. Thus, the Federal Act requires these areas to be addressed if in the coastal zone, but it doesn't require the line to be extended for that purpose alone. On the contrary, Congress intended to include only the necessary land to protect the coastal waters.

NJ/OCZM maintains that CAZMA permit applications in Cumberland County are few, and therefore the extended boundary doesn't have an adverse impact on social and economic factors in the County. This reasoning doesn't consider the impacts of future unnecessary regulations nor long range of location of county and municipal planners.

There are some, but by no means all, of the concerns of local governments in Cumberland County.

It came as a surprise to see that Coastal Program had not adequately addressed these concerns. NJ/OCZM in developing a program is aware of the short comings of the three laws through the testimony of many who came forward at public meetings to express their dissatisfaction with them, and requesting that NJ/OCZM change the unfair aspects of them. NJ/OCZM has been in a front running position to initiate action that would create the necessary amendments needed to reduce these discrepancies, but have failed to do so.

Inaction has resulted in a widespread feeling that State and Municipal legislations during the development process have taken place largely for form sake, and that inputs from local governments have not been taken seriously. Local officials are extremely sensitive to the importance of the coastal program, and they also believe that their experience and awareness, as well as their very real interest in the coast, should entitle them to be more than bystanders.

Much of the concern exhibited in the Federal Act addressed recognition of local governments and assured that they would not become second class entities through out the development process. The provision of a financial base is an essential condition to establish this role. Although local and county governments should not establish a role vis a vis NJ/OCZM, local governments needed professional assistance in order to offer intelligent input to the program. For this they relied primarily on the County Planning Board. The pass through funding program initiated in 1977 by NJ/OCZM was totally inadequate for counties to carry out functions of communication, consultation, and advocacy. The lack of funding generally, of the county has restricted the necessary input needed to make local governments effective partners. Acting individually municipalities lack the ability to deal on a professional or technical level with the professional staff of NJ/OCZM.

In September, 1977, Lawrence Township Planning Board requested NJ/OCZM to pass through funds and establish an office at county level to better serve and educate the people of the coastal regions. For this purpose NJ/OCZM responded with \$1,000,000. A modest sum to say the least, to solicit public opinion and feel it back to the state. Such action as this has created a climate of uncertainty which will ultimately lead to program failure in the operation of NJ/OCZM proposed program. The public opinion here, and I'm sure Congress did in 1970.

Although the program is of National and State significance in the area of coastal management it is even more important to the twelve coastal counties it affects. Therefore, NJ/OCZM, and NOAA/OCZM must treat the issues I have raised not only from a local national and regional perspective, but from a local or municipal point of view as well. If we cannot restore the balance, and make the program a genuine partnership between the municipalities and state, we run the risk of having the program fail.

It's my understanding that on approval of the Governor NOAA/OCZM will recommend Coastal Program to the U.S. Secretary of Commerce for endorsement. If such be the case, the Lawrence Township Planning Board makes the following requests of NOAA/OCZM:

1. On submitting Coastal Program to the Secretary it be noted that certain jurisdictional conflicts in Riparian and Wetland laws, and the coastal boundary line in Cumberland County are unresolved conflicts between the state and these local governments.
2. That NOAA/OCZM not a target date for these conflicts to be resolved.

Without the resolution, and on approval of the Secretary, the authority of the township in Cumberland County will be left with no other alternative than to appeal the decision to the National Coastal Resources Board.

To conclude, it should be noted that the Laurence Township Planning Board has been favorably impressed with the efforts of NJ/OCM in formulating CZM, and the decision making process described in Coastal Program, and also with the dedication and capability of the professional staff. However, we have raised various questions, in particular the lack of effective communication or working relationships between local governments and NJ/OCM.

The friction between local and statewide objectives in the planning and development of a coastal protection program is unavoidable. Any regional solution, however robust, generates such friction. These frictions can be constructive: it is our hope that the recommendations we have made, robust though they be, will facilitate the creation of a constructive atmosphere in which NJ/OCM and local and county government in Cumberland County will indeed work in "concert" to protect our coastal resources.

TOWNSHIP COMMITTEE

Robert J. Eckert
Mayor

Richard V. Kelly
Deputy Mayor

Francis J. Callahan
Committeeman

Allan J. MacDonald
Committeeman

Frank A. Sell
Committeeman

The Township of Middletown

KINGS HIGHWAY
MIDDLETOWN, N. J. 07748



Organized December 14, 1667

July 6, 1978

Administration Building
(201) 671-3100

Joseph R. Vozzo
Township Administrator

Hilda Collison
Township Clerk

Patrick Healy
Township Attorney

Office of Coastal Zone Management
Dept. of Environmental Protection
P. O. Box 1339
Trenton, N. J.
08525

Dear Sir,

The Middletown Environmental Commission has reviewed the Coastal Zone Management Program and finds it a very good comprehensive plan. We strongly support its adoption. The Commission has a few minor points to make. First we believe that there is too much verbiage and too much use of unfamiliar words. Secondly we wish to make a point concerning development and the remaining wetlands. Any decision process must take into account that there are very few wetland left compared to what we originally had. Any development or expansion of present development must protect remaining wetland adjacent to the project whether they be large and unspoiled or small and partly spoiled. Partly damaged wetlands should be protected and restored rather than sacrificed to development.

Very truly yours,

Lynden U. Kibler
Lynden U. Kibler, Chairman
Environmental Commission

Copy to: Township Committee
Monmouth County Planning Board

City Hall
Ocean City, N.J. 08226
(609) 399-6111, X-267
June 21, 1978

Mr. David N. Kinsey, Chief
Office of Coastal Zone Management
N.J. Department of Environmental Protection
P.O. Box 1889
Trenton, N.J. 08625

Dear David,

Thank you for the opportunity to comment on the Bay and Ocean Shore Segment document at the public hearing last week in Toms River. Your office has produced a fine piece of work.

Please find enclosed my written comments for the City of Ocean City. I have also included my verbal comments from the hearing.

Continued success with your coastal management efforts and let me know if I can be of any help locally to you or your staff.

Sincerely,

Stephen R. Gabriel
Stephen R. Gabriel
City of Ocean City
Mayor's Staff Advisor for
Coastal Zone Management

cc: Mayor B. Thomas Waldman
Comm. Chester Wimborg

Written Comments on the New Jersey Coastal Management Program Bay and Ocean Shore Segment submitted June 21, 1978 by Stephen R. Gabriel, City of Ocean City, Mayor's Staff Advisor for Coastal Zone Management

Public Participation

p. 198 Public participation is to be enhanced through the County Planning Boards. How is this expected to take place?

p. 198 What is the status of the proposal by the Public Advocate to fund people who wish to actively participate in the permit review of particular applications?

p. 174 I think there is a need/potential for more public education/information work:

- 1) concerning the need for coastal zone management
- 2) to publicize social issues addressed, such as barrier free design and unique communities.
- 3) a layman's guide to the Location, Use, and Resource Policies, and CLAM.

Sand Dunes

p. 55 Structural development on dunes is prohibited. How can municipalities develop their dune ordinances so that they are not struck down or compromised by the courts?

Public Access and Use of Beaches

p. 158 The State is doing a good job of assuring access to the publically owned beaches. Additionally, the State needs to establish prescriptive use easements on privately owned beaches traditionally used by the public and maintained by public authorities where no significant attempts at ouster have been made by the owner. New Jersey has lost more recreational beach to development than it has to the ocean.

June 21, 1978 Comments on the Bay and Ocean Shore Segment
Stephen R. Gabriel

Shoreline Erosion

- p. 149 Am I correct in assuming that the Shore Protection Use Policies apply only to developments of 25 or more units?
- p. 150 Does the State have a particular bulkhead design for ocean-front properties which could be required by municipalities to help them locally enforce Policy 7.8.3d "structures are designed to eliminate or mitigate adverse impacts on local shoreline sand supply"?
- p. 51 High Risk Erosion Areas - In Ocean City, the North Street - Stenton Place beach should be added.

Non-conforming Uses

Repeating my comment from the public hearings on the Coastal Zone Management Strategy, will the State be developing policy concerning the reconstruction of existing discouraged, prohibited and/or non-conforming uses? In the Ocean City dune ordinance is the following: "All prohibited use structures now existing as of the date of the passage of this Ordinance in the Atlantic Ocean Coastal Beach Zone as heretofore defined, are hereby designated as non-conforming uses. Any non-conforming use existing at the time of passage of Ordinance 1091 may be continued and any structure may be restored or repaired in the event of partial destruction thereof." Other sources of appropriate language would be the State and Federal Flood Plain Acts, and the Federal Flood Insurance Act.



New Jersey State Legislature
OFFICE OF FISCAL AFFAIRS

THOMAS L. BERTONE, D.P.A.
ACTING DIRECTOR
OFFICE OF FISCAL AFFAIRS

STATE HOUSE, SUITE 232
TRENTON, NEW JERSEY 08627
TELEPHONE (609) 292-8014

June 16, 1978

GEORGE D. HARPER
STATE AUDITOR
JAMES J. DONOHUE, CPA
ACTING DIRECTOR OF STATE AUDITOR
WILLIAM P. SCHIMMEL
DIRECTOR OF PROGRAM ANALYSIS
THOMAS L. BERTONE, D.P.A.
DIRECTOR OF BUDGET REVIEW

Office of Coastal Zone Management
National Oceanic and
Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, DC 20235

ATTENTION MS. KATHRYN COUSINS, MANAGER
NORTH ATLANTIC REGION

Honorable David J. O'Hern, Commissioner
Department of Environmental Protection
Room 802, Labor and Industry Building
Trenton, NJ 08625

Dear Sir:

These comments are being sent directly to both agencies as the New Jersey Coastal Management Program - Bay and Ocean Shore Segment states that it serves as a combined Coastal Management Program and as a Draft Environmental Impact Statement. An implication of full adoption in its present form has the significance of managing much land use at State level along the New Jersey coast. Although only 1,382 square miles (17 percent of the State land area and related coastal waters) are directly involved under CAFRA and the Wetlands Act inland of the CAFRA boundary (p. 1), the policies developed herein will establish standards also for Phase II under the Federal Coastal Zone Management Act that requires all parts be integrated into a single, unified program as soon as practicable. This addition of land/river area of about 300 square miles along the Delaware Waterfront, Northern Waterfront, and the Hackensack Meadowlands (p. 258), will comprise about another 4 percent of the total. In terms of the land area only, roughly 1,070 square miles (14 percent) of the State will be affected (in 17 of its 21 counties).

These standards should also be consistent with development limitations now being considered by the Pinelands Review Committee, since the acreage involved is adjacent to the Coastal areas and of similar size. Hence, with about 30 percent of the State's land area potentially affected, it is important that the policies being proposed in this first segment be sound and applicable to the whole. Furthermore, these standards may be applied in other DEP permit programs, such as administered by the Division of Water Resources, "to facilities or areas not regulated by the Coastal Program" (p. 167).

June 16, 1978

The extent of the power of these regulations, as well as the extent of the land coverage, is all the more reason to examine this Coastal Program carefully. Not only will adoption of the rules of Chapter Three bind DEP to issue decisions under the three permit programs of CAFRA, Wetlands Act, and Riparian Statutes (p. 166), but DEP will apply them as well to the Shore Protection and Waterway Maintenance Program (p. 167). The Coastal Policies will be used to review consistency of other State agency proposals and those requiring A-95 clearance, such as sewage, air pollution and transportation projects (p. 191). And on non-federally owned land, "the CAFRA permit would cover all (natural interest) issues and thus has been identified as the single process during implementation of the Coastal Program Segment for assuring the continued consideration by identified national interests" (p. 177). And "the Coastal Policies also will form the basis of New Jersey's discussions with, and responses to local governments, regional and interstate agencies and agencies from other states with an interest in the coast" (p. 164).

Because of this potentially broad and deep regulatory impact upon New Jersey land and because "DEP has proposed that Chapter Three of the document be formally adopted as substantive rules under the general powers of DEP ..." (p. 165), we have commented in detail on this Chapter in Appendix A. Overall, while the rules are a vast improvement over the prior listing of policies only, they are too site-permit oriented, overly complex and confusing. Confusion results from the mixing of "water's edge" and "land areas" criteria; complexity results partly from the treatment of vegetation. Furthermore, the proposed standards lack commonality with those of existing agencies in the area, i.e., county planning board criteria.

The burden of compiling maps by developers is heavy (Appendix I lists five pages of "Data Sources for Location Policies.") Not only does that contribute to development costs, but leads to greater variations in data interpretation. Contrary to the DEP response to the need for combined maps indicating where development would be allowed (p. 250), a basic unfilled need exists for which the Office of Environmental Analysis has a prototype in being. Not only is this needed to relieve the developer, but to show visually the impact of environmental inventories/developmental carrying capacity to government policy-makers. One question the sentence, "Nor would New Jersey, with its strong reliance on municipal zoning, be able to use such plans at a state level." This is refuted elsewhere, "Under the Use Policies, most types of major developments located in the Segment will be regulated by the State of New Jersey" (p. 202).

As the document states throughout that the State's interest is in regional matters and that the remainder of development should remain the responsibility of local government, Location Policies should shift emphasis from detailed "land areas" standards of traditionally local regulatory concern to more complete criteria for the "water's edge" and "water areas." DEP recognizes this to some extent by its intention to do an Estuarine Study (p. 197). Use Policies appear incomplete as they do not consider Deep Water Petroleum Ports, nor the need to differentiate between ocean shore resort/tourism and bay recreation/fishing. Resource Policies are overly involved with matters that should be of local concern only and conversely provide too little concrete basis for long-term beneficial impacts related to protecting water quality, water supply, air quality, etc., as intended (p. 202).

June 16, 1978

The latter point is a critical issue that involves the four Basic Coastal Policies (p. 10). Where is the method for determining the limit on the concentration of development (Policy 2) at which point development becomes so intense in any given area that it no longer respects the natural and built environment (Policy 4)? And what level of government will be responsible for this determination? As a basic policy in this document, it would appear to be a State responsibility. However, it is stated elsewhere, "The Segment leaves land-use decisions of predominantly local impact to the discretion of local governments. Thus, residential or commercial developments that may not be detrimental individually could well have cumulative adverse impacts on the coastal zone" (p. 202). "The Segment Policies will not regulate housing developments of less than 25 units except in coastal wetland and riparian areas. Adverse impacts could result over the long term if developers choose to build in increments of 24 units (p. 210). But a method is lacking also in this document for determining the cumulative adverse impacts of larger projects that the State will review under what are now chiefly site specific permit rules! The resolution of this basic policy conflict again is dependent on carrying capacity mapping.

Along this line we note that HUD suggested a fifth policy be added to the "four Basic Coastal Policies to assure to the maximum extent practicable, consistency with the policies in the Department of Community Affairs State Development Guide Plan" (p. 245). The response was that the two agencies intend to have consistent policies. However, the growth areas shown in each draft plan are markedly different with the Coastal Program's more limiting. Although "DEP adopted the Guide Plan's distinction between 'growth' and 'limited growth' areas, (it) chose different criteria for defining each category" (p. 172). While this partly explains the variation, the chief reason is that the Guide Plan lacks a natural resources/carrying capacity basis even more so than this Coastal Program. The lack of environmental inventory considerations in preparing the draft Guide Plan was a major comment of this office to the Director of Economic Planning, coordinator of State Agency responses (OFA letter to R. S. Petterson, February 14, 1978). Hence, carrying capacity maps are essential for the further development of both agency plans.

Of the three broad options offered by the Federal Coastal Zone Management Act, DEP is opting for direct State control (p. 10). And among alternatives that the Act offers for acceptance of State programs is delay of approval for inadequately considering the siting of facilities of natural interest and for not unifying phases within an entire State program (p. 217). Furthermore, as one of five state alternatives, the second states, "The State could wait to submit the Bay and Ocean Shore Segments as part of the entire State Coastal Program" (p. 218). The result of any of these alternatives taking place would be the loss of Federal funds, however.

While there is adequate time to provide policies for deepwater ports in the final EIS, delay to correct deficiencies in Chapter Three policies for subsequent incorporation into a unified State Coastal Program at the end of 1978 would appear desirable. This would allow for completion of the 12 coastal county contracts from which DEP may choose to adopt local plans pertinent to this program (p. 173). Such action would avert what appears to be unnecessary interference with home rule concerns.

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APPENDIX A

DETAILED COMMENTS ON "CHAPTER THREE: COASTAL RESOURCE
AND DEVELOPMENT POLICIES"

So as not to delay implementation or to risk loss of Federal funds, we suggest another alternative. This would be to perfect the policies in the final EIS on "water areas" and "water's edge areas" under the option for direct State control, while reducing the use of "land area" policies under the option of Case-By-Case Reviews (p. 10). Such a course of action means that the policies would be used to review local plans on land areas for consistency. Revised land area policies could then be incorporated into the waterfront area phase later under the direct State control option, if desired at that time.

Sincerely yours,

Thomas L. Bertone
Director, Budget Review

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Attachment (Appendix A)

Of the 229 non-appendix pages of the draft EIS, 144 involve Chapter 3 (of 8 chapters). These, in turn, are devoted to Location Policies (108 pages), Use Policies (19 pages) and Resource Policies (14 pages). Therefore, to insure reader comprehension and to minimize expense to development that adherence to this proposed program will entail, scrutiny of the location policies seems especially pertinent, as they are the subject of half of the statement.

Location Policies

The guts of these policies revolve around two categories of water areas, two categories of water edge areas, and several categories of all other lands inland from the upper boundary of the water's edge. What has confused the matter is the mixing of "special water's edge areas" and "special land areas" all within section 6.4, "Special Water's Edge and Land Areas." This is attributable to the effort to define a common "water's edge" policy for both tidal waters and for higher elevation freshwater bodies (p. 73). This does indeed provide for the objective of an upland vegetation buffer between wetlands and development. What this omits is the need to delineate floodway and flood fringe areas per discussion on Page 59. (In a similar manner, the need to delineate areas of tidal flooding per Page 58 is not included.) Both types of flooding are supposed to be delineated per further discussion (p. 105) and illustrative example (p. 68).

Policy might be more easily understood if fresh water edge buffers and stream flooding were grouped with land areas above tidal water's edge.

It is stated that, "The Coastal Policies provide a visible basis for offering an informed comment on the consistency of (government and private) plans and proposals (p. 6) "... the Program ... focuses on coastal resource management decisions with greater than local significance that the Legislature has entrusted to State agencies" (p. 7). But there is no area mapping (visual basis) in this revised program, so that the criticism of the Public Advocate to the September, 1977, Strategy remains substantially the same. Specifically, "the document lacks any evaluation of the capability of the various areas within the coastal area to absorb and react to man-made stresses, the second requirement of the 1975 Inventory, N.J.S.A. 13:19-16" (P.A., p. 6).

Yet, the mapping of Interim Land Use and Density Guidelines ... May, 1976, was a step in that direction that needs only to be made more precise and current. The composite of six selected environmentally sensitive areas requires expansion to include several additional that the most recent program version expects each developer to compile for his application. While there is no denying that this process now provides substantive standards, rather than a welter of policies subject to interpretation, upon which to make selected coastal decisions on CAFRA, Wetlands and riparian permit applications; this is still site specific. What is still lacking is the basis upon which the State could determine "carrying capacity" or ability to assimilate development.

To cite specific instances, both of which involve the limitation of potable water, emphasizes this point. Under "Development Potential Factors" (pp. 89-93) water supply discussion is limited to site conditions, without reference to areawide impacts. Yet, the Cape May County Comprehensive Plan, adopted in 1976 uses a carrying capacity approach as a guide to its upper limit to population. The critical restraints were derived from air quality and water demand for people, industry, and agriculture. This was checked against projected land consumption that would use about one-third of the remaining developable land and retain two-thirds in farming, rural and open space. One can question a key assumption that water supply must rely on in-county sources only: But, in the absence of State direction otherwise (which this Coastal Program, the Pinelands Program, and the State Water Plan should address), the assumption was prudent. Likewise, Ocean County planners express concern about the future of well water supplies on Long Beach Island. More intensive development along the Route 9 - Garden State Corridor could result in the mining of the Kirkwood aquifer inland from the Island to an extent that island wells could become permanently ruined by salt water intrusion. Areawide carrying capacity would take such factors into account. The Coastal Program recognizes the problem for facility site permits (p.152), but it does not provide an overview of regional capacities.

While carrying capacity maps can't be developed overnight, maps that show the locations of environmentally sensitive areas could be composited in a short time. Natural features maps have been a part of the Department of Community Affairs State and Regional Planning maps for over a decade. Furthermore, in 1974 the Office of Environmental Analysis of the Department of Environmental Protection (now mapping riparian lands) undertook as a pilot study The Environmental Design for the Boonton Quadrangle with the thought that it would serve as a prototype. A combination of an inventory of natural/cultural resources and of environmental impacts associated with different types of land uses are mapped into environmental zones where development should be regulated. The nine separate environmental zone maps are combined on one map to visually portray the environmental response of the area to development. Three levels of response are shown:

1. Critical for Development

Prime Agricultural Land
Floodways & Flood Prone Areas
Wetlands

2. Sensitive for Development

Flood Fringe Areas
Prime Aquifer Recharge Areas
Highly Erodable Soils
Prime Infiltration
Potential Rapid Runoff

3. Qualified Areas for Development

One could argue that in the light of more recent information this process omits consideration of surface water resources' sensitivity and other results of crowding, but it does incorporate concern for a more representative group of environmental factors than in the proposed Coastal Program, particularly in the latter's "Land Areas." Criteria in the latter should be reconsidered:

1. The 3-foot depth to water table is a construction foundation restraint, not reflective of environmental sensitivity.

2. The definition of "Fertility" is inconsistent with that of Prime Agricultural Lands set forth in the Blueprint Commission Report. (It down-grades Class III soils and inserts consideration for "Woodland Suitability.")

3. The concept of Vegetation Index based on three height differentials is of questionable basis (p.88).

There are other reasons to reconsider "Land Areas" criteria, in particular. These involve consistency with county level and other State agency criteria. Sewage criteria are now being developed on areawide bases by counties. For example, Ocean County has its Environmental Population and Land Use Report of Draft 208. An element "Environmental Site Types Map" combines about ten environmentally sensitive factors. To what extent do these correspond with those in this Coastal Program?

Another example concerns development potential. The Coastal Program bases its least two levels (of four) for development, "Soil Conservation" and "Vegetation Conservation" on the nature of the ground cover. The former would include agriculture and open recreation areas, while the latter would be mostly woodland. In neither case could there be development that exceeds ten percent of the area in permeable paving! On the other hand, the Monmouth County map, Development Suitability, categorizes "Forest" and "Class III Soils" in its mid-range of three classes of suitability. This office's draft study of last year, "A New Jersey Physical Resources Inventory," concluded that lands used for both agriculture and forestry are readily converted from one to the other with small environmental loss if sound conservation techniques are practiced. Since over half of its land surface is currently woodland and vacant land naturally converts back to forest in New Jersey, the classification of Monmouth County seems more appropriate for "Forest," while less so for "Class III Soils." The latter took centuries to produce and, therefore, should receive a higher degree of protection for efficient food production.

What is critical is soil class, not the nature of the vegetation itself; while recognizing that a minimum requirement of vegetation of some type is essential for a variety of reasons, as discussed in greater detail on page 155. Consolidation of "herb, shrub, and forest" into a single category would lead to simplification of proposed standards. Specifically, developers would not have to differentiate between "Forested Vegetation (over 10 feet high) and Unforested Vegetation (under 10 feet)" (p.73), nor between the three classes of the "Vegetation Index" (p.88). The consolidation of "conservation levels" of development would be an extension of what had already been done in eliminating the "preservation levels" from prior work.

Inconsistency with the Department of Community Affairs State Development Guide Plan (Preliminary Draft) is great in spite of the comment on page 97. The "Growth Areas," to receive priority attention by the State before Year 2000 (DCA, p. 62), do not coincide with the "Regional Growth Potential" areas of this Coastal Program (p. 98). The latter are significantly more restrictive, particularly for areas behind barrier islands at Atlantic City and Long Beach Island (the implications to its water supply discussed previously). While one of the basic policies of the Coastal Program is to concentrate the pattern of development at the regional scale, there is no evidence of adequate attention to limits on the intensity of development that could overly drawdown water supply, exceed water and air assimilative capacities and traffic capacities. Again, to provide a factual basis for both of these State plans, there is a crying need for resource inventory and carrying capacity maps.

In view of this and the variations that currently exist among concerned regional agencies in interpreting the importance of environmental factors, deferral to county planning for "Land Areas" appears reasonable until more overall compatible standards can be developed for the Coastal Program. Mapping should receive highest priority. The last referenced map, which has the note: "Does Not Apply to Barrier Islands," vividly illustrates this need. Certain development policies do or do not apply to Barrier Islands (p. 55). Do any exist north of Long Beach Island? Peninsulas extend north of it to Bay Head and beyond the Atlantic Highlands. A map that incorporates shoreline zones, such as a detailing of Figure 1 in the CAFRA staff working paper, Sand Movement and the Shoreline, would provide a complete definition to any user.

Although we may not disagree with the policy of concentrating the pattern of development at the regional scale, the Coastal Program fails to take into account that sprawl can take place if its criteria are met (adequate ground water supply, on-site sewage disposal and expanded road network.) On-site sewage disposal is encouraged further along in the report (p. 148). Hence, there appears to be no basis to limit the portrayal of residential density types to those greater than 2.5 dwelling units per gross acre (Appendix O). This omission is yet another reason to reconsider the proposed standards for "Land Areas" and to defer for the time being to other regional agency criteria. The use of the "Land Acceptability Tables" may be a useful interim tool, but needs to be overhauled rather than "tuned" only (p. 121) in the next program version.

Working backwards, we shall comment on the two other major category groupings: "Water Edge Areas" and then "Water Areas." It is stated, "In retained water's edge areas environmental concerns are less than in undisturbed water's edge areas. The buffering functions of the water's edge have already been largely lost through filling and the construction of retaining structures" (p. 78). However, one upper limit of the undisturbed area is defined as only "50 feet horizontally from the lower limit" (p. 73), one upper limit of the retained area is "100 feet inland from upper limit of water's edge" (p. 77), and filled areas' upper limits are "25 feet inland from the top of the fill slope" (p. 79). If the rationale is correct, then these limits logically should be altered to read as follows: undisturbed, 100 feet; retained, 25 feet; and filled, 50 feet (or the latter two might require the same buffer distance).

Again, mapping of the preceding policy is needed for clarity and areawide impact. The task for developers would also be aided by mapping of streamheads (p. 67), as there are definition vagaries, and other special water's edge features, specifically "100 year tidal elevations" and "white cedar stands."

The Coastal Program for "Water Areas" is sketchy when compared with "Land Areas." Perhaps the emphasis should be reversed in view of the fact that almost all disturbances to the water environment have more than local impacts. Again, mapping would clarify. Inasmuch as tidal wetland mapping for State waters is complete, the task of showing thereon the defined "Water Body Types" and "Channel Types" (pp. 40-41) should not be difficult. Neither should placing the six inch, six feet, and 18 feet depth contours, all of which are essential in the use of the "Water Acceptability Table" (p. 45).

Although "Water Acceptability Conditions" specify limitations on 18 water uses, these are sketchy (pp. 46-49). For example, under "Filling," it is stated, "Limited filling may be considered elsewhere for acceptability on a case-by-case basis provided that, ... (c) the adverse environmental impacts are minimized," Elaboration should specify construction practices to minimize subsidence problems, such as those described in Urban Development in the Louisiana Coastal Zone: Problems and Guidelines, A. T. Murphy, New Orleans University, 31 Dec. 76. (The other problem areas of flooding and pollution associated with development in wetlands reported upon in that report are treated in the Coastal Program.) Another example involves "Pipeline Routes." These are conditionally acceptable, provided "(b) trenching takes place to a sufficient depth to avoid puncture" However, the "Water Acceptability Table" does not appear to take trenching into account in at least one case. Although it "discourages" pipelines in open bays deeper than 6 feet, it "prohibits" them in shallower water. Obviously, they would go ashore from deeper water in a trench, as is recognized further along in the Coastal Program (p. 142).

Use Policies

These policies are intended to specify restrictions on development according to use of coastal resources. Concerning those listed, possible "Industry-Commerce" should consider an additional limitation because of water pollution potential. This restriction should specify rigorous handling of waste products, such as pre-treatment of liquid wastes (a section of PL 92-500 which so far has not been implemented to any degree). On the other hand, to restrict mining "only in sites immediately adjacent to current mining operations," regardless of good reclamation plans, is an inflexible policy (p. 140).

What is omitted altogether are policies concerning deepwater petroleum ports. These require reconsideration of policies now included under the uses "Resort-Recreation," "Energy," and "Ports." In the case of the latter, the policy statement seems too limiting. While acknowledging State ports to be an international resource and that the State must "allow for possible unanticipated future needs for port areas" (p. 149), the policy stated is to limit port-related development

only to "established port areas." The location of more tanker terminals is "discouraged" from this entire Bay and Ocean Shore Segment (p. 145).

Secondly, this policy appears inconsistent with Appendix A to A Draft of the State Energy Master Plan, May, 1978. The latter lists among its siting strategies (p. 24):

"The potential of siting LNG import facilities offshore will be evaluated thoroughly. Offshore siting of LNG import facilities may prove attractive, if technically and economically feasible, since the hazards inherent in handling LNG might be minimized by such a siting approach.

"The potential of siting a deepwater port off the New Jersey coast will be evaluated thoroughly. The siting of a deepwater port off the New Jersey coast should be dependent upon a careful evaluation of its environmental and economic implications for New Jersey."

In its discussion of "onshore vs. off-shore siting," one of four of its fundamental policy options, the Energy Department broadens the scope of siting, as follows (p. 12):

"The concept of offshore energy facility siting need not be confined only to the Atlantic (nuclear) generating station and coal fired generators mounted on offshore production platforms, liquefied natural gas handling, or deepwater oil ports. Current technology allows for the construction of multipurpose industrial island facilities, which, when properly conceived and operated, may serve a variety of functions ranging from energy generation to mariculture"

However, the Energy Department discussion does not seem to include bay waters as "off-shore." The Coastal Program policies do not distinguish between the impact on ocean shore tourism and bay recreation (pp. 139-142), although acknowledging that a difference exists further in the document (p. 182). The latter is of much smaller importance to the State economy. As is pointed out in our New Jersey Status of Transportation, Summer, 1976, (pp. 52-55), there is a need to reexamine ocean and bay port sites, as Delaware Bay locations have real potential. There is new Federal concern also, as expressed in the April report of the General Accounting Office. It suggested the Coast Guard be ordered to complete an extensive study by the end of the year since "at least one deepwater port on the mid-Atlantic coast might be in the national interest."

Whereas tourism is a paramount concern along the ocean coast, fish and wildlife are major bay environmental concerns. Hence, the need to differentiate policies. Commercial shellfishing might be involved with Delaware deepwater sites, for which the policies (p. 32) seem permissive. Reasonable standards for bays need to be developed, particularly since the Amoco Cadiz oil spill has provided no evidence of irreversible effects on the Brittany estuaries and since shellfish beds are a form of aquaculture, rather than a natural resource there anyway. That is, they can be replanted as they are now in Barnegat Bay.

Resource Policies

The policies are to limit development in terms of "effects on various resources of the built and natural environment ... both at the proposed site as well as in its surrounding region" (p. 151). The basic problem here is ferreting out local concerns from regional ones. Specifically, should the State be involved in this Coastal Program with local public services, architectural design, site and lot buffers, and neighborhood and special communities. These are not of regional import, and as currently written the policies are vague or incomplete.

Specifically, if there is to be a policy of a minimum 25 feet of forest buffer between industrial buildings (p. 100), what are the buffers required between residences, between residential areas and agriculture, etc.? Or concerning special communities, it is stated that, "Places such as ... Shellpile along the Maurice River bear eloquent testimony to the heritage of the shellfishing industry in New Jersey ... that should be valued, reinforced, and preserved" (p. 162). The New York Times of June 7, 1978, expressed another point of view, "The wooden shacks are more reminiscent of William Faulkner's Mississippi than of Brendan Byrne's New Jersey - mean little shacks built on hundreds of clam and oyster shells, shacks that contain no water, no toilets, no central heating, where ... seagulls cry above the plastic bottles and moldering garbage that assault the reed grass The main reason black shantytowns remain intact is that there is no agreement on where the people should be relocated."

On the other hand, the other resource policies of true regional extent all express concern for keeping growth within the capacity of the resource in any given area. But, as we have commented previously on water supply, where are the carrying capacity maps needed for air quality, traffic-networks (or their congestion converse), and for determining secondary impacts. The needs of wildlife offer a pertinent illustration. To require an individual site to retain a percentage of its area in vegetation is not sufficient. A map of the site and its surrounding region is needed to incorporate open spaces as much as possible into a contiguous corridor for maximum habitat and movement (pp. 156-157).



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

PATRICIA Q. SHEEHAN
COMMISSIONER

June 15, 1978

363 WEST STATE STREET
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PATRICIA Q. SHEEHAN
COMMISSIONER

MEMORANDUM

TO: Office of Coastal Zone Management
Department of Environmental Protection

FROM: Patricia O. Sheehan, Commissioner *PO*

We thank you for the opportunity to publicly comment on the New Jersey Coastal Management Program, Bay and Ocean Shore Segment. The Department of Community Affairs has been an active participant in this work for a number of years and our interest in your work remains keen.

It is in this spirit of interdepartmental cooperation that we present our remarks which are intended to constructively assist you with your continuing efforts.



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

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COMMENTS

of the

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

on the

NEW JERSEY COASTAL MANAGEMENT PROGRAM

BAY AND OCEAN SHORE SEGMENT

June 15, 1978

We recognize the enormous amount of work that the Bay and Ocean Shore Segment represents and find its content of professional standard. To this extent we compliment the Office of Coastal Zone Management on their work. We understand completely that land- and resource-based planning is a dynamic process and our comments are presented in a constructive manner for the purpose of assisting the continuing refinement process.

Our remarks are presented in two formats. First are generic comments which are applicable throughout the document followed by specific remarks referenced to a particular place in the report. While we have reviewed the entire document, the heart of the work centers on Chapter Three and so we have concentrated our work there.

Our primary concern centers on the absence, at this time, of the fundamental elements of a master plan and a master planning process. Much of the fine work presented will profit with the availability of such a document for which there is clear authority and an explicit mandate (see Secs. 2 and 16 of CAFRA; Opinion No. 1, CA 73-003, July 10, 1974, p.8, para. 15; CAFRA Review Board Decision on Appeal, January 3, 1975, see generally; Toms River Affiliates, Superior Court, Appellate Division, A-1470-74; and P.L. 92-583, especially Sec. 305(b)(5)).

We believe that upon completion of a master plan for the coast, many of the comments and reservations that surface at the public hearings would be resolved. The present program addresses individually proposed projects and assesses their degree of acceptability by judging them against a system of criteria that attempts to measure the probable impact on coastal resources, -- primarily natural. The presently missing ingredient, the plan, would complement and rationalize this system by coming to grips with the human functions of the various parts of the Coastal Zone. It would also provide a framework for assessing the collective long run impacts of the many individual decisions that will be made under the three-stage coastal decision-making process. The identification of land use activity and growth trends and the issues implicit in these trends needs to be assessed in terms of their locational appropriateness. (Location in this context is much broader in geographic scope than presently presented.) Judgments need to be made as to whether observable regional trends should be reinforced, redirected or even stopped. The coastal program has not yet done this. The germ for this analysis lies in 6.6.8 Regional Growth Potential Factor, but it has not yet been developed nor given its proportional status of significance in relation to other elements of the program. For example, what are the implications for the coastal program from the conversion of seasonal dwellings to year-round communities? Should this be encouraged? Should there be a coastal policy to encourage a continuance, at least in some places, of seasonal communities as a recreation opportunity for the thousands of New Jersey and out-of-state families who look to the New Jersey Shore for their two-week vacation at moderate cost? If so, which areas? Another illustration is the future of the Delaware Bay Shore. Is there an active recreation potential there? Should it be pursued? If it is, what are the impacts for coastal and non-coastal locations from access and other improvements which would be necessary to exploit the Bay Shore for recreation.

The absence of a weighting scheme makes it difficult to assess merits where certain location or use policies may conflict, e.g., where everything is judged as acceptable with the one exception that a particular specie of flora is threatened. Where is the trade-off point?

The last general area of comment relates to the proliferation of distances, heights, etc. represented by numbers which have no source reference or rationale in the text. These numbers are extremely important since they function as standards which have a direct effect on how people can use their property. Where specific reference to a source cannot be made it is incumbent upon Office of Coastal Zone Management to explain their reasoning for using a particular "standard" as was properly and acceptably done for the fifteen foot tree height standard for the Vegetation Index Factor presented in 6.6.6.2, p.88. The CAFRA project review process, of the last three years especially, provides much source information from which well-reasoned and defensible standards could be established. Unfortunately there appears to be little evidence of this. A sampling, but by no means complete, of sections of the report which contain undocumented or unexplained "standards" are 6.4.11.1, 6.4.13.1, 6.5.2.1, 6.5.2.2(d), 6.5.2.4, 6.5.3.1, 6.6.4.1, 6.6.7.2.1(d), (e) and (f), 6.6.7.2.3, and 6.6.7.3.1.

In conclusion of this section we note that we are sympathetic to the difficulty of simplifying, to the greatest degree, a very complex subject. However, the strategy will achieve its full potential when it objectively deals with the trade-off issues; and, without a plan such a process remains largely arbitrary no matter how sophisticated the project review process or how high minded the staff.

This section deals with specific comments referenced to specific locations in the document. Any inquiry on these as well as the above remarks should be directed to the Division of State and Regional Planning.

- Chapter I
 - pp.10-12 Phraseology such as regional impact, selected coastal decisions and major development have different meanings to different people and should be defined in coastal zone terms. It is implied that every use requiring a CAFRA permit is of regional impact with which we strongly disagree.
- Chapter III
 - 6.3.8.1 You say aquaculture is "generally encouraged" but your Table, p.45 does not reflect this.
 - 6.4.2.2 Requiring dune walkways to be "on piles" is an unnecessary and costly restriction. The test is dune protection, i.e., performance, not some building code-like standard.

- 6.4.3 No distinction is made between seasonal and year-round communities at this location. Promoting some seasonal communities in these locations may be a useful strategy itself in protecting central barrier island corridors since major human impact is limited seasonally.
- 6.4.3.2 The High Development Potential rating dictates a level of commercial and residential development that may be desirable to avoid at least in some of these barrier island communities. This policy may be encouraging the inevitable -- total year-round settlement of barrier island corridors. Such a result should come from conscious policy formulation.
- 6.4.6.2 Such a policy could lead to the destruction of specimen trees to avoid the restrictions. Hopefully, an inventory of same could be made so we know where they are.
- 6.4.7 This category should be labeled White Cedar Stands.
- 6.4.9.2 What constitutes "adversely affects." Also, a plan would contain judgements that would seek to encourage the location of mutually compatible uses. The current strategy gives minimal guidance in this regard.
- 6.4.11 This represents an ad hoc farming policy which does not deal with any of the issues in arriving at such a conclusion. There could be a "land bank" effect on property which may be better out of farming in any particular location. Also, U.S. Soil Conservation Service includes Class III soils as prime. Twenty acres is an unsubstantiated standard.
- 6.4.11.3 The issue is whether the production of food and fibre in the Garden State is essential to the health, safety and general welfare of New Jerseyans. If so, what kind, how much, where is it best located. This issue has not yet been addressed by our own Department of Agriculture.
- 6.4.12.3 Bogs also assist in flood control.
- 6.5.1.4(c) Additions shown to be "in the public interest" should be conditionally acceptable in this location.

- 6.6.7.4.1(d) What does "surrounding region shall be accessible to campground users" mean? If someone else owns it you are promoting trespass. What's the definition of the "surrounding region." Many people camp in the Pinelands and take day trips to other recreation resources.
- 6.6.7.4.3 Your criteria for Low Potential defines just the recreation experience desired by some, i.e., minimum conveniences.
- 6.6.7.6 Location Policies should not be designed to address the "needs of developers" but the needs and desires of the general public.
- 6.6.8.2 It should be noted that the State Development Guide Plan's use of this terminology is directed toward public investment. Also, that document is more extensive in its definition of Growth areas based on the review of trends and investments. If the Coastal Zone Management Program use of these concepts is "based in part" on the State Development Guide Plan, it should specify it and explain its distinction from the Guide Plan.
- 6.6.9.5 The present array of information is highly confusing to the reader, particularly those not directly working in the program. It is not clear why the X's start and stop where they do for each column. All factors have been treated equally, a weakness brought out in the first part of the comments. It might help if the information were presented in four sets of tables -- each set representing one of the four development intensities. Such a format would lend itself more easily to the eventual introduction of weighting.
- 6.6.9.6.6 This section overstates the benefits of restricting pavement. Based on dwelling type and site design there would be great variation in the relationship population density to paving percent. It's misleading to over-simplify this relationship which is not referenced. This is a classic case where individual site plans must be evaluated.

Reference to Appendix O - The CZMP would have been better served if Appendix O was constructed from the complete CAFRA permit review files rather than a series of individual site plans. If groups of actual cases bore out the contention made with respect to percent of lot coverage, there would be strong irrefutable evidence available.

6.6.9.6.6
(cont'd.)

Acceptability levels are alleged to be based on current DEP policy -- you have an obligation to specify and reference this in light of its importance.

6.9.9

This is too stringent in that it ignores the relative merits of the subareas.

6.11

The General Location Policy is an "escape clause" which must be used judiciously with the utmost discretion.

7.2.1

While dependence on water access may be true, should we rule this out absolutely in all instances as a matter of locational preference?

7.2.2

Present history shows us that clustering is not a preferred housing choice, nor should the State promote changes in the local land use program by variance as a matter of policy. DEP's offer of assistance can be interpreted by unscrupulous developers as official state help in the "busting" of a local zoning ordinance. The U.S. Supreme Court in the fairly recent Belle Terre */sic/* case reaffirmed the right of a community to determine its character.

7.2.5

Barrier free design in "some" of the units -- how many and are single-family units included. If so, we question the wisdom of that. It appears that OCZM may be stretching their coastal resource mantle by getting involved in building code matters. Will exclusion of barrier free design in single-family units constitute justification to deny a permit?

7.2.7

This is too restrictive, especially in more urban areas. Changes in intensity use or occupancy may be desirable and defensible both from the view of society as well as CLAM. "Discouraged" is much too strong. "Conditionally Acceptable" would be more appropriate.

7.2.8(e)

These conditions preclude the phased redevelopment of an area or where a consciously determined change in character, use or intensity may be at work, especially regarding redevelopment of urban locations.

7.3.3

It is not the responsibility of a private investor to provide off-site supporting services and facilities as a condition of approval.

These are only two not so hypothetical examples of the kind of planning process which needs to take place. Establishing the function and character of the various parts of the coastal zone and area will help determine how the more discretionary aspects of the coastal program would be applied. If you will permit the metaphor, it is simpler to construct a jigsaw puzzle piece by piece when one knows what it is supposed to look like when the pieces are in the right place.

The current program gives the strategy almost a parcel-by-parcel perspective by which the broader picture is obscured. Such a focus restricts our ability to prejudge the cumulative effects to which these many individual decisions will contribute. In other words, a host of singularly permitted projects which individually are viewed as permissible may collectively degrade, if not destroy, the very resource being protected by any one permit. An example of this would be Prime Wildlife Habitats (6.4.8 et seq. p.62). Unless we know ahead of time the extent of the habitats' ability to successfully absorb impact, we will not know when the last permit should be granted or what changes in use may be appropriate.

A plan would relieve the heavy burden presently borne by the "infill" criteria since development rarely occurs in a neat sequence of consecutively developed parcels. It's more important that there is agreement on what makes sense for the area and then development can take place as it will within that framework subject to the project review process.

Further, in light of the replanning being carried out by all of the State's 567 municipalities as a result of the Municipal Land Use Law, a plan would be beneficial in giving direction and guidance to municipal planning boards within the coastal zone.

We recognize and accept an environmental bias for this program, however, we don't believe environmental considerations should be absolute unless a clear case can be made primarily on grounds of health and safety. Uses should be evaluated in terms of their competition with other uses and activities, including natural resources, for the same piece of geography. This can be carried on with an environmental bias. Currently uses are dealt with almost exclusively in terms of their environmental impact on natural coastal resources and locations with little attention given to priorities.

By identifying policies as is done now, there is a presumption that all criteria and considerations are of equal value. That all resource locations, for example, have equal merit wherever they occur and that uses which could not meet the performance standards are automatically prohibited no matter how important the use may be (with a few exceptions) at a particular location. The Water Acceptability Table also illustrates this point. A noteworthy exception is High Risk Erosion Areas (6-4-1) which makes a distinction apart from other shoreline erosion areas.

- 6.5.3.2 All locations (retained water's edge) may not have equal merit. There may be places where conventional land use in this highly aesthetic setting may be appropriate.
- 6.5.3.2(c) This criteria, as it stands, is meaningless.
- 6.5.3.3 Assimilative capacity not direct discharge should be the operating standard. Also, higher density private housing along open water bodies would not automatically be inefficient.
- 6.5.4.2(b) As presented, this criteria is meaningless.
- 6.6.3.2 Problems re: frost heave and surface ponding would vary greatly throughout the coastal zone. Selection of the three foot threshold must be tempered by the soil type in this area. Has it been? If not, the threshold would be larger due to sandy porous soils.
- 6.6.5.1 Has Soil Fertility been synchronized with the Prime Agricultural Areas policy?
- 6.6.5.2 The current rationale does not explain the value of soil fertility as a factor in location policy, particularly in the absence of a farmland and productivity plan (policy).
- 6.6.6.1(a) A fifteen foot height minimum here is different than a ten foot minimum in 6.5.2.4. Is there any reason for the difference?
- 6.6.7.2.1 These criteria work against maintaining seasonal communities. Also, their use would perpetuate and expand developments and certain growth locations that would have been better off never happening. The definition of infill is too mechanical. If a general area was identified for promoting growth, it would be unimportant what percent of boundary lengths were involved. You can't reduce the development process completely to matter of distances and percentages.
- 6.6.7.3.1(a) Road improvements are seldom ahead of the impact of growth save for on-site improvements.
- 6.6.7.4.1(a) Anyone travelling these roads on a summer weekend knows that this criteria is impractical since traffic is most often generated by other destinations.

- 8.14.1 Secondary impact needs specific guidelines for use by prospective applicants. This still remains a very tough area in project and plan assessment.
- 8.15 The issue of compatibility of uses is central to the planning process and cannot be dealt with as a matter of buffer requirements.



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

PATRICIA G. SHEEHAN
COMMISSIONER

163 WEST STATE STREET
POST OFFICE BOX 2164
TRENTON, N.J. 08625

June 28, 1978

M E M O R A N D U M

- 7.3.4 Compatibility of scale, site design and architecture is a highly subjective thing leaving much too much discretion in the hands of project reviewers.
- 7.3.6 If demand is not being met by expandable facilities, are you going to prevent new boating facilities? You can't force existing marinas to enlarge.
- 7.3.1.1 Amusement piers are a valid recreational opportunity. The current policy is elitist in tone and ignores the preferences of tens of thousands of people who enjoy these facilities. A more constructive policy would be to recognize the demand and plan for a number of locations rather than grudgingly accept them as an existing but undesirable use.
- 7.4.7(c) The pipeline policy is not coterminous with your boundary with regard to the Central Pine Barrens area and may be in conflict with the preliminary policy statement of the New Jersey Department of Energy entitled Determination of the Need for Energy Facilities, p.21.
- 7.5.5 Bicycle and foot paths design must be sensitive to today's concern for security and the general concern for privacy.
- 8.4.1 This policy should include phasing with expansion plans for potable water systems.
- 8.5.1 It is impractical at best to expect the developer of a thirty unit subdivision in Lacey Township to demonstrate the salinity impact of his proposal. This is a prime example of how the program cannot deal with cumulative impact.
- 8.6.1 How does one quantify the runoff rate of mature forest vegetation?
- 8.6.2(c) and (d) It would appear that storm water runoff must be treated prior to discharge. The economics of such a condition may be way beyond the goal and should be investigated before such a condition becomes determinative with regard to permit approval.
- 8.7.1 How does one quantify the runoff rate of medium density forest.

TO: David N. Kinsey, Chief, Office of Coastal Zone Management Program - Department of Environmental Protection

FROM: Richard A. Ginman, Director, Division of State and Regional Planning - Department of Community Affairs

SUBJECT: Proposed Rules for CAFRA, Wetlands and Riparian Permits

This is in response to the June 19th memorandum from Steven Whitney informing us of the Office of Coastal Zone Management intent to adopt Chapter 3 of the Coastal Management Program - Bay and Ocean Shore Segment (May 1978) as the rules for CAFRA, wetlands and riparian permits. Our major concerns with the Coastal Management Program were expressed in the comments we submitted for the June 15th public hearing (see Comments of the New Jersey Department of Community Affairs on the New Jersey Coastal Management Program Bay and Ocean Shore Segment, June 15, 1978). Therefore, until the deficiencies which were noted are resolved, Chapter 3, as currently drafted, should not be adopted as the rules for the permit review process.

One of the major shortcomings of Chapter 3 is that there are no guidelines for assessing cumulative impacts. While Section 4.4.6 of the adopted CAFRA Rules and Regulations emphasizes the importance of the assessment of inventory elements, this in our opinion is still not adequately handled in most permit applications. We believe that guidelines could be established so that applicants could build upon the analyses made for previous projects (opinions, summary reports and EIS's) and concentrate on the additional effects of their facility on land use, traffic, housing, etc., as well as environmental factors.

We are also concerned with what appears to be unreferenced criteria and standards and pages of confusing tables which are contained in Chapter 3, e.g., 6.6.7.2, pp. 89-90 and 6.6.9.5, pp. 103, 111 (for other examples, see DCA comments of June 15). Such criteria and confusing tabular data could result in delaying the review of permit applications and would seem to be contrary to the Governor's intent in Executive Order #57 which directs that the State's permit review programs be simplified and expedited.

David N. Kinsey

-2-

June 28, 1978

Therefore, we recommend that all of the criteria/Standards be documented so that they are defensible and can be judicially upheld.

At such time as the deficiencies in Chapter 3 are resolved, we recommend that the substantive sections (9 and 10) of the currently adopted CAFRA Rules and Regulations be examined to avoid conflict, duplication or overlap with the proposed rules. Moreover, we recommend that both documents be combined into one set of procedural and substantive rules which would facilitate simplifying and expediting the permit review process.

Finally, Chapter 3 does not establish criteria for the design of on-site parking needs. Not doing this could result in too much reliance on local zoning requirements which are often inadequate. On many occasions in reviewing CAFRA permit applications, we have commented on the inadequacy of parking arrangements, in particular in the area known as the "Five Mile Beach Area" of the Wildwoods. The review of vehicular circulation and on-site parking accounts for considerable time in site review because the arrangement, design and location of parking facilities becomes critical in terms of safety, convenience, aesthetics and environmental considerations. This design problem should be addressed in the coastal program and particularly in the proposed rules.

In conclusion, we support the intent of the OCZM to adopt substantive rules so that the review of permit applications can be simplified and expedited for both the applicant and regulator. However, we feel that Chapter 3 is in need of substantive revision before it can meet the objective of streamlining the review process. Please note that we are available to assist you when time permits.

ccs: D. Graham
S. Whitney
D. Linky
W. Potter

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

MEMORANDUM

TO: David N. Kinsey, Chief, Office of Coastal Zone Management
FROM: Jay T. Fiedloy, Chief, Bureau of Urban Plng. DATE: July 11, 1978
SUBJECT: Housing Impact Analysis and CAFRA

The Division of State and Regional Planning, Bureau of Urban Planning would like to make the following observations and recommendations regarding the Department of Environmental Protection's Coastal Management Strategy for New Jersey and its CAFRA Rules and Regulations.

CAFRA Strategy

Within the three-step decision making process regarding use of coastal resources, Location Policy is of greatest concern to the housing interests of this bureau.

In comparing location "potential" with environmental "sensitivity", a number of factors (e.g., roads, sewers, growth area identification) are weighed. Within this context, housing should be given greater attention to identifying regional needs and growth potential. The division's recently completed Revised Statewide Housing Allocation Report for New Jersey is a good source document for information regarding municipal and regional "fair share" of housing needs. It could be used to: 1) further identify growth or limited growth areas by prospective household growth and housing needs; 2) give priority to those facilities that address housing needs where growth can be expected; and 3) encourage residential applicants who demonstrate greater diversity of type, choice and cost of dwellings within their facility.

CAFRA Rules and Regulations

Assisting the Strategy through its Housing Opportunity Impact Statement (HOIS), the bureau, in a coordinated manner with DEP, assesses the local and regional impact of residential facilities (100+ units) on housing needs within the coastal zone. This assessment is accomplished through the use of data required in the applicant's Environmental Impact Statement and through the use of the division's expertise - notably, its housing allocation and housing needs works.

Unfortunately, inadequate data is often found in the applicant's EIS requiring the bureau to request additional information. Section 10.2.4 "Special Requirements for Residential Facilities", CAFRA Rules and Regulations, should be clarified and amended to avoid this shortcoming. Appended to this memo are two mechanisms, a checklist and an example of a satisfactory response to Section 10.2.4, that could be used to that effect.

It is our desire to minimize EIS deficiencies. DEP's pre-application meetings with potential developers could be an appropriate forum to utilize the tools needed to realize that end.



State of New Jersey

NEW JERSEY STATE MUSEUM
DEPARTMENT OF EDUCATION
100 WEST STATE STREET, 3RD FLOOR
TRENTON, N. J. 08646
CULTURAL CENTER

June 16, 1978

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Regional Manager, North Atlantic Region
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Attention: Ms. Kathryn Cousins

Re: D.E.I.S. "State of New Jersey Coastal Management Program
Bay and Ocean Shore Segment"

Dear Ms. Cousins:

The Bureau of Archaeology, New Jersey State Museum has reviewed the draft E.I.S. for the above referenced project and find that the section on Historical and Archaeological Resources (Part II, Chapter III, 6.4.5) is inadequate with respect to the conservation and preservation of New Jersey's cultural resources. The scientific recovery and/or removal of historic resources (page, 60.) will not insure the preservation of New Jersey's unique cultural past. The draft E.I.S. should have included a set of procedures to determine the cultural resource base before granting permits for particular projects in any given area.

Due to the short time allowed for commenting on the draft E.I.S. the Bureau of Archaeology is not able to provide more detailed comments.

Sincerely yours,

Karen Flinn
Registrar
Bureau of Archaeology
& Ethnology

KF: RF

SAMPLE RESPONSE

DWELLING TYPE	SELLING PRICE	NO. OF BEDROOMS	A P & I (MONTHLY)	B TAXES (MONTHLY)	C HOME INS. (MONTHLY)	TOTAL MONTHLY MORT. PAYMT. A+B+C	D UTILITIES (MONTHLY)	TOTAL A+B+C+D
Ranch	\$43,900	3	\$305	\$52	\$11	\$368	\$102	\$470
Bi-Level	\$48,900	3	\$339	\$64	\$12	\$415	\$102	\$517
Two-Story Colonial	\$47,900	3 or 4	\$332	\$62	\$12	\$406	\$102	\$508
Two-Story Colonial	\$54,900	4	\$382	\$72	\$14	\$468	\$102	\$570

NOTES: 1. All figures estimates

- 1978 Manchester Tax Rate \$1.56/\$100 Ass. Value
- P & I figures assume 10% downpayment and 9% 40 yr. mortgage.
- JCP&L residential rate 0.497/kwh.

DOC

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State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

P.O. BOX 141
TRENTON, NEW JERSEY 08625

CARL S. HIRSHBAUM
DIRECTOR
TEL. 609 292 1693

STANLEY C. VANNESS
PUBLIC ADVOCATE

June 30, 1978

Ms. Kathryn Cousins
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Department of Environmental Protection
John Fitch Plaza
Trenton, New Jersey 08625

COMMENTS OF THE

DEPARTMENT OF THE PUBLIC ADVOCATE
OF THE STATE OF NEW JERSEY
Division of Public Interest Advocacy

Dear Ms. Cousins:

ON

Enclosed is a copy of the Public Advocate's comments on the DEIS for the Coastal Management Program, Bay and Ocean Shore Segment (May, 1978). Appendix A to our comments is a copy of Public Advocate Comments on the Coastal Management Strategy for New Jersey CAFRA Area (September, 1977), which is also included since it contains our most in-depth analysis of the State's coastal program.

THE COASTAL MANAGEMENT PROGRAM,
BAY AND OCEAN SHORE SEGMENT
(May, 1978)

Overall, notwithstanding our criticisms, the current draft is much improved in many respects. We are hopeful that these comments will assist in still further improvements.

If you have any questions, please call myself or Ms. Sharon Treat.

Very truly yours,
R. William Potter

R. WILLIAM POTTER
Deputy Director

RWP/db
Enclosures
cc: David Kinsey
Derry Bennett

I. INTRODUCTION

The Department of the Public Advocate, (hereafter "Public Advocate") is an independent, cabinet level department of the executive branch of State government of New Jersey. Stanley C. Van Ness, the Commissioner with the title of Public Advocate, has been delegated exclusive discretion to "represent the public interest" through the Division of Public Interest Advocacy, N.J.S.A. 52:27E-29, in such proceedings as he deems will best serve the public interest.¹ An area of special concern to the Public Advocate has been, and continues to be, the administration of laws affecting the protection of the State's coastal environment.² Thus, the Public Advocate submits these comments to the Office of Coastal Zone Management ("OCZM") for its consideration and review.

II. THE "COASTAL LOCATION ACCEPTABILITY METHOD" ("CLAM") AND RELATED POLICIES

The Coastal Management Program, Bay and Ocean Shore Segment (hereafter "Program" or "BOSS") is a much revised and reformed version of the Coastal Management Strategy published in September, 1977. Many of the

¹ The Public Advocate was characterized in a recent federal study of public interest representation, Policy Issues Raised by Intervenor Requests for Financial Assistance in NRC Proceedings, NUREG 75/071 (July 18, 1975), at 148, as "the most extensive state public counsel's office in the nation." One of the methods for exercising his discretion is by representing persons who appear pro se in federal or state proceedings and seek to raise issues of broad public concern. The Public Advocate also participates in the formulation of broad matters of public policy through analysis of major planning documents, such as this one, and submission of criticism. See Appendix A, Public Advocate Comments on the Coastal Management Strategy for New Jersey (September, 1977).

² See Appendix A, pp.1-3, for a discussion of Public Advocate cases involving coastal protection.

Department of Public Advocate criticisms of the earlier document have been specifically addressed in the revised Bay and Ocean Shore Segment.³ Changes in wording to clarify and strengthen policy, and the pending promulgation of these policies as regulations, will greatly improve the original Strategy.

Despite changes, however, several of the Department of the Public Advocate's basic concerns remain unaddressed by the new Program. These concerns deal primarily with the DEP's approach, rather than the specifics of the DEP's policies with which we are generally in agreement. For example, the Public Advocate has consistently held the position that the DEP must carry out a comprehensive environmental inventory and complete mapping of the State's coastal area.⁴ These are mandated by Section 16 of CAFRA, N.J.S.A. 13:19-16, and are a necessity for proper location of development in the coastal zone. Although the approach put forth in the BOSS appears to be careful, balanced and comprehensive, we continue to hold that the inventory and mapping must be done to complete the program.

The problems associates with a coastal program lacking the basic data of an environmental inventory and devoid of mapping of areas based upon their environmental sensitivity -- "carrying capacity" -- may be summarized as follows: The public, planners, developers and environmental activists alike, cannot know the suitability of particular areas of the coast for development or protection without initiating the CAFRA permit process by requesting a

³ See, Note 1, supra.

⁴ See, Appendix A, pp. 4 to 11, for a full discussion of this point.

permit. The "Coastal Resource and Development Policies" are complex and do not constitute an easily consulted reference tool which can inform the public or help the public to plan for the future. This lack of what may be called "prior notice" means that no sites are evaluated until a developer decides to build on a particular lot. Thus, the "best" site for a particular facility remains unknown; indeed, it will never be known. The policies in the Bay and Ocean Segment do not provide for a comparison between potentially acceptable sites, but only distinguish a site as either acceptable or unacceptable in a particular case.

The BOSS in fact transfers the responsibility of mapping to the developer. Mapping of the site thus becomes the first step in the CAFRA permit process. Therein lies the second fault in the process: that the sites must be chosen, mapped and evaluated before there is any assessment of the need for the development. The management program, as now established, first evaluates (maps) the suitability of the individual site; then evaluates the site and project in terms of the use policies, and finally evaluates the impact of the project on area resources. This ordering of priorities seems backward. Public service facilities in particular -- such as energy or sewerage facilities -- should be entirely evaluated on the basis of need and alternatives before money and time is spent mapping and evaluating individual sites. Indeed, once a developer has performed the probably costly mapping it is unlikely that he will be open to discussion on whether the facility is "needed." Moreover, need is a determination which can be made independent of the site. If a sewer interceptor has no justification ("it's not needed") then finding an acceptable route is irrelevant. In

short, reversing the order may produce quicker and cheaper decision making.

Turning to the resource and development policies, they appear to be a "fine tool" which can be adapted to all parts of the coast. But the need remains for an initial mapping and delineation of the coast, which would facilitate truly prospective planning.⁵

A major part of this system depends upon the reliability of a 204-line chart, the "Land Acceptability Tables." This chart sets out the 204 possible types of land in the coastal zone and the "maximum acceptable development intensity" permitted in each one, based on combinations of six variables. These variables are divided between four (4) which assess the environmental constraints or sensitivity of a site, and two (2) which set forth its development potential. (The 204 lines represent the 204 possible combinations of variables.) While the four generic sensitivity factors appear comprehensive, the development potential raises certain questions. For example, the sixth column is "Regional Type," either "growth area" or "limited growth." Designation as one or the other is intended to further the policy of concentrating new development, and thereby reversing a historical propensity toward "sprawl" or "sluburban growth" which degrades the environment, wastes resources, and undermines the recreation-tourism appeal of the coast.

Clearly, the DEP wishes to advance laudatory goals. However, the

⁵ Our cursory review of the Massachusetts coastal zone plan suggests that this sensitivity mapping is a reasonable requirement which at least one eastern seaboard state appears to have accomplished.

mapping of the coast, which appears on p. 98 of the BOSS -- into "growth" or "limited growth" areas -- is a crude tool for achieving this goal. The map is too general on its face and, more importantly, lacks the basis necessary for verifying its accuracy and meaning. For example, growth areas are defined in terms of "municipalities where extensive development has already occurred and there is a history of high development pressure . . ." (p. 97). Additionally, the DEP has relied "in part" on the State Development Guide Plan, together with its "analysis of likely areas of development pressure based on the experience from 1973-1978 in the CAFRA permit program . . ." (Id.). Plainly, these factors include a high measure of subjectivity, lack quantifiable standards, and, overall, provide a fuzzy yardstick at best for decision-making. Accordingly, their inclusion in CLAM -- on an equal basis with the sensitivity factors -- is questionable.

CLAM may suffer from other infirmities related to its basis and background. For example, it is not clear from the accompanying explanation how each of these determinations was made. Although the DEP states that "these acceptability levels are based on current DEP policy, particularly as articulated in the detailed CAFRA permit application decisions," (p. 120) it adds that comparisons between actual permit decisions and these tables has only begun. These comparisons will be used to "tune" the tables and "develop a rationale for each line of the Land Acceptability Tables and each of the Water's Edge Policies." (p. 121) How can the tables or policies be based on permit decisions if a comparison between the tables and the decisions is yet to be completed? And how reasonable is it to develop a rationale for the method after it is promulgated as a regulation?

These tables and policies may, in fact, be reasonable and accurate assessments. Unfortunately, there is little way for us to judge.

In our opinion, this explanation is potentially both disingenuous and dangerous. It is disingenuous for its failure to recognize the frequently inconsistent trends in prior DEP decisions, and its failure to identify the specific trends which, like common law codified by statute, it wishes to formalize. It is dangerous due to the same inconsistencies -- DEP may pick the "trend" it wishes and ignore others to suit the moment.⁶ While we do not allege that this would occur, the absence of a detailed evaluation of the actual basis for CLAM strips it of considerable authenticity.

III. SPECIFIC USE POLICIES

The energy use policies in general have been improved over the initial policies of the Strategy, although some of our concerns remain unanswered. The General Energy Facility Siting Policy still does not require that utility applicants demonstrate that there are no "feasible and prudent alternatives" to the proposed facilities although it does extend the criteria of demonstrating need to all energy facilities.⁷

⁶The Public Advocate currently is preparing a case-by-case evaluation of CAFRA decisions. While not yet complete, it shows a degree of varying treatment of different values for no apparent reason in different cases. For example, CLAM, based upon prior decisions, is intended to discourage "sprawl" growth. Yet the DEP has permitted sprawl inducing development even when it recognized the implications. See, e.g., Opinion 19 (Crestwood Village) and Opinion 32 (Ocean County Sewerage Authority). The former licensed a massive retirement community in a previously undeveloped part of western Ocean County. The second licensed a sewer interceptor line from the ocean to Crestwood, thereby opening up the intermediate open land to sprawl.

⁷In many ways, the "need" criteria is meaningless except in the context of alternatives, and in light of costs. For example, how much is the "need" for a power plant if it will be so costly that consumers will respond to price signals by reducing their use -- such as by insulating their dwellings and installing solar collectors (i.e., by employing "alternatives")?

Without requiring such a showing, it will be difficult for DEP to serve the interest sought to be advanced by the project in the most environmentally rational manner.

Moreover, the policy on Onshore Support Bases (7.4.3) for servicing outer continental shelf (OCS) exploration and development still does not prohibit support structures in undeveloped areas, where their impacts, especially secondary, could be severe. Instead, it merely encourages such development in already-built-up urban waterfronts. In short, the policy is too open-ended. The several other policies concerning oil and gas facilities have been re-written and are a marked improvement over earlier versions. Our concerns with these policies as they were stated in the earlier Strategy focussed on the need for secondary impact evaluations of oil and gas related development. (Secondary impact analysis has now been extended to all facilities (Reg. 8.14).)

The energy policies must be interpreted from an additional perspective -- that of the Draft DOE - DEP Memorandum of Understanding (Appendix J, p. 277). This Draft MOU affirms that the coastal zone policies will be respected in energy facility siting, notwithstanding the role newly accorded the DOE by the DOE Act of 1977. However, the MOU leaves several questions unanswered. For example, it states that where the DOE's Energy Report analyzing an energy facility "differs from the DEP, the conflict may be referred for resolution to the Energy Facility Review Board," p. 278 (emphasis added). The contents of the Energy Report are not specified (except for "evaluation of need"); accordingly, it is impossible to know the

areas of review in which possible differences will arise. Moreover, what differences will be significant enough to trigger the Review Board? Additionally, there is no requirement that the Review Board limit its review to the record before it, or, if it finds that record insufficient, that it remand for the gathering of additional evidence. Regarding the determinations of "national interest" and "federal consistency" little is revealed as to the process for decision-making. These omissions show that the DEP and the DOE have not fully analyzed or presented their views upon energy-coastal impacts.

A. Base Load Electric Generating Stations

We are in agreement with these policies. They should, however, be specifically extended to plants currently under construction, even if new legislation is required. The requirement that the DEP - DOE be satisfied that "no other feasible and economical energy alternative exists" should be extended to coal-fired generating plants, which also pose potentially severe economic, environmental and safety risks.

B. Public Facility Use Policies

1. Solid Waste and Resource Recovery (7.5.6-7.5.8)

These policies are greatly improved, although there is no mention of reclamation. Sanitary landfills are unsightly and environmentally hazardous. They deserve the same reclamation requirements as mines.

2. Wastewater Treatment Facilities (7.5.9-7.5.11)

On-site sewage disposal systems should be preferred over regional treatment plants except where there is no feasible on-site disposal alternative

and where there is a water quality need which cannot otherwise be corrected. This policy does not differentiate between regional and other facilities, with both given "encouraged" status. Rather, unnecessary wastewater treatment systems should be prohibited. They encourage growth and can result in massive secondary impacts. Indeed, the growth they generate will probably produce more (non-point) water pollution, than would be cleaned by the facility.

C. Industry - Commerce Use Policies

1. Mining (7.6.2)

This policy needs to be more restrictive. Companies wishing to expand should be required to reclaim prior damage, and security deposits should be required to ensure that reclamation efforts are carried out satisfactorily.

D. Secondary Impacts (8.14)

The addition of secondary impact policy to coastal zone management policies which would apply to all proposed development has been a major concern of the Public Advocate. Although we are pleased to see a secondary impact policy in BOSS (p. 159-60) the present wording is vague and ill-defined. The policy states that "the probable secondary impacts as well as the proposed development itself must conform with the Resource and Development Coastal Policies." There is no indication of the degree of specificity expected in this analysis. We would like to see this analysis tied to standard studies of secondary impacts, where available, such as the Department of Community Affairs study, Secondary Impacts of Regional Sewer

Systems.⁸

The validity of a number of the Use Policies in BOSS, particularly energy and linear development, depends on the specificity and comprehensiveness of the secondary impact policy. An improved secondary impact policy will strengthen these other very important policies.

E. Prime Agricultural Areas (6.4.11)

The policy on prime agricultural areas is vague and, as written, appears to favor development over continued farming when the two uses come into conflict. The policy to concentrate development is one with which we are in fundamental agreement, but it should not be carried out at the expense of losing actively farmed prime agricultural land. The policy that such areas may be developed for non-farming purposes if farming is "incompatible with adjacent development that carries out the policy to concentrate the pattern of development" appears to value farmland only if it meets the ill-defined concept of "compatibility."

The burden of proving "incompatibility" should be placed on the proposed development, not on the neighboring farmland. Moreover, "compatibility" should be defined to exclude conflict with "urban preferences" -- such as ordinances against the use of heavy machinery before 8 a.m.⁹

⁸Where not available or not well-known, such as standardized evaluations of the secondary impacts of highways or airports, the DEP would do well to have them prepared. These could then be treated as "interpretive guides." They would not have the status of regulations but they would show how the DEP interprets its regulations and policies with great specificity. The burden would then fall upon the applicant or another party to show that his was a special case which falls outside the scope of the "guide." This is a common practice with several federal agencies.

⁹Indeed, it is difficult to imagine any incompatibility which is not derived from these urban biases. Farmland is farmland wherever it is found. Simply because the process of farming may disadvantage certain residential values means nothing. Obviously, prime farmland is an endangered, increasingly rare natural resource. It should not be sacrificed to values derived from a transplanted life style.

Additionally, this policy should mention the possibility of using TDR's (Transfer of Development Rights) to keep agricultural land actively farmed.¹⁰ Overall, the DEP's agriculture policy should be further improved show a conscious, clear preference for farmland preservation.

F. Casino Development (7.3.5.)

This policy, as written, appears to exempt Atlantic City hotel-casino developments, which can be anticipated to be high-rise, from the general policy on high-rise housing developments. Although hotel-motel developments are specifically required to comply with the housing standard, Atlantic City hotel casinos are not. Among these regulations are the requirements that new high-rise structures

- (a) "...must not block the view of dunes, beaches horizons, inlets, bays, or oceans that are currently enjoyed from existing residential structures, roads or pathways,"
- (b) "...must not overshadow beaches between May and October," and
- (c) "...must not have an adverse impact on traffic and air quality."

In light of Atlantic City's severe traffic problems and the recreational, aesthetic and economic importance of its beaches, the casino policy should be written to specifically apply the above requirements to casinos.

IV. PUBLIC PARTICIPATION

In our comments on the Coastal Management Strategy, we stated that the DEP failed to "discuss or promote meaningful opportunities for public participation in the coastal process."¹¹ Despite the addition of a section

¹⁰ See Appendix A, page 52 for discussion of this point.

¹¹ See Appendix A, pp. 36-41.

in the BOSS devoted to "public participation," (p. 174) our earlier comments are still valid. They can be summarized as follows: 'the DEP lacks a strong plan for public participation. It must

- (1) involve the public early in the decision-making process, including making the preliminary analysis easily available to the public;
- (2) require applicants to submit adequate Environmental Impact Statements; and
- (3) offer financial assistance to public participants.

The DEP responded to these criticisms in the BOSS by promising:

- (1) to inform the public of pending applications through local planning boards and environmental commissions and through the DEP Weekly Bulletin, currently circulated to 1,600 people. In addition, owners of land adjacent to the site proposed for development will be informed of the application. The DEP's file on a pending application is also available for inspection.

These measures simply are not adequate. There is still no guarantee of sufficient time between public notice of a hearing and the hearing date to ensure that the public will have time to prepare reasoned testimony. Also, reliance on a mailing list does not ensure adequate public awareness of issues or hearings.¹² Finally, permission to examine DEP documents does not satisfy the public's need for access to the preliminary analysis (PA). The PA, the DEP's initial (non-binding) analysis of each application, is particularly useful to the public, in a way that the application itself is not. It is shorter, less-technical and could be made easily accessible.

¹² See discussion of a DEP questionnaire on this point, Appendix I of "Coastal Management Strategy: Public Comments and DEP Responses" which shows this graphically.



GERALD M. HANSLER
EXECUTIVE DIRECTOR

DELAWARE RIVER BASIN COMMISSION
P. O. BOX 7360
WEST TRENTON, NEW JERSEY 08620
(609) 883 9500

HEADQUARTERS LOCATION
25 STATE POLICE DRIVE
WEST TRENTON, N.J.

July 3, 1978

Mr. David N. Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Department of Environmental Protection
P. O. Box 1889
Trenton, New Jersey 08625

Dear Mr. Kinsey:

Subject: New Jersey Coastal Zone Management Program, Bay and
Ocean Shore Segment, Draft Environmental Impact
Statement

Thank you for the opportunity to review the subject statement. The Delaware River Basin Commission is particularly interested in the geographic segment of the state-
ment relating to Delaware Bay since that area overlaps DRBC's jurisdiction for regu-
lation and development of certain water-related resources.

New Jersey's proposed coastal management program appears to be consistent with DRBC policies and objectives, including relevant criteria, standards, and guidelines by which to evaluate impacts that could occur on the environment as a result of im-
plementing the program. We agree that implementation of the State's management program should generate net gains in preserving, conserving, and enhancing the en-
vironment. We notice that many of the factors considered in the State's decision-
making process are compatible with DRBC's Comprehensive Plan for development of the water resources of the Delaware Basin, including wetlands, and that there is enough flexibility in the State's processes to allow coordination of policies that could conflict with other levels of government and with public agencies.

We look forward to receiving the Final EIS for the Bay and Ocean Shore Segment of New Jersey's Coastal Management Program and also to receiving the remaining segments of the program, as outlined in Chapter Seven of the subject DEIS.

Sincerely,

J. W. Thursby
J. W. Thursby
Head
Environmental Unit

JWT:mz

cc: S. Selzer

(2) The DEP still makes no guarantee that it will require adequate Environmental Impact Statements (EIS) with the CAFRA permit application. In the past, a major frustration of the public has been insufficient EIS's. Since enactment of NEPA, the EIS is what the public looks to for a comprehensive review of applications. The DEP should ensure that the EIS is complete before the public hearing, as required in CAFRA.

(3) Regarding financial assistance to intervenors, the DEP appears to be placing its efforts on indefinite "hold" until the Public Advocate comes forth with a specific proposal. While we are eager to work with the DEP, the DEP appears to have imposed a burden of proof on the Public Advocate to show that "this idea would be workable and beneficial."¹³ There should be no question that public funding will enrich the decision-making process by providing the means for largely volunteer citizens groups to present more expert advice on proposed facilities. Accordingly, the DEP should allocate a sufficient share of its federal grant to citizen funding. Assuredly, a number of groups can be expected to apply once the DEP agrees to fund, at least on a "demonstration" basis, public participation.

Respectfully submitted,

R. William Potter

R. WILLIAM POTTER
Deputy Director

Sharon Trent

SHARON TRENT
Research Assistant

¹³ See, p. 198.

- 215-925-8780
- 609-963-6420
- TELEX 03-1417

- 2 -

Ameriport DELAWARE RIVER PORT AUTHORITY
PORTS OF PHILADELPHIA WORLD TRADE DIVISION
Bridge Plaza, Camden, New Jersey 08101

JAMES R. KELLY
DIRECTOR

June 30, 1978

The Honorable Daniel J. O'Hern
Commission Department Environmental Protection
P. O. Box 1889
Trenton, N. J. 08625

Dear Commissioner O'Hern:

Reference: Draft Environmental Impact Statement, State of New Jersey
Coastal Management Program Bay and Ocean Shore Segment

The Delaware River Port Authority is a public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey created with the consent of Congress in 1952 by compact between the Commonwealth and the State. The other powers, is vested with the control, operation and collection of tolls and revenues of certain bridges spanning the Delaware River (Benjamin Franklin, Walt Whitman, Commodore Barry, and Betsy Ross Bridges). The Authority has also constructed and operates a high speed transit facility known as the Patco Transit System. The facility operates between Philadelphia and Lindenwold, New Jersey, as a wholly owned subsidiary. Through its World Trade Division, the Authority promotes the development and use of the Delaware River and the Port District as a highway of commerce.

The Delaware River is one of the greatest resources of the eleven county Delaware Valley Region and the Delaware River Ports have the largest concentration of water-related industries of any port in the world. The Delaware River handles 133 million tons of cargo annually from both foreign and domestic sources and 77 million tons is international waterborne commerce with a value of \$10 billion. This represents 34 percent of the entire North Atlantic market. In the eleven county area, which is served by the Ports of the Delaware River, there are over 180,000 people employed in port-dependent industries and their total wages in 1977 was \$2.5 billion.

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The Delaware River Port Authority is aware of its compact obligations and we are constantly updating the port planning needs for our region. There have been great advances made in maritime transportation technology in the past 14 years and we strive everyday to improve our cargo transfer facilities and port technology. The basic reasons are economic. In recent years U. S. trade has compounded at a regular 6% rate and this equates to a doubling of the transport demand every 12 years. If this growth rate continues, and it appears likely that it will, then the volume of commerce which will be handled during the next 25 years will exceed the total volume of commerce which has been handled in the entire previous U. S. history. Port interests of the Delaware River, therefore, must plan for the continual expansion of port capacity and the improvement of services.

It is essential that the Delaware River Port Authority protect its responsibility to promote the Delaware River as a highway of commerce for the economic benefit of the region. Section 306 (c) (1) of the 1972 Federal Coastal Zone Management Act states that "prior to granting approval of a management program submitted by a coastal zone state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone ... with the opportunity of full participation by ... port authorities. Sub-paragraph (2) of this section further requires that the 'management' program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature". It is significant to note that the ports of the U.S.A. handled \$123 billion in foreign trade in 1974 on which trade the U. S. Custom Office collected \$4 billion in custom duties.

We have reviewed your draft environmental impact statement, State of New Jersey Coastal Management Program Bay and Ocean Shore Segment, May, 1978. The following comments are to be incorporated into the final draft. These comments are not listed

by any priority but in the order where they occurred in the draft environmental impact statement.

Part 1 - Introduction

No objective has been stated for the program. The objective of the Coastal Zone Management Program should be the same objective of the Coastal Area Facility Review Act. These objectives are:

1. promote the public health, safety and welfare.
2. protect public and private property.
3. are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.
4. improve the economic position of the inhabitants.

The four basic coastal policies should support these objectives. It is vital that this management program follow the prescribed desires of the New Jersey Legislatures and the Coastal Area Facilities Review Act of 1972.

Part 11, Page 10

The Federal Coastal Zone Management Act offers three broad options for implementing the federal program:

Technique A - Local Implementation

B - Direct State Control

C - Case-by-case Review

The draft environmental impact statement states: "New Jersey opts for the direct state control approach". This draft environmental impact statement should have considered all three alternatives as required by law and let the people know what their options are. We believe it to be very important that all three alternatives be fully reviewed in public hearings to determine which alternatives or combination of alternatives will best serve to carry out the CAFRA objectives.

Chapter 3, page 12

Decision making on each coastal location is to be evaluated in terms of both advantages and disadvantages. Since this is the key to the entire report, e.g. decision making, this should be developed in great detail. Particular attention should be directed to the requirements of CAFRA which are to promote the safety and welfare "and to improve the economic position of the inhabitants". The management program should develop the coastal resources as specified by CAFRA.

Chapter 3, page 19

1.0 Purpose

The four policies which are used to review CAFRA permit applications are mentioned. The draft environmental impact statement fails to list the CAFRA objectives in its management program. The policies must be clearly stated to show how they promote predictability and eliminate administrative discretion in meeting the CAFRA objectives.

Chapter 3, page 20

4.0 Definitions

The standards which are applicable to definitions must be clearly set forth for evaluation.

Chapter 3

Figure 5, page 45

The water acceptability table for Open Bay 18'+ for boat ramps, docks and piers, dredging maintenance, dredging new and spoil disposal are in conflict with the fourth CAFRA objective which is to improve the economic position of the inhabitants. The draft environmental impact statement has prematurely made a decision that there would be no development in the Delaware Bay without considering the fourth objective of CAFRA. This alternative should be developed so the people in the region could decide what option they desired.

Chapter 3,

7.4.3 On-shore support bases, page 140

Disagree with predetermination of location, e.g. Perth Amboy. The management program should evaluate all alternatives.

Chapter 3

7.4.4. Platform Fabrication Yards, page 141

The report states: "Platform fabrication yards will be encouraged in built-up area which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the area". The report further states that offshore platform construction yards would be located "along the Delaware River in Salem, Gloucester and Camden counties, outside the Bay and Ocean Shore Segment". These statements clearly violate the objective of CAFRA which is to improve the economic position of the inhabitants and the report's 3rd policy which states: "employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and disadvantages it offers for development". Apparently a decision has already been made to eliminate the possibility of on-shore platform fabrication yard in Cumberland county and this was done without the local consent and in violation of the reports stated decision on page 12, "Land and water decisions with limited impact that affect only one municipality should be made by local citizens and officials".

The principal error with paragraph 7.4.4 makes is that the bridges crossing on the Delaware River prohibits the fabrication of platforms in Salem, Gloucester and Camden counties. For fabrication of platforms there can be no height restrictions of the platforms and this makes Cumberland county an ideal location for platform construction. There are no sites readily available in New Jersey which meets the

requirements as specified in the report in paragraph 7.4.4.

Chapter 4

Regional and Interstate Agencies, page 173

The Delaware River Port Authority, which has decision making responsibilities in the Delaware Valley, is not listed as such in the above classification.

Chapter 4

National Energy Plan, page 178

The report quotes the salient features of the National Energy Plan, and specifically conservation. The report further emphasizes how conservation was a leading factor in deciding on the second policy of the report. All references to the National Energy Plan should be deleted because the plan is only a proposal which has not been adopted by Congress. The draft statement should reconsider the second policy.

Chapter 7

Completing the Bay and Ocean Shore Segment, page 197

The report states, "First, Chapter three and substantive Coastal Resource and Development Policies will be proposed and adopted as administrative regulations of the Department of Environmental Protection, according to the requirements of the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) under the Commissioner's authority under CAFRA and the DEP enabling act to adopt regulations".

"Comments on these proposed rules, as well as comments on the combined Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement, may lead to revision to the Program".

The above two paragraphs show that the intent of the State Coastal Zone Management Office is not to have full participation of the Delaware River Port Authority as the Federal Coastal Zone Management Act so specified. The words "may lead" show that

our full participation is optional to New Jersey's Coastal Zone Management. In addition, if the heart of the program, Chapter 3, is adopted as Administrative regulations as recommended by the State Coastal Zone Management Office, then the requirements of National Environmental Protection Act of 1970 for full public hearings on the adaption of management regulations, will be ignored.

Chapter 7

Preliminary Boundary of the Coastal Zone Entire State, page 255

Federal regulations require that the coastal zone boundary be determined at the time this report is approved and sent to Washington for their approval. The State of New Jersey, Office of Coastal Zone Management, proposed to extend the coastal zone north of the present CAFRA boundary to all the tidal tributaries of the Delaware River, see figure 25, page 258. The justification of this is the statement on line 38 of page 257. "Tidal influence makes the Delaware River region immediately adjacent to these waters 'coastal' in the sense intended by the Federal Coastal Zone Management Act".

The Director, Office of State Programs of the National Ocean and Atmospheric Administration for Coastal Zone Management, Department of Commerce, Washington, D. C., advised the Delaware River Port Authority on the 27th of December, 1977, that as far as the Federal Government is concerned there is no reason to extend the coastal zone past the present CAFRA limits in the Delaware River. The report on page 257, line 43, states the same conclusion, "NOAA-OCZM does not require inclusion of the Delaware River within New Jersey's coastal zone as the quantity of sea water is less than 5 parts per thousand".

The Delaware River Port Authority believes that the present boundaries of CAFRA are adequate. There is no need to extend the coastal zone on the Delaware River.

Sincerely yours,

James R. Kelly,
Director

JRK/gra

cc: W. W. Watkin, Jr., Executive Director
Mr. Armour S. Armstrong, Maritime Administration, U. S. Dept. of Commerce
Mr. Thomas A. King, Maritime Administration, U. S. Dept. of Commerce
Freeholder, Director Cape May County, N. J.
Freeholder, Director Cumberland County, N. J.
Freeholder, Director Salem County, N. J.
Freeholder, Director Gloucester County, N. J.
Freeholder, Director Camden County, N. J.
Freeholder, Director Burlington County, N. J.

Human and Environmental
Development
Education Office Director

Dr. J. D. Hazy,
Deputy Director
Office of
Environmental Protection

July 3, 1978

Mr. David N. Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
State of New Jersey
Department of Environmental Protection
P.O. Box 1889
Trenton, New Jersey 08625

Dear Mr. Kinsey:

The Port Authority of New York and New Jersey has reviewed the State of New Jersey Coastal Management Program: Bay and Ocean Shore Segment (May 1978). We commend you and your staff on a very exhaustive treatment of the subject. As you know, our prime interest at this time is in the Raritan Bay area, which is part of the Port of New Jersey and New York District, and eventually the Northern Waterfront and Meadowlands area, which is the next program segment to be prepared. While you view these two areas as separate and distinct, we do not. Our comments hereinafter will thus consider these two areas and their ultimate relationships, and are identified by applicable section.

6.2.6.2.: We are very concerned over the prohibition of subaqueous disposal of dredge spoil, but trust that Section 6.3.8.7. controls this policy.

6.2.7.: We find this section unclear with regard to harbor approaches and channels. We trust that the prohibition of commercial salvage of wrecks will not prevent prompt removal of vessels sunk in navigable waters in keeping with Federal law, including the New York Harbor Collection and Removal of Drift Project, in which DEP is an active participant with the Corps of Engineers.

6.3.8.6.: We are very concerned over the general prohibition of new dredging, though case-by-case exceptions are possible. Our concern arises out of the lack of definition of "new dredging". We assume it does not include deepening, widening or other improvements to existing channels.

6.3.8.9.: Since marine facilities are located in coastal waters, we are concerned that this "limited" filling concept could prevent necessary filling for the construction of docks and wharves. We suggest that the word "limited" be deleted.

6.3.8.10.: This wording and Section reference on piling needs clarification.

6.6.7.3.: Industrial site potentiality should be determined by more than just proximity to a rail line or highway, which in isolation could introduce rigidities and ignore trade-offs with other locational assets.

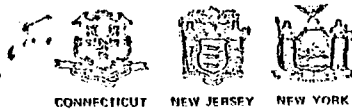
7.4.1.: Until rules for siting arbitration between DOE and DEP by the Energy Facility Review Board are defined it is impossible to comment on general energy facility siting policy.

7.4.6.: The discouraging of pipe coating yards in that portion of Middlesex county beyond the CAFRA area, and Union, Essex and Hudson Counties, is inappropriate for inclusion in the Bay and Ocean Shore Segment Program which does not apply these regions. This subject should be thoroughly reconsidered in the Northern Waterfront and Meadowlands Segment Program, and not foreclosed in that area.

7.4.12.: New or expanded, non-nuclear fossil fueled power plants are directed toward relatively built-up areas where air quality standards would in effect, rule out their acceptability, thereby actually banning new coal plants in direct opposition to Federal policy.

7.7.1.: Confinement of new port facilities to sites adjacent to existing port facilities may be encouraged, but should not be prohibited from non-adjacent locations where there is no other recourse and the non-adjacent site is in all other ways acceptable under the location, use and resource policies. (Page 182 would appear to afford such flexibility).

Many of the facilities and services of the Port of New Jersey and New York relate to the "national interest" and "federal consistency" features of the Coastal Zone Management Act of 1972 (as amended). The commerce served by the Port, and the Federal system of aids to navigation, waterways, anchorages and other port activities, are but a few examples. Thus, how these matters will be carried out in the Northern Waterfront and Meadowlands Segment Program, as well as in Raritan Bay, become quite important. We also hope that there will be some harmonizing of policies between these two areas, since, as mentioned earlier, Raritan Bay is a functional element of the Bi-state Port system, with specific linkages to harbor deepwater channels, anchorages, aids to navigation, and marine terminals.



TRI-STATE REGIONAL PLANNING COMMISSION

ONE WORLD TRADE CENTER, NEW YORK, NEW YORK 10048
TELEPHONE (212) 938-3300

Thank you for the opportunity of commenting on the Bay and Ocean Shore Segment of the State's Coastal Zone Program. We look forward to working with you on the Northern Waterfront and Meadowlands Segment.

Sincerely,

Clayton D. Peavey
Deputy Director of Planning & Development

June 2, 1978

Mr. David N. Kinsey, Chief
New Jersey Coastal Zone Management Project
Department of Environmental Protection
Box 1889
Trenton, New Jersey 08625

Dear Mr. Kinsey:

Regarding your Coastal Management Program - Bay and Ocean Shore Segment we are happy to note that Tri-State responsibilities are now mentioned specifically (page 173). However, the wording could be misleading to those unfamiliar with the planning network in the Region. Chairman Brooks' letter of December 29, 1977 goes as follows: "responsibilities for assessing consistency between its plans financed by HUD and DOT and the coastal management program." The wording in your latest version is "assessing consistency between state plans, etc." The word "state" should be "its", I believe.

I trust this correction can be made in the next version of the CMP.
Many thanks.

Sincerely,

Stephen C. Carroll, Director
Regional Development Division

SCC:fh

AMERICAN LITTORAL SOCIETY

For The Study and Conservation of Aquatic Life

SANDY HOOK • HIGHLANDS, NEW JERSEY 07732 • 201-291-0055

Comments of D.W. Bennett, executive director, American Littoral Society, on State of New Jersey, Coastal Management Program, Bay and Ocean Segment, dated May, 1978.

My name is D.W. Bennett. I am executive director of the American Littoral Society, an organization committed to protecting the coastal environment. The Society has about 1500 members in New Jersey. We have participated in coastal zone legislation in this State since 1969 when New Jersey's Wetlands Act was being drafted. Since the Coastal Area Facility Review Act was passed in 1973, we have attended meetings and public hearings on the different stages of that law -- the inventory, the interim guidelines, the alternative management strategies, the final management plan, and now the molding of that plan into this draft environmental impact statement that is the State's submission to the federal coastal zone management plan office.

In 1973, when it passed CAFRA, the legislature found that the State should regulate land uses "within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development..."

Measured against that phraseology, we believe that the draft document under consideration today falls short of the legislative intent of CAFRA but goes much of the way toward coping with land use decision making in the coastal zone. We believe, and we have said in the past, that both the inventory and the alternative management strategies which the Department of Environmental Protection (DEP) presented as required under CAFRA were weak documents, and they led to a final management plan presented to the legislature last September that again fell short of the legislative intent of CAFRA. That DEP document has now been refined and appears today as the State's presentation to the National Oceanic and Atmospheric

American Littoral Society (2)

Administration (NOAA) to fulfill a segment of its coastal plan. If the plan is followed, it will lead to better environmental protection along the coast, and to that extent, we can support it. However, there are deficiencies in the document, places where the language can be strengthened or rewritten so that natural coastal resources can better survive. Let me make some general comments on the document and then detail specific questions and changes:

Each draft of this document we have seen does a better job at being specific about what can and cannot be done to land and water in the coastal zone. As it stands now, a land owner can go to the document and make accurate predictions of the chances of receiving approval for a planned development. A key part of any land use law is its ability to make clear what will be permitted and how to go about getting permission. The steps outlined under the Coastal Location Acceptability Method (CLAM) are straightforward and detailed. There is no reason an applicant cannot go through the process -- there is no reason for the applicant to be surprised with a decision by the Department of Environmental Protection.

It is legal for the State to control some land use decisions in the coastal zone. Both CAFRA and the Wetlands Act have stood up under court challenge. Neither law is arbitrary. Neither law constitutes a taking without compensation. In fact, it is absolutely necessary for the State to have a say in coastal land use, for two reasons: first, municipalities cannot withstand the pressures to add tax ratables at the expense of the environment, and second, coastal land use decisions influence environmental conditions far beyond the limits of the development itself or the municipality where it takes place.

So, to the extent that this document protects the coastal environment and does so in a clear, predictable manner, we can support it. But, there are weaknesses that need to be addressed:

American Littoral Society (3)

CLAM IS REACTION, NOT PLANNING

The DEP still leaves the important first step -- what should happen to the land -- to the developer, contrary to the intent of CAFRA which emphasized a state-wide interest in the well-being of coastal water and land. Instead of a vision of the coast, the DEP has decided to design "a program which accomodates the creativity and initiative of individual landowners, and developers, and others..." Rather than directing development (or non-development) on the coast, the State will react to the plans of others, plans which most often serve to get money from land rather than preserve the environment.

This is not to say that CLAM is not a useful tool in coastal planning, but CLAM will work better if a plan, drawn from an inventory, sketches in some general vision of the coast.

GROWTH AREAS NEED BETTER DEFINITION

The map on page 98 showing growth areas is at odds with the State Development Guide Plan, partly because DEP has added to the growth areas "likely areas of development pressure based on the experience from 1973-78 in the CAFRA permit program of regulating major residential development" (SEct. 6.6.8.2, page 97). This is another example of reacting to development pressure rather than planning it. Delineation of growth areas needs refinement.

CUMULATIVE IMPACTS ARE NOT MEASURED

Without an inventory or a plan, the DEP will wait for permit applications to arrive, weighing the impact of each against environmental constraints, without acknowledging that an accumulation of developments can cause environmental stress.

Also, because residential construction of less than 24 units does not require a permit, there can be an accumulation of small impacts through small developments. There are cases where many more units than 25 can be permitted with little environmental impact and other cases where a single unit can cause serious environmental damage. Environmental sensitivity, not number of units, should guide

American Littoral Society (4)

land use.

GAPC NOMINATIONS ARE LARGELY IGNORED

The DEP received 176 nominations from citizens for designations of coastal plans to be Geographic Areas of Particular Concern (GAPC), yet the DEP has finally included only one of these (it mentions two others -- coastal wetlands and wet sand beaches, but both of these are already protected under wetlands and riparian statutes). ~~The inclusion of~~ Higbee Beach, certainly deserves GAPC status, but so do many other nominations. Coupled with the DEP's decision to not map critical areas of special biological significance, it has missed a prime opportunity to delineate areas where development would be banned. Citizen participation in the GAPC process was good; State reaction to citizen participation was not.

ENERGY

In general, we believe that the section covering energy is strong, clear, and much improved over earlier drafts. It appears to set into perspective the relative needs for new energy facilities (low) with natural coastal productivity (high). We do have concerns about how the DEP will maintain its premier position as controller of coastal land use in the face of the efforts of the new Department of Energy to enter the energy siting discussion. Legislation now in the Assembly Committee on Energy and Natural Resources, can weaken DEP's powers ^{coast.} ~~in the court.~~ In particular, we question the legal strength of the memo of understanding between the two departments and its effectiveness in protecting marine resources. We note (page 280) that the Energy Facility Review Board, which will settle disputes over energy siting between the two departments, is heavily weighted toward energy interests and does not provide for third party participation.

COASTAL AUTHORITY

We believe that the State must maintain control over land use decisions in

the coastal zone and not delegate its authority to counties or municipalities. Beyond that, the State needs to approach communities to see that their zoning ordinances conform to coastal policies. Already we see development of coastal land for 24 units to avoid CAFRA (see clipping). While this document speaks about dune protection, it fails to come to grips with single-family development on dunes. Barrier beaches can be heavily developed under present regulations. A coastal plan that cannot control construction on dunes and barrier beaches is too weak. Further, mosquito commissions impact heavily on coastal natural resources. Their work should also fall within the coastal plan's regulations.

MANPOWER NEEDED TO PROCESS PERMITS

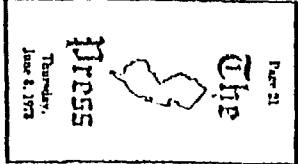
The DEP does not have enough staff to do a thorough job of processing CAFRA applications. While this document states that its policies can be enforced under present law (Wetlands, CAFRA, Riparian, Shore Protection), this is only true if there are enough people to process applications. Staff in both the CAFRA and Wetlands Sections must be doubled. We also suggest that procedures for regulating land use through the Office of Shore Protection be made a part of this document as CAFRA and Wetlands are (Page 285).

In general, we can be comfortable supporting the policies outlined in this document and in the process set up to regulate land and water use. But we cannot support all the document's details. In addition to the more general comments contained here, we plan to submit more details on specific wording.

In summary, we think that the document under discussion, the Bay and Shore Segment of the State's Coastal Management Program, is a step toward coastal environmental protection with room for improvement.

Builder Divides 120 by 5, Subtracts CAFRA

By JAMES R. DAVENPORT
Pineville, N.C. (AP) — A local building contractor has divided a 120-acre tract into 24 lots, each 5 acres, to avoid the Coastal Area Frontage Regulation Act (CAFRA) in North Carolina. The contractor, J. W. Jarrar, said he was able to avoid CAFRA by dividing the land into 24 lots, each 5 acres, and then subdividing each lot into five 1-acre lots. Jarrar said he was able to avoid CAFRA by dividing the land into 24 lots, each 5 acres, and then subdividing each lot into five 1-acre lots. Jarrar said he was able to avoid CAFRA by dividing the land into 24 lots, each 5 acres, and then subdividing each lot into five 1-acre lots.



AMERICAN LITTORAL SOCIETY

SANDY HOOK - HIGHLANDS, NEW JERSEY 07732 - 201-291-0055

July 7, 1978


Mr. David Kinsey
Office of Coastal Zone Management
Department of Environmental Protection
P.O. Box 1889
Trenton, New Jersey 08625

Dear David:

The attached are comments prepared by Anne Penna and Dana Rowan. I endorse them. The three of us are concerned about the advisability of adopting Chapter Three, as it stands, as rules and regulations. I recommend two steps:

- 1) Get someone from the Attorney General's office to look at Chapter Three, to make sure the wording is specific enough to be law.
- 2) Hold Chapter Three open for comments until August 1. It is taking us real time to go through its many parts.

Sincerely,



D.W. Bennett
Executive Director

AMERICAN LITTORAL SOCIETY

SANDY HOOK - HIGHLANDS, NEW JERSEY 07732 - 201-291-0055

July 7, 1978

Mr. David K. Kinsey
Office of Coastal Zone Management
Department of Environmental Protection
Trenton, New Jersey 08625

Dear David:

In addition to the statements made at the public hearing June 14 and 15, on New Jersey's Coastal Management Program, BOSS, the American Littoral Society submits these further detailed comments on the plan for inclusion in the final draft of July 21.

Section 303 of the Coastal Zone Management Act (1972) acknowledges, in its wording, the traditional pressure of economic development at the expense of "ecological, cultural, historic, and esthetic values..." The Coastal Area Facility Review Act (1973), likewise notes that certain parts of the delicately balanced natural environmental resource called the coastal area are presently suffering serious adverse environmental impacts and calls for a "comprehensive environmental design strategy" to halt the trend.

The current Coastal Management Program, BOSS, is a step toward a comprehensive environmental design strategy, a significant improvement over the Coastal Management Strategy Sept. 77. However, the Program seeks to be a developer's handbook as well as an environmental impact statement, serving neither aim well.

As an Environmental Impact Statement, this document falls far short of what the Department itself requires from a developer in assessing proposed facilities. At the least, developers are required to submit an EIS which contains an inventory of existing conditions, mapped clearly. While the Littoral Society is aware of financial limitations repeatedly cited by DEP-OCZM, we question the completeness of this program as it now stands. Without an inventory and mapping, examination of adverse impacts is superficial at best. In a 350-page document, fewer than 10 pages deal with negative impacts of the Program. The Introduction (p. iii) touches on the Environmental and Adverse Environmental Effects, and further examines irreversible commitment of coastal resources on pp. 201-205, 225. Only three paragraphs speculate on the adverse impacts of the Program on the 1376-square mile CAFRA area. There is no examination of facts. This is not sufficient to provide a balanced, thorough EIS for federal review.

Secondary impacts (p. 159, 210) are recognized as having significant influence and as such are included in the Resource Policies, Chapter 3. While these policies are good, it is hard to see a working relationship with CLAM. For example, the Lakewood case study shows high intensity development adjacent to cranberry bogs. With 80% of the site paved as allowed under this designation, drainage patterns, especially parking lot runoff, would contaminate this sensitive area. Pipes through wet terraces (p. 121) could act as subsurface dikes, disturbing nutrient

AMERICAN LITTORAL SOCIETY (2)

flow and pollution filtration, thus affecting surface water. DEP's statistics show a link between high incidence of cancer and use of surface water for drinking, as noted in the revised runoff policies.

To achieve the Basic Policy of protecting the health, safety, and welfare of those in the coastal zone, as well as fulfill requirements under the Clean Water Act, government officials have a responsibility to minimize risks of contaminated surface water.

DEP-OCZM anticipates that the limiting factors of secondary impacts will help control sprawl (p.210), the characteristic land use pattern of New Jersey's recent development. Concentration, rather than dispersal, of development as one of the four major aims of the program, should be controlled. Directing sensible growth patterns should be achieved through projection and planning, with particular attention to mass transportation rather than reaction after the fact. If measurements of secondary impacts are to be helpful in limiting sprawl, parameters to be examined by the developer should be specified in the Resource Policy. Such factors should include impacts on property contiguous to wetlands; socio-economic effects; projected service needs of schools, shopping, sewage, water, transportation -- in short, cumulative impacts.

The Littoral Society questions the validity of the DEP's claim that this plan is one of direct state control (p.10) as defined in the federal CZMA sec. 306(e) (1)(B). The plan states (p.6), "Most regulatory decisions will be made through the permit process," leaving the balance to the discretion of municipalities. While the DEP is limited to regulating activities specified in state law, "accommodating the creativity and initiative of individual land owners, developers and others..." has led to misuse of coastal resources. This plan is actually a combination of all three management techniques: local implementation, direct state control, and case-by-case regulation. Local implementation governs developments of fewer than 25 units, and density of larger projects through zoning. The Littoral Society urges consistency of local and state regulations for building in the coastal zone. Coordination with the Department of Labor and Industry to devise a taxation system which encourages open space, in conjunction with Green Acres purchases, could further protect coastal ecosystems. Transfer of Development Rights would concentrate building. The DEP could also encourage consistent application of the Management plan through its contracts with regional government agencies, requiring municipalities to undertake a natural resource inventory and land capability analysis within a specified time limit.

The 176 Geographic Areas of Particular Concern nominated for protection two years ago resulted in only three areas so designated in the Coastal Management Program. Two of the nominated areas, coastal wetlands and wet sand beaches are regulated under existing legislation, and only Higbee Beach-Pond Creek Meadow area is protected by BOSS. The Littoral Society sees GAPC designation for dunes and specific areas of high erosion as a significant means of protecting these fragile, productive ecosystems against development which falls below the CAFRA threshold. Including a more extensive GAPC list under Chapter Three will give DEP proper legal authority when these regulations are adopted under the Administrative Code.

The format for conditional approval should be standard throughout the document;

AMERICAN LITTORAL SOCIETY (3)

the layout of Upper Water's Edge Policy (p 74) makes it clear that all conditions must be satisfied, then lists them in an easy-to-read manner. The following should be standardized:

- p. 46 Boat Ramps
- 47 Docks and Piers
 - New Dredging
 - Dredge Spoil Disposal
- 48 Filling
 - Offshore mining
- 49 Cable Routes
 - Overhead Transmission Lines
 - Pipeline Routes
- 59 Flow Hazard Areas
- 69 Wetlands Policy
- 78 Retained Water's Edge
- 134 High-rise Structures
- 136 Hotel-casino Location Rationale
 - New Marinas
- 137 New Amusement Piers
- 141 Pipeline Corridors
- 145 Nuclear Stations
- 147 Public Facility Use Policies
- 149 Shore Protection Use Policies
- 153 Intensive Development Area Policy

The document is lacking an index. The following should be cross-referenced within the text if a separate index is not developed.

Page	Item	Cross-reference
30	5 units/acre	119 mod intensity devel.
36	dredge spoils deposition	land uses
48	piling	47 docks
78	retained water's edge	71 beach policies
		135 recreation policies
84	wet soils	121 septic systems
96	barrier island devel.	89 devel. potential criteria
159	secondary impacts	210 secondary impacts
		223 secondary impacts

The Universal Soil Loss Equation should be included in the text, or in an appendix, for the benefit of readers without engineering backgrounds.

Water Uses/Water Acceptability should also follow a standard format, laid out as are the Special Water Areas: definition, policy and rationale.

The Bay and Ocean Shore Segment is a lengthy document both intimidating and redundant in its current form. It would be more manageable broken into two parts, the first comprising the function of the program; ie, part I, part II chapters 1-3, Parts III-VIII. The second volume would represent the structure of the program: the federal CZMA, CAFRA, Wetlands, riparian and shore protection statutes, DEP-DOE Memorandum of Understanding, and the Energy Act; in addition, Part II, Chapters 4-7 with an expanded explanation of the CARB, EFRB, NRC and the appeals processes. A schematic diagram or timeline which presents the application process in a straightforward manner would be helpful. (Such as the one attached.)

AMERICAN LITTORAL SOCIETY (4)

To provide adequate legal authority as required in the federal CZMA, the DEP proposes that Chapter 3, "Coastal Resource and Development Policies," be adopted as administrative regulations (as per the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) prior to program appeal. After adoption, the regulations would be equivalent to law; revisions to them would require a lengthy process of drafting, reviewing, and passing amendments. Therefore, elimination of ambiguous language is crucial to: 1) increase predicability of the permit process, 2) assure consistent regulation with changing administrations, 3) be understandable to non-specialists as required by CZMA, and 4) fulfill the intent of New Jersey's Coastal Area Facility Review Act.

Sincerely,

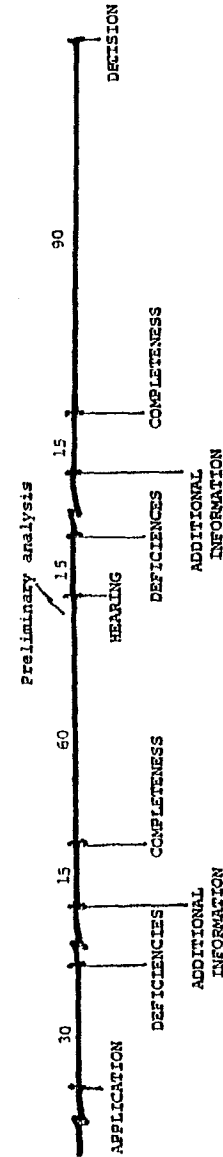


Anne Penna and

Dana Rowan



CC: Diane Graves
William Potter
Daryl Caputo
Frances Beinecke



CIFRA PERMIT SCHEDULE



American Association of University Women
New Jersey Division

2 W. Barksley Ave.
Brant Beach, N.J. 08008.
June 14, 1978.

TESTIMONY OF THE NEW JERSEY DIVISION OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, DELIVERED BY WINIFRED D. MEYER, OF BRANT BEACH, LEGISLATIVE CHAIRMAN OF THE NEW JERSEY DIVISION AND OF THE BARNEGAT LIGHT AREA BRANCH OF THE AAUW, ON THE NEW JERSEY COASTAL MANAGEMENT PROGRAM - BAY AND OCEAN SHORE SEGMENT AND DRAFT ENVIRONMENTAL IMPACT STATEMENT.

My name is Winifred D. Meyer, and I represent approximately 7000 college-educated women in New Jersey, members of the American Association of University Women. In April, 1978, at the N.J. Division's Meeting, their representatives unanimously approved the Division's Legislative Program (attached), which as part of its Community Policy has the following statement:

"We support the protection and conservation of water resources through local and state implementation of the National Environmental Policy Act, the Federal Water Pollution Control Act Amendments of 1972, and the Coastal Areas Facilities Review Act (Cafra), including citizen participation in Water Quality Planning (208), ocean and wetlands protection, and preservation of fresh water resources such as the Pinelands."

In a volunteer organization such as ours it is impossible to study thoroughly a document as far-reaching as the Bay and Ocean Shores Segment within the reaction time limit set by the National Oceanic and Atmospheric Administration and our own office of Coastal Zone Management. In fact, to get better citizen participation, longer study time would be most desirable. However, we have some isolated reactions based upon our policies.

One is on ocean dumping. We have felt for some time that the demand of the American Littoral Society and of other coastal groups

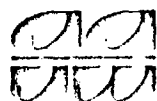


American Association of University Women
New Jersey Division

P. 2-Testimony

to stop ocean dumping NOW will save us much grief. The need for immediate action was emphasized by Dr. Donald W. Lear, Program Advisor for EPA Region III, when he told the AAUW Middle Atlantic Regional Conference this pastweekend that there is a potential danger in the reappearance this spring of green slime on the ocean floor, indicating the possibility of oxygen loss. We all remember what happened two years ago when a combination of green slime and strong Southwest winds caused a massive fish kill off our coast. He believes we could face more of the same unless programs to diminish ocean dumping and to institute better sewerage treatment be given immediate and EMERGENCY attention.

Regarding High Risk Erosion Areas, I suspect that after the damage done by our northeasters to the Barrier Islands this winter plus the additional building permitted on the dunes this spring - in Long Beach Island particularly- that not only Barnegat Light and others which are listed, but other areas of these barrier islands are now high risk erosion areas. The Segment on page 51, Section 6.4.1.2. states: "Development in high risk erosion areas is prohibited except for shore protection measures that satisfy the shore protection use policies", and again on page 55 Section 6.4.2.2., "Development on dunes is prohibited, with the exception of the construction of limited pedestrian walkways supported on piles above the dune surface." We hope that this means that there will be a big improvement in preserving all N.J.'s barrier islands' protective dunes. Figure 8 on page 56 of the Segment dramatically shows how man has violated Nature's protection. In fact, it is hard to understand why parts of our barrier islands were never declared National Seashores, like Hatteras and parts of Cape Cod with similar exposures to

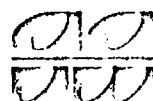


American Association of University Women
New Jersey Division

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the sea. However, although Nature's northeasters and other eroding factors are out of our jurisdiction, the curtailment of building that threatens and destroys our dunes is not. It is in our interest to sacrifice a bit economically now so that we do not ultimately destroy our constant economy by losing our beaches, and consequently the summer and other seasonal visitors who are most responsible for our shorelands economy.

A major impact upon our bays and shores is of course that of offshore drilling. We commend the DEP encouragement of Outer Continental Shelf related facilities only in developed areas, and the fact that pipelines will be conditionally acceptable only if they follow already developed rights-of-way. Furthermore, although the Segment prohibits pipeline corridors for landing oil in the Central Pine Barrens area of the Mullica River, Cedar Creek watershed, and portions of the Rancocas Creek and Toms River watersheds, we feel strongly that the same prohibition should apply to all possible pollutants, and in a much larger section of the Pine Barrens area. The reason for this thinking is the fact that our underground water reserves in the Pine Barrens are all one big lake, and whatever pollutes one section pollutes it all. We cannot afford to pollute our water reserves whether it be thru development and its attendant pollutants or thru possible oil or gas leakage. There can be no guarantee that pollution will not occur in any case. Recent events- to cite a local instance- indicate that we may need these water reserves sooner than expected. For instance, see the Beach Seven Times of June 7 which reports plans for a regional water system for southern Ocean County because the salt level in the water from the wells on Long Beach Island,



American Association of University Women
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and ultimately, on the mainland, is increasing notably, the result of the increased use of water since the county sewerage installation. The recommendation is that present wells be abandoned and water piped in from the Pinelands, where drilling would take place.

Conservation becomes a most important factor in these energy-related matters. Therefore we applaud the Segment's policy of

- 1) concentrating, rather than dispersing, the pattern of coastal residential, commercial, industrial, and resort-oriented development, and
- 2) encouraging the preservation of open space.

Conservation in energy leads us to alternate sources, as mentioned in the Segment. The AAUW feels strongly that there should be stringent limitations on the use of nuclear reactors, and acceleration of the technology leading to the development of adequate energy sources other than nuclear, with emphasis on renewable sources: sun, wind, tides, co-generation, and geo-thermic. What area can better lend itself to the use of sun and wind than the Coastal Area with practically no shade and an almost constant wind? If we can put a man on the moon, we certainly can utilize sun and wind more inexpensively and efficiently than we do now. All we need is to accelerate the technology, and we urge New Jersey to use all means on all levels of government to meet that challenge. We wish to compliment the Office of Coastal Zone Management not only on its well thought-out document, but also on its intense efforts to encourage citizen participation in the PLANNING stage of the direction New Jersey will go. This is the democratic way, based originally upon



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New Jersey Division

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the town meetings in the 13 colonies where everybody had his say. We sometimes feel we get many useless ideas, by this method, but we also get proportionately more good ideas. As a result, government by the people becomes government for the people and of the people.

The New Jersey Division of the American Association of University Women offers its cooperation to the Office of Coastal Zone Management in moving forward our mutual recommendations for a better New Jersey.

Thank you.

N.J. Division Proposed Legislative Program

1978-80

(Items in Bold type denote priorities)
RIGHTS OF THE INDIVIDUAL

To protect the rights of the individual under the constitutions of the United States and the State of New Jersey, we support:

1. The guarantee of full equality under the law for all; active encouragement of national ratification of the Equal Rights Amendment to the United States Constitution.
2. Laws insuring the privacy of the individual.
3. The elimination of financial, economic, and societal discrimination against women, promoting equal rights of women to all assets acquired during the partnership of marriage; equal opportunities in quality employment, including political office; and societal freedom of choice.
4. Right to individual choice in the determination of one's reproductive life.
5. The N.J. Division on Women and its development and financing to provide direction and guidance to cope with life's realities through timely programs, research, resources, counseling, and referral to appropriate agencies.
6. Continued review and revision of all penal systems and court procedures with emphasis on improved Family Court reform.
7. The establishment of a uniform probate code.
8. The right of citizens to be informed before public meetings with accurate data and to participate in decision making.
9. Effective procedures for the elimination of conflict of interest in appointed and elected officials.

COMMUNITY POLICY

In these times of rapid changes affecting community living, we support: **ENVIRONMENTAL ISSUES**

1. Conservation by residents and industry, comprehensive planning, and wise utilization of resources, including land and energy sources, with emphasis on the concepts of limited growth and of enforcement.
2. The acceleration of technology leading to the development of adequate energy sources other than nuclear: with emphasis on sun, wind (individually or together), tides, co-generation, geo-thermic, and coal.
3. Stringent limitations on the use of nuclear reactors and the assignment of high priority to the solution of safety questions and waste disposal problems: nuclear energy should be considered only as an interim source of electric power in cases where conservation and alternate energy sources cannot meet reasonable demands.
4. Development of citizen participation in state and local implementation of a federal urban policy and programs to preserve and rehabilitate our cities.
5. Protection and conservation of water resources through local and state implementation of NEPA (The National Environmental Policy Act), the Federal Water Pollution Control Act Amendments of 1972, and the Coastal Area Facilities Review Act (CAFRA); including citizen participation in water quality planning (208), ocean and wetlands protection, and preservation of fresh water resources such as the Pinelands.
6. Development of a safe and balanced mass transportation system including a variety of forms of transportation appropriate to a given area, such as rapid transit in cities and biking paths in the suburbs.

ECONOMIC ISSUES

7. Equitable and adequate governmental funding through a realistic combination of the following: a fair-share progressive income tax with its attendant control of the property tax; a sales tax; other necessary and feasible taxes; and governmental accountability.
8. Promotion of consumer protection at the local, state, and national levels.
9. Quality day care programs.
10. Development of a comprehensive community based health system, universally available, designed to provide a full range of quality health services, institutional and non-institutional including proven tative as well as acute care.

11. Measures to improve living conditions for the aging such as the national Independent Living Program.
12. Development of in-depth studies of the causes of child abuse, battered women, and other violence, with possible remedies.

CULTURAL POLICY

To encourage and promote an enriched cultural environment, we support:

1. Public and private financial aid for creative and performing arts such as state theater, opera, art, symphony, cultural centers, and libraries.
2. Promotion of commercial and cable TV programming whose thrust is news and programs of interest (limited in violence and stereotypical fare) specifically designed to meet the needs of N.J. residents, the cultural and educational use of mass media, including the establishment of quality criteria for programming cable TV, with AAUW as a source wherever feasible; and the support of public educational television.
3. Preserves and financing for the preservation of all of N.J.'s cultural and historical heritages, perpetuating them by the building of all into one state mape.

EDUCATIONAL POLICY

1. The establishment of educational goals by involving citizens, students, and professionals at all levels, with opportunities for the general public to study and react to them.
2. An efficiently administered program of public education adequately and equitably funded on all levels.
3. Promotion of educational programs with maximum opportunities for life long general education and experience in careers, responsible citizenship, consumerism, environment, conservation, interpersonal relationships and responsibilities, life skills, and ethical principles.
4. Strong emphasis in elementary and secondary education on the development of the basic skills of reading, writing, and mathematics.
5. Development of a code and procedures for early identification of exceptional and gifted children and appropriate programs for both, with separate funding for each.
6. Expansion of educational services by museums and libraries, with adequate funding.
7. Increased fiscal autonomy for the community and State colleges and the State University.
8. A thorough review of policy making and its implementation in the Department of Higher Education leading to the reinforcement of standards and quality education.
9. Adequate provision for extension of time limits on postgraduate work.
10. Comprehensive, expert family life and sex education programs in grades K through 12.

FOREIGN POLICY

We support procedures and programs which further:

1. International cooperation, including a code of conduct for multinational corporations, emphasizing the interrelationship of food, energy, natural resources, and population.
2. The UN and its affiliated agencies, and ratification of the Human Rights Conventions.
3. Continued negotiation of mutual reduction and control of armaments with special regard to nuclear proliferation and sales of conventional weapons.
4. International cooperation in punishing terrorists.
5. The development of cultural and intellectual exchanges among the women of the world, leading to equal participation of women in economic, social, and political development.

(For other Foreign Policy objectives see the Association's
Exp. Value Program)



The League for Conservation Legislation

Box 805, Teaneck, N. J. 07666

REPLY TO:
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32 LAFAYETTE STREET
TRENTON, N.J. 08609
609 393-7474

COMMENTS DELIVERED BY MICHAEL HAVRISKO, LEGISLATIVE AGENT
FOR THE LEAGUE FOR CONSERVATION LEGISLATION, ON 6/15/78.

Good morning, thank you for giving me this opportunity to speak on the Coastal Management Program, Bay and Ocean Shore Segment. My name is Michael Havrisko, I am the legislative agent for the League For Conservation Legislation.

I would like to commend the DEP's Office of Coastal Zone Management for their conscientious work in putting together this document. I have a few comments on how it may be improved.

The lack of an inventory of coastal zone resources and of detailed mapping causes some concern. One of the first steps in preparing a comprehensive management document would be to completely inventory the natural areas, fisheries, historic sites, industrial development, residential housing, wildlife habitats, and other features of the coastal zone. I do not believe this has been adequately developed in this document.

The Department may now regulate construction of housing developments of 25 or more units. Haphazard developments along the coastal zone could have an adverse effect. At this time, there seems to be a lack of coordination between

local zoning laws and the Bay and Ocean Shore segment. There should be careful monitoring of development not covered by CAFRA. The cumulative impact of numerous housing developments should be addressed in this document.

A policy statement in the document discourages development which would damage or destroy the value of historic resources. Development which would allow demolition of historic sites should be prohibited.

The CAFRA policies and guidelines must be specifically outlined with respect to energy siting in the coastal zone. With new legislation being proposed which would give the DOE the lead role in the siting of energy, it is imperative that specific guidelines be developed. Furthermore, Commissioner Jacobson's statement that pipelines may have to go through the Pine Barrens raises further concerns. The Pine Barrens must be protected from exploitation by the oil and gas industries.

The Coastal Plan asks that conservation of energy be encouraged in coastal development. The League feels this policy should be required.

The Plan mentions policies directed towards the preservation of open spaces. By naming hotels and restaurants as desirable structures along the coastline, the above policy seems to be self-contradictory.

In closing, I hope that the vast resources necessary to administer and enforce the coastal program will be made available. If properly administered, the program should provide an equitable management program for the New Jersey coastal Zone.

Michael Havrisko

Comments
of the Natural Resources Defense Council
on the Bay and Ocean Shore Segment
of the New Jersey Coastal Program

Frances Beinecke
Atlantic Coast Project
June 15, 1978

The Atlantic Coast Project of the Natural Resources Defense Council (NRDC) has reviewed the Bay and Ocean Shore Segment of the New Jersey Coastal Management Program and would like to comment on those key areas of particular interest to NRDC. NRDC is a national public interest organization which specializes in natural resources and environmental problems. In 1976 NRDC established an Atlantic Coast Project to focus on protection of productive and fragile coastal resources.

New Jersey became an early focus of the Project with the scheduling of the first Atlantic offshore lease sale, number 40, off its coastline. NRDC was a plaintiff in the lawsuit over the inadequacy of the environmental impact statement for Sale 40 (NRDC v. Secretary of the Interior). The Project's involvement with New Jersey's coastal program was a direct result of that litigation in which onshore impacts of OCS activities were a major issue. The offshore oil and gas leasing program is an example of one major federal program which could have a determining effect on the extent of development and its location in New Jersey's coastal zone. It is this kind of new activity which the federal coastal zone management program was designed to address through a statewide planning and management program.

The second largest contribution to New Jersey's economy is tourism and recreation, and the long term survival of that economy is dependent on the continued health and vitality of the coastal resource. By participating in the federal coastal zone

management program New Jersey has been provided with financial assistance and certain guidelines with which to design a program geared to its unique problems. In return it must produce a program which meets the requirements of the federal Coastal Zone Management Act.

Over the past two years NRDC has worked with statewide environmental organizations and the Department of Environmental Protection in an effort to have our concerns for New Jersey's coastal resources considered throughout the planning process. Today we would like to comment briefly on those parts of the coastal program which have improved significantly over the past six months as well as those which continue to need improvement to qualify for federal approval under the Coastal Zone Management Act.

New Jersey has been involved in the coastal planning process since the state legislature passed the Wetlands Act in 1970 and the Coastal Area Facilities Review Act (CAFRA) in 1973. Over the past three years the Department of Environmental Protection has designed a coastal program that is based on those two statutes as well as the state's older riparian statutes. During this planning phase the DEP has developed a very innovative review process for evaluating applications under these programs--the Coastal Location Acceptability Method (CLAM). We commend the Department for designing a methodology that so thoroughly considers the inter-relationship of a natural ecosystem in its permit review process. One of its most commendable features is its predictability for project applicants as well as for the interested public. Although

there are certain modifications in the specific policies that we would like to see, we can support the thorough approach which the DEP has developed.

A second area where we see substantial improvement from the initial coastal Strategy is in the energy policies. We feel that this document represents a significant effort to tighten up these policies and make some clear distinctions between what is to be permitted within the boundaries of the Bay and Ocean Shore Segment and what is not. Although there are policy changes we would like to see, we commend the DEP for the substantial improvements represented in this document. We believe the policies clearly reflect the intent of the legislature to protect the natural resources within the coastal boundary.

A third area in which this program has improved relates to the national interest determination as required by the federal statute. It is NRDC's belief that the federal Coastal Zone Management Act and its findings and purposes presents a clear indication of Congressional intent to interpret national interest as protection of fast dwindling coastal resources as well as providing for necessary energy development. New Jersey thoroughly evaluated all elements of the national interest by incorporating the intent of federal programs which affect the coast into its policies.

Recognizing that coastal management is a constantly evolving process, and that the Bay and Ocean Shore Segment is still in draft form, we would like to indicate those areas where we think improve-

ment is required before federal approval can be given to this program. The general points we would like to address are:

1. The program must meet the requirements for segmented approval by showing significant progress towards a completed statewide program (923.61).
2. As enforceability is a major requirement for an approvable program, Chapter III of the document must be adopted as a rule before New Jersey can qualify for federal approval (923.42).
3. As all policies of the coastal program must be enforceable and legally binding, New Jersey must obtain an Attorney General's opinion on the binding nature of the memorandum of understanding between the Department of Environmental Protection and the Department of Energy (923.42).
4. The program does not adequately protect fragile ecosystems, particularly dunes and barrier islands, from cumulative impacts of a number of small scale projects.
5. The program is not adequate to meet the requirement for geographic areas of particular concern.
6. The program does not adequately define a procedure for designation of areas for preservation and restoration.

As New Jersey has chosen to submit a segmented program to the Office of Coastal Zone Management, it must comply with the federal requirements for segmentation. These include an indication that the remainder of the program will be completed in a timely manner and that the boundary and national interest component

of the entire coastal program be included. In this document New Jersey has not demonstrated the timeliness or boundary provisions satisfactorily.

One of the basic federal requirements for an approvable program is enforceability of a program's policies. At this time New Jersey's program is not enforceable because the policies are not yet adopted as regulations governing the riparian, wetland and CAFRA review process. Although the document states that Chapter III will be adopted as a regulations under the Administrative Procedures Act, we would like to point out that this is essential before the program can be considered for approval. We understand that this can be done by the Commissioner as soon as the program is finalized and urge that it be done as expeditiously as possible. Furthermore, we urge that the policies included in Chapter III be applied to any DEP decisions which would affect coastal resources within the Bay and Ocean Shore boundary. At a minimum this should include actions undertaken pursuant to the state water statutes which were passed last year. Other DEP actions should be evaluated for possible inclusion under this regulation.

An additional requirement of enforceability is a demonstration that a memorandum of understanding is legally binding. The Draft MOU between the Department of Environmental Protection and the Department of Energy does not adequately demonstrate enforceability. The DEP must obtain an Attorney General's opinion which indicates that both the Department of Energy and the Energy Facility Review Board are bound by the energy policies and can be challenged if these policies are not followed.

A second concern to NRDC is whether this program is adequate to protect critical natural resources within the coastal boundary. These resources are now protected only from major projects which require a CAFRA permit but not from small scale but cumulatively destructive residential and commercial development. We recommend that the DEP evaluate mechanisms to enable cumulative impact review of many small projects in critical resource areas, especially barrier islands and dunes. These resources have been most critically ignored throughout the evolution of this program. They serve essential natural functions of flood protection, buffers to productive wetlands, recreation, filtering out pollutants, and wildlife habitat. In addition they are fragile and vulnerable to human impacts from small scale development. The program ignores both their contribution to natural ecosystems as well as their fragility and flood potential. New Jersey must include in its program a mechanism for protecting these valuable resources.

The Coastal Zone Management Act provides a mechanism for attention to special areas by designating them geographic areas of particular concern. This component of New Jersey's coastal program is seriously inadequate. A year ago the DEP recognized public concern for coastal resources by requesting public nomination for geographic areas of particular concern. The DEP received nearly 200 nominations. However, only three areas are proposed for this status in the document and two of those, wetlands and wet sand beaches, are already protected by state statutes. GARC

status is an essential component of a coastal program because it is a protective, rather than reactive, device. Once an area is designated as a gapc a special management program must be designed which is geared towards the reasons for which an area was nominated. NRDC is concerned that New Jersey has adopted an approach based on two basic errors. The first was to seek and then ignore public comment; the second, to avoid using gapc's as a mechanism to protect critical resources.

Another requirement of the federal program is a procedure for designating and managing Areas of Preservation and Restoration. The program gives one page to this process with little explanation except to say it will be part of the Green Acres Program. There is no discussion of how the process is intended to work, who will be in charge of it, or how we are to be assured that the program staff will be tied into and act consistently with the program's policies.

In conclusion, although there are a number of key areas where New Jersey's coastal program requires additions or modifications, which we will comment on in detailed written comments, this document shows substantial improvement over previous drafts and we commend the DEP for its effort in these areas, particularly the energy policies. We hope that the next draft will incorporate even more modifications and will address the concerns we have raised today.

Natural Resources Defense Council, Inc.

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Comments Of The
Atlantic Coast Project
Natural Resources Defense Council, Inc.
On
New Jersey's
Bay And Ocean Shore Segment

Frances Beinecke
Natural Resources Defense Council
917 15th Street, N.W.
Washington, D.C. 20005

July 5, 1978

The Atlantic Coast Project of the Natural Resources Defense Council, a national public interest organization concerned with the protection and management of natural resources, has reviewed New Jersey's Bay and Ocean Shore Segment. These comments are a detailed supplement to our oral comments delivered at the public hearing in Trenton, New Jersey, held on June 15, 1978. The comments are divided into two parts: the first addressing New Jersey's program measured against the requirements of the Coastal Zone Management Act of 1972; the second criticizing the Chapter III policies and their ability to meet the intent of the Act and to implement the program.

I. Meeting Federal Requirements

In our review of New Jersey's document we have identified six major areas where we believe additional work must be completed before the Bay and Ocean Shore Segment may qualify for approval under the federal Coastal Zone Management Act. The six areas that we have identified are as follows:

1. The program must meet the requirements for segmented approval by showing significant progress towards a completed statewide program (§ 306(h), 15 C.F.R. Part 923.61).¹
2. Chapter III of the document must be adopted as a rule in order to make the program enforceable (923.3(a)(3) and 923.42).

^{1/} 43 Fed. Reg. 8,378 - 8,432 (March 1, 1978, effective April 1, 1978).

3. A legally binding and enforceable mechanism must be established to ensure conformance of energy facility siting decisions of the Department of Energy, and the Energy Facility Review Board (§§ 306(b)(F) and 923.14).

4. The program must include a mechanism for the protection of fragile ecosystems, particularly dunes and barrier islands, from cumulative impacts of a number of small scale residential and commercial projects (§§ 302 and 303).

5. The program should designate barrier islands as geographic areas of particular concern (§§ 305(b)(3) and 923.20).

6. The program must establish a procedure for designation and management of areas for preservation and restoration (§§ 306(c)(a), 923.24).

1. Segmented Program

New Jersey has chosen to develop its coastal program in two segments: the first, the Bay and Ocean Shore Segment; the second, the Delaware and Hudson estuaries. In submitting its program in segments, New Jersey must meet the applicable requirements under Section 306(h) of the Act and Section 923.61 of the Interim-final Regulations. This section of the Act reads:

301(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

NRDC does not believe that New Jersey qualifies for segmented approval at this time because of the extremely cursory work done so far on the Delaware and Hudson portion of the state. Approval of the Bay and Ocean Shore Segment must be delayed until both segments are complete or until the state has met the applicable statutory and regulatory requirements to assure development of a single, unified plan.

The information on the remaining segment in the document does not indicate what kind of program is anticipated for that part of the state. The state has not demonstrated that

it can:

. . . exercise policy control over each segment of its management program prior to and following its integration into a complete state management program. Demonstration of this control will include (i) completion of the management boundary determination for the entire coastal zone . . . and (ii) consideration of the national interest throughout the state's entire coastal zone in the planning for and siting of facilities cited in § 923.52.

In the document New Jersey devotes less than one page (pp. 198 - 199) to "completing the State's Management Program." We do not believe that what is in this section indicates that adequate progress is being made towards program completion. In this brief section New Jersey indicates that the coastal boundary for the Hudson and Delaware portions of the state has not been completed but that a study is being done which will "help define an appropriate coastal zone boundary, based in part on water quality, wetlands, and aerial photographic analysis." This makes clear that New Jersey has not determined what the completed coastal boundary will be. A complete boundary for the entire coastal zone must be delineated prior to federal approval of the first segment or that approval will be illegal and subject to challenge.

Appendix F further substantiates this impression by discussing the "Preliminary Boundary of the Coastal Zone -- Entire State" on pages 255 to 263. The inland Preliminary Boundary for the Hudson and Delaware portions of the state is

defined loosely as the "first road or cultural feature."

New Jersey's opinion that this is only a preliminary delineation is clearly indicated in their conclusion:

. . . the inland boundary of the coastal zone beyond the boundary of the Bay and Ocean Shore Segment is a proposal to be debated and refined as DEP conducts future coastal planning in 1978.

2. Enforceability Before Approval

Enforceability of policies at the time of program approval is a key requirement of the federal Coastal Zone Management Act (§§ 923.3(a)(3) and 923.42). This is an essential requirement because it is the only way to ensure that development will be controlled in conformance with the policies and goals of the coastal program (§ 306(c)(1)). In this document New Jersey recognizes the necessity to adopt enforceable regulations and proposes Chapter III as a rule governing actions under the riparian, wetlands, and CAFRA statutes. In the document and at the Trenton public hearing New Jersey admitted the need to adopt this rule prior to submission of BOSS to the Office of Coastal Zone Management for approval. We would like to reiterate our belief that this must be done before the program can qualify for approval. If the rule is not adopted according to the present timetable federal OCZM cannot approve the program.

Additional concern arising from the document is the lack of enforceability of policies or other actions affecting coastal waters which are not covered by the three key statutes.

At this time there is a large gap in New Jersey's program because of its lack of authority over cumulatively destructive projects or over protection of fragile resources such as floodplains, specimen trees, steep slopes, prime forest areas, bogs and white cedar stands. In Chapter IV the document outlines the other offices within the DEP whose activities affect the coastal zone. New Jersey has not adequately included these other programs in New Jersey's Coastal Program. Without incorporating these other programs, New Jersey cannot comprehensively control activities which affect coastal resources or coastal waters.

The Shore Protection and Waterway Maintenance Program is cited as controlling beach erosion and waterway maintenance, barrier islands and shorefront access. This is only described by a single paragraph on page 167 and the discussion does not clarify whether this program will be bound by the coastal policies in Chapter III. In the EIS this program (and its statutory authorities) must be clearly explained. This program must be bound by the policies affecting the resources and activities it controls.

A second area of concern is the Water Resources Program within the DEP. The last paragraph on page 167 discusses the limited extent that the water resources program may use coastal policies. As CIAM defines a process for evaluating applications, we believe that the Commissioner could make the procedure

apply to all relevant programs under his jurisdiction. We recommend that the Division of Water Resources programs be bound by the policies in Chapter III. Certainly water quality programs and floodplain management programs in a coastal zone have a direct impact on coastal waters (§ 305(b)(2)). New Jersey seems to have lost sight of the section of the statute which discusses coastal waters. This is especially important as the document states that the water resource programs "will be coordinated and made consistent" with the coastal program. The only way to ensure that coordination is to require all decisions to be made pursuant to these statutes and consistent with the enforceable policies of Chapter III.

The third program where inadequate evaluation has been made is the Green Acres Program (page 169). Green Acres is the primary open space acquisition program for New Jersey and as such has direct relevance to the access and areas for preservation and restoration requirements of the CZMA (§§ 305(h)(7) and 306(e)(a)). The document indicates that DEP/OCZM will review Green Acres projects but there is no mechanism for DEP/OCZM to propose projects or for critical coastal projects to be ranked with other programs.

To conclude, our review of this section leads us to recommend that the coastal policies be applied to other programs within the DEP which have an affect on coastal waters. Such action would bind the decisions made under these programs to

adhere to the policies. The programs we are most concerned with are actions under the Shore Protection and Waterway Maintenance Program, the Water Resources Program, and the Green Acres Program.

3. Enforceability of Interagency Agreements

Appendix J of the document contains a draft Memorandum of Understanding between the Department of Environmental Protection and the Department of Energy. Section 923.42 of the Interim-final Regulations clearly indicates that MOU's must be enforceable and legally binding to be acceptable. As they state:

Each state agency that exercises statutory authority that is to be incorporated into the management program must be legally bound to exercise its authority in conformance with the state's enforceable policies. Interagency agreements (such as memorandum of understanding or agreement) must be binding and enforceable in order to constitute acceptable legal authorities. Interagency agreements will be considered enforceable if the management program and state authorities in support of the program provide grounds for bringing an action to ensure compliance of networked agencies with the program.

We are not satisfied that the draft memorandum of understanding binds either the Department of Energy or the Energy Facility Review Board to make their decisions in conformance with coastal policies. The Review Board exists for the specific purpose of deciding disagreements between DOE and other state agencies. For example, the MOU states that "DOE may refer a DEP decision

that differs with DOE's Energy Report to the Energy Facility Review Board" (page 280). Although the Energy Report is to be made up from both the Bay and Ocean Shore Segment and the Energy Master Plan, there is no language in the MOU which says that the Energy Report is bound by the coastal policies, it simply says that those two documents will form the "basis for formulation of the DOE Energy Report." We find the MOU unacceptable as a mechanism to ensure the enforceability of the coastal policies in the energy facility siting area. The Energy Department must be required to act consistently with coastal policies through an enforceable mechanism such as regulation, an executive order, or a secretarial order. This requirement is a key link in developing an acceptable program because it is the only way to ensure that the energy facility siting decision of the Energy Facility Review Board or the Department of Energy would be in conformity with the program.

4. Protection of Critical Resources

New Jersey has devised a coastal program which does not adequately protect critical coastal resources, particularly barrier islands and dunes. These resources are both fragile and extremely important flood protection to back bays and mainland areas. These systems consist of thin barriers and a small break in the system can have a devastating effect. Essentially one or many small infringements on the systems cuts into the continuity and threatens the longevity of the entire resource.

Disruption of dunes and barrier islands can be created by storms themselves but more devastating are human activities such as flattening out dunes or halting normal littoral drift actions to stabilize areas for construction of second homes. Along the New Jersey coast most projects on barrier islands are well below the 25 unit requirement of CAFRA, and yet the impact of a number of them can be tremendous.

Yet, the Bay and Ocean Shore Segment does not ensure control of these developments and hence the protection of these resources. As a result it violates the intention of the Coastal Zone Management Act. In Section 301, Congressional Findings, the Act makes clear the extent of Congressional concern over threats to coastal resources through human exploitation, and the Congressional intent of state involvement in "land and water use decisions of more than local significance" (§§ 301(a) - (h)). New Jersey has chosen to interpret these decisions based on the size of a particular facility rather than on a resource which in itself is of regional or statewide significance. We maintain that this Act was passed to protect coastal resources and that these resources themselves are of greater than local significance. In the President's Environmental Message in May of 1977 he focused attention on barrier islands by indicating their threatened status and requesting the Interior Department to both inventory and develop alternatives for their protection and management.

Clearly activities undertaken on New Jersey's barrier islands have a direct impact on the state's recreation and tourist economy. If New Jersey's Coastal Program is unable to address these resources which are the base for a great part of that recreational activity -- that portion of the state's economy could be seriously jeopardized. Furthermore, these islands play an essential role in protecting back bay areas which produce valuable commercial and sport fisheries. By ignoring the piecemeal and cumulatively destructive residential and commercial development on barrier islands and dunes New Jersey is violating the intent of the federal statute, as well as jeopardizing the continued health of its tourist and fisheries economies.

We suggest three ways in which to reduce this problem. The first is to designate barrier islands as a generic geographic area of particular concern. The details of this will be discussed in the next section. At this point we would like to point out that the Division of Marine Resources notified us in a letter earlier this year that barrier islands would be designated as gapcs. This never happened.

The second manner in which to deal with this problem is to develop a cumulative impact review for New Jersey's program. This is essential for small scale projects on the coastal water's edge and on critical resources such as barrier islands. We believe that the Department should adopt a cumulative impact review procedure as part of CLAM. This review should be limited

to activities undertaken in the Special Water's Edge and Land Areas (§ 6.4 of Chapter III). This review should not be limited to major facilities but should include any project which impacts a critical resource. New Jersey must study the mechanisms available to implement such a review. If inadequate authority exists, legislation should be considered.

A third option available for cumulative impact review would be to limit state aid or public services to communities which did not make their zoning decisions consistent with the policies for Special Water's Edge and Land Areas and the Resource Policies. Throughout its planning process New Jersey has not become involved with the local communities within the coastal boundary. An early effort should have been made to get communities to adopt local ordinances consistent with the state's policies. By ignoring this major gap from the beginning New Jersey has ended with a program that has virtually no control over land and water uses which are cumulatively destructive to critical resources.

It should be pointed out that the predominant activities undertaken on barrier islands are commercial and residential. It is clear from CAFRA that the minimum sized residential development that the state can consider is 25 units, yet much of the piecemeal development is less than 25 if not intentionally restricted to 24 units. This means that the primary activity undertaken on the islands is not under CAFRA's jurisdiction.

The other major development activity is commercial. CAFRA does not have any specific authority over commercial facilities except if they are associated with a major public facility such as a parking lot or sewer system. New Jersey has not yet clarified the extent of its legal jurisdiction over commercial facilities. The New Jersey Public Advocate's office recommended in their comments on the Strategy that CAFRA be amended to specifically include commercial facilities. We certainly support that as a long range goal. In the short term we would like some clarification over the extent of CAFRA's jurisdiction over parking facilities. The document does not clarify this. The paper on Public Comments and DEP Responses indicates that only parking facilities with 300 spaces require CAFRA review. We find this to be a completely arbitrary cut off point and one that is not sensitive to the potential impact of smaller facilities on critical resources. For that reason we suggest that this be modified to 50 spaces for special land areas with particular emphasis on barrier islands.

5. Geographic Areas of Particular Concern

As NRDC has specifically stated in public meetings and correspondence, it does not believe that New Jersey has adequately met the requirements for "an inventory and designation of areas of particular concern within the coastal zone" (§ 305(b)(3)).

First, the state of New Jersey never completed an inventory of areas of particular concern. It completed a

bibliography of information available on New Jersey's coastal resources. It then requested the public to propose areas of particular concern.² The state never evaluated the nearly two hundred proposals which resulted from this process to determine whether they were of state or regional concern. Thus, the requirement quoted above was not met.

Secondly, New Jersey has not adequately designated areas of particular concern. The three areas designated -- wetlands, wet sand beaches and Higbee Beach -- are of concern and certainly merit designation. However, many other potential areas were not properly evaluated, designated, nor was any procedure adopted for future designation.

Finally, New Jersey does not include special management techniques or plans in the document for Higbee Beach, the one proposed gap not specifically covered by an existing statute. A management program designed for the problems peculiar to a designated area must be established.

NRDC asserts that New Jersey has repeatedly ignored a major requirement of the CZMA and in doing so has jeopardized approval under the federal program. This is evident from the state's reluctance to meet federal requirements that require efforts which would supplement existing state authority.

New Jersey has failed to use a procedure which would

^{2/} Nominated Areas of Particular Concern, New Jersey Office of Coastal Zone Management, December 1977.

enable management of critical resources not otherwise covered by the three coastal statutes. As the Interim-final Regulations state:

. . . where a State's general coastal management policies and authorities are insufficient to address the nature of a State's concern . . . then designation of areas of particular concern is especially important.

As stated in the previous section, we believe that New Jersey's program does not adequately protect critical resources of statewide importance, particularly barrier islands, and that it must use this section of the Coastal Zone Management Act to devise a program for their protection.

6. Areas for Preservation or Restoration

Section 923.24 of the Interim-final Regulations calls for the designation of Areas of Preservation or Restoration. The requirements for this section are:

- (1) Describe the criteria by which areas can be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values; and
- (2) Describe the procedures by which such designations can be made.

In the one page description of APRs in New Jersey's program (page 146) neither of these requirements has been met. The document mentions the primary program that will be used to meet the requirement (Green Acres) but does not suggest any criteria for determining how an area would qualify as an APR, or procedures for getting an area designated as an APR.

Furthermore, the only technique which this section proposes is the use of acquisition powers. There is no discussion of what kind of areas or problems are to be addressed under this section nor any indication that the administration of the Green Acres Program would have to consider the coastal program in any of its decision making processes.

For New Jersey to qualify for federal approval under the CZMA substantial improvement must be made in meeting this requirement. Particular items to be addressed are the following:

- (1) The Division of Marine Resources must develop criteria to determine if an area qualifies as an APR.
- (2) A process and a responsible office must be officially designated by the Commissioner for fulfilling the responsibilities under this section.
- (3) The relationship of this program with existing mandates of the Green Acres Program must be identified and accepted in an agreement between the Division of Marine Services and the Green Acres Program.
- (4) A formal process should be adopted to process public recommendations for APR designations. This process should contain an appeal process for citizens proposing APRs that are not acted upon.

7. Meeting Federal Requirements

Additional federal requirements which New Jersey must adequately address to qualify for federal approval include consideration of the national interest, federal consistency and public participation.

a. Section 306(c)(8) of the Coastal Zone Management Act requires "adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect such state's coastal zone) which are necessary to meet requirements which are other than local in nature." NRDC is concerned with the discussion of "Regional Benefit Decisions" (pages 192 - 193) which indicates that the Board of Public Utilities in the Department of Energy can overrule local decisions. There is no indication whether this Board has similar overrule authority over CAFRA decisions, or how energy facility siting decisions made under CAFRA could be affected by this Board. New Jersey's program could be seriously jeopardized if the Board of Public Utilities has authority to override decisions made under the coastal program, and if the Board is not bound by the coastal policies in Chapter III. Again, NRDC urges that DOE issue regulations establishing the consistency of its actions with the policies in Chapter III.

In the discussion of nuclear facilities on page 180 the document lists criteria which must be met for New Jersey

to permit the siting of any additional nuclear facilities. We are concerned that this list contains no environmental concerns except for the disposal of spent fuels. Of particular concern to us is the impact of a plant's cooling system on adjacent waters. This should be of primary interest to New Jersey's coastal program and should be added to the list of criteria.

b. The description of federal consistency procedures (pages 186 - 192) contains some disturbing language which must be clarified. On page 187, the document indicates that the Department of Energy "will participate in the decision of the state of New Jersey to issue a determination of consistency." Regulation 923.53 requires inclusion in the program of "(1) An indication of whether the State agency designated pursuant to subsection 306(c)(5) of the Act or a single other State agency will handle consistency review." New Jersey has not met this requirement but has listed two agencies without delineating their respective roles. DOE is not the appropriate agency because its actions are not bound by this program and it has no ability to review projects unless they have energy implications. Federal consistency review extends far beyond review for energy projects and for that reason DEP should be the authoritative review agency.

The Bureau of Land Management must be added to the agencies under the Department of Interior whose activities and

development projects must be reviewed for consistency. This agency makes decisions under the OCS leasing program which relate directly to the state's coastal program. Prelease sale decisions can have a determining effect on activities which would fall in New Jersey's three mile boundary both off and onshore.

In addition, we recommend that New Jersey reserve the right to exercise consistency review over the licenses and permits issued by the Nuclear Regulatory Commission. This right has been reserved by Massachusetts in its coastal program and we think it especially important in New Jersey because of the proposal for floating nuclear power plants off its shores.

c. A final area we would like to address is New Jersey's treatment of public participation in its coastal program. On page 174, the document indicates the procedure the DEP will follow to notify the public of pending permit applications in the CAFRA, riparian and wetlands programs. There is no discussion of how the DEP expects to address public concerns raised through this process. This is a serious oversight because the CZMA requires a public participation element which must be more than an information program. New Jersey has not previously demonstrated a willingness to incorporate public interest or consensus into its decisions as evidenced in the gapc process discussed earlier. New Jersey's coastal program must have a much clearer discussion of how the DEP will process and factor

public input into its decisions. In addition, we support the public Advocate's suggestion for public funding of public participation. This is an essential element of public involvement as administrative proceedings are lengthy, detailed, quasi-judicial, and expensive to participate in.

II. Basic Coastal Policies (Chapter III)

As an introduction to the Coastal Location Acceptability Method (CLAM) the document lists four major coastal policies which guide the more detailed policies in Chapter III. We recommend additional policy requiring that the ecological carrying capacity of critical resources be evaluated. Concentration of development, particularly in areas of critical resources, such as barrier islands, and in areas where the air and water quality limits are being strained, may have reached the limits of the possible carrying capacity without new development. We do not think that following the CLAM methodology will automatically flag this if a specific site meets the requirements.

A second general concern focuses on the development of a methodology (CLAM) which is sensitive to the bay and ocean shore segment but which does not evaluate other portions of the state where projects are directed. We believe it is irresponsible to propose development in already urbanized areas without a detailed analysis of the capability of these areas to accept additional development. We are wholly supportive of directing noncoastal dependent development outside of the bay and ocean shore segment, but we think it will be difficult to uphold such a policy without adequate analysis of those noncoastal or already industrialized areas. Although the policies themselves evaluate the potential of a particular site to withstand a certain activity, there is no capability for regional decision making.

Generally, we suggest eliminating qualifying language such as "to the maximum extent practicable" throughout the regulations. Strong, definitive language should be used throughout.

2.0 & 3.0 Authority and Jurisdiction

These two sections make clear that the only actions to which this rule applies are those which require permits under CAFRA, wetlands and riparian statutes. We find this too limiting as other actions undertaken by the DEP within the BOSS boundary should also be required to adhere to these policies, particularly those affecting critical coastal resources. Small actions which affect resources of statewide significance must be controlled to the same degree as large projects whose scale makes them of regional significance.

4.0 Definitions

Although the DEP has made a real attempt to define the qualifying language of the policies, a great deal of ambiguity still remains. For example, both "discouraged" and "conditionally acceptable" require meeting additional conditions before approval. The specific conditions must be spelled out in each policy which utilizes either of these definitions.

5.0 Coastal Management Decision-Making Process

This section again describes how only those actions under the three permit programs within DEP would be bound by these pol-

icies. There is no reference to other state actions outside of the DEP which might affect New Jersey's coast and ocean shore segment. Both the Department of Energy and Energy Facility Review Board should be discussed in this section.

6.0 Location Policies

6.2 Special Water Areas

6.2.1 Shellfish Beds. This policy makes conditionally acceptable water dependent development which requires dredging adjacent to shellfish beds. Dredging activity next to productive shellfish beds should be discouraged, not conditionally acceptable.

6.2.2 Surf Clam Areas. Developments which would result in closing productive surf clam areas should be prohibited and directed to other areas where surf clams would not be affected.

"Within a specific area" should be defined more precisely.

6.2.3 Prime Fishing Areas. Disposal of domestic or industrial wastes must be prohibited from these areas. There is no reason why New Jersey can't adopt a stronger policy than federal standards to protect its fishing resource. This policy should indicate that dredging or disposal of dredge spoil would also be prohibited.

6.2.4, 5, 6 Finfish Migratory Pathways, Submerged Vegetation, Navigation Channels. "Mitigation measures" should be defined more precisely and specific types of mitigation measures should be outlined.

6.2.4 Fish Migratory Pathways. The list of activities which would require mitigation measures must include changes in salinity.

6.2.5 Submerged Vegetation. The developer must be responsible for seeing that the replanted vegetation lives and that reclamation is successful. This may require putting up a performance bond for the duration of the reclamation project.

6.2.6 Navigation Channels. This policy discusses existing, but not new navigational channels. Does this imply that new channels are prohibited?

It is good that the relationship between erosion and maintenance dredging is recognized.

6.3 Water Areas

6.3.5 Definition of Water Body Types. This section gives a clear indication of why mapping is essential for New Jersey's coastal zone program to operate successfully. The definitions of semi-enclosed and back bays, for example, are brief with few examples and no comprehensive list of each type.

6.3.7 Water Acceptability Table. It is unclear in the definition of "prohibited" whether the exception is limited to existing riparian grants or whether new riparian permits could be granted and then be also subject to an exception. The confusing element is the extent of the state's jurisdiction over subsequent actions once a riparian grant is allowed. Because it

is unclear how Special Water Areas are to be addressed in this Table we recommend extending the Table to include Special Water Areas. This would require an additional section outlining the conditions in those Special Water Areas, such as 6.3.8 for the other water areas. The Table and the text on Conditions are not compatible. The Table should be modified to reflect the conditions in the text.

6.3.8 Aquaculture. The qualifiers attached to the aquaculture policy make it in fact a "conditionally acceptable" policy, not an "encourage" one. The adverse environmental impacts which may result from aquaculture make the conditionally acceptable designation more appropriate. The last sentence should read "do not cause adverse off-site environmental impacts."

6.3.8.3 Retaining Structures. Shoreline retention structures should be considered only if nonstructural stabilization cannot be used. This policy should be modified as necessary as the shoreline erosion component of New Jersey's coastal program is developed. The Table should be changed to reflect the text which is "discourage."

6.3.8.4 Delete "to the maximum extent feasible."

6.3.8.5 Dredging Maintenance. This section has given no consideration about whether existing maintenance dredging operations are necessary or desirable. The DEP should undertake an evaluation of all dredging going on in its coastal zone to determine what is absolutely necessary.

6.3.8.7 Dredged Spoil Disposal. This policy is inconsistent with 6.2.6.2, the policy on navigation channels, and the definition of "prohibited." If disposal of spoil is "prohibited" (p. 36) it cannot be deposited under certain conditions. These policies must be uniform throughout.

6.3.8.9 Filling. Same comments as above. If filling is prohibited, it cannot be permitted with conditions.

6.3.8.10 We recommend deleting this if piling is always associated with another, already controlled activity.

6.3.8.12(b) Offshore Sand and Gravel Mining. There must be performance standards to control physical and chemical impacts from mining.

6.3.8.13 Bridges. "Acceptable" secondary impacts must be defined.

6.4 Special Water's Edge and Land Areas

6.4.1.2 High Risk Erosion Areas. We strongly support the prohibition of development in "high risk erosion areas." Also, "in principle" development in areas that will be eroded in less than 50 years should be prohibited, not discouraged.

The causes of erosion should be included in the list of factors affecting policy on development restriction.

Structural solutions should be acceptable only if non-structural controls would be ineffective.

The above rules apply only to facilities which require a CAFRA, riparian, or wetlands permit. Many structures in high

risk erosion areas would not require any of these permits. Local governments are not bound to act consistent with these rules so significant development in high risk areas can continue. New Jersey must develop a method to address this problem, as such actions have statewide and national significance as established in the Executive Order on Floodplains, May 24, 1977 (E.O. 11988). This process must be developed to meet the Erosion Control Requirements of the CZMA.

6.4.2 Dunes. The stabilization of existing dunes and the creation of new dunes should not be encouraged. Artificial stabilization of dunes which naturally shift in response to a number of factors, particularly winter storms, will result in increased erosion. New dunes created in areas where no dunes previously existed are not likely to last very long and could also result in erosion through disruption of overwash. Dunes should be protected and repaired, but not created or stabilized.

New Jersey has no state authority to control activity on dunes unless a facility requiring a CAFRA permit is proposed. This is a serious shortcoming in the program.

6.4.3 Central Barrier Island Corridor. This section encourages development on barrier islands whereas all future development on barrier islands should be prohibited or discouraged. The state does not have control of non-riparian, non-wetlands, smaller than CAFRA projects which cumulatively

and individually adversely impact barrier islands and amplify the need for federal and state subsidies for inappropriate development. Furthermore, this policy in no way reflects the potential hazard to barrier island development from flooding, nor the ability of the islands' resources to withstand increased development.

6.4.4 Flood Hazard Areas. By what authority does the state regulate "most uses" in the flood fringe? Will these rules be applicable to that authority? These questions are not satisfactorily answered in this section.

Furthermore, this section must meet the requirements of the Executive Order on Floodplains (E.O. 11988). To do this the policy should reduce the risk of flood loss, minimize the impacts of floods on human safety, health and welfare, and restore and preserve the natural and beneficial values served by the floodplains.

6.4.6.4 Specimen Trees. Only specimen trees to be impinged on by CAFRA, riparian or wetlands projects will be protected under the program. What authority is there to protect other specimen trees?

6.4.7 Prime Forest Areas. This policy applies by definition only to white cedar stands. What about other prime forest stands within the coastal area? We recommend including the Pine Barrens vegetation under this definition.

The program has no authority to govern cumulative impacts

which can be a major source of forest destruction.

"A significant percentage of stems" is not an adequate definition of a white cedar stand.

6.4.8.2 Prime Wildlife Habitats. Development causing minimal feasible interference with habitats is listed as "conditionally acceptable," but no conditions are established. Development that is destructive to endangered or threatened species must be prohibited. To adequately enforce this policy prime wildlife habitats must be inventoried and mapped, and a management program developed. We recommend such areas as gaps.

6.4.9 Public Open Space. The overall policy of encouraging the concentration of development will curb sprawl, but could also reduce the open space in urban areas. A major impact on public open space as defined here would result from activities on the fringe. This policy should more specifically address fringe activities by listing the types of activities acceptable adjacent to public open space.

6.4.10 Steep Slopes. Development on steep slopes should be discouraged, not conditionally acceptable.

6.4.12 and 6.4.13 Bogs, Stream Heads. Small-scale activities which would damage bogs or stream heads are not subject to CAFRA, but these areas should be protected under the coastal program.

The location of bays should be mapped by the coastal

program to notify the public of exactly where activities will be prohibited.

6.5 Beaches Policy

Any development on the beach must be in the public interest. A developer's proposal to build on the beach or dunes, even if there is no feasible nonbeach location, is not sufficient to permit development. "No prudent or feasible alternative" should be deleted from this section. This policy makes no reference to the wet sand beach gapc designation. This should be clearly detailed in this section.

6.5.2.2 Water's Edge. Criteria for determining the need for specific facilities (not solely in terms of demand) should be added to the list of conditions for a water's edge location.

6.5.3.2 and 6.5.4.2 Retained Water's Edge, Filled Water's Edge. Development is conditionally acceptable provided that "the development provides a net benefit to the environment." How will "net benefit" be determined? The policy does not reflect the continued effects of erosion on stabilized shorelines. The policy is too confident that stabilization techniques work permanently.

6.5.3.3 Retained Water's Edge Rationale. Restaurants are not water dependent.

6.6 Land Areas

6.6.3 Depth to Seasonal High Water Table Factor. Why would the creation of surface ponds in areas with a shallow water table render the area unsuitable for open space use? It seems logical that such areas would be suitable only for open space.

6.6.4 Soil Permeability Factor. This policy has a very direct bearing on New Jersey Coastal Program's ability to meet the requirements of the federal Coastal Zone Management Act. One of the basic requirements of the Act is that activities must be controlled so as to protect coastal waters. The most conservative policy must be adopted to ensure minimum runoff on the surface and minimum affect on subsurface flow which reaches coastal waters either directly or via streams.

6.6.7 and 6.6.7.2.1(b) Development Potential Factor, Residential Development Potential Criteria. For the infill criteria, "existing residential development" should be defined quantitatively. For example, what is compatible for infill adjacent to a commercial or condominium area would be substantially different from an area which was predominantly cottages.

6.6.7.3 Commercial and Industrial Development Criteria. CAFRA does not give the state explicit control over commercial facilities. The final document must delineate more clearly how commercial facilities are to be controlled under the public facilities requirement.

6.6.7.3.3 There should be low potential for development of any facility incompatible with existing land use.

6.6.7.4 Campground Development Criteria. Secondary impacts should be a criterion in determining both high and low potential sites.

6.6.8 Regional Growth Potential Factor. The document does not clearly establish how growth areas were chosen and whether carrying capacity of air and water resources were utilized as a basis for the determination. The State Development Guide Plan was prepared prior to the creation of CLAM and we are not convinced that its contents can be accepted as part of this document without a review of its conformity to the principles of this process.

7.0 Use Policies

7.2 Housing Use Policies - Definition

The program identifies no authority to control cumulative impacts from housing projects of less than 25 units which may have a direct and significant impact on coastal waters.

7.2.7 By what standards can an applicant's claim that restoration is impractical and infeasible be judged?

7.3 Resort/Recreational Use Policies

7.3.1 Placing resort/recreational uses as the highest priority is inconsistent with the program's primary goal to protect coastal ecosystems. Coastal protection should be the highest priority with resort/recreational uses second.

7.3.3 Does New Jersey have authority to require access to the shorefront for resort development? If so, the document should indicate what it is.

7.3.6 Marinas. The conflict between preservation of wetlands and other special water's edge areas with development of new or expanded marinas should be addressed.

Dredging of dry land should be "discouraged," not "encouraged."

7.4 Energy Use Policies

NRDC is generally pleased with the improvement of the energy policies over the Strategy. We are still very concerned about the relationship between the Department of Environmental Protection and the Department of Energy as discussed in an earlier section. We recommend that this relationship be more firmly established through an enforceable mechanism prior to approval under the CZMA.

7.4.3 Onshore Support Bases. It should be clearly stated that onshore support bases will not be permitted in fragile areas as defined by the location policies.

7.4.5 Repair and Maintenance. Repair and maintenance facilities can be allowed only at existing shipyards where no additional dredging is necessary.

7.4.4 Platform Construction Yards. This policy must recognize the potential impact of dredging which would be necessary to accommodate such a facility. If there are sites with adequate water depth, those sites should be identified by the state.

7.4.7 Pipelines. There should be a prohibition to crossing barrier islands or any part of the Pine Barrens to minimize the adverse impacts of such crossing on the geological and biological properties which makes them unique. Section (f) of this policy does not adequately protect fragile coastal features from major impacts resulting from pipeline corridors. As we stated in our comments on the Strategy, "areas to be excluded from pipeline corridors, which should be specifically delineated, should include undeveloped portions of barrier islands, areas designated under the Wetlands Act of 1970, areas necessary to protect groundwater resources, and other fragile resources valuable for wildlife or wildfowl habitat and recreation."

7.4.8 Refineries. NRDC strongly supports this policy as we believe that available information indicates that the

Mid-Atlantic already has adequate refinery capacity to meet foreseeable demand.

7.4.9 Gas Processing Plants. This policy is over qualified with "to the maximum extent feasible."

7.4.11 Tanker Terminals. New or expanded tanker terminals should be discouraged for siting which would result in increased dredging.

7.4.12 Base Load Electric Generating Stations. The issues of coastal dependency and demand should be addressed in this policy. This policy is extremely vague in comparison with the specificity of many policies for activities of smaller impact.

7.4.13 Nuclear Facilities. We commend New Jersey for establishing a strong policy relating to nuclear energy.

7.4.14 LNG. We support this policy which recognizes the risks associated with siting LNG facilities.

7.5 Public Land Use Policy

7.5.1 There must be a policy regarding the capacity, location, and conditions for hook up for sewage collection systems.

There should be a public facility policy to discourage those facilities on barrier islands, especially those facilities such as sewage treatment plants or hook ups which generate expanded development.

7.6 Industry-Commerce Use Policies

New or expanded coastal dependent development should be conditionally acceptable, not encouraged, at or near existing sites. "Sites" should be qualified as developed sites.

7.6.2 Mining. What is the justification for excluding mining from the Location Policies? We cannot accept this policy as it is very brief and gives inadequate explanation of why mining should be allowed. What constitutes an "acceptable" reclamation plan?

7.6.3 Parking Lots. There is no information in this document to describe the size of facilities covered under commercial facilities. We would like to see a much more specific policy here which controls parking lots of 50 spaces or more. We think that 50 is a large facility for coastal areas that are on or adjacent to "special areas." A limited number of spaces is essential if air and water quality impacts are to be controlled.

7.8 Shore Protection Use Policies

7.8.2 The source of sand for beach and dune nourishment projects should be addressed.

7.8.3 The type and efficacy of shore protection structures are linked to the causes of erosion. Structures should only be allowed if they will really work, and a project by project analysis must be done to ensure the project would accomplish

its goals.

8.4 Resource Policies

8.4.1 "Surface water disturbances" should be defined.

8.4.2 The policy refers to water quantity, not quality.

8.6.2 Runoff. We support the runoff policy for Intensive Development because of the direct affect that runoff has on coastal waters.

8.16.1 Solid Waste. This policy is unclear and should be rewritten in the final document.

8.17.1 Energy Conservation. It is legally possible to require energy conservation; "encourage" is too weak.

In conclusion, NRDC's review of New Jersey's Bay and Ocean Shore Segment has found six major areas where additional work must be completed before New Jersey can qualify for approval under the federal Coastal Zone Management Act. In addition, our review has identified numerous weaknesses in the Coastal Policies in Chapter III which we believe must be rectified before Chapter III can be adopted as the regulation for the Coastal Program. We look forward to discussing these comments and reviewing any subsequent drafts that New Jersey prepares.

*New
Jersey
Conservation
Foundation*

300 Mendham Road
Morristown NJ 07960
201-539-7540

July 5, 1978

Mr. David Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Department of Environmental Protection
P. O. Box 1889
Trenton, New Jersey 08625

Re: NJCF Review: New Jersey Coastal Management Program, Bay and Ocean Shore Segment and
Draft Environmental Impact Statement.

Dear David:

The New Jersey Conservation Foundation has been following with great interest the state's formulation of a coastal zone management plan. It is significant that both state and federal legislation require the formulation of a management plan for the protection and proper development of coastal resources. It is also significant that four years and several millions of dollars have been invested into the preparation of the present plan which is largely being submitted to meet the requirement of both statutes. The plan, recently submitted and the subject of the above captioned environmental impact statement, is a comprehensive collection of proposed departmental policies designed to insure a balance between resource protection and development. The Coastal Location Acceptability Method (CLAM), as outlined in the document, is an innovative attempt to establish a rational decision making process for individual development proposals, however, the nature of planning implies much more than reacting to specific proposals.

The coast's natural resources are the foundation for its social and economic system. A destruction or misuse of these resources will create adverse reverberations throughout the social and economic systems. Planning in the coastal zone, therefore, must include the protection and appropriate allocation of natural resources. In order to accomplish this adequate knowledge of coastal resources must exist. As we have previously mentioned an adequate inventory of the coast's resources has not been compiled. In view of this deficiency there is little alternative for formulating a plan other than setting forth loose policies and reviewing projects on a case by case basis. This case by case allocation of coastal resources will only through luck, not through rational planning, provide for long term stability of the coast.

NJCF - Mr. David Kinsey - July 5, 1978 - Page 2


The case by case approach avoids answering, or even raising, fundamental questions necessary for proper resource planning; what and how much of specific functioning ecosystems are necessary to protect, what are the total water and air assimilative capacities of the coast, what are the interconnections and interdependencies of coastal resources, what are the synergistic impacts of development on coastal resources? Without raising and subsequently answering questions of this nature coastal resources become allocated on a first come first serve basis; a process which could preempt the opportunity to establish desirable future uses of coastal resources. Instead of providing maximum flexibility the case by case approach will most likely limit future resource allocation opportunities. A process whereby coastal resources are identified and geographic areas are delineated for specified uses based on the ability of the resources to accommodate such uses would result in a more equitable distribution of resources, preserve future land use options and allow present land use decisions to be made with more complete knowledge of synergistic environmental impacts. In addition, such a plan would serve to guide both private and public development investments, thus, bringing about its own implementation. The application of a somewhat simplified version of CLAM throughout the entire coastal area would be an appropriate beginning. To summarize we feel that the Coastal Management Program does not reflect the planning mandates and purposes of either the state or federal legislation.

Additionally, we would like to point out the following:

1. Growth areas as defined in the plan are based on the State Development Guide Plan. We object to the inclusion of the growth designations of the Guide Plan within this document since the Guide Plan has not had official state or federal acceptance and virtually no public input and since the designations include all the coastal area as a growth or limited growth area; obviously in contradiction with the number one coastal policy; "Protect the Coastal Ecosystem."
2. Hundreds of places were nominated as geographic areas of particular concern, yet only three places were mentioned in the document and two of the three are already subjected to state control. This is indicative of the state's consideration of public input throughout the formulation of the plan.
3. In the 350 page report, which is supposed to be an environmental impact statement on the coastal management program, only 19 pages discuss impacts and 90% of the content of these pages consists of a summary of the management program. We feel that the document does not adequately assess the programs environmental impact.

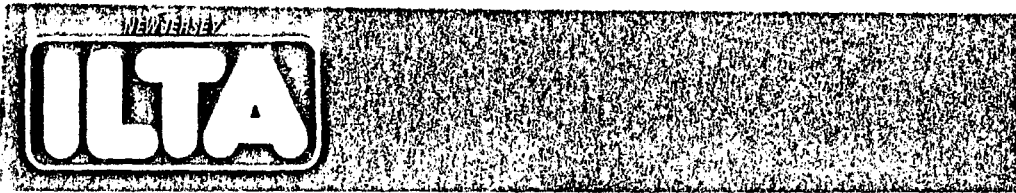
Thank you for the opportunity to present these thoughts.

Sincerely,


Darryl F. Caputo
Assistant Director

DFC:js

CC: Ms. Kathryn Cousins
Office of Coastal Zone Management
National Oceanic and Atmospheric Adm.
3300 Whitehaven Street, N.W.
Washington, D. C. 20235



June 22, 1978

Ms. Kathryn Cousins
Regional Manager - North Atlantic Region
Office of Coastal Zone Management
Natural Oceanic and Atmospheric Administration
3300 White Haven Street, N.W.
Washington, D. C. 20235

Dear Ms. Cousins:

Enclosed please find the statement of the New Jersey Independent Liquid Terminals Association on the Draft Environmental Impact Statement for the State of New Jersey Coastal Management Program Bay and Ocean Shore Segment (May 1978).

I regret that we were unable to have this to you on Monday, June 19 and thank you again for granting us the extra time to file our statement.

Sincerely,

Thomas V. O'Neill

TVO/st

STATEMENT OF THE
INDEPENDENT LIQUID TERMINALS ASSOCIATION
NORTHEASTERN REGION AND NEW JERSEY MEMBERS OF ILTA
ON THE
DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE
STATE OF NEW JERSEY COASTAL ZONE MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT DATED MAY 1978

The Independent Liquid Terminals Association welcomes this opportunity to comment on the draft Environmental Impact Statement concerning proposals for the Bay and Ocean Shore Segment of the New Jersey Coastal Zone Management Program.

The ILTA is a national trade association which represents more than 40 independent companies in the business of providing "for hire" bulk liquid terminal and storage services. The independent liquid terminal operator does not own the products stored in its storage tanks as ownership remains with our customers major petroleum or chemical companies. Therefore, since we do not own the product in our tanks, our principal business is leasing storage space to owners of the commodities in our facilities and providing the customers warehousing and terminaling services. It is estimated that New Jersey ILTA members handle annually over 70 million barrels of bulk liquid commodities essential to New Jersey and other nearby manufacturers and producers.

On a national level, ILTA members operate bulk liquid terminaling and storage facilities on the East Coast, Gulf Coast, West Coast, Great Lakes and inland waterways of the United States. We operate 150 deepwater and barge terminals in 35 states including Hawaii. These 150 terminals have at any given time the capacity to hold conservatively at least 85 million barrels of bulk liquid commodities and annually it is estimated that they handle over 300 million barrels of bulk liquid commodities.

These terminals are an important part of the national commodity distribution system. They interconnect and provide services to the various modes of bulk liquid carriers namely tankers, tank barges, tank trucks, rail cars, and pipelines. The

commodities handled, stored and transferred include a wide variety of chemicals, crude oil, refined petroleum products, animal fats and oils, molasses and vegetable oils. Other commodities handled also include items for the pharmaceutical, cosmetics and drug industries. As such the terminals are a vital link in the manufacturing and production chain of commerce in this state and directly and indirectly play an important role in providing employment and contributing to a healthy economy.

We realize that in our business that if we do not handle the commodities properly it can result in a number of environmental problems, some of them quite grave. That is why we do not dispute the need for uniform, informed and reasonable regulation. Since the inception of the New Jersey Coastal Zone Management Program the New Jersey ILTA members have been active in monitoring its progress and providing input at various meetings. Although the New Jersey members of ILTA endorse the concept of sound reasonable coastal zone management we are deeply concerned over the approach outlined in the draft EIS document.

Additionally, our concern is centered on the relatively short period of time given to review the latest 350 page document when considered against the vast overall impact of such a program on the future of our State. As stated in the document and by NOAA-OCZN representatives, participation in the Coastal Zone Management Program is voluntary in nature. Therefore, should the State of New Jersey elect to participate in the program sufficient time should be allowed for its citizens, private and industrial to submit opinions on what type of participation they wish the State to undertake. It was apparent at the public hearings our representatives attended that environmental groups, private citizens and industry were generally displeased for various reasons with the actions taken by the New Jersey Department of Environmental Protection (DEP) to date. Sufficient time to adequately comment was not available and the format and content of the proposed program was seriously questioned by all parties.

The major concern the ILTA has at this stage in the Coastal Management proposal is that the program as we understood it was to address the portion of the State now covered by the New Jersey Coastal Area Facility Review Act (CAFRA Act), that is a limited portion of shore line designated as requiring special protection by the elected officials of the State. However, at the hearings on the draft EIS it was apparent to many participants that the DEP proposals alluded to in the document are intended to go beyond the CAFRA boundaries mandated by the State Legislature. Indeed the policies mentioned throughout the text and especially in Chapter Three take the form of "legislation by regulation". Several passages (pages 165, 250-263) clearly indicate the intent of DEP to extend the currently existing or proposed policies designated for the CAFRA zone, which essentially restrict any kind of industrial development to extremely small low economic and employment yielding businesses to zones not delineated in the first segment of the Coastal Zone program. This procedure could be construed as implementing regulations and policies before comment is solicited. Heavy industry essential to the economic well being of the State and region is effectively restrained in the CAFRA zone.

While the DEP-OCZM might say industrial development would be allowed under CAFRA rules, not one industrial application has been approved since the rules were implemented in 1973. Naturally it is reasonable for us to fear the same result may occur should the CAFRA zone or policies applied to it be extended under the questionable authority of other acts as stipulated in the document. However, many heavy industries dependent upon waterfront activities are already located or should be able to locate or be sited in areas designated for such uses. The DEP-OCZM fails to identify these areas. We have cause for apprehension since the course for restrictive policies for all New Jersey coastal areas already seems to be set by DEP. No protection exists such as grandfathering for existing facilities. Not only do the proposed policies and regulations seem to limit new development in

industrialized areas but, also they seem to prevent expansion of existing facilities in areas designated for such authorized uses. Policies of this nature seem to erode even further the ability of a municipality to determine its own destiny.

DEP might say that regional needs should be considered and indeed it is the intent of the Federal Coastal Zone Management Act to insure regional considerations are weighed before a coastal policy is promulgated. However, only selected application of regional need is employed by the DEP in their policies despite the fact that for a viable regional economy to grow and prosper current industrial areas must also be allowed to grow and prosper. If those activities are severely restricted by regulations as they seem to be then curtailment will occur and regional economic needs will suffer. ILTA views the coastal management program envisioned by Congress as a comprehensive, rational and reasonable tool to enable states with coastal regions to create well balanced management plans for their coastal areas.

Throughout history our nation has depended upon its coast for participation in foreign and domestic maritime commerce as well as for conservation and recreational purposes. Therefore, it would seem that Congress intended that a proper balance be developed for these activities in a good management strategy. Yet it appears that DEP is tipping the scale towards the protection of the environment disregarding the needs of other activities on the coast and further extending their power beyond the CAFRA zone which has been designated by the legislature as the environmentally sensitive area of the State. No reasonable alternative seems to exist that will allow for industrial growth zones as these areas are not identified by the DEP program. The policy seems so restrictive industry must ask: "Will we be able to continue to operate?"

Regional needs dictate the maintenance of industrial well being and growth in certain areas. These areas should be clearly defined to assure that the economy of the State will be protected as well as the coastal zone. Page 258 describes what New Jersey DEP desires to delineate as coastal zone in New Jersey. ILTA submits that this must be determined by the State legislature. However, DEP seems to assume

they do not need to consult either the public or the legislature as they repeatedly state that their policies will apply to all coastal areas in the future. Therefore, in our opinion the hearings held on the Ocean and Bay Segment should not be considered as the forum for input on regulations covering other areas of the State beyond the current CAFRA zone area.

The Federal Coastal Zone Management Act stipulates that areas beyond the current CAFRA zone on the Delaware River need not be included in the State's Coastal Management Program as the salinity content of the water is less than 5 parts per thousand. Here again, New Jersey DEP-OCZM in our opinion is exceeding the mandate of the Legislature as well as going beyond the requirements of the federal statute.

In conclusion, we request that further time be given to allow substantive comment on the draft EIS. We also wish to insure that the public will receive sufficient notification on the availability of the final EIS on this subject. Secondly, ILTA feels the public hearings held on the Coastal Management Program Bay and Ocean Shore Segment should not be construed as a hearing covering policies procedures or regulations intended to cover areas outside the current CAFRA limits to include the Delaware River waterfront north of the current CAFRA limits, nor north of the limits of CAFRA from the Raritan Bay, Arthur Kill, Kill van Kull, Hudson River to the New York-New Jersey state line. Thirdly, it is recommended separate public hearings be called by the DEP concerning its proposed rules and regulations outlined as Chapter 3 of the draft EIS before adoption. These hearings should be held in the communities into which DEP wishes to extend its CAFRA jurisdiction. Very few if any public hearing participants realized that the public hearings on the draft EIS were also to be the forum for comment on the new rules cited as NJAC 7:7E-1.1 et seq. (Docket number DEP 013-78-04). Rules of such magnitude cannot be adequately addressed as they have been to date.

Again, we welcome the opportunity to participate in the democratic process of public comment. However, we feel that a reasonable and rational approach to the mandate given by Congress to provide equal and balanced uses of the coastline for recreational, economic and industrial purposes has yet to be adequately addressed by the New Jersey program.

cc: David Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Department of Environmental Protection
P.O. Box 1889
Trenton, New Jersey 08625

REGIONAL PUBLIC RELATIONS, INC.

SIXTY PARK PLACE
NEWARK, NEW JERSEY 07102

(201) 622-4141

July 3, 1978

Mr. David Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Department of Environmental Protection
P.O. Box 1889
Trenton, New Jersey 08625

Dear Mr. Kinsey:

Enclosed please find a statement of the New Jersey
Independent Liquid Terminals Association on proposed
rules on Coastal Resource and Development Policies.

Sincerely,

REGIONAL PUBLIC RELATIONS, INC.

Thomas V. O'Neill
Vice President

TVO/st
Enclosure

STATEMENT OF THE NEW JERSEY
INDEPENDENT LIQUID TERMINALS ASSOCIATION
ON PROPOSED RULES
ON COASTAL RESOURCE AND
DEVELOPMENT POLICIES

INTRODUCTION

The New Jersey Independent Liquid Terminals Association (ILTA) welcomes this opportunity to comment on rules proposed by the Department of Environmental Protection (DEP) concerning Coastal Resource and Development Policies.

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On a national level, ILTA members operate bulk liquid terminaling and storage facilities on the East Coast, Gulf Coast, West Coast, Great Lakes and inland waterways of the United States. We operate 150 deepwater barge terminals in 35 states including Hawaii. These 150 terminals have at any given time the capacity to hold conservatively at least 85 million barrels of bulk liquid commodities and annually it is estimated that they handle over 300 million barrels of bulk liquid commodities.

These terminals are an important part of the national commodity distribution system. They interconnect and provide services to the various modes of bulk liquid carriers namely tankers, tank barges, tank trucks,

rail cars, and pipelines. The commodities handled, stored and transferred include a wide variety of chemicals, crude oil, refined petroleum products, animal fats and oils, molasses and vegetable oils. Other commodities handled also include items for the pharmaceutical, cosmetics and drug industries. As such our terminals are a vital link in the manufacturing and production chain of commerce in this state and directly and indirectly play an important role in providing employment and contributing to a healthy economy.

We realize that in our business that if we do not handle commodities entrusted to us properly it can result in a number of environmental problems, some of them quite grave. That is why we do not dispute the need for uniform, informed and reasonable regulation. Since the inception of the New Jersey Coastal Zone Management Program the New Jersey ILTA members have been active in monitoring its progress and providing input at various meetings. Although the New Jersey members of ILTA endorse the concept of sound, reasonable coastal zone management we are deeply concerned over the approach outlined in the proposed rules.

USURPATION OF LEGISLATIVE FUNCTIONS

The proposed rules upon which we comment can be found in a 350 page volume entitled State of New Jersey Coastal Management Program Bay and Ocean Shore Segment.¹ This is a draft Environmental Impact Statement submitted to the United States Department of Commerce.

¹ We note in passing that this draft EIS violates President Carter's recently announced policy that such documents should be limited to 150 pages, or 300 pages if particularly complex issues are involved. We trust the final EIS will comply with the new federal policy.

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We contend that the Department lacks the legal authority to adopt these policies as rules. The Legislature defined the CAFRA zone in 1973. Only the Legislature can change those boundaries. We do not believe that DEP can get around the Legislature by relying in part upon the Wetlands Act and riparian laws for its proposed imposition of CAFRA policies upon municipalities excluded by the Legislature from the CAFRA zone in 1973.

The Federal Coastal Zone Management Act does not mandate this bureaucratic expansion. Indeed, participation in the Federal program is voluntary. Now that five years have passed since enactment of the CAFRA law, the Governor and Legislature might want to re-examine New Jersey's participation in this program as well as the 1973 decision to take away from local government and to delegate to DEP jurisdiction for coastal facility siting.

After such re-examination the Legislature might even agree to the expanded boundaries DEP seeks. And then, the Legislature might delegate to DEP authority to adopt the 144 pages of rules which appear in the May 1978 draft EIS. But that is not the procedure being followed now. Instead, DEP seeks to adopt rules and policies which will apply beyond the Bay and Ocean Shore Segment to the second segment which the Legislature hasn't even defined. How can you regulate when you don't know what areas you are regulating?

We realize that we are not the first or only commentators to contend that only the Legislature may define the coastal zone. And, we realize that

DEP rejects this argument.² Given this impasse, the issue can not be resolved in comments upon the rules, but must be referred to either the legislative or judicial arena.

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We object to the procedure by which these rules are being adopted. We don't believe rules of this consequence should be considered as part of a draft EIS.

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We contend that the Department lacks the legal authority to adopt these policies as rules. The Legislature defined the CAFRA zone in 1973. Only the Legislature can change those boundaries. We do not believe that DEP can get around the Legislature by relying in part upon the Wetlands Act and riparian laws for its proposed imposition of CAFRA policies upon municipalities excluded by the Legislature from the CAFRA zone in 1973.

The Federal Coastal Zone Management Act does not mandate this bureaucratic expansion. Indeed, participation in the Federal program is voluntary. Now that five years have passed since enactment of the CAFRA law, the Governor and Legislature might want to re-examine New Jersey's participation in this program as well as the 1973 decision to take away from local government and to delegate to DEP jurisdiction for coastal facility siting.

After such re-examination the Legislature might even agree to the expanded boundaries DEP seeks. And then, the Legislature might delegate to DEP authority to adopt the 144 pages of rules which appear in the May 1978 draft EIS. But that is not the procedure being followed now. Instead, DEP seeks to adopt rules and policies which will apply beyond the Bay and Ocean Shore Segment to the second segment which the Legislature hasn't even defined. How can you regulate when you don't know what areas you are regulating?

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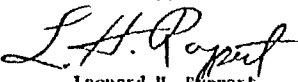
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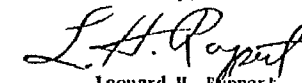
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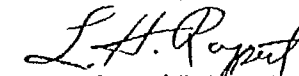
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- Federal Consistency with Approved Coastal Management Programs Regulations ("Consistency Regulations"), 15 CFR 930.1 et seq., 43 F.R. 10510, (March 13, 1978).
- Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.
- Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.
- Riparian Statutes, N.J.S.A. 12:3-10 et seq., 12:5-3 et seq., 13:1B-13.2 et seq.

The New Jersey Petroleum Council (NJPC) believes that upon reviewing these and other appropriate legal authorities it will be abundantly clear that the Plan is not ready for approval at this time. The New Jersey Plan represents a bona fide effort by the state's Office of Coastal Zone Management (OCZM) to develop a workable management scheme which satisfies the many rigorous requirements set forth in the CZMA. However, in our review of this document, we have noted numerous serious deficiencies which must be ameliorated before any action is taken to approve the Plan.

Furthermore, it is the NJPC's contention that the analysis of the environmental impact of this proposal is deficient in many respects. Consequently, for these reasons alone, this

- I. Does the Plan satisfy all of the requirements of section 306(h) of the CZMA and the approval regulations concerning the submittal of segmented plans?

Section 306(h) of the CZMA authorizes the Secretary of Commerce to permit a state to submit its coastal zone management plan for approval in segments, provided that "the state adequately provides for the ultimate coordination of the various segments into a unified program." The key factor in determining if a segment should be processed for ultimate approval is whether the remaining segments of the federally-defined coastal zone can be integrated into the Plan and will be subject to the same or similar planning and control mechanisms as the first segment submitted for approval. Thus, the statute requires that segmented approval only be permitted in cases where a unified, legally enforceable plan can and will be in place as soon as is reasonably practicable.

This fact is duly noted in the approval regulations which require a state to demonstrate that:

- "(2) A timetable and budget have been established for the timely completion of the remaining segment(s); and
- (3) The State will exercise policy control over each segment of its management program prior to and following its integration into a complete State management program. Demonstration of this control will include (i) completion of the management boundary determination

proposed federal action should be delayed until the substantive and procedural requirements of NEPA are satisfied as required by law.

Finally, it must be noted that these comments are limited in their scope. They merely address those issues which, in the NJPC's opinion, need to be identified and discussed at this time. By no means should these comments be construed to be an exhaustive, all-inclusive compilation of the petroleum industry's opinion(s) regarding this proposed action.

for the entire coastal zone throughout the State and (ii) consideration of the national interest throughout the State's entire coastal zone in the planning for and siting of facilities cited in § 923.52." [15 CFR 923.61(a)] (Emphasis added.)

These two (2) regulatory provisions establish several crucial prerequisites which must be met in order to approve the submission of a management plan in discrete segments and to approve the initial segment of a plan:

- A timetable must be established for the completion of the plan for the remaining segments; and,
- A state must demonstrate that it possesses the requisite legal authority to manage and regulate land and water uses in the entire federally-defined coastal zone before any segment can be approved; and,
- A state must delineate and adopt the boundary of the entire federally-defined coastal zone before any segment can be approved.

The DEIS includes one (1) chapter, with less than one (1) page, devoted to a discussion of the necessary action steps which must be completed in order to develop a consistent, complete and unified plan for the four (4) segments of the entire coastal zone. [DEIS, pp.197-199] The DEIS refers to research which has been completed and to future detailed coastal planning efforts, but nowhere does the document specifically outline those tasks which must be completed in

order to develop a comprehensive plan for the entire coastal zone.

The most distressing aspect of this failing is the total absence of any discussion of the legislative and regulatory steps which must be taken to authorize the OCZM to define the entire coastal zone and to manage and regulate development in the other segments, notably the Delaware River Area and the Northern Waterfront Area. The legal authority which the OCZM relies upon to manage and regulate development in the Bay and Ocean Shore Segment at this time is virtually useless for the purpose(s) of controlling development in the other segments of the coastal zone.

The New Jersey Plan cites four (4) state statutes as the source of the DEP's authority to delineate and adopt a boundary for the entire coastal zone and manage coastal resources in this area. This list includes "the DEP enabling legislation, CAFRA, the Wetlands Act and riparian statutes..." [DEIS, p.10] Each of the latter three statutes is limited in their geographic scope and their jurisdiction.

The CAFRA law does not authorize the OCZM either to regulate or conduct any planning efforts outside of the defined "coastal area." [N.J.S.A. 13:19-4] The boundaries set forth in CAFRA can only be expanded by an act of the Legislature;

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and, likewise, only the Legislature can authorize the OCZM to extend the planning mandate of CAFRA to other areas of the state or insert this mandate as a consideration of other related state legislation.

The Wetlands Law is similarly defective. This law is limited geographically to an area south of Raritan Bay. [N.J.S.A. 13:9A-2] Additionally, delineated wetlands may not be regulated pursuant to the management strategy developed pursuant to CAFRA. [NJSA 13:19-19] By virtue of this expressed provision of CAFRA, these two (2) laws must be administered separately and may not be integrated or combined to expand the statutorily defined boundary of the "coastal area."

Lastly, the Riparian Statutes only authorize the state to exercise its control over development which takes place upon riparian lands within the established pierhead lines. Hence, any development in these other segments which does not take place on such riparian lands would not be subject to control by the state. Thus, where CAFRA and the Wetlands Law cannot be used to regulate development in these other segments of the coastal zone, the state's reliance upon the riparian statutes to manage these coastal resources is ill-founded.

The enabling legislation which established this agency is cited as the fourth statutory bases for the DEP to define

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the entire coastal zone and to extend its planning powers to regulate development in this expanded coastal area. The DEP enabling legislation, which was enacted in 1970, states that the department shall have the power to

"... f. Prepare, administer and supervise Statewide, regional and local programs of conservation and environmental protection, giving due regard for the ecology of the varied areas of the State and the relationship thereof to the environment, and in connection therewith prepare and make available to appropriate agencies in the State technical information concerning conservation and environmental protection, and cooperate with the Commissioner of Health in the preparation and distribution of environmental protection and health bulletins for the purpose of educating the public, and cooperate with the Commissioner of Health in the preparation of a program of environmental protection." [NJSA 13:1D-9]

These generalized powers were conferred upon the DEP three (3) years before the Legislature empowered the OCZM to execute the functions and exercise the powers prescribed by CAFRA in the statutorily defined "coastal area." (See Toms River Affiliates v. DEP, 140 N.J. Super. 135, 355 A.2d 679 (1976).)

The enactment of CAFRA represents a grant of specified administrative powers for the execution of statutory policies. The exercise of these powers is of necessity restricted and restrained by the declared policy of the statute and the criteria, standards, terms and conditions which attach to this legislative action. The issue of who retains the power to

define the coastal area and to plan for and manage the use of coastal resources in the state's entire coastal zone touches very basic, well-recognized principles of law in New Jersey.

The courts in New Jersey have long recognized the distinction between making law and the execution of law. In the execution of law, administrative action "cannot subvert, enlarge or deviate" from the principles and policies set forth in an agencies' enabling statute. [Abelson's Inc. v. N.J. State Bd. of Optom. 5 N.J. 412, 75 A.2d 867, 872. (Sup. Ct.) (1950)] Similarly, it is an established rule of New Jersey law that "an administrative agency is a creature of the Legislature" and that "its primary function is to carry into effect the will of the State as expressed by its limitations, and its powers are limited by the statute creating them." [Rosenthal v. State Employees Retirement System, 30 N.J. Super 136, 103 A.2d 896, 899 (Super. Ct., App. Div.) (1954)] (See also Nagy v. Ford Motor Co., 6 N.J. 341, 78 A.2d 709 (1951).)

The Legislature's subsequently expressed intent regarding the geographic limitations of the DEP's planning and administrative functions for the purpose of conserving coastal resources is quite clear. This subsequently enacted measure is unambiguous in stating the limitations and authorities of the DEP with regard to this matter. As such, the DEP's

authority to conduct planning efforts and to regulate development to fulfill the mandate of CAFRA cannot be enlarged upon by virtue of previously enacted enabling legislation authorizing this agency to exercise certain generic functions. This very fact is recognized in the DEIS. (See DEIS, p.219.)

This interpretation is supported when these statutes are read in pari materia. The DEP enabling statute authorizes the agency to "prepare, administer and supervise regional programs of conservation and environmental protection." [NJSA 13:1D-9(f)] CAFRA is a subsequently enacted measure which authorizes a regional plan for the limited purposes expressed therein. CAFRA is a clear statement of the Legislature's intent both to authorize the DEP to execute certain functions and exercise certain powers in the defined "coastal area," while reserving to the Legislature alone the power to expand the boundaries of the coastal zone and exercise or delegate the authority to regulate the conservation and use of coastal resources in the balance of the state. (See N.J.S.A. 13:19-19.) The OCZM is not empowered to define and adopt a boundary for the State's coastal zone, nor is this agency empowered to plan for and manage uses of coastal resources in the other segments.

The foregoing discussion raises serious questions regarding the state's efforts to identify the necessary steps which

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must be taken to regulate development in the entire coastal zone and thereby complete a comprehensive, unified plan. [15 CFR 923.61(a)(2)] The crucial question of the need for legislative action to authorize the OCZM to plan for and regulate development in the remaining segments is not adequately discussed in the DEIS. The discussion in the DEIS regarding future steps which must be taken to complete the plan is too vague to allow one to determine whether the state-wide program will proceed in an orderly fashion, and whether it will adequately reflect the needs and capabilities of the entire state coastal zone. [DEIS, pp.198-199] (See also 15 CFR 923.61(c).)

Furthermore, this discussion points up the fact that the state currently does not possess the requisite legal authority to exercise effective management and control of the remaining segments prior to their integration into a unified plan, thereby failing to satisfy the requirements of the approval regulations in this regard. [15 CFR 923.61(a)(3)] This too raises questions concerning full compliance with the requirement to consider the national interest in planning for and siting of certain enumerated facilities. [supra] (See also 15 CFR 923.52.) Although the DEIS alleges that the national interest considerations set forth therein apply to the entire

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coastal zone, this contention is of dubious force and effect when the state's authority to plan for and regulate the siting of such facilities in the remaining segments is non-existent. [DEIS, p.176]

Lastly, and perhaps most importantly, the Plan does not include a delineation of the entire coastal zone as required. [15 CFR 923.61(a)(3)] (See also 15 CFR 923.30.) The segmentation option recognizes and allows for the dynamic processes involved in a planning effort of this magnitude to take place over an extended period; however, the regulations require one (1) constant to be present during the planning process for the remaining segments:

".... Regional agencies and local governments may play a large role in developing and carry out such segmented programs, but there must be a continuing State voice throughout this process. This State involvement shall be expressed in the first segment of the management program in the form of evidence that (1) the boundaries of the coastal zone for the entire State have been defined (pursuant to Subpart D)" (15 CFR 923.61(c).) (emphasis added)

The DEIS fails to delineate an explicit boundary for the entire coastal zone. The DEIS recognizes this shortcoming and erroneously downplays its significance:

"In conclusion, the inland boundary of the coastal zone beyond the boundary of the Bay and Ocean Shore Segment is a proposal to be

debated and refined as DEP conducts further coastal planning in 1978. The final boundary for the entire coastal zone will depend in part upon the legal authority to carry specific coastal policies to be defined for these regions of the coast. At this stage, however, the most important boundary is the one defined in Chapter Two for the Bay and Ocean Shore Segment." [DEIS, p.263] (emphasis in the original)

The proposal discussed in the DEIS is the approval of this Plan under section 306(h) of the CZMA. [DEIS, p.i] The key concerns are set forth in the NEPA summary. [supra] However, one major consideration has obviously been overlooked, i.e. the OCZM is not empowered by state law to define and adopt the boundary of the state's entire coastal zone. To date, its efforts in this regard have only resulted in a "proposed," not a legally adopted, enforceable delineation of the coastal zone.

In conclusion, the NJPC contends that the very decision to permit submission of a segment for approval is, at this time, unauthorized since the state has failed to delineate the entire coastal zone as required. This deficiency, in and of itself, militates against any further consideration of approval of this segment at this time. Submittal of this segment for approval can only take place after the boundary of the entire coastal zone has been defined and adopted in accordance with the specific requirements of federal regula-

tions. [See 15 CFR 923.30] At this time, the OCZM is not authorized by law to delineate and adopt a boundary for the entire coastal zone. Furthermore, the state's inability to demonstrate that it possesses adequate legal authority to regulate development in the remaining segments at this time and its failure to specify the necessary steps which must be taken to complete a unified, enforceable Plan are significant deficiencies which must be ameliorated before any action is taken to approve this segment.

II. The next broad issue to be considered is whether the New Jersey Plan satisfies all of the procedural and substantive requirements of the CZMA, as set forth in the federal approval regulations. Discussion of this issue must be divided into several sub-issues relating specifically to the requirements of the CZMA, most notably sections 305 and 306, and the corresponding provisions of the federal approval regulations. This issue has been subdivided in the following manner:

- A. Does the DEIS demonstrate that the state currently possesses the requisite legal authority to enforce the proposed Plan in accordance with the requirements of the CZMA and approval regulations?
 - 1. Are the legal authorities relied upon by the state adequate to ensure the implementation of the proposed Plan in accordance with the requirements of section 306(b)(7) and 306(d) of the CZMA?
 - 2. Does the Plan satisfy the requirements of section 306(e)(1) of the CZMA?
 - 3. Does the Plan satisfy the requirements of section 306(e)(2) of the CZMA?
 - 4. Does the Plan satisfy the requirements of section 305(b)(6) and 306(c)(6) of the CZMA?
- B. Does the Plan include legally adopted, specific policies and standards which satisfy all the requirements of the CZMA and approval regulations?
 - 1. Does the Plan satisfy the requirements of section 305(b)(2) of the CZMA and the approval regulations?

2. Does the Plan satisfy the requirements of section 307(f) of the CZMA?
 3. Does the Plan satisfy the requirements of section 306(c)(1) of the CZMA?
- C. Does the Plan define the boundary of the entire coastal zone as required by section 305(b)(1) of the CZMA?
- D. Does the Plan satisfy the requirements of section 306(c)(8) of the CZMA and the approval regulations?
- E. Does the Plan satisfy the requirements of sections 307(c) and (d) of the CZMA and the approval regulations?
- F. Does the Plan satisfy the requirements of sections 306(c)(2)(A) and (B) of the CZMA?
- G. Does the Plan satisfy the requirements of section 306(c)(4) of the CZMA and the approval regulations?
- H. Does the Plan satisfy the requirements of section 305(b)(8) of the CZMA and approval regulations?
- A. Does the DEIS demonstrate that the state currently possesses the requisite legal authority to enforce the proposed Plan in accordance with the requirements of the CZMA and approval regulations?

Section 306(b)(7) of the CZMA requires that the Secretary find that the state has the necessary authority to implement the management program and satisfy the requirements of sections 306(d) and (e) of the Act. A necessary and related requirement is the establishment of an organizational structure to implement and administer the program. [CZMA, §305(b)(6), §306(c)(6)] Additionally, section 306(e)(2) specifically requires

that the plan prescribe a legally enforceable method of "assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude uses of a regional benefit." These statutory requirements raise numerous issues which must be discussed in detail.

1. Are the legal authorities relied upon by the state adequate to ensure the implementation of the proposed Plan in accordance with the requirements of section 306(b)(7) and 306(d) of the CZMA?

The DEIS identifies three (3) principal state statutes as the basis for the state's authority to implement the Plan as proposed. [DEIS, p.9] As noted previously, the state does not possess the necessary authority to regulate development in the entire coastal zone as required.

The mere identification of the legal authorities upon which a state relies is not sufficient. The CZMA and the approval regulations require that the Secretary, or her designated representative, assess the adequacy of the state's legal authority. [15 CFR 923.41(a)(1)] The regulations emphasize that the authority on which a state relies is a crucial element of the enforcement of program policies. [15 CFR 923.40(a)] Ultimately this authority must be adequate to meet four statutory requirements and must form the foundation of the control technique chosen by the state.

Prior to approval, the State must identify adequate legal authorities which must include the ability to:

- "(1) Administer land and water use regulations in conformance with the policies of the management program;
- (2) Control such development as is necessary to ensure compliance with the management program;
- (3) Resolve conflicts among competing uses;
- (4) Acquire appropriate interests in lands, waters or other property as necessary to achieve management objectives." [15 CFR 941(c)]

The OCZM relies to a great degree upon the CAFRA statute for implementation of the Plan in the Bay and Ocean Shore Segment. The OCZM has continually maintained that this statute indeed provides adequate authority to prescribe and administer a management plan, in the area now designated as the Bay and Ocean Shore Segment. A careful analysis of this legislation casts doubt on the OCZM's position in this regard.

It is not clear whether CAFRA was intended to authorize the OCZM to develop a comprehensive coastal zone management plan; or, whether the Act was merely a regulatory measure which required the OCZM to protect and preserve unique resources in the coastal area. Although the law was enacted in June of 1973, the legislation was initially

introduced in June of 1972, a full four months prior to the enactment of the federal CZMA. During nearly a year of pendency in the Legislature, the original bill was amended substantially. Yet there is no evidence of any intent to amend the legislation to include an expressed provision to authorize the OCZM to develop a comprehensive management plan to satisfy the requirements of federal law.

It is interesting to note that CAFRA, which was enacted over eight (8) months after the CZMA was passed by Congress, never uses the phrase "coastal zone management plan." The choice of the phrase "environmental design strategy", rather than "coastal zone management plan", was a conscious choice by experienced legislators who knew and appreciated the deep roots of the concept of "home rule" in New Jersey. The very thought of a state "management plan" is repugnant to municipal leaders in New Jersey.

This choice of words not only evidences a clear intent to avoid a clash with municipalities in the coastal area, but it also indicates that the Legislature intended to restrict the OCZM's authority. The statute uses the phrase "environmental design strategy" i.e., a plan to

achieve certain specified goals. The goals of CAFRA are quite clear:

"... to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile areas from inappropriate development and provides adequate environmental safeguards for the construction of any facilities in the coastal area." [N.J.S.A. 13:19-2]

This is not a mandate to undertake comprehensive planning or to develop a "management plan" for the coastal area. The primary function of CAFRA was to prepare an environmental inventory of coastal resources and assess their capability "to absorb and react to man-made stresses." [N.J.S.A. 19-16] In other words, the OCZM was to identify specific "areas of particular concern" in the coastal area and prescribe minimum safeguards in order to mitigate adverse impacts on coastal resources in the balance of this region.

This is why there are no permissible uses per se identified in the Plan. CAFRA authorizes the OCZM to veto development in the coastal area, but it does not authorize the state to direct facility development to take place at sites which "achieve wise use of the land

and water resources of the coastal zone." [CZMA, § 303 (b)] This very deficiency was noted over a year ago by the OCZM's own consultants:

"Negative authority of various kinds does exist, particularly CAFRA, riparian, air and water permits. The state thus has the authority to veto specific undesirable proposals... It does not, however, have effective mechanisms of positive authority to guide facility siting into those areas which might be preferred..." [Who's in Charge? Government Capabilities to Make Energy Facility Siting Decisions in New Jersey, Center for Environmental Studies, Princeton Univ. (July 1977), p.205]

Without the authority to guide facility development to the most preferred site for wise utilization of coastal resources, it is difficult to perceive how the OCZM can rely upon this statute as the nexus of their authority to implement their proposed Plan. A policy promulgated pursuant to this Plan is only effective in its ability to prohibit - not provide for - uses of coastal resources.

This misplaced reliance upon CAFRA is at the root of this dilemma. The OCZM views CAFRA as a comprehensive planning statute, which it is not. This statute merely authorizes the OCZM to develop an environmental design strategy for the expressed purposes of state law, i.e., to develop a regulatory tool to enable the Commissioner

to enhance his ability to make permit decisions concerning specific applications for certain kinds of development in the coastal area. Ironically enough, the Commissioner's mandatory findings prior to the issuance of a permit do not require that he find that any proposed development is in accordance with the operative provisions of the "environmental design strategy." [N.J.S.A. 13:19-10]

The confusion regarding the function and purpose of this "environmental design strategy" is, in part, engendered by the statute itself. The statute requires that the "management strategy" be submitted to the Governor and Legislature, but it is absolutely silent regarding what these parties must do when they receive it. [N.J.S.A. 13:19-1] The uncertainty regarding this issue, as well as the question of the adequacy of CAFRA to ensure implementation of the strategy once it is developed, is perhaps best illustrated by this quote from the OCZM's Legal Inventory:

"In New Jersey the Coastal Area Facility Review Act N.J.S.A. 13:19-1 et seq. (sic) requires preparation of an environmental design to be presented to the Governor and Legislature. Such design to be implemented must be based on sufficient legal authority The ultimate goal of the legal component of the management

program is to develop a framework within which the state alone or in concert with local levels of government has the legal authority to implement the policies developed." CAFRA: Legal Inventory, p.1, (undated) (emphasis added)

It is evident from this statement that if the OCZM must "develop a framework" to implement the strategy the CAFRA statute by itself does not provide adequate legal authority to implement any coastal zone management plan.

The NJPC concurs with the OCZM's conclusion that the CAFRA statute by itself does not provide adequate legal authority to implement the policies of the proposed coastal zone management plan. The NJPC submits that this is due to the fact that this statute was never intended to serve this purpose. However, before rendering a final judgment regarding the OCZM's "networked" authority to implement its Plan, one must examine the other statutes relied upon by this agency.

Riparian Statutes

The extant riparian statutes have been construed to limit the State's authority to grant, transfer or otherwise alienate its rights to submerged tidal lands out to the existing bulkhead and pierhead lines. (Baily v.

Driscoll 19 N.J. 363, 117 A.2d 265 (1955)] The state does not presently possess a mechanism to pass title to or lease lands beyond this point out to the three (3) mile limit, which is the seaward boundary of the coastal zone. (See 15 CFR 923.32.) This too was noted by the aforementioned Princeton University study:

"However, since the Natural Resources Council is not authorized under New Jersey's existing riparian statutes to make grants of land within the three-mile limit, seaward of the pierhead and bulkhead line, special legislation may be required before any oil or gas pipelines can enter New Jersey's waters from the Baltimore Canyon Trough OCS area." Who's in Charge? Government Capabilities to Make Energy Facility Siting Decisions in New Jersey, Princeton Univ., (July 1977) at p.47]

On this issue, the report concludes by saying (Id. p.199):

"As noted in Chapter II, the legislature has not delegated to DEP (or to any other executive branch agency) authority to issue riparian grants in the offshore waters of the state, outside the pierhead and bulkhead lines. There seems to be no legal question that the state has this power, but as of today it remains in the hands of the legislature itself. To resolve any uncertainty associated with riparian actions in this critical area - for oil or gas pipelines, for example - we recommend that the legislature act soon to pass necessary legislation."

While proposed legislation to ameliorate this deficiency is pending before the state Legislature at

this time, the CZMA requires that such legal authorities be in place prior to approval of a state plan. In view of this deficiency, the state's submittal for approval of the Plan is untimely, and NOAA's proposed action is premature. The OCZM has no legislative authority to plan for and regulate the use of submerged lands in the coastal zone and the associated impact(s) of such uses on the waters of the coastal zone.

Wetlands Law

The inclusion of the Wetlands law as an element of the Plan's legal authorities does little to enhance the adequacy of the Plan. As noted previously, the Wetlands law is very limited geographically and otherwise.

The Wetlands law is special purpose legislation which cannot be integrated into the OCZM's Plan established pursuant to CAFRA.

The extension of CAFRA's design strategy to regulate development in delineated wetland is expressly prohibited by statute:

"The provisions of this act shall not apply to those portions of the coastal zone regulated pursuant to enforceable orders under the Wetlands Act, c. 13:9A-1 et seq., section 16 however shall apply to the entire area within the boundaries described herein." [N.J.S.A. 13:19-19]

Clearly, wetlands cannot be included in the segment subject to the OCZM's policies developed pursuant to CAFRA. It is difficult to perceive how, if at all, this statute augments the OCZM's alleged authority to regulate coastal development.

In conclusion, the state does not presently possess the requisite authority to manage the resources of the entire coastal zone. The state has limited authority under three (3) pre-existing statutes to veto development in certain areas.

This segregated authority is restrictive, not permissive, in nature. As such, it fails to ensure that the stated policies and goals of the CZMA will be achieved as required.

2. Does the Plan satisfy the requirements of section 306(e)(1) of the CZMA?

The CZMA recognizes three (3) control techniques for enforcement of a plan's requirements. [CZMA §306(e)] The approval regulations acknowledge that a plan which proposes direct state control may have to rely on various state laws and the powers of several executive agencies to comply fully with these regulatory requirements. [15 CFR 923.42(d)]

The DEIS identifies the New Jersey Plan as a direct state control or "Technique B" plan. [DEIS, p.10] The DEIS cites several statutes as the sources of authority for this direct state control approach:

"In particular, the DEP enabling legislation, and the Coastal Area Facility Review Act (CAFRA), Wetlands Act, and riparian and shore protection statutes, as well as the Department of Energy Act, provide a strong mandate and basis for direct State agency involvement in key decisions involving the coastal region." [DEIS, p.10] (emphasis added)

As noted previously, CAFRA, the riparian statutes and the Wetlands Act do not provide adequate legal authority to ensure that the policies of the Plan will be implemented to achieve the goals of the CZMA. The OCZM's failure to recognize and account for the numerous deficiencies of these statutes is, in and of itself, contra the expressed requirements of the approval regulations. [15 CFR 923.42(d)(3)] The approval regulations concerning networking require a state Plan to identify:

- (i) the extent to which existing, special purpose laws adequately reflect and will be operated in conformity with the State's comprehensive management policies;

(ii) the extent to which and when rules and regulations of networked authorities need to be altered; and

(iii) the extent to which executive orders intra-departmental or interagency agreements, memoranda of understanding or agreements are binding and enforceable. [15 CFR 923.42(d)]

Nowhere in the DEIS is there an analysis of the extent to which special purpose legislation and regulations need to be altered. Similarly, though the DEIS includes one (1) unsigned, draft memorandum of understanding, there is no evidence in the DEIS that such agreements are legal, binding or enforceable under New Jersey law. Notwithstanding the comments set forth in the approval regulations, each state must determine, for itself, if state law authorizes such agreements between agencies of the Executive Branch of government. (See 15 CFR 923.42(d) (4) (5).) Furthermore, evidence of the legality of such agreements should be included in a state Plan to ensure that networked authority will achieve the goals of the CZMA. Finally, the DEIS fails to demonstrate how other state agencies exercising jurisdiction over development in the coastal area will be required to exercise their authority in conformance with the state plan. Although numerous other state agencies have jurisdiction over development

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in the coastal area, the DEIS includes only one (1) draft inter-agency agreement with the DOE.

In view of the limitations of the legal authority which the OCZM has chosen to rely upon to implement the Plan, it is difficult to perceive how the state opted for the "Technique B" approach. The state does not in fact have direct control over development in the coastal area. As the DEIS notes, the statutory authority cited by the OCZM is a basis for direct state "involvement" in certain decisions involving the coastal area. [DEIS, p.10] However, this authority is limited by the zoning powers of local municipalities:

"The New Jersey Coastal Program can influence other levels of government with coastal responsibilities, even though it may have no direct statutory power over their decisions. Municipal and county governments, and regional and interstate agencies have significant planning and, in some cases, regulatory roles in the Segment." [DEIS, p.173]

The DEIS notes that the authority of local governing bodies will continue without change. [DEIS, p.172] More importantly, the DEIS states that:

"A locally approved proposal cannot be constructed without receipt of relevant state approvals, and likewise, a state-approved project must receive local approvals." [DEIS, p.172] (emphasis added)

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Given this fact, how can the New Jersey Plan be considered a direct state control program?

The OCZM, and the DEIS, confuse state "involvement" with direct state control. Under New Jersey law, the degree of state involvement is limited in two (2) ways. First, the state's authority is limited by the existence of concurrent zoning powers at the municipal level. Secondly, the OCZM's involvement in coastal decisions is only prohibitive in nature. The OCZM can prohibit development in the coastal area but it cannot direct development to occur at site which is deemed most preferable.

The OCZM has recognized this weakness and "is continuing to explore the feasibility of new legislation" to remedy this dilemma. [DEIS, p.245] In view of this fatal defect, it is submitted that the New Jersey Plan cannot be approved as a "Technique B" program.

3. Does the Plan satisfy the requirements of section 306(e) (2) of the CZMA?

Section 306(e) (2) of the CZMA requires each state to demonstrate that it has the necessary authority to adopt and enforce "a method for assuring that local land and water use regulations do not unreasonably restrict or

exclude land and water uses of a regional benefit." The approval regulations detail the specifics of what is required to meet this statutory mandate. (See 15 CFR 923.13, 43.)

The Plan attempts to define those facilities which are deemed to be beneficial to the coastal region as required. [DEIS, p.192] (See 15 CFR 923.13(a)(1).) At the outset, it should be noted that it is not clear if all facilities in the national interest are to be considered uses of a regional benefit. This point should be clarified especially with respect to energy facilities which are deemed to have a regional benefit. (See CZMA § 306(c) (8).) Furthermore, it would be helpful if the list provided were more specific. For example, the phrase "energy facilities using oil" is confusing. Does this include pumping stations or surge tankage? Or, is this term restricted to facilities like oil-fired generating stations? It would also be helpful if the OCZM were to disclose why certain uses were excluded from the definition, e.g. casinos, hospitals, port facilities and light or heavy industrial development. These uses undoubtedly have greater than local significance.

More importantly, the CZMA and the approval regulations require that each state plan include a lawfully adopted provision which provides a method to assure that uses of a regional benefit will not be excluded or restricted by local regulations. [15 CFR 923.42(a)] As noted previously, under New Jersey law the OCZM is not authorized to override local zoning decisions which prohibit or restrict the development of uses of a regional benefit. On the contrary, CAFRA expressly preserves the integrity to local zoning authority and powers. [N.J.S.A. 13:19-19] Thus under New Jersey law, local governments can exercise absolute veto control over uses of a regional benefit. This too was recognized in the previously cited Princeton University study (id., p.10):

"Under CAFRA, the state may veto a project that received approval at the local level. The corollary, however, is not true. That is, the state is not authorized by this law to override a local government's denial of any project. Thus, while CAFRA is an innovative state statute, its authority and jurisdiction are restricted."

The regulations cite three (3) specific examples of acceptable techniques which may be used to assure that local regulations do not impede the development of uses of a regional benefit. [15 CFR 923.43(c)] New Jersey

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has apparently opted for the first technique cited, by listing four (4) basic sources of State authority to insure that local regulations will not restrict or exclude the defined uses of a regional benefit:

- the Board of Public Utilities (BPU; and
- the power of eminent domain; and
- the "fair share" housing guidelines of the Department of Community Affairs; and
- the state's coastal laws.

The broad definition of public utility set forth in the DEIS is misleading. The Board's jurisdiction to regulate the operations of energy facilities involved in interstate commerce is questionable. The regulatory authority of several federal agencies preempts the Board from exercising jurisdiction over such activities. (See N.J.S.A. 48:2-15.) Even the courts in New Jersey have recognized this limitation on the Board's power. (See Erie R. Co. v. State 51 N.J. Super 61, 143 A.2d 224 (1958).)

The Board's authority is also limited by virtue of its statutory grant of authority. The Legal Inventory

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cites an important case which held that the Board's statutory powers do not make it a statewide planning and zoning agency. (In Re Public Service Gas and Electric 100 N.J. Super 1, 11 (1969).) (See CAFRA: Legal Inventory, pp.89-90.)

The Legal Inventory goes on to note that the Supreme Court of New Jersey has held that the Board has a duty to achieve an accommodation between energy needs and local land use needs. (In Re Monmouth Consolidated Water Co. 47 NJ 251, 259-60 (1966).) Given these limitations upon the Board's jurisdiction and authority, this agency hardly seems to be equipped to satisfy this requirement of the CZMA.

Perhaps more importantly, although the DEIS attempts to cite some authority to meet this requirement, it fails to provide a method to ensure that the Board will exercise its authority in such a way as to implement the policies and objectives of the Plan. Nowhere in the proposed State regulations is there a provision to be adopted which specifically prescribes an override mechanism or conflict resolution mechanism. Likewise, the proposed memorandum of understanding between the DOE and DEP makes

no mention of the Board, nor does it bind the DOE or Board to exercise these powers when necessary.

With respect to the other sources of authority cited, several comments need to be offered at this time. First, there are no legally enforceable documents in the DEIS which bind the other state agencies cited, notably the Department of Community Affairs (DCA) and the Department of Transportation (DOT), to exercise their powers in a manner which will assure that uses of a regional benefit will not be unreasonably restricted or excluded by local regulations. Secondly, the DCA's authority to enforce the yet to be developed "fair share" guidelines is doubtful at best. Finally, the DEIS fails to indicate if any earmarked funds are available to the Green Acres Program which can be used to satisfy this requirement of the CZMA.

In conclusion, the Plan fails to adopt an enforceable method to assure that uses of a regional benefit will not be restricted or excluded by local regulations. At the present time, the state does not possess the requisite legal authority to satisfy this statutory requirement. Further consideration of any action to approve the Plan

for this segment must be deferred until this requirement can be satisfied.

4. Does the Plan satisfy the requirements of sections 305(b)(6) and 306(c)(6) of the CZMA?

Sections 305(b)(6) and 306(c)(6) require that each state plan include a description of the organizational structure proposed to implement the program, including a delineation of the responsibilities and interrelationships of local, state and regional agencies in the process. The approval regulations specify what is required for the Plan to satisfy this requirement:

"In order to fulfill the requirements of subsections 305(b)(6) and 306(c)(6) of the Act, States must describe the organizational structure that will be used to implement and administer the management program. This description must include a discussion of those State and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(c)(2)(B); 306(c)(7); 306(d)(1) and (2); 306(e)(1) and (2) and 307(f). Further, the State must describe the relationship of these administering agencies to the State agency designated pursuant to subsection 306(c)(5) of the Act." [15 CFR 923.45(a)]

The DEIS briefly describes the responsibilities of other state agencies which relate to the Plan. [DEIS, p.170-171] However, it does not describe an organiza-

tional structure to insure that these agencies will exercise their authority to implement the Plan. The Plan must provide for and adopt a process whereby these agencies in exercising their authority are effectively integrated into the coastal zone management program.

Similarly, the DEIS does not include any legal documents which bind these other agencies so that they will exercise their authority to implement the policies and goals of the Plan. This is clearly required by the approval regulations, and, more specifically, by section 306(e)(2) of the CZMA. (See also 15 CFR 923.4(d)(3).)

Lastly, the DEIS fails to indicate that local and regional agencies have been integrated into the required organization to implement the Plan. [DEIS, p.172-173] This topic will be discussed in greater detail herein-after.

The Plan, as proposed, does not adequately describe the necessary organization to implement this program. As such, the Plan fails to satisfy the requirements of the CZMA and approval regulations cited herein.

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- B. Does the Plan include legally adopted, specific policies and standards which satisfy all the requirements of the CZMA and approval regulations?

Section 305(b)(2) of the CZMA requires each state plan to identify what shall constitute permissible land and water uses in the coastal zone. For segmented programs, this requirement extends to both approved segments and segments which will be approved in the future. [15 CFR 923.61]

Section 306(c)(1) of the CZMA requires each state plan to be adequate to carry out the stated policies and objectives of the Act as set forth in section 303. This statutory requirement has, in turn, been interpreted to require state management programs to be comprehensive, specific and complete.

The approval regulations note this requirement repeatedly.

Section 923.1(c)(2) of the regulations states:

"(c) In summary, the requirements for program approval are that a State develop a management program that ...

- (2) Reexamines 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."

This requirement is reiterated in section 923.3(a)(1) and (2):

- "(1) That the management program is comprehensive. It must address and provide for the management of those significant resources, uses and areas that the State has determined, through its development process and in consultation with all relevant interests as required by the Act and these regulations, make its coastal zone a unique, vulnerable or valuable area requiring various forms of management;
- (2) That the policies, standards, objectives and criteria upon which decisions pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision-makers who must take actions pursuant to or consistent with the management program." (emphasis added)

This emphasis on specificity is consistent with Congress' intent to authorize the approval of only those state plans which are adequate to achieve the policies and objectives of the CZMA.

Additionally, the CZMA requires each management plan to incorporate the requirements of the Clean Air Act and Clean Water Act in the process of developing the management program. [CZMA § 307(f)]

Lastly, the CZMA expressly requires that management plans must be "developed and adopted" in accordance with state law.

{CZMA § 306(c)(1)} (See also CZMA § 304(ii).)

1. Does the Plan meet the requirements of section 305(b)(2) of the CZMA and the approval regulations?

The Plan describes a process to define permissible uses in the coastal area. [DEIS, pp.19-164] It is submitted that the CZMA requires a definition of permissible uses, not just the establishment of a process to determine what uses will be encouraged or prohibited.

The process developed by the state includes three (3) steps:

- Location Policies; and,
- Use Policies; and,
- Resource Policies. [DEIS, p.22-23]

Each set of policies set forth in the DEIS is far more complex than those which were included in the previously published Coastal Management Strategy for New Jersey (Strategy) (Sept. 1977). This increased complexity is probably most evident in the CLAM process. It is very difficult to agree with the statement in the DEIS that:

"Any interested person should be able to fill in the characteristics of a particular site and determine its acceptability under the Coastal Program." [DEIS, p.23]

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Individuals who are able to secure the services of trained professionals will be able to use this process to assess the acceptability of a specific site using the CIAM method. Those who are unable to afford such assistance may not be able to gain a clear understanding of the program.

The most striking deficiency in the program is the absence of any energy facility siting criteria. This, undoubtedly, is due to the fact that the DOE Master Plan has not yet been adopted. Nonetheless, it is extremely difficult to assess the impact of this Plan on the energy industry in view of this failing.

The location policies, as set forth in the "Water Acceptability Table" require comment. [DEIS, p.45] The Plan establishes policies for dredging, yet this activity is not listed in CAPRA as subject to regulation by the OCZM. (See N.J.S.A. 13:19-3(c).) Regardless of this point, dredging of any kind should not be prohibited outright. Existing and proposed water-dependent uses should not be deprived of water access. Each application for the construction of a facility which requires dredging should be reviewed independently

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to assess the impact of this proposed activity. The facility's construction should only be prohibited if the impact of this activity is deemed unacceptable.

The prohibition of pipeline development in certain water areas does not appear to be valid or practical. Pipeline construction in these areas will result in temporary environmental disruption. However, the prohibition of pipeline construction in certain areas would not appear to be warranted in all cases. Practically speaking, such prohibitions may preclude the development of pipeline corridors along preferred routes. It is recommended that there be no blanket prohibitions of pipeline construction in any water areas at this time.

Similarly, the prohibition of effluent discharge(s) in certain water areas is also overly restrictive. If these criteria are used to review consistency certifications for existing NPDES permits, numerous dischargers in the state would be required to modify their effluent handling facilities. Similarly, otherwise acceptable development may be precluded by virtue of these prohibitions. Each application for the construction of a facility with a point source discharge should be

reviewed independently. There should be no blanket prohibition of effluent discharge(s) in certain areas.

With regard to the Plan's use policies, again the most striking deficiency is the absence of the Department of Energy's Master Plan. This will be discussed in detail hereinafter.

The policy with respect to onshore support bases is too restrictive. This use is not encouraged anywhere in the Bay and Ocean Shore Segment. While this type of supply activity is unique to the oil and gas industry, it is not unlike similar water-related uses which are presently operating in ports within this area. It is important to note that such a facility may also serve as a storage site for spill containment and cleanup equipment. It is especially important that such equipment be located in close proximity to the current and proposed lease sites. In short, it is recommended that this use be encouraged at suitable sites in the Segment.

The policy with respect to oil refineries should define what is meant by the terms "expansion" and "modification." Additionally, this policy should reflect the need to consider the national interest in possible refinery expansion proposals.

The policy concerning storage facilities is in some respects unenforceable. The Plan attempts to regulate uses outside the coastal zone by banning all new storage facilities from sites outside of the port areas of New York/New Jersey and the Delaware River. The OCZM clearly does not have the authority to ban such uses in areas outside of their jurisdiction. This policy should include an expressed exemption for small tankage required to refuel vessels and underground tankage required at service stations. Furthermore, the policy should define the term "hazardous liquid substances."

The policy with respect to surge tankage should be reconsidered. This policy should permit the construction of such facilities in the Segment when it is necessary or when no other site is acceptable for this purpose. Given the overly restrictive policy regarding storage facility construction, surge tankage would be prohibited virtually anywhere along the most likely pipeline corridors.

Does the Use Policy concerning tanker terminals pertain to deepwater port construction? If so, the policy should specify that it applies to such facilities.

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As it is presently written, this policy would be interpreted as banning deepwater ports off the New Jersey Coast:

"New tanker terminals will be discouraged on other parts of the coast, including the Bay and Ocean Shore Segment." [DEIS, p.145]

Finally, the Plan does not include any use policies with respect to ocean dumping, dredging and dredge spoil disposal. In view of the importance of these uses, the OCZM is urged to adopt policies regarding whether, or under what conditions, these activities will be permitted to take place in the coastal zone, rather than include these issues in the Location Policies.

The Resource Policies, which were more appropriately referred to as performance standards in the previously published Strategy, require greater specificity to bring them into compliance with the requirements of the approval regulations. These policies, or more properly performance standards, must be sufficiently explicit to indicate what uses will be permitted in the Segment and under what conditions.

The failure to include the permit processing regulations and permit decisions in the Plan is, in part,

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responsible for uncertainty concerning what specific conditions will be imposed on development in the Segment. The Plan, as proposed, must include all of the materials relied upon by the OCZM to evaluate the compatibility of specific proposals with the Resource Policies, as well as specify what conditions must be met to initiate development. The failure to include these documents in the Plan and DEIS circumvents the CZMA's requirement of full public knowledge of and participation in the Plan's development. [CZMA § 306 (c)(1)] This failing also deprives interested parties of an opportunity to review what specific conditions must be met to comply with the otherwise general requirements of the Resource Policies.

In conclusion, further refinement, greater specificity and the inclusion of certain key documents in the Plan is required to satisfy this requirement of the approval regulations.

2. Does the Plan meet the requirements of section 307(f) of the CZMA?

Pursuant to Section 307(f) of the CZMA, each state plan must incorporate the requirements of the Clean Air Act and the Clean Water Act in its coastal zone manage-

ment plan. The approval regulations recognize this requirement but apparently fail to grasp the significance of this statutory mandate:

"With respect to the document submitted for approval, it is sufficient that the program state that the requirements of the FWPCA and CAA are the minimum water and air pollution control requirements applicable to the management program and are incorporated by reference." [15 CFR 923.44 (c) (1)]

This regulation goes on to state:

"Incorporation of the air and water quality requirements should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management." [supra] (emphasis added)

The legislative history of the CZMA evidences Congress' intent to ensure that these legal requirements were factored into and considered in the process of developing an approvable management plan.

Section 307(f) had its genesis in the legislation which was enacted in 1972. (See Legislative History of the Coastal Zone Management Act of 1972, as Amended in 1974 and 1976, Senate Comm. on Commerce, (Dec. 1976).) The Conference Committee amended the entire bill and substituted a compromise House bill in its stead. The compromise House bill included the new section 307(f).

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which was, in effect, embodied in section 307(e) of the original House bill. With regard to this provision, the House report stated:

"Those laws [CAA and CWA] continue to apply, and the specific requirements as to their implementation must be taken into account in the development of the States' programs." [supra, p.234] (emphasis added)

The fact that this provision is found in the section which concerns interagency coordination and cooperation and the national consistency requirements is no accident. This represents a conscious choice to elevate our Nation's air and water resources to their proper place: resources in the national interest.

To be truly meaningful, the requirements of the CAA and CWA must be considered and factored into the planning process used to develop the management plan. Upon reviewing the Plan's Use Policies, especially those set forth in the housing, resort and transportation sections, it is apparent that the requirements of the CAA have not been adequately considered in the process of developing the program. [DEIS, pp.133-150]

The Plan encourages development in the coastal zone which will admittedly exacerbate those air pollution

problems which have led to New Jersey's designation as a non-attainment area, particularly for hydrocarbons and photochemical oxidant precursors.

Development of this type obviously will increase air pollution from "indirect sources", yet the Plan includes no enforceable provisions to mitigate these problems. On the contrary, one (1) of the basic coastal policies encourages the concentration of development in a manner which will undoubtedly create air pollution problems and may have a significant impact on water quality.

The Plan should be re-evaluated to account for and incorporate these crucial factors in the program planning and development process. Until such time as these important factors are incorporated in the planning and development of the program, the Plan fails to satisfy this requirement of the CZMA.

Additionally, it should be noted that the failure to consider these factors in the Plan's development casts serious doubts on the OCZM's consideration of facilities in the national interest. The consideration given to the siting of energy facilities in the coastal

zone, which are in the national interest, is seriously deficient if such development would be precluded in the future due to inadequate consideration of these factors in the development of the Plan. With the existing development pressures in the Segment, especially in Atlantic City, adoption of the Plan's proposed Use Policies will undoubtedly preclude future energy facility development from occurring, while degrading the air and water resources of this area at an alarming rate.

3. Does the Plan meet the requirements of section 306(c)(1) of the CZMA?

Section 306(c)(1) of the CZMA requires the substantive requirements of each State plan be "developed and adopted" before approval. NOAA has proposed approving the New Jersey Plan, but the Plan has yet to be adopted by the state. This proposed federal action is violative of this expressed requirement of the CZMA. Submittal of the New Jersey Plan for approval should be deferred until its substantive provisions are fully enforceable by virtue of their lawful adoption in accordance with the requirements of state law.

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C. Does the Plan define the boundary of the entire coastal zone as required by section 305(b)(1) of the CZMA?

Section 305(b)(1) of the CZMA requires each state to identify the boundary of the coastal zone as defined by the Act. (See CZMA § 304(1).) The DEIS, however, does not define and adopt a boundary for the entire coastal zone for under New Jersey law this power rests in the Legislature's hands.

The need to define and adopt the inland boundary for the entire coastal zone is extremely important. A comment in the approval regulation perhaps best illustrates why this requirement must be satisfied prior to any action to approve the Plan.

"The primary purpose in defining the coastal zone boundary is to assist coastal residents and property owners, resource users and governmental entities to understand the geographic scope of the management program and to assist them in determining whether, where and how they are affected by the program. Accordingly, it is anticipated that the program submission should contain maps, charts or other graphics appropriate to understanding the provisions and geographic scope of the management program." [15 CFR 923.31 (f)]

Since the Plan does not include a definition of the boundary for the entire coastal zone, it fails to satisfy the requirements of the CZMA and the approval regulations.

D. Does the Plan satisfy the requirements of section 306(c)(8) of the CZMA and the approval regulations?

Section 306(c)(8) of the CZMA provides that, prior to approving a state's management program, the Secretary must

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find that the plan "provides for adequate consideration of the national interest in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature." It is submitted that the approval regulations, which merely require the establishment of a process to consider the national interest, do not satisfy this requirement of the CZMA. The CZMA mandates that all agencies with permitting authority in the coastal zone must consider the national interest in their decision-making, not just establish a process to consider such uses. The approval regulations, however, specifically require that each state plan:

- "(1) Describe which national interests in the planning for and siting of facilities (which are necessary to meet requirements that are more than local in nature) were considered during program development and the sources relied upon for such consideration;
- (2) Indicate how and where the consideration of these national interests is reflected in the substance of the management program including, where appropriate, indication of when and where national interests in identified facilities may compete or conflict with other national interests in coastal resource conservation. In cases of such conflict, the program shall indicate how the conflict has been or can be weighed and resolved;
- (3) Describe a process for continued consideration of identified national interests (in facilities which

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are necessary to meet requirements that are more than local in nature) during program implementation, including a clear and detailed description of the administrative procedures and decision points where such interests can be considered." [15 CFR 923.52(b)]

Furthermore, as to energy facilities each state plan must:

- "(1) Consider any applicable interstate energy plan of program developed pursuant to section 309 of the Act; and
- (2) Meet the requirements for an energy facility planning process pursuant to the requirements of § 923.14, except that:
 - (i) States with a management program approved prior to October 1, 1978, that do not meet the requirements of subsection 305(b)(8) of the Act shall:
 - (A) Describe existing or developing management to energy facility planning and siting; and
 - (B) Describe briefly the status of the planning process required pursuant to subsection 305(b)(8) of the Act." [15 CFR 923.52(c)]

Thus, each state plan must develop and adopt a program which satisfies or will satisfy these requirements of the CZMA.

[CZMA § 306(c)(1)]

The DEIS describes the resources and facilities in the national interest, and briefly indicates where identified national interest facilities may conflict with the concomi-

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tant interest in preserving and protecting national interest resources in the coastal zone. [DEIS, pp.177-186] There are inconsistencies evident in this discussion, notably with regard to maintaining air quality in the coastal zone. The preservation and "allocation" of this one resource impacts upon the other national interests and the Use Policies identified in the Plan. However, the failure to consider this important factor adequately raises serious doubts regarding the adequacy of the OCZM's consideration of other national interest resources and uses in and of the coastal zone.

For example, the proposed Use Policies permit certain OCS-related activities to locate in the Segment, as well as, other areas of the coastal zone. Nonetheless, other Use Policies, regarding uses which are not in the national interest, encourage development in these same areas which will result in emissions which will exacerbate the state's existing air quality problems. Thus, emission increments for the purposes of PSD permits may be exhausted by encouraged development which is not of national concern and/or such development may cumulatively contribute to the future non-attainment status of air quality in the Segment and the

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state. Subsequent proposed development of facilities in the national interest may be precluded from the coastal region or, for that matter, the entire state. This points up both the need to consider this crucial resource in the development of the plan and establish a more comprehensive process for continued consideration of national interest issues.

The DEIS describes the proposed process to consider the national interest on a continued basis. [DEIS, p.177] The proposed process is not adequate to satisfy the requirements of the CZMA. First, it must be noted that the CAFRA permit procedures are not included in the Plan document. Secondly, the permit process by itself does not consider the full range of factors which must be analyzed collectively and cumulatively as development takes place in and affecting the coastal zone. The permit review process is limited to an analysis of discrete development projects. It is unclear what, if any, inter-relationship there will be between the Plan's proposed national interest considerations and this review procedure. Discrete projects by themselves may be deemed acceptable, yet there is no overall process to relate these individual proposals to the much broader national interest considerations. Finally the

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statements of national interest are not in whole included as legally adopted, enforceable elements of the Plan.

The DEIS also notes that the OCZM has interpreted the phrase "public welfare" in the CAFRA statute to assure that the national interest will be considered as described in the program. [DEIS, p.177] However, this phrase is extremely limited in its scope. CAFRA is purely a creature of state law. As such, the state's interest in its inhabitants' public welfare cannot transcend the state's federal constitutional limitations. CAFRA is quite clear in indicating what public's welfare it is concerned with:

"The Legislature finds and declares that ... certain portions of the coastal area are now suffering from serious adverse environmental effects ... that would preclude ... uses which ... are in the best long term social, economic, aesthetic and recreational interests of all people of the State; ... it is in the interest of the people of the State that all the coastal area should be dedicated to those kinds of uses which promote the public health, safety and welfare ..." [NJSA 13:19-2] (emphasis added)

The permit review process is a response mechanism which is extremely limited in scope and purpose. This proposed review procedure is not an adequate process to consider the national interest on a continued basis, and it is doubtful if it could ever serve this purpose. The process as described

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does not include a "clear and detailed description of the administrative procedures and decision points where such interests can be considered." [15 CFR 923.52(b)(3)] The Plan must be revised to include an adopted, legally enforceable and comprehensive process to consider the national interest which is clearly detailed and specific.

The CAFRA, Riparian and Wetlands laws provide an administrative appeal of any permit decision by the state. [See DEIS, pp.174-175] The DEIS does not indicate if these appellate bodies are authorized by law to resolve "disputes which involve national interest use and resource protection conflicts" as required. [15 CFR 923.52(h)] Nor does the Plan include these national interest considerations as expressed, legally adopted and enforceable provisions of state law which could be reviewed by these bodies if they are authorized to do so. The Plan must satisfy this requirement before approval by the Secretary.

The DEIS does not adequately describe the status of current OCZM-sponsored energy facility planning programs as required. [15 CFR 923.52(c)(2)(i)] The DEIS briefly notes that the Department of Energy is preparing a Master Plan which "will become a primary resource for energy facility

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siting decisions by DEP." (DEIS, p.171) Surely these important programs deserve more ink than this and most assuredly even this very brief description fails to satisfy this requirement of the CZMA and the approval regulations.

In conclusion, the Plan does not satisfy this requirement of the CZMA, nor does it even meet the less stringent requirements of the approval regulations.

- E. Does the Plan satisfy the requirements of sections 307(c) and (d) of the CZMA and the approval regulations?

Section 307(c)(3)(A) of the CZMA requires applicants for federal licenses or permits for activities which affect the coastal zone to append to their application(s) "a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program." A similar provision applies to governmental agencies' applications for federal assistance. [CZMA § 307(d)] The approval regulations require that each adopted state plan include "the provisions they will use to implement the Federal consistency requirements" of the CZMA. [15 CFR 923.53(a)]

The DEIS provides a brief description of the Plan's consistency review process. [DEIS, pp.186-187] It identifies the federal activities, licenses and permits which will be subject to review by the OCZM. [DEIS, pp.187-192]

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At the outset, it must be noted that several points require clarification. The Plan should clearly indicate when or if modifications and renewals of federal permits or OCS plans will require a consistency certification. While the Plan's consistency review is extended to certain activities in a seventeen county area, it fails to specify whether such activities are included in this category. [DEIS, p.187] The OCZM should reconsider the boundary of the area in which activities will require a consistency certification. The area, as defined, is large and densely populated and the OCZM will be inundated with many federal assistance and permit applications filed by parties in this area. It is suggested that this area be decreased in size or that the OCZM delimit the number and types of federal permit which must be reviewed for consistency.

The DEIS notes that public notice and public hearings will be provided pursuant to the Plan. [DEIS, p.187] Duly adopted regulations should be promulgated to implement this specific requirement of the CZMA.

It is submitted that duly adopted regulations should be included in the Plan to reveal to interested parties:

- What information will be required for consistency reviews?

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- Who will conduct consistency reviews?
- How will these reviews be conducted?
- How and when mediation will be utilized?
- What specific criteria will be examined to certify to the consistency of a federal activity?
- What time frame will be prescribed to complete the review process?

(See 15 CFR 930, Subpart D.)

The last two (2) questions posed are especially important both to the potential applicant and interested parties. The DEIS does not indicate what specific criteria will be used to conduct a consistency review. If the OCZM intends to utilize the Plan's coastal policies to conduct consistency reviews, these policies must be reviewed and revised. In their current form, these policies would severely restrict and even preclude essential activities in the specified "consistency" area. For example, the Location Policies would prohibit essential maintenance dredging in the entire coastal zone. It is recommended that these policies be revised or that the Plan include separate, specific criteria for consistency reviews.

Finally, consideration should be given to the establishment of a multiple permit review procedure and/or a mandatory

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schedule to expedite the consistency review process. (See 15 CFR 930.59.) The inclusion of such a provision in the Plan would appear to be consistent with New Jersey's stated policy to coordinate and expedite the permit review process at the state level.

F. Does the Plan satisfy the requirements of sections 306(c)(2)(A) and (B) of the CZMA?

Sections 306(c)(2)(A) and (B) require the Secretary to find that:

"The State has: (A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, and areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency ... (B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this section and with local governments, interstate agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; ..."

The DEIS identifies those local and regional agencies which the OCZM has been in contact with regarding the Plan.

[DEIS, pp.172-173] It also discusses the history of the OCZM's involvement with representatives of local governments.

[DEIS, pp.247-249] Unfortunately, the DEIS omits any reference

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to various agencies, boards and commissions of the state which possess statewide or regional planning or regulatory powers and which influence or affect development in the Coastal Zone, for example, the Economic Development Authority, the State Health Council, the Mortgage Finance Agency, etc. The OCZM must also coordinate the Plan with the ongoing programs administered by such agencies.

The approval regulations also require each State Plan to:

"Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that will be used to resolve these conflicts." [15 CFR 923.56(a)(2)] (emphasis added)

The DEIS does not identify any such conflicts with local, regional or interstate plans. This is an extremely crucial oversight or failing, especially in light of the current autonomous zoning authority of local governments. The DEIS notes that there may be conflicts between the Plan and local zoning regulations which the OCZM is powerless to rectify at this time but fails to indicate how such conflicts may be resolved in the future. [DEIS, p.173] Further, the OCZM apparently has been unable to reach the stage of identifying such conflicts with regional and interstate agencies. [supra] It is submitted that the CZMA requires that lawful agreements

must be entered into to bind such agencies to act in a manner which is consistent with the Plan.

The CZMA and the approval regulations also require each adopted plan to include an effective mechanism to notify local governments of any management program decision, as defined, which conflicts with any local zoning regulations. [CZMA § 306(c)(2)(B)] (See also 15 CFR 923.47(a).) The Plan does not include a duly adopted procedure to establish such a process which is enforceable under New Jersey law. [15 CFR 923.57(f)(1)]

In conclusion, the Plan fails to satisfy the noted substantive and procedural requirements of the CZMA and the approval regulations. These deficiencies must be rectified before any action is taken to approve the Plan at this time.

G. Does the Plan satisfy the requirements of section 306(c)(4) of the CZMA and the approval regulations?

Section 306(c)(4) of the CZMA provides that prior to approval of any state plan the Secretary must find that "the management program and any changes thereto have been reviewed and approved by the Governor." The approval regulations specifically require that the Plan must include documentation to the effect that the Governor:

- "(1) Has reviewed and approved as State policy the management program, and any changes thereto, submitted for the approval of the Assistant Administrator;
- (2) Has designated a single State agency to receive and administer implementation grants;
- (3) Attests to the fact that the State has the authorities necessary to implement the management program; and
- (4) Attests to the fact that the State is organized to implement the management program." [15 CFR 923.47(a)]

No such documentation is included in or with the Plan. Suffice it to say, no action to approve this Plan can be taken until the necessary documentation is provided by the Governor.

H. Does the Plan satisfy the requirements of section 305(b)(8) of the CZMA and approval regulations?

Section 305(b)(8) of the CZMA requires each state plan to include "a planning process for energy facilities likely to be located in the coastal zone," however, no management program must meet this requirement before October 1, 1978. [CZMA § 306(b)(5)]

The New Jersey Plan does not include this element in the program. The DEIS notes that the Department of Energy is preparing a Master Plan which "will become a primary resource for energy facility siting decisions by the DEP." [DEIS, p.171]

However, the Plan otherwise does not provide a description of the Master Plan and how it relates to the status of the developing OCZM energy facility planning process as required. [15 CFR 923.52(c)] In view of the overlapping interests of these two state agencies, the Plan should include a more explicit description of how the Master Plan will relate to the OCZM's efforts to fulfill this requirement. Additionally, the Plan should provide a more thorough discussion of the status of the development of this OCZM planning process. The DEIS merely notes that the "DEP and DOE will take steps to conduct a joint Major Energy Facility Study." [DEIS, p.197] The completion of this crucial element is required by October 1. What steps must be taken and when will they be completed?

The approval regulations clearly require the OCZM to develop a separate and unique planning process to accommodate energy facilities in the coastal zone. [15 CFR 923.14(a)] It remains to be seen if such a process can be established in a timely manner, given the duality of state agency functions and the complexity of the task.

The absence of any significant comment(s) regarding this requirement may be due, in part, to the Legislature's recent efforts to enact legislation to assign the energy facility

siting function to the Department of Energy and authorize it to exercise certain attendant powers. On June 1, 1978, the Senate of the State of New Jersey passed an Administration-backed measure which would significantly alter the existing authorities of and relationship between the Department of Energy and OCZM. (S-1179)

The enactment of this legislation would undoubtedly diminish the OCZM's powers in this regard by shifting the decision-making authority for energy facility siting to another agency of state government. (See S-1179, Sections 18, 19, 20, 25 and 31.) This legislation has some desirable provisions concerning using the power of eminent domain to acquire state-owned riparian lands out to three mile limit for energy facility development and, the establishment of a mechanism to override local zoning decisions. However, enactment of this legislation would require extensive-time-consuming changes to crucial aspects of the Plan.

The CZMA requires that before a state management plan is approved, it must be complete. (CZMA § 305(d)) In view of this impending action, which would significantly affect the proposed Plan, it is evident that this critical part of the program is far from complete. Approval of this program should

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III. Does the DEIS satisfy the requirements of NEPA and the guidelines adopted to implement the objectives and policies of this legislation?

NEPA imposes several substantive and procedural requirements upon federal agencies to consider the impact(s) of proposed actions in order to ensure that careful consideration is given to the environmental implications of major federal initiatives. (42 USC 4321 et seq.) The most important of these is the requirement to prepare a detailed environmental impact statement to assess and review "every major Federal action affecting the quality of the human environment." (42 U.S. 4332(s) (C); Calvert Cliffs' Coord. Com. v. U.S., 449 F.2d 1109 (D.C. Cir. 1971))

At the outset, it would be helpful to review the courts' views concerning the purpose of the NEPA process and this impact statement requirement. It is an acknowledged fact that the requirements of NEPA were established specifically to effectuate substantive changes in the decision-making processes employed by Federal agencies. (See M.P.I.R.G. v. Butz, 498 F.2d 1314 8th Cir. En Banc, 1974.) The courts have gone so far as to note that the requirements of NEPA were designed to counter an agency's inevitable bias in favor of a proposal which it has developed or recommended. (See EDF v. Corps of Eng., 470 F.2d 8th cir. 1972.)

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be deferred until appropriate amendments to the Plan can be developed and implemented as necessary. With the advent of OCS exploration efforts, and hopefully some day resource development activities, full approval of this Plan at this time would be unwise and premature. Approval of the program, including the granting of consistency powers, would result in irreparable economic harm to many affected parties left to cope with changing authorities, requirements and policies as these state agencies grappled with implementing this legislation and re-developing many crucial elements of the Plan.

On the other hand, if the Legislature does not enact this legislation the OCZM must include an energy facility siting process in the Plan by October 1, 1978. To date, there is nothing in the Plan to indicate what is the current status of this developing planning process and it is doubtful that this requirement can be satisfied in a timely fashion.

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The NEPA process was established both to sensitize and enhance the decision-making process and to inform and involve the interested public in decisions to initiate major federal action(s). Thus, it is absolutely essential that an impact statement provide a decision-maker with a "detailed and careful analysis of the relative environmental and socio-economic merits and demerits of the proposed action." NRDC v. Callaway 524 F.2d 79, 92 (2nd. Cir. 1972). While perfection is not required, "nothing less than a complete impact statement" can fulfill the law. EDF v. Froehlke, 473 F.2d 346, 350 (8th Cir. 1972). (See also Cape Henry Bird Club v. Laird, 359 F.Supp. 404, 411-412 (W.D.Va.) aff'd. 484 F.2d 453 (4 Cir. 1973).)

An impact statement must also provide "sufficient information and material, contemplated by Congress, in a form suitable for the enlightenment of others concerned" with regard to the impacts of the proposed action. NRDC v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972). Environmentalist commentators appear to concur with the holding in the Gillham Dam case which established the following standard to evaluate the adequacy of impact analysis by an EIS:

"At the very least NEPA is an environmental full disclosure law The "detailed statement" required by § 102(2)(C) should, at a

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minimum, contain such information as will alert the President, the Council on Environmental Quality, the public and, indeed, the Congress, to all known possible environmental consequences of proposed agency action. [EDF v. Corps of Eng., 325 F.Supp. 728, 759 (E.D. Ark., 1971)] (See Rogers, "The National Environmental Policy Act," Federal Environmental Law, ELI(1974).)

However, an impact statement must not only "catalog environmental facts," but it should also explain fully the underlying reasoning and conclusions in order for the courts and the general public to assess and critically evaluate the agency's decision. EDF v. Froehlike, supra, 473 F.2d at 351; Ely v. Veide, 451 F.2d 1130, 1139 (4th Cir. 1971).

In short, an impact statement must provide an unbiased analysis of detailed facts regarding all known environmental impacts of a proposed federal action; and, the statement must provide an agency's reasoning and conclusions regarding its decision to proceed on its chosen course.

NEPA requires that a detailed impact statement address:

- "(i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

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- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." [42 USC 4332(1)(C)]

The guidelines established by the Council on Environmental Quality (CEQ) expand upon these requirements and detail what is specifically required to fulfill the mandate of NEPA. (See 40 CFR 1500.1.) The CEQ's requirements are embodied in the approval regulations which require the following:

- "(1) A description of the proposed action;
- (2) A description of the environment affected;
- (3) The relationship of the proposed action to land and water use plans, policies, and controls for the area;
- (4) The probable impact of the proposed action on the environment;
- (5) Alternatives;
- (6) Probable adverse environmental effects which cannot be avoided;
- (7) The relationship between local, short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (8) Irrevocable or irretrievable commitments of resources that would be involved in the proposed action should it be implemented; and
- (9) Consultation and coordination with others." [15 CFR 923.62(a)]

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Some comment must be addressed the the requirement to describe the proposed action. [15 CFR 923.62(a)(1)] The federal action proposed is the approval of the New Jersey Plan, as set forth in Chapter 3 of the DEIS. The CZMA requires that each state plan be "developed and adopted" before approval by the Secretary. [CZMA § 306(c)(1)] The statutory definition of the term "management program" reinforces this interpretation since this phrase is defined as "a comprehensive statement" which has been "adopted by the State." [CZMA § 304(11)]

Although the current approval regulations are silent on this requirement, the former regulations interpreted this to mean that:

"The management program has been formally adopted in accordance with state law or, in its absence, administrative regulations."
[15 CFR 923.31(a)(1), 40 FR 1683, 1691
(Jan. 9, 1975)]

The substantive provisions of the Plan have not yet been adopted in accordance with state law. (See NJSA 52:14B-1 et seq.) The CZMA clearly includes this requirement and the approval regulations mandate that the Secretary find that the requirements of the CZMA have been satisfied. [15 CFR 923.72(a)]

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Admittedly, there is a difference of legal opinion regarding when it is appropriate to begin the NEPA process. However, in this instance, it is abundantly clear that the CZMA requires a state plan to be firmly in place before consideration can be given to its approval.

As it stands now, this proposed federal action is too tentative to enable one to assess its impacts. Interested parties are being asked to evaluate the effects of a proposed federal action concerning a proposed state action. In some instances this might be acceptable, but given the many changes contemplated by the OCZM, impending substantive changes in the Legislature and the numerous deficiencies which must be remedied, one must ask - "Evaluate what?"

For example, how does one evaluate the impact of the Plan when:

- the boundary is not defined; and,
- the Plan fails to indicate how or where federal consistency procedures will be applied and what criteria will be used to evaluate these other activities; and,
- the Plan does not include the DOE Master Plan which will be the basis for energy facility siting decisions.

In view of these facts, the DEIS analysis of this proposal must be considered inadequate on its face. Presently the

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New Jersey Plan has not been adopted in accordance with state law as required. It is submitted that this fact alone requires the deferral of the initiation of the DEIS process and the approval process, until the plan satisfies this basic requirement of the CZMA and NEPA.

The DEIS stipulates to the fact that the Plan does not define the entire coastal zone as required. [DEIS, p.263] This deficiency makes it impossible for the DEIS to provide an adequate "description of the environment affected." [15 CFR 923.62(a)(2)] This failing is especially frustrating since it makes it impossible to assess the impact of the Plan's policies on the resources and uses in the other segments. Suffice it to say that until the boundary of the entire coastal zone is delineated and adopted, the Plan cannot satisfy this fundamental requirement of the approval regulations.

The DEIS does not adequately discuss the "relationship of the proposed action to land and water use plans, policies and controls." [15 CFR 923.62(a)(3)] In a comment, the approval regulations indicate that this requirement may be satisfied by cross-referencing certain key elements of the Plan. [15 CFR 923.62(c)(3)] However, as was noted previously,

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many of these requirements have not or cannot be satisfied under New Jersey law, notably those pertaining to the identification of legal authorities, authorities related to uses of a regional benefit, and plan coordination. Clearly, the Plan's failure to meet the substantive requirements of the CZMA and adequately discuss these deficiencies in the DEIS evidences the fact that this requirement of NEPA and the approval regulations has not been satisfied.

Similarly, the analysis of the socio-economic and environmental impact(s) of this proposed action is superficial at best. This is especially evident in the discussion concerning the socio-economic effects of the Plan. The DEIS raises numerous issues and offers many unsupported conclusions, but it fails to provide any facts concerning:

- the increased costs of new development; and
- the costs and benefits of encouraging high density development; and,
- the full range of effects upon future economic development in the Segment and throughout the state; and
- the increased public costs for the maintenance and development of recreation-related facilities and the development of public transportation facilities in the coastal area; and,
- the increased costs of public infrastructure development in the coastal area, notably water, transportation and sewerage facilities.

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The assessment of environmental impacts is also lacking. The DEIS fails to discuss or analyze the environmental implications of the basic coastal policy which encourages concentrated rather than dispersed development. As noted previously, this policy in conjunction with the Use Policies would appear to be inconsistent with many of the statutory objectives of the CAA. Yet, this obvious significant impact is glossed over in the DEIS. Similarly, the DEIS does not analyze the effect of concentrated development upon the water resources of the coastal area. This must be remedied to determine if the basic thrust of the Plan's policies will indeed preserve and enhance the coastal environment. At present, the DEIS is replete with conclusions but there is a paucity of facts and analysis which indicate that these conclusions are supported by empirical evidence.

It must also be noted that the DEIS is addressed only to the direct effects of the proposed action. It does not address the secondary or indirect consequences of the Plan's many far-reaching policies. This analysis is clearly required by the guidelines established by the CEQ. [40 CFR 1500.8(a)(3)(ii)] The discussion regarding the environmental and socio-economic impact of the proposed action requires the presentation of more factual and analytical material not merely conclusions which are unsupported by any record.

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The DEIS fails to consider one important programmatic alternative to the proposed approval of this segmented plan: preliminary approval. (See CZMA § 305(d).) One may choose to rebut this contention by asserting that this alternative is not available under the circumstances. (See 15 CFR 923.74 (f).) However, this rebuttal assumes that the Plan is eligible for segmented approval. The alternative of preliminary approval must be fully discussed especially since it would appear that this is the only viable alternative to ensure the continued development and ultimate completion of the Plan. Additionally, it should be noted that there is legal precedent to support the position that an agency must even discuss alternatives which are beyond its powers to implement at this time. (See NRDC v. Morton, 458 F.2d 827, 835 (D.C. Cir. 1972).) The failure to consider this important alternative to this proposed federal action is a fatal deficiency. This alternative must be recognized and discussed fully to satisfy this requirement of NEPA. (See Township of So. Brunswick v. N.J. Turn. Auth., 129 N.J. Super 126, 322 A.2d 478, 482 (1974).)

The DEIS does not consider alternatives to any of the Plan's policies as required. (See NRDC v. ERDA 11 ERC 1607 (1978).) At minimum, alternatives to the Basic Coastal

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Policies and Use Policies should be posed and examined in order to comply with this statutory requirement.

Similarly, the DEIS does not adequately analyze and discuss the:

- relationship between local, short-term uses of the environment and the maintenance and enhancement of long term productivity, or
- irrevocable or irretrievable commitments of resources.

Once again no analysis is offered, rather the DEIS merely recites conclusions which are unaccompanied by any facts and are unsupported by the record. Contrary to what the DEIS alleges, approval of the Plan will encourage the use and consequent loss of certain resources. [DEIS, p.225]

The basic coastal policy to concentrate rather than disperse development commits the Plan to a course which must of necessity result in the irretrievable loss of urban open space. The priority accorded to coastal-dependent development will also result in irrevocable commitments of resources, yet the DEIS fails to describe and assess these commitments of resources as required. [40 CFR 1500.8(a)(3)(1), 5, 7]

This no doubt is related to the fact that the DEIS fails to specifically identify the unavoidable adverse effects which will result if the Plan were to be implemented by the state. [DEIS, p.221] (See 42 CFR 1500.8(a)(5).)

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Lastly, the DEIS must discuss the OCZM's efforts to consult with and coordinate with other agencies of federal, state and local governments. As noted previously, the OCZM has failed to satisfy the substantive requirements of the CZMA in this regard. Perhaps it is most important to note that the DEIS does not:

- include a discussion of existing inter-agency conflicts, as required by the CZMA; and,
- indicate to what extent, if at all, the plan has been coordinated with local and regional agencies; and,
- identify certain important state agencies which exercise regulatory and planning powers over development in or affecting the coastal zone.

The DEIS concludes that extensive coordination and consultation with all local, state and regional interests has taken place, yet it would appear that this effort is really in its infancy. [DEIS, p.227] Unless additional facts are presented to support the OCZM's contention that extensive inter-governmental consultation has occurred, this conclusion is unsupported by the record.

It is doubtful that this document can be said to satisfy any of the NEPA requirements set forth in the approval

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regulations. The DEIS simply does not provide any facts which would permit one to assess the conclusions reached by NOAA. In fact, impact analysis is expressed merely in the form of conclusions, thus subverting the very intent of NEPA to open the agency decision-making process to informed debate. The statutory standard of full disclosure is far from satisfied by this document.

Additionally, the DEIS fails to consider one important programmatic alternative which must be evaluated to fulfill this requirement of NEPA. It also does not consider any alternatives to the substantive policies of the Plan. In short, the DEIS simply does not include sufficient information to provide for "a reasoned choice" of alternative courses of action. NRDC v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972).

The DEIS, in its present form, represents a purely mechanical attempt to satisfy the procedural and substantive requirements of NEPA. It serves only to justify this action without regard for either the adequacy of the Plan or a careful analysis of the impact of its implementation. The DEIS must be substantially revised in order to satisfy the requirements of NEPA and the CZMA.

TESTIMONY ON BEHALF OF THE NEW JERSEY BUILDERS ASSOCIATION
CAFRA COMMITTEE ON THE STATE OF NEW JERSEY
COASTAL MANAGEMENT PROGRAM, BAY AND OCEAN SHORE
SEGMENT, MAY, 1978, DRAFT
ENVIRONMENTAL IMPACT STATEMENT

Good evening. My name is Joseph Todino and I am Chairman of the New Jersey Builders Association CAFRA Committee, a standing sub-committee of the New Jersey Builders Association Environmental Committee. We have been involved with CAFRA since its inception in 1973 and have seen the program grow in scope and content. Previously we have been asked to comment upon the Coastal Zone Management Interim Land Use and Density Guidelines, the Coastal Zone Management Strategy, and received, in March of this year, a pre-publication working draft of the document under discussion this evening. We distributed copies of the draft Environmental Impact Statement to numerous builders and their consultants, including engineers, planners, environmental consultants and realtors. A workshop meeting was held with representatives of the Office of Coastal Zone Management on June 7, 1978.

At this workshop the discussion focused upon the glaring engineering and planning deficiencies in the document as well as inadequacies in the scope of the Draft Environmental Impact Statement. Therefore we have requested that the comment period should be extended for at least sixty (60)

days. The draft Environmental Impact Statement was submitted to the Federal Environmental Protection Agency on April 28, 1978 and a Notice of Availability was published in the Federal Register on May 5, 1978. The period for public comment to the Federal Office of Coastal Zone Management extends only until June 19, 1978. Furthermore, it is proposed that Chapter 3 of Part II of this document be adopted as formal rules and regulations sometime in September. The deadline for comments to the State Department of Environmental Protection is July 5. We feel it is unfair, to say the least, to mandate that comments on a 350 page document be submitted within such a short period of time. No environmental benefits will accrue by expediting the acceptance of this draft Environmental Impact Statement by the federal government. It would appear that the more prudent course would be to allow a sufficient time to comment and then discuss those comments and resolve the issues involved. We were informed at the June 7 workshop meeting that the policy on runoff would be altered and there was a document that would be published to that effect. Certainly this is a change in the proposed rules and regulations and cannot possibly be implemented until there is another announcement of that substantive change in the New Jersey Register and time is afforded for comment on this change.

The usual course of events utilized by DEP is exemplified by a document entitled "Coastal Management Strategy - Public Comments and DEP Responses". In that document DEP synthesizes many of the comments on the Coastal Management Strategy, some 434 in number, and offers a response to those comments. It is unfortunate, however, that the response, in some instances, is the first indication of DEP's position on some of the criticisms. Would it not be far better to engage in a dialogue on these comments? Very often, our questions remain unanswered at face to face meetings until such a public written document is published with no opportunity to respond.

Above and beyond the lack of dialogue with respect to previous comments and criticisms of documents published by the New Jersey Office of Coastal Zone Management, there are some glaring inadequacies in the present documents. For instance, the section on runoff would in effect prohibit development in almost all areas in the CAFRA zone. The section on definitions of waters edge areas is confusing and in some cases misleading. There are certain engineering and planning decisions embodied in the draft Environmental Impact Statement which are questionable and have no basis in any documents that have thus far been made available. The land acceptability tables on Pages 103 through 111 are actually a detailed plan for the acceptable development of

the Bay and Ocean Shore Segment of the Coastal Area. The Office of Coastal Zone Management has failed to analyze how much of the bay and ocean shore segment of the coastal area will be eligible for high and moderate intensity development based upon the land acceptability tables. This is extremely important because pursuant to the provisions of the draft Environmental Impact Statement if high and moderate intensity development is not allowed, then the use and resource policies need not even be considered, because they will not result in the allowance of moderate or intense development. Thus, there is absolutely no analysis of the effect of the land acceptability table on the bay and ocean shore segment of the coast. Nor is there a basis for the conclusions drawn on each line of the location acceptability table. Until that basis is clearly set forth, there is no way to evaluate the validity of the land acceptability table. Thus, there is no rationale for the decisions reflected in the land acceptability tables, a table which in effect serves as a plan for the bay and ocean shore segment of the coastal zone.

There are other significant deficiencies, the most glaring of which is that the document in question leaves no room for flexibility, judgment, and imaginative planning. Most of the policies as set forth are completely inflexible and as a matter of fact at the June 7 workshop it was the

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opinion of the Chief of the CAFRA permit section that if the criteria on the location acceptability table are not met for medium and high intensity development, that there is not enough flexibility in the document to allow for such medium and high intensity development.

Furthermore, there is little rationale set forth for many of the policies in this document. The restrictions on high rise development are simply not based on any logical and professional planning concept and in fact do not make common sense. On the one hand there is a policy to encourage and foster low and moderate income housing. Obviously, the greater density the more opportunity for low and moderate income housing and the greatest density of all is high rise development. By restricting high rise development to areas which already contain such development, such as Keansburg, Atlantic City and Asbury Park, as a practical matter you may be discouraging the construction of high rise dwellings, because there is very little incentive to construct low and moderate income high rise housing in Atlantic City, Asbury Park and Keansburg. As a matter of fact federal monies may not be available for high rise developments containing children. There is no question about the fact that in some areas high rises would be completely incompatible with surrounding uses, however, where high rises are not incompatible with surrounding uses they should be explored and not discouraged

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or prohibited. The idea that dwellings along the shore should not block the view of the ocean afforded to other people who live in the area is reflective of the most regressive "last in shut the door" thinking. Why should people expect that just because they buy property near the shore that has a view of the ocean that they can enjoy this view forever, notwithstanding the fact that another property owner owns lands between their dwelling and the ocean.

There are numerous examples of planning policies and engineering decisions set forth with absolutely no basis in fact. For instance, what is the source for allowable percentage of impermeable paving, permeable paving and structures? For instance for high density development 90% impermeable paving is allowed and for moderate density development 30% impermeable paving is allowed. What is the level of density allowed for impermeable paving between 30 and 90%? Where is the basis for the definition of stream head and the 300 foot buffer around a stream head? We understand that this very issue is the subject of a contract for study that has not yet even been completed. How can the Office of Coastal Zone Management possibly include definitions of areas without absolutely any basis in fact? The same holds true for the definition of upper water's edge which is defined partially as 50 foot horizontally from the lower limit. Where is the basis for this 50 feet? Again we are of the understanding that this

is the subject matter of a contract for study and no conclusion has yet been reached with respect to this topic.

The policies in this Environmental Impact Statement are also inconsistent with other state policies. For instance, the State Development Guide Plan seems to encourage high rise development along a certain portion of the New Jersey coast, which is not encouraged by this Environmental Impact Statement. How are these two differing policies reconciled? The policy on siting of industrial facilities within the coastal area is also much too inflexible and has no basis in fact. Only if existing industrial sites are demonstrated to be impractical will new sites be acceptable, providing that there is a high ratio of jobs created as opposed to the acres of the site utilized for development and the development poses no conflict with the resort-recreation uses of the coast. (Page 148). There is really no logical basis for this policy except the statement that there are "significant environmental impacts of most industrial development", a statement that certainly is not borne out as a general proposition. Furthermore, there is no secondary impact analysis of this and many other policies contained in the Draft Environmental Impact Statement.

This leads to a very significant discussion with respect to the sufficiency of the entire Environmental Impact Statement. Parts III to Part VII, which supposedly address

environmental impacts is superficial and totally inadequate. It is ironic that considering the pains that developers must go through in order to satisfy the Department of Environmental Protection with the level of analysis in an Environmental Impact Statement submitted in order to obtain a CAFRA permit, that this document ostensibly prepared by the National Oceanic and Atmospheric Administration, Office of Coastal Zone Management is woefully inadequate. For instance, what is the secondary effect of a restrictive policy on industrial development considering the fact that people in the coastal area may have to commute by automobile to noncoastal areas in order to be gainfully employed? What will the air pollution effect be of the extra vehicle miles traveled? There are a myriad of other secondary impacts that have not been addressed by this Environmental Impact Statement. It is significant that one of the requirements for applicants contained in this Environmental Impact Statement is that they present a secondary impact analysis for their projects. Notwithstanding the fact that we do not necessarily agree with this requirement, certainly if the requirement is imposed upon applicants, the same requirement should be imposed on the very agency imposing the requirement of analysis of secondary impacts. Even assuming that secondary impacts need not be addressed, the primary impacts of many

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of the policies as enunciated in the draft Environmental Impact Statement are not analyzed.

In conclusion, we feel that/^{not}until a basis for each of the policies as set forth in the draft Environmental Impact Statement is enunciated, until many of the inconsistencies are explained, and a sufficient Environmental Impact Statement is prepared analyzing the environmental and socio-economic effects of all of the policies contained in the draft Environmental Impact Statement, can the Secretary of Commerce approve the Coastal Zone Management Program (Bay and Ocean Shore Segment) of the State of New Jersey. Only until all the alternatives are considered should the Secretary of Commerce approve the Program. To expedite the approval of this program for no other reason than to receive a grant even when the Program is without a basis in engineering and planning and even when the Environmental Impact Statement is fatally defective would be a disservice not only to the citizens of the coastal area in New Jersey, but to all the citizens of the State of New Jersey and to the country. We are willing to work hand-in-hand with the State and Federal offices of Coastal Zone Management in order to produce a workable document, and in fact another workshop session in order to discuss in detail the general comments and criticisms contained in this testimony is scheduled for June 21, 1978. Hopefully, the September 30th deadline will be met with a

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revised Environmental Impact Statement acceptable to professional engineers and professional planners. If the Environmental Impact Statement is not revised accordingly, unfortunately it will be to the detriment to all concerned including the New Jersey office of Coastal Zone Management and the citizenry of this State.

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ATTENTION: Ms. Kathryn Cousins
Regional Manager

RE: STATE OF NEW JERSEY, COASTAL MANAGEMENT PROGRAM,
BAY AND OCEAN SEGMENT, DRAFT ENVIRONMENTAL IMPACT
STATEMENT DATED MAY 1978

Dear Ms. Cousins:

The following constitute the comments on behalf of the New Jersey Builders Association with respect to the above-mentioned document. The New Jersey Builders Association presented testimony at the public hearing held on June 14th, 1978. That testimony should be incorporated herein and I enclose a copy for your information. The New Jersey Builders Association participated in a workshop session held on April 1, 1978 at the Offices of the New Jersey Office of Coastal Zone Management in Trenton. The subject of this workshop was a pre-publication draft of the Environmental Impact Statement. There were also two (2) other sessions with David Kinsey, one on June 7th and the last session on June 21st. There were numerous changes suggested at the June 21st workshop session, all of which were noted by Mr. Kinsey, but he indicated that he would not be able to respond to our comments and suggestions prior to July 5th, 1978, the extended deadline for comment. Therefore, these comments are made notwithstanding the fact that they have already been presented to the State Office of Coastal Zone Management.

The following documents are included herewith and should be incorporated herein as comments from individuals invited to the Builder/Workshop Meetings. The documents are as follows:

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1. Comments submitted by Craig G. Cunningham on behalf of Canetic Corp., Berlin, New Jersey.
2. Memorandum from Dresdner Associates, dated June 12th, 1978.
3. Letter dated June 16th, 1978 to Federal Office of Coastal Zone Management from George A. Van Sant, P.E. of Wilcox, Gravatt & Macunda, Inc.
4. Hand-written comments submitted by Robert Maestro of Maestro Associates.
5. Comments on storm water runoff policy submitted by Fellows, Read & Weber, Inc., Consulting Engineers to David N. Kinsey, by letter dated June 20th, 1978.
6. Letter to Michael J. Gross, Esq. from Barry Weshnak, Vice President of Barrymor Enterprises, Inc. dated June 9th, 1978.
7. A copy of a letter dated June 30, 1978 from Thomas A. Thomas of Townplan Associates to David N. Kinsey (under separate cover).
8. A copy of a letter dated July 3, 1978 from Ernst, Ernst & Lissenden, Engrs. (under separate cover).

The sufficiency of the Environmental Impact Statement is addressed on Pages 7 through 9 of the Testimony submitted on behalf of the New Jersey Builders Association at the public hearing. It is our feeling that an expansion of this point is warranted in our formal comment submission. Initially, it should be noted that 16 U.S.C.S. 1452(b) declares as congressional policy the development and implementation of management programs giving full consideration not only to ecological, cultural, historic and esthetic values, but also to the needs for economic development. One would expect that an Environmental Impact Statement would assess not only the impact of the Coastal Management Program upon ecological, cultural, historic and esthetic values, but also upon economic development. There is only a cursory discussion of any of these elements in the Environmental Impact Statement.

It is submitted that the Impact Statement prepared is

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too vague, general, and conclusory to satisfy the requirements of 42 U.S.C.S. § 4332. It is clear, for instance, that an Environmental Impact Statement must contain a detailed statement as to all feasible alternatives and not merely a conclusory statement that the alternatives were evaluated and rejected. It is also clear that the underlying reasons for the conclusions reached and findings made in the Environmental Impact Statement must be clearly set forth. Also, the Courts have held that an Environmental Impact Statement must provide sufficient data on a project's economic feasibility and economic effects to allow the assessment of countervailing interests, feasibility of alternatives, or full analysis of environmental effects. It is incredible that the impact analysis portion of the document is some twenty-eight (28) pages in length, when the body of the document is almost two hundred (200) pages in length. The most glaring omission is a failure to assess the impacts of the Land Accessibility Tables on pages 103 through 111 of the document. These tables are the plan for the coast and without assessing current land use and current land characteristics, one cannot determine the affect of the Land Accessibility Tables on the development in the Bay and Ocean Shore Segment.

It is also unclear as to whether the Federal Regulations have been complied with in the Coastal Management Program. One of the comments to 15 C.F.R. §923.4, indicates that present ownership patterns of the land and water resources, including administration of publicly owned property must be considered as well as present populations and further trends, including assessments of the impact of population growth in the coastal zone and estuarine environments, present uses, proposals for changes and long-term requirements of the coastal zone, housing requirements, mineral resources requirements, transportation and navigation needs, and communication facilities. It is submitted that these items have not sufficiently been addressed in the Coastal Management Program. Also in this vein, there does not appear to be a sufficient inventory of natural and man-made coastal resources, a requirement of 15 C.F.R. § 923.12(a)(2). Thus it is questionable whether the Coastal Management Program complies with the applicable statutory and regulatory provisions. Beside from the obvious deficiencies in complying with applicable Federal statutes and regulations, the Coastal Management Program should serve as guidelines and not as definitive rules. We object to the adoption of Chapter 3 of Part II as rules and regulations, since we see no requirement for such adoption in the Federal Coastal Zone Management Act, nor do we feel

Ms. Kathryn Cousins
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that the adoption of these rules and regulations are mandated by the Federal Regulations adopted pursuant to the Coastal Zone Management Act. Most of the rules and regulations are far too inflexible and may reflect a textbook attitude towards management of resources, but does not reflect practical real world experiences. This is especially true with respect to the policy on storm water runoff. The policy is unworkable and impracticable. Many professional engineers and consultants have commented on the storm water runoff policy to the New Jersey Office of Coastal Zone Management and we feel that at least this policy should be studied further prior to its adoption as a regulation.

The Basic Coastal Policies on pages 11 and 12 are deficient in that they do not consider the legitimate economic aspirations of the inhabitants of the Coast. There is also no means to carry out the policy enunciated on page 12 to consider only coastal resource and coastal land and water use decisions of greater than local significance.

The State in a sense admits on page 19 of the Program that administrative discretion will be limited. It is submitted that administrative discretion will be virtually non-existent under this Program. For instance, proposed Rule 6.3.8.3 discourages bulkheads, revetments, and seawalls and other retaining structures. These retaining structures can be acceptable if there is a danger to life or property or if water dependent uses cannot operate without the structure. Rip rap is indicated as a preferred construction material for such retaining structure. There is absolutely no analysis, however, of the affect of this policy on the development of lots fronting on lagoons. Also there is no rationale for discouraging the construction of bulkheads as a general policy. The same inflexibility is shown in the policy for new dredging included in proposed Rule 6.3.8.6. In order to be considered acceptable, new dredging must meet six (6) different conjunctive criteria, which may be almost impossible to meet. There is little flexibility to allow something like new dredging if it can be shown that this dredging will not have an adverse environmental impact. Another example, is proposed Rule 6.4.10 which discusses Steep Slopes. The policy is to allow development of steep slopes only if there is no prudent or feasible alternative site. It would seem that the only criteria that should be utilized is if any adverse environmental affects can be mitigated, not if there is no prudent or feasible alternative site. Again, the lack of flexibility is evident. The policy on Prime Agricultural Areas in

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proposed Rule 6.4.11 is also inflexible, because it does not account for the situation wherein a farmer no longer wishes to farm a particular tract of land, can find no purchasers for said tract of land, and does find a purchaser who wishes to develop the land for residential or other uses. Since the land would not be utilized for agriculture, it would seem that some flexibility should be allowed so that the farmer can dispose of the premises.

As indicated in the public hearing testimony, we disagree with the whole concept of Stream Heads as a new concept with absolutely no basis in fact. None of the professional engineers or planners involved in the Builder/Workshops have ever encountered this type of definition and certainly, do not agree with the 300 foot buffer zone. The Wetlands Policy (proposed Rule 6.5.1.2) does not include the criteria to be utilized in the new procedure pursuant to N.J.A.C. 7:7A-1.7(b)1 et seq. As indicated in the public hearing testimony, there is no basis for the definition of Upper Water's Edge at 50 foot horizontally from the lower limit which ever is further from the lower limit. The policy in proposed Rule 6.5.2.2 is much too inflexible and does not take into account peculiarities and unique characteristics of certain sites as well as mitigating measures which can be undertaken.

We take great exception to the policy for Retained Water's Edge as found in proposed Rule 6.5.3. Initially, the policy that runoff from paved areas may not be discharged directly into adjacent water bodies is ludicrous, since there is no place else to dispose of runoff from lagoon development than into lagoons. There is also evidence that such discharge improves circulation and the water quality of these lagoons as opposed to lagoons in which no runoff is discharged. The statement that the waterfront is a scarce resource in Rule 6.5.3.3 is totally without basis. Has an actual survey been taken regarding the amount of waterfront space available? Are lagoon lots considered waterfront? There is also no reason for lagoon development to provide a net benefit to the environment. This is not required for any other type of development and one questions whether this is equitable. We also question the requirement that such development be water dependent or utilized for public recreation or resort use. Traditionally, the State has

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not considered housing to be water dependent even if the housing is purchased by persons who wish to utilize the lagoons and bulkheads for recreational boating. We contend that such uses are water dependent and in any case, there is no basis for the policy of requiring water dependency. The indication that new private housing would be an inefficient use of a scarce resource as opposed to hotels and restaurants is also not based on any practical experience. As a practical matter, more paving will probably be required for restaurants and hotels than would be required for residential development on lagoon lots. Also restaurants and hotels will probably not be compatible with adjacent uses.

We also object to the policy for Filled Water's Edge in that it is unrealistic and without basis. A twenty-five (25) foot buffer will probably result in most municipal zoning ordinances being violated by lagoon development. Also there is the very practical problem of maintenance of any plantings. Most owners of lagoon lots purchase them because of the access to recreational boating and it is submitted that it is simply not practical to revegetate these lots. In many cases, it may be preferable to bulkhead the lots to prevent further erosion. The lagoon policy is also discriminatory in that the development must provide a net benefit to the environment, when the State does not require such a net benefit for any other type of development but lagoon development. As long as adverse environmental affects are minimized, most development should be allowed. The policy of a net benefit to the environment is not supported by any rationale in proposed Rule 6.5.4.

We disagree with the discussion of Development Potential Factors in § 6.6.7 in that the statement in Rule 6.6.7.6 that High Development Potential Sites are most desirable from a developer's view point is not based on any extensive study and as a matter of fact, such a study is proposed for the fiscal year of 1978-1979. One ponders how High Potential Sites can be determined when such a study has not been completed. The policy to concentrate the pattern of development on a regional scale also has not been sufficiently studied. For instance, how much infill land is available for development within the Bay and Ocean Shore Segment of New Jersey's coast? Should not the impact of this policy be determined prior to the adoption of the policy? The policy has also been altered. Previously, infill and extensions of existing development were encouraged. Under this new policy, only infill is encouraged.

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We also take issue with the definition of "infill". All of the public infrastructure and community facilities may already be in place in individual cases of expansions. Therefore, there may, as a practical matter, be no difference in the environmental affects of some infill as opposed to some extensions. Again, this must be determined on a case by case basis and Rule 6.6.7 does not offer this flexibility. Again, it is obvious that development is discouraged by these policies since High Potential Sites must meet all of seven (7) possible criteria and Low Potential Sites must merely meet any one (1) of four (4) criteria.

We also take issue with the definition of "Growth Areas". Although the placement of a project in a Limited Growth Area may not adversely affect an ultimate determination as to whether a permit will be granted in accordance with the Land Accessibility Tables (Figure 18), it is important to note that apparently all of Ocean County, south of Berkeley Township, is excluded from the Growth Areas. How much growth can be accommodated in these Growth Areas? It appears that again this Environmental Impact Statement is deficient in failing to determine this question.

The significance of the Land Accessibility Tables is addressed in Mr. Dresdner's comments and also in our Public Testimony and we reference you to those documents.

There is absolutely no basis for the percentage of paving in intensive and moderate development areas included in Rule 6.6.9.6. Furthermore, permeable paving has not proved practical and again, this is textbook planning instead of practical planning. Again, these percentages appear to be inflexible and will take the innovative ideas and imagination out of the planning process.

The Use Policies are also very disturbing. It is interesting to note that if the Location Acceptability Table discloses that a project should not be built, then the Use and Resource Policies do not even enter the picture. Rule 7.2.1 indicating that housing development in the Water's Edge is prohibited is much too inflexible as is the policy against dredging, filling or bulkheading. We would agree that housing which requires lagoons should be discouraged, but not prohibited. We also question the basis for the statement that housing is not dependent on water access, since in individual cases, housing may indeed be dependent on water access. The definition of "clustering" in Rule 7.2.2 is questioned as being contrary to many other clustering policies. The

GIORDANO, HALLERAN & CRAHAY
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statement regarding application for municipal variances in order to cluster reflects a lack of understanding of the planning process at the municipal level. Since these hearings are quasi-judicial, the only way that DEP can assist an applicant is to provide sworn testimony at a hearing which is subject to cross-examination.

It should be clearly indicated that if a proposed use is not "encouraged" under these use policies, it does not mean that said use cannot be built. We understand that these are in a sense "bonus" factors which may allow a borderline use to be permitted. There is absolutely no basis for Rule 7.2.3, which encourages a mix of dwelling types and age and income groups within housing developments. Is there a socio-economic basis for this? We also question the policy in Rule 7.2.4. What if a housing development meets a municipality's fair share of high income housing? We have already commented on proposed Rule 7.2.8 regarding high rise dwellings in our public testimony and refer to that as if incorporated herein. We object to any exclusions of development as stated in this document in the Pine Barrens except in the area of the Pine Barrens in which the permit programs referred to in the Program have jurisdiction.

We object to the requirement of bicycle and foot paths in residential projects in Rule 7.5.5 in that in some cases, such bicycle and foot paths may have an adverse environmental affect. Again, no flexibility is incorporated into this and many other rules.

We have already commented on the secondary impacts of proposed Rule 7.6.1 concerning industrial or commercial siting. As a matter of fact, criteria (a) would seem to be inconsistent with the policy of retaining open space, since the more open space that is retained, then 7.6.1 (a) could be interpreted to mean that this would have an adverse affect on the ratio of jobs created to the acres of site used for development. In other words, what is the meaning of "development"? Is it just the building and parking areas or does it include retained open space?

We also object to the policy on mining in proposed Rule 7.6.2 in that if reclamation plans are acceptable, mining should be allowed even if it is not adjacent to current mining operations since mining may be an important economic factor in the coastal economy. Again, no analysis has been made of the affect of this policy, albeit primary or secondary.

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The resource policy on Runoff (Proposed Rule 8.6) is simply not workable. It is our information that extensive comments have been furnished to David N. Kinsey of the State, and we urge you to review these comments. We also again urge that the Runoff Policy not be adopted as rules, but that a task force be immediately formed in order to study and determine a rational and practical Runoff Policy. The policy on vegetation to plant appropriate native coastal species (proposed Rule 8.8.1), may not be practical if such native coastal species are not available for planting. What determinations were made as to the availability of such species?

The policy on Public Access to the Shore Front is deficient in that there is no real definition of "coastal waters". Although we may not necessarily agree with some municipalities which have enacted laws or regulations making waterfront access inconvenient, expensive, or impossible for non-residence, it should be noted that the Courts of the State of New Jersey will determine this question and it is beyond the province of the Coastal Management Program to effectuate such policy since this is within the judicial province.

We take issue with the policy on Secondary Impacts in proposed Rule 8.1.4 in that the whole field of "Secondary Impacts" is imprecise, vague, and results in generalities. It is interesting to note that although Secondary Impacts of proposed developments must be part of an application for development, this Draft Environmental Impact Statement does not include such a Secondary Impact analysis. Therefore, we believe that a Secondary Impact analysis should be required only on a selected basis where anticipated substantial adverse Secondary Impacts are anticipated. There is also an assumption in the rationale (proposed Rule 8.14.2) that Secondary Impacts are predictable. We seriously question such predictability.

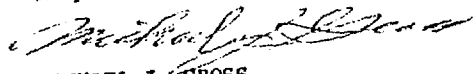
With respect to buffers, again there is no determination as to the availability of native forest vegetation. There is also no reason given for the specific requirements for buffers, including height of saplings and spacing of plantings. Also, the requirement that residential uses may have to buffer an industrial site is contrary to accepted planning techniques of the industrial use buffering the residential use.

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We are hopeful that these comments, which are intended as constructive criticisms, will be useful and serve to strengthen the Final Environmental Impact Statement. We have formally protested the limited time within which to comment on the Draft Environmental Impact Statement. We would be more than willing to discuss any of the within comments with you or your staff, and welcome the opportunity for a dialogue, which has too often been missing in the past. We again urge that these proposed Regulations not be adopted as of September 30, 1978 and that the subject document be revised in accordance with our comments prior to adoption.

Respectfully submitted,


MICHAEL J. GROSS

MJG:jm
Enclosures

cc: David N. Kinsey; John Maczuga; Allen Dresdner; George Schilling;
George Lissenden; Wayne Oldroyd; Robert Maestro; William
Galestok; Craig Cunningham; Donald W. Smith; George Van Sant;
Thomas A. Thomas; Marc R. Shuster; Barry Weshnak; Joseph F.
Wiseman; Patricia Haines; Robert Williamson; Peter J. McDonough,
Jr.; Director Donald T. Graham

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JOHN C. GIORDANO
OF COUNSEL

FILE NO. 2263A

David N. Kinsey,
Chief Office of Coastal Zone Management
Department of Environmental Protection
Division of Marine Services
P.O. Box 1889
Trenton, New Jersey 08625

RE: COASTAL MANAGEMENT PROGRAM - BAY AND OCEAN SHORE SEGMENT

Dear David:

I received your letter dated June 14th, 1978 with respect to the above-mentioned matter on June 21st, 1978. As you know, it was my understanding that Kathryn Cousins had agreed to an extension of the June 19th, 1978 deadline for the close of the Federal comment period for the New Jersey Builders Association until July 5th, 1978. This was confirmed in a letter dated June 19th, 1978 to Kathryn Cousins, on which you were copied. Please advise if this is not your understanding.

I would like to take this opportunity to thank you, Karl, and Mike for meeting with us on June 21st, 1978. As you know, one of the problems we have had is that after these meetings the only communication from your office is when we receive another draft document or another final document. In this case, we would appreciate a continuing dialogue, since there were many questions raised at our meeting which merit further discussion.

Approximately, the first hour was devoted to discussion of the runoff policy. It was pointed out that many municipalities will not allow retention or detention facilities, since they become a maintenance problem. In a fee simple situation, maintenance is the responsibility of the municipality. If a retention or detention facility is not maintained, it usually becomes an eyesore. With respect to proposed R. B.6.1, there is a question as to whether the runoff is limited to the runoff generated from the subject development or from all upstream site

David N. Kinsey
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I understand that this will be clarified. There was also a suggestion that the nature of the receiving stream should be taken into consideration, since runoff exceeding mature forest vegetation may not in all cases cause an adverse environmental affect.

It was discovered that there may still be a philosophical difference with respect to recharge of aquifers. There is apparently a policy which has been established to promote aquifer recharge, when, in fact, aquifer recharge may not be suitable in all cases. This again highlights our major criticism of the entire DEIS relating to the lack of flexibility of the document. For instance, if there is a high water table, ground water recharge may not be feasible. We believe that feasibility should be introduced into the runoff policy and allowances should be made for the physical aspects of the site and desirability of detention or retention facilities. If it can be ascertained that erosion and flooding will not occur without use of detention or retention facilities, then perhaps those facilities are not necessary. With respect to proposed R.8.6.2, there should be a clarification (c) in that the word "facilities" seems to be misleading. The word utilized should probably be either "technique" or "method". Also some treatment techniques should be listed, such as traps, catch basins, etc. Also when "the amount of runoff" is considered, it is unclear whether this is rate or volume. A clarification of this would be appreciated.

With respect to proposed R.8.6.2 (e), this seems to be even more stringent than Section 10 of the Statute which allows only minimal adverse environmental impacts. The proposed Rule would seem to prohibit any adverse impacts no matter how insignificant.

With respect to R.8.6.2(d), it was indicated by the engineers present that it was impossible to analyze storm water runoff quality or indeed to predict such quality. I brought up the question of why the regulations cannot be adopted without the runoff section, since this policy has caused so much controversy. It was my feeling that the Federal Government would still approve the DEIS if you indicated that a task force was studying this problem and that for the time being, it will be dealt with on a case by case basis.

We next discussed lagoon development in proposed Regulation 6.5.3 and 6.5.4. It was felt that there was not enough consideration given to development on existing bulkheaded lagoons and it would seem that there should be no impediment to development and these developments should

David N. Kinsey
June 22nd, 1978
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be considered no different from inland development in terms of the criteria applied. In R.6.5.3.2(c), there was question as to why lagoon development must provide a net benefit to the environment, when no other development must meet this criteria. We agreed to present you with the documentation showing that water quality in lagoons which contained a storm water outfall was superior to lagoons which did not contain such an outfall. We also asked for a clarification of proposed R.7.2.1. In that the wording could be changed to indicate that only housing which requires new lagoons is prohibited.

We next engaged in an extensive discussion on vegetation. We have no quarrel with the attempt to preserve as much existing vegetation onsite as possible, but we do quarrel with mandating that a developer plant certain shrubs and trees around each individual dwelling unit. Initially, it removes the freedom of choice which a purchaser should have. Many purchasers do not want the landscaping offered by a developer and would prefer to do their own landscaping. Furthermore, this mandatory landscaping will add significantly to the cost of a house, because, in effect, it is included in the mortgage. Therefore, over the life of the house, the landscaping will be paid for several times over. We discussed with Karl Braun the idea of offering a landscaping package to all purchasers with the option that those purchasers could refuse this package and engage in their own landscaping. Karl seemed receptive to the idea, but we would like some feedback on this idea.

At the end of the meeting, we focused upon the problem of lack of flexibility in the proposed Rules and Regulations. There must be a statement some where on pages 126 to 127 allowing flexibility. Perhaps such a statement could be incorporated in proposed R.6.9.8(b). Also, even if the site is not conducive to development according to the regulations, there must be a provision for mitigation of any adverse environmental conditions. Of course, the mitigation measures must be reasonable to meet with your approval. We believe that this provision is extremely important and would appreciate your response as soon as possible.

The last subject discussed was proposed R.8.11.2. This regulation would provide that agreements would have to be provided showing adequate levels of service by municipalities. We would ask that the wording "through agreements with the relevant agencies" be deleted from proposed R.8.11.2 as unnecessary. Many municipalities do not encourage growth and this would be a great way for them to eliminate

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JUN 13 1978
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TOMS RIVER, N. J.



BARRYMOR ENTERPRISES, INC.

David N. Kinsey
June 22nd, 1978
Page 4

June 9, 1978

all growth in their respective municipalities.

I cannot stress too strongly my client's feelings that it must have satisfactory responses on all of these issues in order to not oppose the acceptance of the DEIS on the Federal level. There must be a meeting of the minds on the runoff policy and there must also be revisions made to the proposed regulations to accommodate our reasonable requests. This is particularly true in the areas of flexibility, vegetation, treatment of storm water runoff, lagoon development, the definition of streamhead, and other issues which have previously been presented. We are requesting that all of these changes be reflected in a written document which can be reviewed, and very frankly, if we are not provided with this written document, I have been instructed to actively oppose the approval of the DEIS. I am hopeful that this will not be necessary and that we can resolve all of our differences in an amicable fashion. I look forward to hearing from you in the near future.

Very truly yours,

MICHAEL J. GROSS

Mr. Michael J. Gross
Giordano, Halleran & Crahay
1005 Hooper Avenue
P.O. Box 657
Toms River, New Jersey 08753

Subject: Coastal Zone Management Program - Draft
Environmental Impact Statement

Dear Mike:

We are writing with our comments resulting from the DEP workshop held in Toms River this past Wednesday. Realizing that the engineers present including Don are the most qualified individuals to make specific recommendations and criticisms, I will limit my comments to a few general areas. My main concern is that the draft document reviewed on Wednesday is both all encompassing and roughly done necessitating a delay in submitting same to RCMA on the timetable postponed by the DEP. It is imperative that our association and engineers be given a full opportunity to critique the document in detail especially Chapter 3 prior to the document's finalization and submission to the Federal people.

Some of the specific areas that concern me which were covered on a first brush basis on Wednesday are as follows:

1. The incomplete and inadequate condition of the E.I.S.
2. The long overdue requirement on additional and more extensive mapping.
3. The fact that a plan has been laid out for the State as opposed to rules and regulations leading to such a plan as exemplified by Figure 13 on page 102.
4. Run-off policies are inadequately and incorrectly treated in the present document.
5. More detailed definitions of such terms as "clustering".

- MJG:jm
cc: Director Donald T. Graham
Kathryn Cousins
Mr. George Lissenden
Mr. John Maczuga
Mr. Allen Dresdner
Mr. George E. Schilling
Mr. Wayne Aldroyd
Mr. Robert Maestro
Mr. William Galestok
Mr. Craig Cunningham
Mr. Donald W. Smith
Mr. George Van Sant
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6. The need for a bibliography and list of the contributors relative to the preparation of the document in its present form and as these relate to future revisions and corrections.

7. Treatment in the E.I.S. of the economic and social ramifications of these environmental regulations.

We feel it is imperative that the DEP does not act prematurely in closing the file on this draft document by submittin, same to parties outside the state of New Jersey. We feel the association must take any and all steps available to it to prevent such a dangerous move from taking place.

Very truly yours,

BARRINGTON ENTERPRISES, INC.

Barry Weschuk
Barry Weschuk
Vice President

BW:clw

cc: Donald Smith



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JOHN B. EXRISO, President

DIV. OF HAZAR. SERVICES

June 19, 1978

Mr. Michael Gross
Giordano, Halleran & Crabay
1005 Hooper Avenue
Post Office Box #667
Toms River, New Jersey 08753

Dear Mike:

Enclosed please find the outline of questions on policy as set forth in CAERA Draft Environmental Impact Statement, dated May 1978.

I hope these prove useful.

Sincerely yours,

Craig B. Cunningham

CRAIG G. CUNNINGHAM

cgc/ad
enc.

6.4.1.2 High risk erosion areas - non-structural solutions are encouraged - what are they?

6.4.3.2 Central Barrier Corrido - policy is vague.

6.5.1.2 Wetlands Policy - what does DEP define as: development that requires water access or is water oriented?

6.5.3.2. Bulkheads - Development if water-dependent is acceptable in retained water's edge areas, or if for public recreation or resort use. Isn't residential housing (second homes) recreation/resort? Wouldn't any development in this area extend Central Barrier Island Corridor? Waterfront public hotels and restaurants are much more stressful than private housing and also create much more impervious structures and coverings by needing parking, etc. Hotels also would cause shadowing problems.

6.6.9.6 Intensive Development - No where defines pervious paving (permeable). Permeable pavement will allow certain undesirable substances into ground water table. Two tables for Soil Conservation and Vegetation Conservation for acceptable percentage are inconsistent values.

7.2.1 Housing Use Policies - Housing does not depend upon water access but, did encourage recreation and resort development in water's edge areas.

7.2.2 Encourages zoning variance where minimum lot sizes preclude cluster.

7.2.3. Housing to provide mix of dwelling types, but encourages clustering and later makes hi-rise structures virtually impossible.

7.2.7 Re-development and demolition is discouraged - rationale that areas of historic and aesthetic value should be rehabilitated. What about areas that are neither of historic and aesthetic interest?

7.2.8 High-rise developments -

(c) makes any high-rise impossible - any high-rise will to some degree block the features.

(d) high-rise will at some point create shadow on beach - what do they consider "overshadow"?

7.3 Resort/Recreational Use - all these uses will be stressful on area - create more impervious surfaces, traffic burdens, air pollution from automobiles. Hotel/casino uses in existing resort areas is encouraged in Atlantic City, usually on water's edge location, while high rise housing types are discouraged.

7.3.6 New marinas are acceptable if demand is made apparent; however, marinas and related activities are sources of both severe air and water pollution.

7.3.7 Who can assure that a marina for sale and oar boating (encouraged) will not be converted to a primarily motor boat marina after completion.

7.3.9 Dredging of dry land marina expansion is encouraged - what about the effects of water action, erosion, new bulkheading, etc. on this procedure?

DESIGNER ASSOCIATES
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STATE OF NEW JERSEY 07901

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JUN 16 1978
GIORDANO & HALLERAN
TOMS RIVER, N.J.

MEMORANDUM

TO: Michael Gross

RE: NJCZMP-Bay and Ocean Shore Segment

DATE: 6/12/78

This review of the Bay and Ocean Shore Segment of the New Jersey Coastal Zone Management Program (CZMP) focuses on two areas:

1. Implications of Table 10, pp. 103-111, and
2. Adequacy of the Environmental Impact Statement (EIS)

Implications of Table 10

The CZMP is intended to control the development of the coastal zone directly by the State (p. 10). This is to be done by the combination of boundary definition, policy statements and decision-making processes described in the CZMP. Although the report states that the CZMP is to be applied "for only those selected coastal decisions defined in the management system, particularly on CAFRA, Wetlands and riparian permit applications", the report further states that the CZMP policies "because of their comprehensive nature (can) be used to guide other decisions not strictly subject to the New Jersey Coastal Program".

This is an open door to substantial State review and approval of a wide variety of activities, facilities and developments that heretofore have not been considered within the purview of the State's review procedure. It is important that this open door be closed. It should be closed because the phrase gives unlimited application to NJDEP for management of the coastal zone. If indeed NJDEP is to have this authority it should be specifically granted by State statute, and not be gained by administrative acquisitiveness.

Table 10 is the means by which NJDEP's control mechanism comes together. Table 10 establishes the intensity for development in the coastal zone. It is to be used only when the NJDEP review applications pursuant to CAFRA, Wetlands or riparian permits; however, as noted above, the open door could allow Table 10 to be used as a control on many more situations.

Table 10 usurps land use prerogatives traditionally accepted to be local in nature. It has, in all likelihood, extensive conflicts with local planning and zoning. This can only be determined by a test application of CZMP's location policies on several typical communities. This has not been done.

Finally, Table 10 is not internally consistent--or stated another way, there is no rationale for going from the Land Area factors (depth to seasonal high water table, permeability, soil fertility, vegetation index, development potential and

regional type) to the four Maximum Acceptable Development Intensities. Several questions evolve out of an analysis of Table 10:

- Do each one of the Land Area factors have equal weight or value?
- Are any of the factors exclusive or controlling regardless of the other factors?
- Are not several of the Land Area factors derivative from soils data, and therefore duplicative?
- Are all the factors pertinent where public sewer and water are available?

The Maximum Acceptable Development Intensities, in the light of data and methodology presented (or the lack thereof) is arbitrary in its development and its application. Table 10 must be tested on a larger scale to determine its practicality and its real impact on development in the coastal zone.

Environmental Impact Statement (EIS)

Considering the significance, the geographic application and the controversial nature of the CZMP, the EIS is deficient. Indeed, it is fatally defective in terms of analyzing the impacts (consequences) of Bay and Ocean Shore Segment of the CZMP.

- The Bay and Ocean Shore Segment presents guidelines (which will later become rules and regulations) for controlling development in a significant portion of the State of New Jersey. These rules and regulations will usurp elements of local land use authority.
- Vast acreages will fall into one of four development intensities. No studies or evaluations have been made as to the amount or distribution of these development intensities. Of major significance is the question of whether development intensities inhibit or do violence to local, county and State plans for land use development, conservation or preservation.
- The rules and regulations could have a significant impact on employment, the construction industry, housing for all income levels and the economy in general.
- The guidelines have generated controversy, which has not been addressed.

The EIS has glossed over issues of significance that touch not only on socioeconomic impacts but also on the philosophy of governance in this State. The EIS lacks a rigorous analysis of the very real problems and issues raised by the guidelines. A more substantial EIS is required by NJDEP for an inland, 25 unit subdivision than was prepared for this major and significant document which affects dozens of communities within the coastal zone.

General Comments

My main concern regarding the CZMP is the substantial authority it gives NJDEP without State statute. Under the guise of guidelines (or rules and regulations) NJDEP is imposing a review system which predetermines type and intensity of

development for all communities in the coastal zone. The full implications of the guidelines cannot be known until they are tested on at least several typical communities.

Additionally, I have serious reservations regarding NJDEP's ability to administer its regulations in a timely, consistent and equitable manner.

Allen Dresden

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CONSULTING ENGINEERS

CABLE: FELLCO

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HAGERSTOWN, MD. 21740
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310 MAIN STREET
CN 2548
TOMS RIVER, N. J. 08753
(201) 349-3121

REPLY TO:

Toms River

June 20, 1978

Mr. David N. Kinsey
Office of Coastal Zone Management
Dept. of Environmental Protection
P. O. Box 1889
Trenton, N. J. 08625

Runoff Policy

Dear Mr. Kinsey:

I have read your department's draft of the segment of the Coastal Zone Management Plan concerning "Storm Water Runoff Policy for the Development and Operation of Coastal Uses" dated May 1978.

While I can't disagree with the general policy that storm water runoff from developed areas can and is a major source of stream pollution, I feel greatly concerned with the draft policy as written for the following reasons:

1. The draft policy is somewhat vague in the manner in which it must be implemented.
2. The policy seems to imply that runoff from a developed site cannot exceed that which would occur if the site were covered with a "mature forest vegetation." This is regardless of the existing condition of the site.
3. It does not appear to be a clear indication of the degree to which storm water must be treated prior to discharge. Are you speaking of treating to potable water standards, existing stream quality standards, or ground water standards similar to those adopted in the Pine Barrens or some other criteria not yet established.
4. Some of the retention requirements may be physically impossible on the site depending upon topography, ground water elevation and other physiological features. If this is the case on a specific application, it may well preclude development.

FELLOWS, READ & WEBER, INC.

Mr. David N. Kinsey

-2-

June 20, 1978

5. It does not appear to be a concise rate at which retained storm water must be treated. This rate must be established in order to determine the size of the treatment plant and hence its cost.

In view of the ambiguities, I would find it very difficult as a consulting engineer to use the draft and apply it to a specific development site as a criteria for design, and I, therefore, urge your department to postpone adoption of this runoff policy until these matters can be clarified.

I may also suggest that you contact the Consulting Engineers Council, P. O. Box 359, Springfield, N. J. 07081, Attn: Peter Allen, Executive Director, and ask that organization to offer comments from their various committees.

Very truly yours,

FELLOWS, READ & WEBER, INC.


Joseph R. Read

dg

c: Hon. John F. Russo
Mr. Peter Allen

3 Spencer Lane
RD #1
Absecon, N.J. 08201

June 15, 1978

Mr. David Kinsey
N.J. Dept. of Envir. Protection
Division of Marine Services
Office of Coastal Zone Management
P.O. Box 1237
Trenton, N.J. 08625

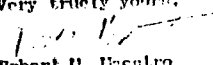
Dear David:

As per your request at our June 7 meeting in Toms River, please find enclosed copies of pages from the CZM draft EIS with my comments. I hope you can decipher my chicken scratching.

Although certain problem areas exist, I feel your office should be commended for what they put together. This document provides better guidance than most regulatory documents I have seen. My major concern, however, is that it appears to be too restrictive by prohibiting many types of activities in certain areas and therefore does not allow for such innovation in design which could mitigate some of the potential problem areas.

I would be happy to clarify any of my comments for you, if you so desire.

Very truly yours,


Robert H. Heston

if place where legal documentation is mentioned in the appendix, appen. section should refer to it that is included in the appendix, appen. section should refer to it

could include more of the laws + statutes in appendix to provide for a ^{NEW JERSEY COASTAL MANAGEMENT PROGRAM} ^{BAY AND OCEAN SHORE SEGMENT} ^{AND} convenient of refer-
ent people wouldn't even know where to locate them, or they could be relatively inaccessible to them

DRAFT ENVIRONMENTAL IMPACT STATEMENT
use terminology that can be understood by the layman -
mean high water definition in the glossary leaves much to be desired

way set up w/ definition, policies, rational + example in section 6 is excellent

May 1978
although some problem areas, best guidance document I have seen from any regulatory agency

Bob Maestro

Prepared by:

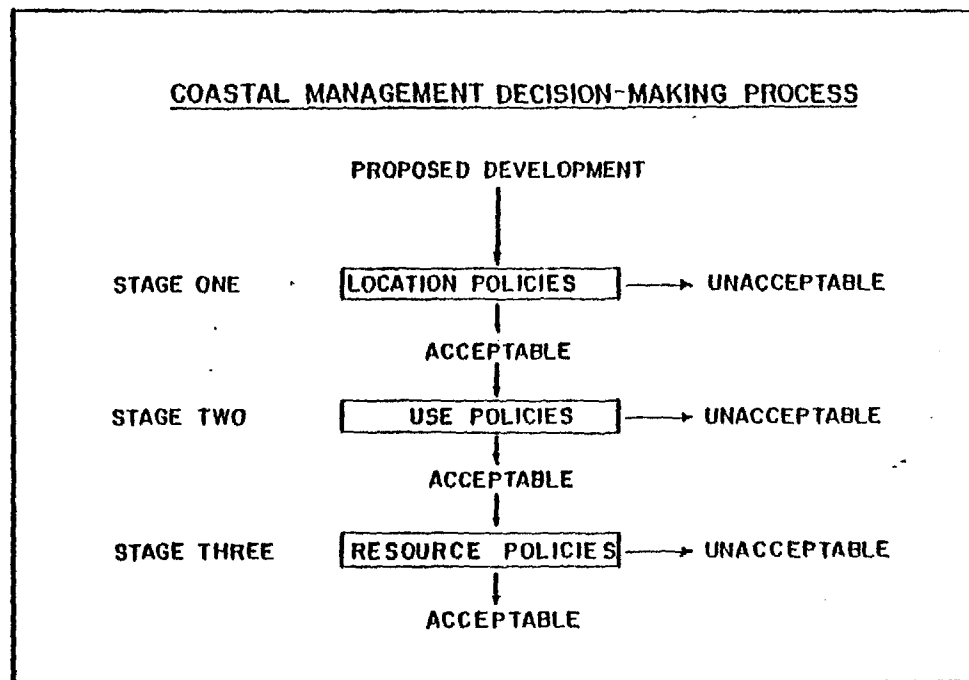
State of New Jersey
Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Management
P. O. Box 1889
Trenton, New Jersey 08625

U.S. Department of Commerce
National Oceanic and Atmospheric
Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Stage One: Location Policies
Stage Two: Use Policies
Stage Three: Resource Policies

The purpose of the three-stage screening process is to increase the predictability of coastal decision by adding more specificity to the decision-making process. Explanations of these three stages may be useful before the detailed statement of the policies themselves (See Figure 4).

Figure 4



First, the Location Policies delineate acceptable amount and intensity of development for different types of locations, by considering both the sensitivity, or disadvantages, of sites, as well as their development potential, or advantages. This process of evaluating the acceptability of locations is called the Coastal Location Acceptability Method (CLAM) and indicates where developments may take place.

There is a stage not clearly labeled here - what discusses the "how" along with the

Second, proposed developments that pass the Location Policies screen are then evaluated in terms of specific Use Policies that more precisely define acceptable uses of coastal land and water resources -- such as high-rise housing and parks -- from the perspective of a proposed development, as distinguished from a proposed location. Use policies indicate what may take place.

Third, proposed developments that meet the standards of the first and second stages must also comply with appropriate Resource Policies regarding the possible effects of the proposed development on coastal resources such as water, air, and public access to the shorefront.

In brief, these stages, presented in Section 6.0, 7.0 and 8.0, define a process for decision-making to carry out the Basic Coastal Policies at both the regional and site-specific scales. Any interested person should be able to fill in the characteristics of a particular site or development project to determine its acceptability under the Coastal Program.

Before presenting the Coastal Resource and Development Policies, it is important to grasp the kinds of decisions these policies will help to make. First, the policies will serve as the standards for regulatory decisions, primarily under the three coastal permit programs. Second, the policies will serve as the basis for determining the consistency of proposed actions, by federal, state, and local agencies with the Coastal Program. Third, the coastal policies will shape key state funding decisions in the coastal zone especially under the Shore Protection and Green Acres Open Space Acquisition and Outdoor Recreation programs. Fourth, the coastal policies will guide further planning and advocacy actions by DEP as the state coastal management agency.

This Chapter spells out New Jersey's substantive coastal policies for the Bay and Ocean Shore Segment, in a manner that can be used by prospective developers, DEP staff, other public agencies and interested citizens to determine whether or not a proposed development or activity should or should not take place in New Jersey's coastal zone. The description of each of the three stages includes definitions of geographic areas, uses, and other terms, indicates the applicable policy, and provides a rationale for the policy. At this stage in New Jersey's participation in the national coastal zone management program, it is important to stress that for the purposes of the federal Coastal Zone Management Act, the policies of this chapter apply only within the Bay and Ocean Shore Segment boundary defined in Chapter Two and to the developments under the jurisdiction of the Coastal Program, as defined in Chapter Four.

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6.0 LOCATION POLICIES

- 6.1 Introduction
- 6.2 Special Water Areas
- 6.3 Water Areas
- 6.4 Special Water's Edge and Land Areas
- 6.5 Water Edge Areas
- 6.6 Land Areas
- 6.7 Composite Mapping
- 6.8 Preparation of Location Acceptability Map
- 6.9 Determination of Location Acceptability
- 6.10 Location of Linear Facilities
- 6.11 General Location Policy

Handwritten notes:
This section has a lot of info. for development, but must be presented in a manner that is easy to understand. It is a lot of overlap & redundancy recognized by the break-down of a site into tool many sub-units is major cause of confusion.

6.1 Introduction

6.1.1 Purpose

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment, as well as different social and economic implications. Different policies are therefore required for different locations. This section defines the Location Policies of the Coastal Program. This presentation of the policies is lengthy and detailed because the coast is large, varied, and complex. The method of applying the policies is, however, relatively simple.

6.1.2 Eight Step Process

The Location Policies provide an eight step process for determining the acceptability for development of a particular location for a particular use. This process, or method, was developed by DEP-OCZM and is sometimes referred to as the Coastal Location Acceptability Method. In addition to this stage, proposed coastal developments must pass the two screens of the appropriate Use Policies and Resources Policies.

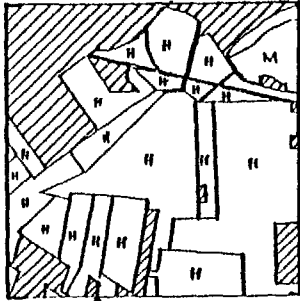
The eight location policy steps require the identification of defined water, water's edge, or land types, and the preparation of maps indicating the distribution of the various location types present on a proposed site. Various policies are associated with the different types. The final steps in the process identify the distribution of specific policies for the proposed site.

The eight steps of analysis begin at the wettest parts of the coastal region and proceed upland to the driest areas. The steps, with their relevant section numbers, are as follows:

Step 1 - Identify and Map Special Water Areas (Section 6.2)

In some water areas, such as surf clam beds or navigation channels, there is a concentration of specifically valued natural or cultural

This map shows the distribution of existing property boundaries to a scale of 1:24,000. The source of data is the Ocean County Tax Records.



H = Hypothetical Marina Proposal
 H = Hypothetical Housing Proposals
 = Existing small subdivisions
 PROPERTY BOUNDARIES

The assumption is made for the purpose of illustrating the analysis described in the following sections, that proposals have been received simultaneously on all properties marked "H" for moderate density housing (5 dwelling units per acre) and on the property marked "M" for a marina.

No such proposals really exist; this is a purely hypothetical study to illustrate how the steps of the Location Policies (CLAP) analysis are done.

Location policies should address an area immediately adjacent to site (should be defined) as well as site itself - activities on the site from site as well. Some principle applies to ways basic natural resources. In map, it should cover area larger than site. You express concern about this in section 8, but I believe it would greatly facilitate your review if the surrounding area was mapped along with the site for this section.

6.2 Special Water Areas

(Step 1. Identify and Map Special Water Areas)

Certain specific water areas merit focused attention and special management policies. The tidal estuaries of New Jersey are critical habitats for at least two-thirds of the state's important marine commercial and recreational species of finfishes. These species are commonly called "estuarine dependent", because their life cycles rely upon the estuaries as nursery, wintering, and/or feeding areas. Finfish, like waterfowl and blue-claw crabs, are highly mobile and seasonally migratory creatures. Each uses various portions of the estuarine system at different stages in their life cycles, depending on seasonal and daily aquatic and atmospheric conditions. For these reasons, the entire estuarine system (tidal waters and coastal wetlands) must be viewed as prime finfish and shellfish nursery habitats and prime migratory waterfowl wintering areas. This section defines the various Special Water Areas, and indicates the applicable location policy.

The information requirements for each of these Special Water Areas are similar; a map shall be prepared at the scale of 1:24,000 for pre-application conferences and at least the scale of 1:2,400 for application purposes, showing the distribution of each Special Water Area on the proposed site.

6.2.1 Shellfish Beds

6.2.1.1 Definition

Estuarine bay or river bottoms (tidelands) presently supporting commercial or recreational quantities of hard clams, soft clams, oyster or bay scallops. This category includes: open, seasonally open, and specially restricted water quality classes as shown in Shellfishing Area Charts 1 through 10, prepared by and available from DEP. Source areas for transplanting (relays) programs and depuration processing are included, as well as natural or artificial oyster seed (spat) setting beds. Maps of shellfish beds can be found in H. Haskin (1963) "Distribution of Shellfish Resources in Relation to New Jersey Intra-coastal Waterway".

6.2.1.2 Policy

Coastal development which would directly discharge untreated domestic sewage, or industrial wastes, toxic or carcinogenic agents or alter salinity regime, or natural water flow patterns during operation of development is prohibited. Water dependent development which requires dredging adjacent to shellfish beds will be conditionally acceptable, provided that the activity is managed so as not to cause significant mortality of the shellfish resulting from increase in turbidity and sedimentation, resuspension of toxic chemicals, or to otherwise interfere with the natural functioning of the shellfish beds.

6.2.2.3 Rationale:

The surf clam fishery in New Jersey's single most important fishery with dock-side landing values (wholesale) of \$10.8 million during 1976 and estimated retail value of \$27 million. The industry annually generates monies in excess of the retail value, supports employment of over 300 full and part time people in fishing and 1,000 - 1,500 in canning processing, distribution and industry services. Significant areas of productive water are presently closed due to water pollution. In addition, the massive marine fish kill during the summer of 1976 was estimated to have resulted in the loss of \$65 million in sea clam stocks over a seven year period. Surf clam harvesting within New Jersey's territorial sea is regulated by NJDEP. The Mid-Atlantic Regional Fisheries Management Council regulates sea clamming within the Fishery Conservation Zone (200 mile limit). Harvesting is required to be compatible with these agencies, as appropriate. Harvest quotas and other management measures have been adopted for sea clamming (surf clams and ocean quahogs) within the Fishery Conservation Zone.

6.2.3 Prime Fishing Areas

6.2.3.1 Definition:

This category includes special tidal water areas and any water's edge areas which have a demonstratable history of supporting a significant local quantity of recreational fishing activity. Included are all coastal jetties and groins and public fishing piers or docks. Prime fishing areas also includes all red line delineated features within the State of New Jersey's three mile territorial sea illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds and Fishing Facilities, Section III and IV.

6.2.3.2 Policies:

Permissible uses include recreational and commercial finfishing and shellfishing, as presently regulated by NJ Division of Fish, Game, and Shellfisheries, scuba diving and other water related recreational activities. Fishing activities in these areas seaward of New Jersey's Coastal Zone Boundary (within the Fishery Conservation Zone) are required to be consistent with regulations adopted by Mid-Atlantic Regional Fisheries Management Council.

Indicate where can get...

Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes is discouraged and must meet applicable State and federal effluent limitation and water quality standards. Development which would preclude existing public access to shoreline will be prohibited. Development of regional or national significance, such as crude oil or natural gas submarine pipelines, will be directed to locate in an alternate corridor.

6.2.3.3 Rationale:

Natural bathymetric features and artificial structures act as congregation areas for many species of finfish, shellfish, and a diversity of invertebrate species which are essential to marine ecosystem functioning. These areas are heavily utilized by recreational and commercial fishermen. Over 2.7 million people annually participate in marine sport fishing and shellfishing in New Jersey. This represents the highest number of participants in any state, from Maine to Maryland. Of that total, 1.6 million reside in New Jersey, with the remaining number coming mostly from Pennsylvania and New York (792,000 and 300,000 respectively.)

6.2.4 Finfish Migratory Pathways

6.2.4.1 Definition:

Waterways (rivers, streams, creeks, bays and inlets) known to serve as passageways for anadromous fish to or from seasonal spawning areas, as listed by H. E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report, No. 61, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary. Species of concern include: alewife (river herring) (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), American shad (*Alosa sapidissima*), and striped bass (*Morone saxatilis*).

6.2.4.2 Policies:

Development that blocks upstream movement of anadromous species is prohibited. Mitigation measures will be required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature impinging on or suffocating species; causing siltation, or raising turbidity levels during spring migration periods. Water's edge development which incorporates migration access structures, such as

Should not limit to anadromous fish - other species which are not truly anadromous and less saline areas for part of their life cycle - e.g. blue fish

some long approach should be taken for that local water area

functioning fish ladders, will be encouraged, provided that the NJ Division of Fish, Game, and Shellfisheries approves the design of the access structure.

6.2.4.3 Rationale:

Striped bass are one of New Jersey's most prized sport fish and are actively sought wherever they occur in New Jersey. This species spawns in the Delaware, Hudson and Maurice Rivers. American Shad, once much more numerous and formerly an important commercial species, continue to make an annual spawning run in the Delaware River, where there is an active sport fishery. A much reduced commercial fishery exists in Delaware Bay. Herrings are important forage species and spawn annually in many of New Jersey's tidal tributaries. Herrings are fished during spring runs, for direct human consumption and for use as bait.

6.2.5 Submerged Vegetation

6.2.5.1 Definition:

This special water area includes estuarine water supporting rooted vascular seagrasses (such as) widgeon grass (*Ruppia maritima*), eelgrass (*Zostera marina*), and the green algae sea lettuce (*Ulva lactuca*). Eelgrass beds are limited to shallow portions of Sandy Hook Bay, Shrewsbury River, lower Barnegat Bay and Little Egg Harbor. Widgeon grass is for the most part limited to shallow areas of upper Barnegat Bay. Detailed maps of the distribution of the above species for Little Egg Harbor are available from DEP in the DEP-OCZM sponsored study, in R.E. Good, et al. Analysis and Delineation of the Submerged Vegetation: A Case History of Little Egg Harbor. In areas outside of Little Egg Harbor, a developer will be required to survey this resource until DEP completes additional surveys.

6.2.5.2 Policies:

Destruction of submerged vegetation beds is prohibited. Mitigation measures will be required for all developments which would result in erosion or increased turbidity within this special area. Dredging for energy pipelines and submarine cables of national significance will be conditionally acceptable, provided there is no prudent or feasible alternative site, and if the site is restored to original bathymetry and replanted with pre-development vegetation.

...ntin... Shell... which have been so designated and approved by the Secretary of Commerce and the Governor of the State of New Jersey. Under Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532), a marine sanctuary can be established for the purpose of preserving or restoring marine areas for various values. To date, there are no designated marine sanctuaries within New Jersey. The Office of Ocean Management within NOAA is presently reviewing all nominations and recommendations within the Mid-Atlantic states. DEP-OCZM submitted six recommendations to NOAA in 1977, including the Hudson Canyon, Shrewsbury Rocks, Great Bay estuary, shipwrecks, inlets, and offshore sand ridges. Final definition and designation of marine sanctuaries in New Jersey's nearshore and offshore areas requires joint actions by the Governor of New Jersey and the U.S. Secretary of Commerce, with final approval by the President of the United States and could take place during 1978-1979.

6.2.8.2 Policy:

Management principles in the selected areas will serve to preserve and protect the areas, as well as indicate what actions are not permissible in the area. Non-permissible uses will be dependent on the five basic purposes for designation, which include: habitat areas, species areas, research areas, recreational and esthetic areas, and unique or exceptional areas. After designation, activities not compatible with the basic purposes will be prohibited or restricted, but in general all other uses are allowed. Final policy in marine sanctuaries must be approved jointly by the Governor of New Jersey and the U.S. Secretary of Commerce.

6.2.8.3 Rationale:

Certain portions of the Atlantic Ocean and adjacent estuaries are of special national and regional value which could be adversely impacted by development likely to take place in the future, especially activities related to offshore oil and gas development. It is in the long-term interest of the people of the Nation to identify, protect, and manage these special areas.

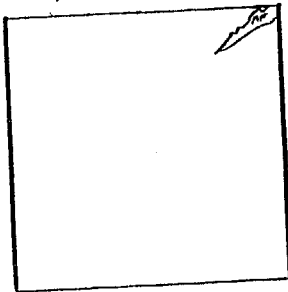
6.2.9 Illustrative Example: Special Water Areas

The map below shows, to a scale of 1:24,000, the Special Water Areas present in the illustrative site. The only special water area present is Anadromous Fishing areas which is included in the Finfish Migratory Pathways. The data source for this information is the "New Jersey anadromous Fish Inventory" Miscellaneous Report No. 41 NJDEP as listed by H.E. Zich (1977).

how about limited spawning with size which counts on it.

how about water areas that are heavily used for concentration areas for waterfowl?

hard water and waterless?



Special Water Areas

Legend:

AF = Anadromous Fish Area

6.3 Water Areas (Step 2 - Identify and Map Water Areas)

6.3.1 General Definition

Areas below the mean high water line, including intertidal areas, and nontidal permanent surface water features are classified "Water Areas". Water areas include various specific types of basins and channels.

6.3.2 General Policy

The location policy for coastal water areas varies according to the depth of the water basin, flow of the water channel, and proposed water use. For this reason, specific water basin and proposed water channel types and specific water uses are defined below. Specific coastal policies are then articulated in a Water Acceptability Table for specific uses, considering both the advantages and disadvantages (sensitivity and development potential) of various types of locations, using the Coastal Location Acceptability Method (CLAM). In addition to the Water Areas policies presented here, proposed coastal development must also comply with applicable state and federal effluent limitations and water quality standards.

6.3.3 Rationale

The sensitivity of water areas to environmental impacts depends primarily on the assimilative capacity of the specific water area. Assimilative capacity indicates the amount of adverse impact or pollutants that a water body can absorb and neutralize before it begins to display a significant reduction in biological diversity, chemical, or physical water quality. Two factors -- water volume and flushing rate (the rate that water in a channel or basin is replaced) -- are used in CLAM to determine the approximate assimilative capacity of water basins and water channels respectively. Water volume depends upon the surface area and depth of a water body. The Location Policy for Water Areas considers flushing rate in terms of three types of water channels and three types of bays. The development potential of water types for specific uses has been included in the Water Area Acceptability Table.

6.3.4 General Information Requirements

A map shall be prepared at the scale of 1:24,000 for pre-application conferences, and at least the scale of 1:2,400 for application purposes, showing the distribution of various water body types on the proposed site.

6.3.5 Definitions of Water Body Types

The water areas of the coastal zone have been classified into eight water body types, as defined below. In addition, some water body types are further classified according to the depth of the water body type, or its bathymetry.

6.3.5.1 Basin Types (arranged by assimilative capacity from high to low)

6.3.5.1.1 Ocean

All areas of the Atlantic Ocean out to the limit of New Jersey's territorial sea, three nautical miles from the shoreline. The ocean extends from the marine boundary with the State of New York in Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point.

6.3.5.1.2 Open Bay

A large, somewhat confined coastal water body that has a shoreline length in excess of three times the width of its outlet to the sea, with a major river mouth discharging directly into its upper portion. The outlet is typically wide and unrestricted by land. Delaware Bay, Raritan Bay and Upper New York Bay are the only representatives of this type in New Jersey.

6.3.5.1.3 Semi-Enclosed Bay

A partially confined coastal water body with a narrow restricted inlet and with significant fresh water inflow, such as Great Bay and Great Egg Harbor.

6.3.5.1.4 Back Bay

A generally small shallow coastal water body with restricted inlets to the sea and low freshwater inflows, and limited tidal circulation such as Shark River, Barnegat Bay, Reeds Bay, Absecon Bay, Lake's Bay and Great Sound, among others.

*Case type of
a basin & gulf
be made for all
by these criteria
waters*

Figure 5
WATER ACCEPTABILITY TABLE

	Ocean	Open Bay	Semi-Enclosed Bay	Back Bay	Inland Basin	Man-Made Harbor	Channel
Key							
P = Prohibited							
D = Discouraged							
C = Conditionally Acceptable							
E = Encouraged							
/ = Impractical							
Note: Water depths are measured from mean low water							
	Deep + 18'	Medium 6' - 18'	Shallow 0' - 6'	Deep + 18'	Medium 6' - 18'	Shallow 0' - 6'	Lakes and Ponds
	Deep + 18'	Medium 6' - 18'	Shallow 0' - 6'	Deep + 18'	Medium 6' - 18'	Shallow 0' - 1/2'	Large Rivers
	Deep + 18'	Medium 6' - 18'	Shallow 0' - 6'	Deep + 18'	Medium 6' - 18'	Shallow 0' - 1/2'	Medium Rivers and Streams
	Deep + 18'	Medium 6' - 18'	Shallow 0' - 6'	Deep + 18'	Medium 6' - 18'	Shallow 0' - 1/2'	Small Creeks and Streams
1. Aquaculture	C	C	C	C	C	C	C
2. Boat Ramps	C	C	C	C	C	C	C
3. Retaining Structures	C	C	C	C	C	C	C
4. Docks and Piers	C	C	C	C	C	C	C
5. Dredging-Maintenance	C	C	C	C	C	C	C
6. Dredging-New	/	/	/	/	/	/	/
7. Spoil Disposal	C	C	C	C	C	C	C
8. Dumping	/	/	/	/	/	/	/
9. Filling	/	/	/	/	/	/	/
10. Piling	C	C	C	C	C	C	C
11. Mooring	C	C	C	C	C	C	C
12. Offshore Sand Mining	C	C	C	C	C	C	C
13. Bridges	/	/	/	/	/	/	/
14. Cable Routes	/	/	/	/	/	/	/
15. Overhead Lines	/	/	/	/	/	/	/
16. Pipeline Routes	C	C	C	C	C	C	C
17. Effluent Release	C	C	C	C	C	C	C
18. Dams and Impoundments	/	/	/	/	/	/	/

45

even though... probably part in... he would not put in homes... could not get rid of the storm water?

234

6.4.1.2

Policy

Development in high risk erosion areas is prohibited, except for shore protection measures that satisfy the shore protection Use Policies (See Section 7.0). Development that contributes to further erosion of high risk erosion areas is discouraged.

In principle development in areas that will be eroded in the mid term future (50 years) is discouraged.

In shorelands adjacent to rapidly eroding shorelines there are several factors that affect policy on the geographical extent of areas where development should be restricted. These include:

1. Steep beach slopes
 2. Cliffed bluffs adjacent to beach
 3. Insufficient dune or bluff vegetation
 4. Exposed, damaged or breached jetties, groins or seawalls
 5. High long-term erosion rates
 6. Pronounced downdrift effects of groins (jetties)
- Thirteen specific examples of high risk erosion areas have been identified by DEP within the Bay and Ocean Shore Segment, including:
1. Cumberland County - Delaware Bay Shore (developed portions along bayside)
 2. Middle Township (developed portions of bayside)
 3. Cape May County
 4. Northern Wildwood (where Hereford Inlet fronts beach)
 5. Strathmore (Putnam Avenue to end of developed island)
 6. Ocean City (3rd St. to 18th St.)
 7. Ocean City (E. Atlantic Blvd. to Newcastle Rd.)
 8. Atlantic City (where Absecon Inlet fronts beach, Oriental Ave. to Parkside)
 9. Barnegat Light (8th to 4th St.)
 10. Loch Arbour to Elberon
 11. Long Branch
 12. Sea Bright and Monmouth Beach
 13. Raritan Bay (developed portions along bayside)

6.4.5 Historic Resources

6.4.5.1 Definition

Historic resources include objects, structures, neighborhoods, districts, and man-made or man-modified features of the landscape, including archaeological sites, which either have been on or are eligible for inclusion in the State or National Register of Historic Places. The criteria are defined by the National Park Service. The range of historic resources along the coast is broad and diverse, from oceanfront Victorian "gingerbread" architecture, to examples of New Jersey's maritime heritage, to colonial homes, and Indian artifacts.

6.4.5.2 Policy

Development that detracts from, encroaches upon, damages, or destroys the value of historic resources is discouraged. Scientific recording and/or removal of the historic resource must take place, if the proposed development proposal would irreversibly affect historic resources. Development that incorporates historic resources in adaptive reuse is encouraged.

6.4.5.3 Rationale

The public interest requires the preservation of both representative and unique historical and archaeological (cultural) resources of the coast, in order to provide the present and future generations with a sense of the people, who lived, worked, and visited in the coast in the past. DEP's Office of Historic Preservation maintains an up-to-date list of properties on the New Jersey State Register of Historic Places (N.J.S.A. 13:1B-15.128 et seq.) and the National Register of Historic Places.

6.4.6 Specimen Trees

6.4.6.1 Definition

Specimen trees are the largest (diameter at 4.5 feet above ground) known individual trees of each species in New Jersey as listed by DEP-Bureau of Forestry (see New Jersey Outdoors, September-October 1977 for a listing of specimen trees). A specimen tree site is the area directly beneath the crown, also known as the dripline.

why not consider individual pth sp. or pth communities which are limited & unique with respect to the region? the region may be defined simply as the entire area

6.4.6.2 Policy

Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. Preservation of the site is encouraged. The site extends to the outer limit of the buffer areas necessary to avoid adverse impacts, or 50 feet from the tree, whichever is less.

6.4.6.3 Rationale

Many specimen trees have been associated with significant historical events, in addition to their scientific importance. Specimen trees are the largest known representative of a species, and frequently the oldest representative, too. Specimen trees are irreplaceable.

6.4.7 Prime Forest Areas

6.4.7.1 Definition

Low lying areas supporting Atlantic White Cedars (*Chamaecyparis thyoides*), where white cedars compose a significant percentage of stems within a given area. Generalized location maps of white cedar stands can be found in J. McCormick and L. Jones, the Pine Barrens Vegetation (1973), and forest type maps within the N.J. DEP Bureau of Forestry.

6.4.7.2 Policy

Development that adversely affects prime forest areas, including white cedar stands and their surrounding areas, is prohibited.

6.4.7.3 Rationale

White cedar stands most commonly occur in flood plains and in the fringe areas of drainage ways and bogs, which are frequently underlain with saturated organic peat deposits. This material is particularly unsuited for development unless highly altered. White cedars are usually found in swampy areas with high seasonal groundwater tables between zero to one foot.

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and serving as a rich habitat for many rare and endangered plant and animal species, as well as game species, such as deer.

*6.4.7.1
areas that white
cedar stands are
usually found in
low lying areas
with high seasonal
groundwater tables
between zero to one
foot*

White cedar stands also act as forest fire breaks. This species in New Jersey's most valuable timber species and grows in discrete stands. The wood has a long tradition of maritime and local craft uses. Unfortunately, white cedars have been eliminated from much of their previous range in New Jersey.

6.4.8 Prime Wildlife Habitats

6.4.8.1 Definition

Areas known to be the habitat of any flora or fauna species identified as "endangered" or "threatened" on federal or New Jersey lists of endangered or threatened species, including a buffer area of sufficient dimension to ensure continued survival of the species, and other local areas serving a critical role in maintaining wildlife, particularly in wintering, breeding, and migrating. These habitats includes but are not limited to: colonial nesting bird rookeries and white-tail deer wintering yards. Information on the geographic distribution of this Special Land Area is sensitive and not widely published.

6.4.8.2 Policy

Development that causes minimal feasible interference with prime wildlife habitats is conditionally acceptable. DEP will review development proposals involving these areas on a case-by-case basis.

6.4.8.3 Rationale

The value of endangered and threatened species can not be based upon commercial or recreational industries which they help support, for these industries are usually consumptive of natural resource. Rather, the State of New Jersey, as custodian of a particular portion of the national wildlife heritage, has the obligation of stewardship on behalf of the people of the state and nation toward perpetuation of wildlife species within its borders. Natural forces and especially human actions have steadily reduced the number and diversity of certain species. The State has an obligation to use its influence and authority to keep preventable losses to a minimum and perpetuate those species faced with possible extinction.

Further, this obligation has been clearly specified by both state and federal legislation. The New Jersey Endangered and Nongame Species Conservation Act (P.L. 1973, c. 309) declares that it is the policy of the State to manage all forms of wildlife

*no one knows!
it also emphasize the return of natural areas of open space, especially prime or undeveloped and providing some degree of connectivity*

which are limited for unique for the region

is this an arbitrary delineation?

The head is defined as a 300 foot buffer zone measured from points where a line projected upland along the line of the stream intersects the line defining the limit of seasonal high water table at surface. A stream head also extends 50 feet on both sides of intermittent or perennial stream channels, when the limit of seasonal high water table at surface does not extend to the end of the stream channel. (See Figure 10).

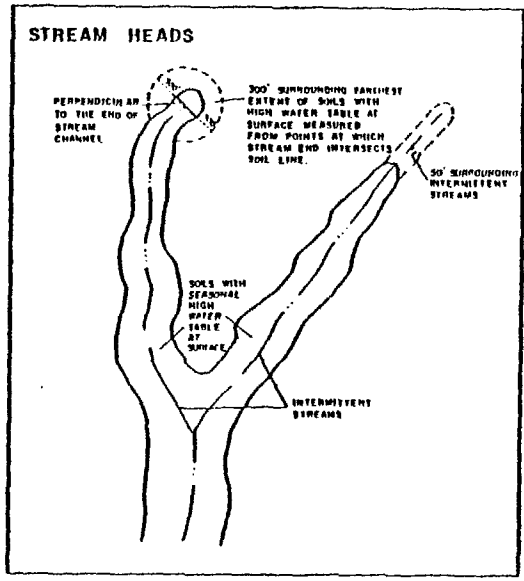
6.4.13.2 Policy

Development that would adversely affect the natural functioning of stream heads is prohibited. In particular, paving, filling, effluent discharge, vegetation disturbance, and disturbance of drainage patterns are prohibited.

6.4.13.3 Rationale

Stream heads serve as groundwater discharge areas that help maintain the quality of the water regimen of streams, and directly protect the quality of coastal waters. Stream heads are the source of perennial and ephemeral streams.

Figure 10



leaves and dead plants is washed to the streams, which carry it to estuarine waters where the detritus becomes the basis for estuarine food webs.

(g) Maintenance of Wildlife Habitats. Flood prone areas are very important wildlife habitats. The branching nature of streams serves as wildlife movement corridors. Even when development is intense between stream corridors, preserved vegetated buffers along streams help maintain wildlife species diversity and numbers.

(h) Recreation. The linear branching nature of streams also offers the possibility of providing green walkways and bikeways, if vegetated buffers are preserved.

6.5.2.4 Upper Water's Edge Information Requirements

Development proposals shall map and label the upper water's edge areas of a proposed project at a scale of 1:24,000 at the pre-application stage and at least the 1:2,400 scale at the application stage, indicating sources of information and the lower and upper boundaries of the upper water's edge. These areas shall be labeled Upper Water's Edge. If the on-site vegetation is greater than 10 feet in height, as established by site survey, then the area shall be labeled FORESTED. If the vegetation is less than 10 feet high and not wetlands vegetation, the area shall be labeled UNFORESTED. Areas growing freshwater vegetation shall be labeled FRESHWATER WETLANDS.

At the application stage, the inland limit of the upper water's edge should be defined by an on-site soil survey.

6.5.3 Retained Water's Edge

6.5.3.1 Definition of Retained Water's Edge

Retained Water's Edge Areas are adjacent to either water areas or lower water's edge areas as defined above and stabilized with existing bulkheads, revetments or sea walls. The lower limit of the Retained Water's Edge is the line of the retaining structure. The upper limit of the Retained Water's Edge is either the first public cultural feature inland from the retaining structure (such as a road or boardwalk) or 100 feet inland, whichever is the lesser. Two types of Retained Water's Edge are defined: those along open water bodies and those along man-made lagoons. Figure 13 presents a sketch showing the extent of the Retained Water's Edge.

6.6.4 Soil Permeability Factor

6.6.4.1 Definition

Soil permeability is the rate of vertical movement of water through a surface sediments, expressed in inches per hour. The permeability variable has three levels:

- (a) High 2" + per hour
- (b) Medium 0.2" - 2" per hour
- (c) Low 0 - 0.2" per hour

Where permeability varies from soil horizon to soil horizon, the lowest permeability level shall be used.

Rationale

The permeability of soils has several implications for planning. Buildings and impermeable pavement reduce surface permeability to zero, increase surface runoff and decreasing aquifer recharge. This will have the greatest adverse impact on the hydrologic system in high permeability soils and least effect in low permeability soils. In high permeability soils, inadequate filtration of runoff may cause contamination of groundwater, wells, and discharge areas. In low permeability soils, inadequate drainage may cause flooding. Soils of moderate permeability and high ion exchange have the highest nutrient absorption capacity and are therefore prime areas for land application of nutrients. Upland (SHWT 3+) soils of high permeability are prime aquifer recharge areas. Soil permeability affects the suitability of soils for subsurface sewage disposal systems but this is discussed separately in the resource policy section.

6.6.4.3 Information Requirements

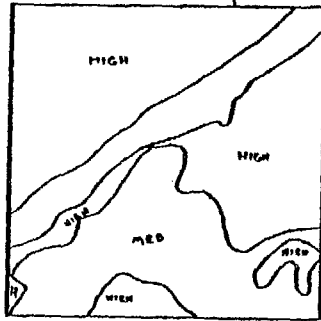
Data for the distribution of these permeability levels may be obtained from the Soil Conservation Service (SCS) surveys by linking the soil distribution maps to the tabular data indicating permeability of soil types. Site survey data from percolation test program will be accepted as alternative data source for surface permeability provided that there is at least one test pit cent within each soil type area indicated by SCS data (where available) and at least one test pit per 10 acres overall. An applicant shall prepare a map showing the distribution of surface permeability all areas outside the water's edge.

does not account for use of detention basins for mitigation

see 6.5.2.4

6.6.4.3 Illustrative Example: Land Area - Permeability

The map below shows to a scale of 1:24,000 the permeability factor included in the illustrative example. The data source is the SCS County Soil Survey.



Permeability

6.6.5 Soil Fertility Factor

6.6.5.1 Definition - Soil fertility indicates the degree of suitability of soils for producing field crops and wood.

The Soil Fertility variable has three levels:

- (a) High - Soil Conservation Service (SCS) Agricultural Capability Classes I and II, Special Soils for Blueberries, Cranberries, and Woodland Suitability Class 1.
- (b) Moderate - Agricultural Capability Class III and Woodland Suitability Class 2.
- (c) Low - Agricultural Capability Class IV and below, Woodland Suitability Class 3 and below.

The U.S. Soil Conservation Service uses two ranking systems to describe the potential of soils for plant growth. The Agricultural Capability classes estimate the soil productivity for agricultural crops and the Woodland Suitability classes estimate the soil productivity for timber.

205 sites... the vegetation... present with... areas of such greater value... "High" areas will vary greatly in value according to the veg types present.

- (a) High - Areas of mature forest or early successional forest with a tree canopy height 15 feet or more, or pygmy forest growth in the Pine Barrens.
- (b) Medium - Open lands, agricultural lands, field successional meadows, areas with scrub vegetation of up to 15 feet in height, and vacant lots settled areas.
- Low - Developed land with structure paving, mown lawns, and open areas immediate adjacent to structures, which may include so highly maintained landscaped or vegetated areas.

6.6.6.2 Rationale

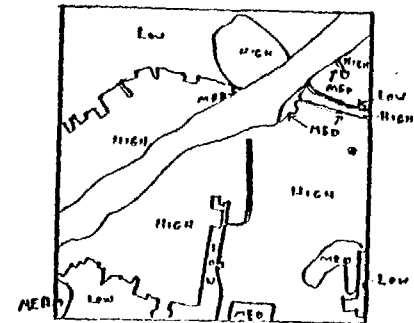
The Vegetation Index is included as a sensitive variable due to the importance of conserving forest and vegetation resources for numerous reasons including soil stabilization, air and water purification, surface runoff and flood control, wildlife habitat, and visual quality. As abandoned meadows succeed through scrub to early successional forest the vegetation index changes from medium to high. The 15' level was selected because at this height the vegetation provides significant visual screening and the extent of tree growth is sufficient to provide the valued environmental functions of a forest.

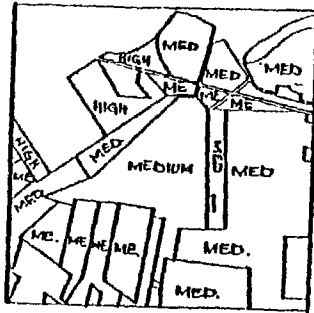
6.6.6.3 Information Requirements

The classification of the site by the three levels Vegetation Index shall be mapped using recent aerial photography or site surveys as data sources.

6.6.6.4 Illustrative Example: Land Area - Vegetative Index

The map below shows to a scale of 1:24,000 the vegetative index in the illustrative site. The data source is aerial photographs.





6.6.8 Regional Growth Potential Factor

6.6.8.1 Definition

The Regional Growth Potential factor divides mainland municipalities within the Bay and Ocean Shore Segment into either Growth Areas or Limited Growth Areas. This classification does not apply to that portion of municipalities located on barrier islands, such as Atlantic City, Brigantine, Long Beach Township, Stone Harbor, and Wildwood Crest. Only the Development Potential Factor (See Section 6.6.D) is used in determining the acceptability for development on the Central Barrier Island Corridor.

6.6.8.1.1 Growth Areas include those mainland sections that lie within the Bay and Ocean Shore Segment of the following municipalities, listed below by county:

- (a) Atlantic County
Absecon, Linwood, Northfield, Pleasantville, Somers Point
- (b) Burlington County
None
- (c) Cape May County
None
- (d) Cumberland County
Bridgeton, Hillville
- (e) Middlesex County
Old Bridge

(f) Monmouth County
All municipalities within Bay and Ocean Shore Segment

(g) Ocean County
Beachwood, Berkeley, Brick, Dover, Island Heights, Lakewood, Ocean Gate, Pine Beach, Point Pleasant, South Toms River

(h) Salem County
Salem

6.6.8.1.2 Limited Growth Areas include those mainland sections that lie within the Bay and Ocean Shore Segment of all municipalities outside Growth Areas.

6.6.8.1.3 Figure 17 indicates the areas within the Bay and Ocean Shore Segment included in the Growth and Limited Growth Area categories.

6.6.8.2 Rationale

also areas where sewerage conveyance systems are planned or in near future that have to

Growth Areas are municipalities where extensive development has already occurred and there is a history of high development pressure on remaining undeveloped sites. Access to infrastructure, transportation and major employment centers is good. Because of the increased development potential associated with growth areas, a higher intensity of development is acceptable than in Limited Growth Areas. The Regional Growth Potential Factors help carry out the Basic Coastal Policy to concentrate the pattern of developments at a regional scale.

The classification of municipalities into Growth Areas and Limited Growth Areas for the purposes of the Location Policies is based in part on the proposed Growth Areas and Limited Growth Areas presented in the State Development Guide Plan (Preliminary Draft - September 1977), prepared by the Department of Community Affairs, Division of State and Regional Planning, as well as upon DEP-OCZM analysis of likely areas of development pressure based on the experience from 1973-1978 in the CAFRA permit program of regulating major residential development.

6.6.8.3 Information Requirements

The entire site is either in a growth or limited growth municipality, if not on a barrier island. The applicant shall note in which type of municipality the site is located.

according to recent th. Co. Planning Department letter, all municipal municipalities should be added

USE POLICIES

- 7.1 Purpose
- 7.2 Housing
- 7.3 Resort-Recreation
- 7.4 Energy
- 7.5 Public Facility
- 7.6 Industry-Commerce
- 7.7 Ports
- 7.8 Shore Protection

7.1 Purpose

Many types of development seek locations in the coastal zone. The second stage in the screening process of the Coastal Resource and Development Policies spells out a set of policies for particular uses of coastal resources. A proposed development must meet the standards of the Use Policies, in addition to the Location Policies. The Use Policies often reinforce and highlight Location Policies.

7.2 Housing Use Policies

Definition

Housing in the Bay and Ocean Shore Segment includes both large and small developments of single family detached houses, multi-family units with apartments or town houses, high rise buildings and mixed use developments. The Housing Policies which follow will apply to all proposed housing on wetlands or riparian lands and to housing projects of 25 or more units in other parts of the Bay and Ocean Shore Segment (See Chapter Four for a detailed description of the Management System).

7.2.1 Housing development in the water's edge is prohibited. Housing that requires lagoons, dredging, filling, or bulkheading is prohibited.

Rationale

Housing is not dependent on water access, and does not qualify for any exceptions to the policy of restricting development in sensitive areas.

Housing development that clusters dwelling units on the areas of sites most suitable for development are encouraged.

Rationale

Clustering is defined as an increase of net density realized by reducing the size of private lots. The open space that is produced by clustering can be returned to the community as common open space. The location policies define certain sensitive areas where development is prohibited. When such areas are present on a site, the acceptable gross density

does not allow for innovative design & mitigative measures which could offset some potential env't. impacts such as 1 for 1.2.2 of wetlands in adjacent areas

7.2.6 The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

Rationale

Public health and welfare concerns about air quality, as well as the necessity to limit energy consumption, require that public policies and decisions encourage public transportation.

7.2.7 Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical and infeasible.

Rationale

The preservation, restoration, or rehabilitation of existing structures is preferable to demolition and redevelopment in order to save structures and neighborhoods with historic and aesthetic interest. Rehabilitation can often be more labor intensive than construction of a new building which means that more jobs are created and less energy is consumed through the production of new building materials. Applicants who build on developed sites must demonstrate why existing structures cannot be rehabilitated.

7.2.8 All high rise housing developments, defined as structures more than six (6) stories or more than sixty (60) feet from grade, are encouraged to locate in areas of existing high density, high-rise and/or intense settlements. High rise housing is acceptable subject to the following conditions:

- (a) high-rise structures within the view of coastal waters must be separated from coastal waters by at least one public road or an equivalent park distance,
- (b) the largest dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters,
- (c) the proposed structure must not block the view of dunes, beaches, horizons, inlets, bays, or oceans that are currently enjoyed from existing residential structures, roads or pathways,
- (d) the structure must not overshadow beaches between May and October,
- (e) the proposed structure must be in character with the surrounding transitional heights and residential densities,
- (f) the proposed structure must not have an adverse impact on traffic and air quality.

may be too restrictive - single family homes may block view of the view is limit to the same area

1.0 RESOURCE POLICIES

8.1 Purpose

The third step in the screening process of the Coastal Resource and Development Policies involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These policies serve as standards to which proposed development must adhere.

8.2 Marine Fish and Fisheries

8.2.1 Policy

Development is conditionally acceptable to the extent that minimal feasible interference is caused to the natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine estuarine dependent species of finfish and shellfish.

8.2.2 Rationale

Fishery resources provide recreation and economic activity in the coastal zone. Finfish (freshwater, estuarine, and marine) and shellfish resources provide significant recreation experiences for residents of New Jersey and interstate visitors. These resources also help the State's economy. DEP estimated that marine fishing in New Jersey provides 36.07 million/person days of recreation annually, with approximately \$10.42 in expenditures per day, yielding a total of \$375.8 million to the state economy. Of this total, fishing yields approximately \$217.2 million and shellfishing \$158.6 million. DEP also estimates that 1,868,000 people participated in marine/estuarine recreational fishing in 1976 in New Jersey. Commercial landings for all finfish and shellfish in New Jersey during 1976 were 226,988,000 lbs., valued at \$34.55 million dockside and an estimated \$86.3 million retail value, according to Department of Commerce statistics.

Indices of interference with fish resources include actions that cause: blockage of anadromous finfish spawning runs, reduction in the critical capacity of estuaries to function as finfish nursery areas, reduction of summer dissolved oxygen level below 4 ppm, introduction of heavy metals or other toxic agents into coastal water, rise in ambient water temperature regime especially during summer and fall periods, increases in turbidity levels, siltation, or resuspension of toxic agents, and introduction of untreated effluents from domestic and industrial sources.

Can not discuss this with existing land development

8.3 Water Quality

8.3.1 Policy

Coastal development shall conform with all applicable surface and groundwater quality standards, as established and administered by DEP's Division of Water Resources (see N.J.A.C. 7:9-4.0 et seq.).

8.3.2 Rationale

Most of the natural, commercial, recreational, industrial, and aesthetic resources of the coastal zone affect or are affected by surface and ground water quality. Specific coastal zone water quality problems include pollution by nutrients, pathogenic organisms, toxic and hazardous wastes, thermal discharges, suspended sediments, and saline intrusion into freshwater resources. These pollutants can lower water quality sufficiently to prevent desired water uses.

also significant increases in finfish spawning

8.4 Surface Water Use

8.4.1 Policy

Proposed coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity of the local potable water supply system or reserve capacity and that construction of the facility will not cause unacceptable surface water disturbances.

8.4.2 Rationale

The surface waters of the New Jersey coastal zone are an invaluable natural resource. Fresh waters maintain the propagation of established and natural biota. They serve as commercial, recreational, industrial, agricultural, and aesthetic resources. Any development that affects surface water quality will have a negative impact on these uses.

8.5 Groundwater Use

8.5.1 Policy

Proposed coastal developments shall demonstrate that the anticipated groundwater withdrawal demand of the facility will not cause salinity intrusions into present potable groundwater well fields or significantly lower the water table.

Coastal developments shall conform with all applicable DEP requirements for groundwater withdrawal and water diversion rights.

will not significantly decrease base flow of adjacent water courses

8.5.2 Rationale

Groundwater, defined as water beneath the land sur a primary source of water for drinking and industrial in some areas of the coastal zone, especially areas in No. Salem and Cape May Counties, excessive amounts of grou are being withdrawn. The problem stems from the overpump groundwater and reduction of aquifer recharge caus increased development and population. This has led to a lowering of the water table that may change the base flow conditions of streams, or increase salt water intrusion into the groundwater.

8.6 Runoff

8.6.1 Moderate Intensity Development Area Policy

In areas designated for moderate intensity development runoff crossing a site boundary shall not exceed the rate that would occur if the site were covered with mature forest vegetation.

8.6.2 Intensive Development Area Policy

In areas designated for intensive development the amount of runoff from the roofs and walls of structures that crosses the site boundary shall not exceed the rate that would occur if the area of structures were covered with mature forest vegetation. Runoff from paved areas may be sewered and discharged off site provided that:

- (a) The applicant demonstrates that it is not feasible to recharge pavement runoff on-site either for reasons of the quantity or quality of the effluent.
- (b) The storm water pipes do not carry sewerage waste or discharge into, or otherwise interconnect with sanitary sewer systems.
- (c) The storm water pipes do not discharge water into surface or ground water without passing the effluent through treatment facilities.
- (d) The applicant demonstrates that the effluent from treatment facilities whether on or off-site, meets all applicable water quality standards, and
- (e) The applicant demonstrates that the volume of treated effluent will not cause adverse impacts in the receiving water body.

8.6.3 Rationale

In principle, it is desirable to apply the same standard of runoff detention to all developments. However, in practice,

intensively developed sites pose several difficulties. The land area required for detention basins may be difficult to obtain. The general location policy requires that a minimum of 5% of any site is preserved in herb or shrub vegetation and calculations indicate that this could be enough for detention basins on a site with the maximum 80% allowance of impervious surfaces. For this reason, applicants are required to demonstrate why a storm water sewer system is essential.

The runoff from urban pavement is highly polluted. Waste petrochemicals, heavy metals, sulphuric acid and other contaminants are usually present. Recent DEP statistics show that the rate of cancer mortality is related to the extent that surface water is used as a source of drinking water. Known carcinogens are present in pavement runoff which makes it imperative to introduce adequate filtration between paving and any source of drinking water whether on the surface or in the ground. If pavement runoff is concentrated in a small detention basin area, particularly on porous sandy soils with low filtration capacity, the pollutants may reach the groundwater aquifer and discharge into wells or surface water bodies. Applicants are encouraged to maximize the on-site recharge of pavement runoff but should provide evidence that unacceptable groundwater pollution will not result.

The runoff from the roofs and walls of structures is considerably less polluted than that from pavement areas and the land required to recharge this element of runoff is more easily incorporated. Such techniques as swales and detention basins, land drains and gabions are encouraged to recharge this runoff. In permeable sandy soils, it may be possible to discharge runoff from structures to the ground beneath impermeable paving. Applicants shall include calculations to show that the runoff volume from a 100 year 24 hour storm shall not damage paving or cause frost heave. Porous paving is also encouraged in permeable soils providing that the applicant can show that the filtration capacity between the surface and the water table is sufficient to prevent pavement contaminants from reaching the aquifer.

8.7 Soil Erosion and Sedimentation

8.7.1 Policy

Coastal development will be required to restrict soil loss and control soil erosion and sedimentation during the construction of development to the standards specified in the Soil Erosion and Sediment Control Act (Chapter 251, P.L. 1975), as administered jointly by DEP and the N.J. Department of Agriculture, State Soil Conservation Committee.

The sediment crossing a site boundary from a completed development shall not exceed the amount which would occur if the site were covered with medium density forest with understory in a 24 hour storm of 25 year recurrence frequency.

8.8.2 Rationale

The steady loss of vegetation is a nearly inevitable result of urbanization. Terrestrial vegetation stabilizes soil, retards erosion and runoff, promotes infiltration of surface water, reduces the force of wind, provides foods, shelter and breeding sites for wildlife, and adds to aesthetic values for recreation and domestic life. Trees release life-giving oxygen, filter particulate pollutants, provide foods and fuel, with no energy input necessary by man.

Because each site is unique, the percentages of vegetative preservation required will depend upon the environmental conditions within and adjacent to the development site. The percentage of the site to remain naturally vegetated must be compatible with levels described in Location Policy. In general, the greater the intensity of development permitted, the less vegetation preservation required.

"Appropriate native coastal species" means that species selection must reflect the natural physiological limitations of species to survive in distinct habitats, which include all environmental processes (natural and artificial) that operate within a site. Non-suitable species plantings will do poorly or die, or if preserved through an intensive maintenance program of 'ph' adjustment fertilization and irrigation, will cause unacceptable ground and surface water impacts.

New vegetative plantings will reflect regional geophysical suitability and can be grouped into three categories:

- (a) Barrier Beach Sites - Plants tolerant of salt spray and occasional saline flooding, such as American holly, red cedar, black cherry, beach plum, beach grass, bay berry, beach heather, etc.
- (b) Pine Barrens Sites - Plants tolerant of infertile sandy soils, frequent fires, and acidic water, such as pitch and short-leaf pines, Atlantic white-cedar, dogwood, American holly, oaks, blueberry, etc.
- (c) Inner Coastal Plain and Southern Outer Coastal Plain - Plants compatible with fertile, well drained soils; such as eastern hemlock, oaks, beech, hickory, dogwood, black cherry, white pine, white birch, laurel, etc.

Within these regional groupings, the selection of individual species should take into consideration the depth to seasonal high groundwater table. Species which provide food for wildlife or other desirable traits will be favored for new planting. Species selection should be made through consultation with a consulting state forester or landscape architect.

should not make restriction as to who can be used - other well qualified individuals who could be used are available

8.9 Wildlife

8.9.1 Policy

The design of coastal development shall incorporate management techniques which favor or maintain native wildlife habitats, diversity, and numbers, to the maximum extent practicable.

no development adjacent to wildlife through open spaces

8.9.2 Rationale

Wildlife is important natural resource of the coast. Desirable on-site wildlife management techniques which could mitigate adverse impacts, and favor minimal feasible interference include preservation and dedication to open space of sensitive habitats of sufficient width, especially along drainageways and waterways, to preserve wildlife movement corridors, placement of nesting boxes, and planting of vegetative wildlife food species.

and using... will... human... important to... areas

8.10 Air

8.10.1 Policies

Coastal development shall conform to all applicable state and federal emissions regulations, ambient air quality standards, and deterioration criteria established to meet requirements of the federal Clean Air Act as amended in 1977.

8.10.2 Rationale

The attainment and maintenance of high air quality is vital for the health of and welfare of New Jersey's residents and visitors. The federal Clean Air Act Amendments of 1977 require almost all states to develop a State Implementation Plan (SIP) to attain National Ambient Air Quality Standards (NAAQS) for photochemical oxidants.

Since the principal source of hydrocarbons and oxides of nitrogen, the precursors of oxidants, is the automobile, the strategies to attain the NAAQS must include, in addition to emission control on vehicles and industrial sources, measures to reduce vehicle miles travelled, by inducing a shift to car pools and other modes of transportation. The Coastal Program policies on transportation address these objectives, as do the policies concerning concentration of development.

Furthermore, new major stationary sources of hydrocarbons will continue to be subject to restrictions, such as the current requirement to offset emissions. The severity of the restrictions will depend on the progress made in reducing emissions during the next decade.

The problem of attainment and maintenance of carbon monoxide NAAQS in urban areas such as Atlantic City is one primarily of traffic congestion.

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3. The lack of mapping is a major flaw in the entire Coastal Management Program in the State of New Jersey. This flaw has caused unnecessary disagreements and confrontations between the Coastal Management Program staff and local and county governments and private developers. The application of this document as a guideline within the local and county planning processes is practically impossible when compared to a mapped master plan or a county development plan. It is very difficult to relate the proposed policies in this document with the complex land and water inter-relationships which exist in the coastal area.
4. There are several specific areas which are referenced within the report which should be identified in map form. The prime agricultural areas which are referred to can, I believe, be identified in most areas with the use of U.S.D.A. information. I am concerned, however, about the identification and mapping of prime wildlife habitats. In addition, areas of endangered species, including the suggested buffer areas, should also be mapped. Other significant environmental areas which are referred to directly or by inference should be included on a composite map for reference by state, county, and municipal agencies as well as interested private developers.
5. The definition of streamhead (6.4.13.1) is very confusing and unrealistic. The term "ephemeral" is not one generally used within planning, engineering, or agricultural circles. Taken literally, "ephemeral" (which means short lived or one day in duration according to Webster's dictionary) could result in a total prohibition of development in the entire coastal region. Within an existing developed area, for example, there are "ephemeral streams" in back yards, vacant lots and even in parking areas, etc. Application of a 300' radius to all "ephemeral" streams would reduce the entire

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- coastal region to a "streamhead" according to the definition indicated. If the definition refers to intermittent streams which are identified on U.S.G.S. Quadrangle Sheets, this should be so specified.
6. The section pertaining to waters edge areas (6.5) should be thoroughly reviewed and revised in accordance with previous comments and discussions by several engineers and environmentalists. Questions about the definitions of the waters edge areas are important in terms of identifying potential project sites and site reviews by the CAFRA staff.
7. Section 7.5, Public Facility Use Policies, contains wording which, I believe, should be modified. Specifically 7.5.4 should read "discouraged" rather than "prohibited" and 7.5.5 should read "encouraged" rather than is "required." It is readily evident that within a coastal area with interlacing streams, bays, and oceanfront it would be physically impossible in many situations not to block some physical or visual access to a waterfront. Also, the construction of bicycle and footpaths in residential projects may not be desirable in all situations nor would fishing catwalks and platforms on new or improved bridges necessarily ever be utilized and in many cases may not be desirable from a safety point of view. Section 7.5.9 should also be modified. The most energy efficient treatment system may be prohibitively expensive in terms of capital investment. Each wastewater treatment system should certainly be evaluated in terms of energy efficiency, but to require that as a sole criteria for prohibiting construction seems unrealistic and very difficult to establish from a technical viewpoint.
8. In Section 8.5 the proposed policy requiring that an applicant "shall demonstrate that the anticipated groundwater withdrawal demand of the facility will not cause salt water intrusion into present potable groundwater, well fields or significantly lower the water table," is a prohibitively expensive

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requirement and may not be technically possible, except on a regional level. Groundwater modeling has not been completed for most of the coast area by the U.S.G.S.

9. Section 8.6 (Runoff) is totally unmanageable as it is written. I would fully concur with the comments and observations presented by several of the engineers in the coastal region, including specifically the comments submitted by C. Bernard Blum, Jr., P.E. in his letter to you dated June 22, 1978.
10. Section 8.13 (Design) is one which should be reconsidered. The word "shall" in the first sentence should be modified to reflect the term encouraged. In many cases, the materials, color, texture and geometry of buildings, etc. in the coastal zone is pretty dismal. Many new developments which are sharp departures from what currently exists have provided the only aesthetic buildings in many of the coastal areas. Many of the summer rental units (such as those near Island Beach State Park) are certainly not worthy of emulation.
11. Section 8.15 (Buffers for Industrial Developments) should be thoroughly reconsidered. This type of detailed requirement is the prerogative of municipalities in accordance with State statutes pertaining to Municipal Land Use Law. At any rate, the requirements are unrealistic in terms of the wording. The term "native forest vegetation" may make no sense whatsoever in terms of a new industrial development. If a buffer requirement is going to be established, I would submit that it be encouraged in accordance with municipal zoning and subdivision regulations. Native vegetation in the coastal area is not generally good buffer material and secondly is very difficult to obtain on the open market. It is a stringent requirement which reflects a lack of understanding of land development and local

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concerns about desirable buffering. I suggest that detailed requirements for buffer be eliminated as not being appropriate as a "regional concern." (Enclosed for your review is an example of the new Dover Township requirements for buffer areas).

12. While several of the policies contained in the document are paraphrases or extracts from existing policies within the DEP and the State of New Jersey, several of the policies which are being promoted by the Coastal Zone Management Program are conflicting. For example, the continued stress on infill by CAFRA may be inconsistent with other environmental policies being promoted, including the proposed runoff policy. Intensification of development in the coastal zone, particularly in Ocean and Monmouth Counties may be self-defeating. In areas of the coast which are developed to a great extent, infill basically requires building on marginal property. This is particularly true in portions of Ocean and Monmouth Counties. While infill may be desirable philosophically, I believe that the emphasis on the entire process of development by CAFRA and the coastal zone management program should be on the compatibility of development with the environment. This may result in infill but it may also result in extension of development (which is ignored apparently in this document in contrast to earlier coastal zone policy statements) or in new developments in somewhat isolated areas. The process of infill is also a very costly process. Encouraging the development of low and moderate income housing may best be achieved by extension or encouraging selected new development areas. Infill properties are very expensive. Large scale development in undeveloped areas produces much less cost on an individual unit basis than most infill areas, even relatively large infill areas. Extensive development of infill areas may also result in a) degradation of air quality, b) degradation of water quality, and c) elimination of areas for ground water recharge. It should be stressed that the infill policy may not be as desirable in terms of overall environmental quality

File No. TPA-G-78

Sheet 6
July 3, 1978

Le: David N. Kinsey, Chief
Re: State of New Jersey Coastal Management Program
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as would appear on the surface. Areas which have experienced the "infill process" in its ultimate form, i.e. urban areas, are not always desirable as quality living environments.

There are types of urban development which should be discouraged. These may include linear development in areas other than certain naturally restricted areas, remote development areas in some cases, or extension in other cases. Again the lack of mapping makes it difficult to be specific.

As has been stated several times at previous meetings with the CAFRA and Coastal Zone Management staff, the importance of developing guidelines and policies is to provide a framework within which all parties concerned can review proposed development. In terms of the Coastal Zone Management Program (as enunciated in the Bay and Ocean Shore Segment, some of the proposed policies appear to be too specific in terms of site plan review procedures and requirements. In many cases these specific requirements have not been well thought out and their impact therefore is of limited value in terms of promoting a desired goal. On the other hand, the very broad policies included in the document are often difficult to relate in terms of an overall development plan within a community.

A general theme in the document is one of requiring applicants (including municipal and county governments) to evaluate many complex and difficult questions which realistically can only be addressed on an areawide or regional level. Requiring an applicant to address regional problems, some of which have not yet been addressed in any reasonable form by federal, state or regional agencies, is not realistic nor is it productive. I believe that the unreasonable burden of some of the requirements may result in the encouragement of development in areas outside of CAFRA, many of which are much more sensitive than those within the coastal region itself and which, in any event, could produce more adverse impacts within the coastal area than if the developments had originally been located within the coastal zone itself. This overview of development is one which must be considered seriously by the State of New Jersey and the National Oceanic & Atmospheric Administration in its review of the proposed Bay & Ocean Shore segment draft Environmental Impact Statement.

File No. TPA-G-78

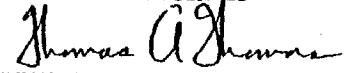
Sheet 7
July 3, 1978

Le: David N. Kinsey, Chief
Re: State of New Jersey Coastal Management Program
Bay & Ocean Shore Segment - Draft - E.I.S. - May 1978

I do commend you and your staff on the effort which was undertaken in developing a broad based Coastal Zone Management Program. I hope that my comments will be of value in improving the Coastal Zone Management Program in the future.

Very truly yours,

TOWNPLAN ASSOCIATES


THOMAS A. THOMAS, P.P., A.I.P.
PRESIDENT

TAT:vs
Enclosure as Noted

cc: Michael Gross, Esq.

b) Uses in all other zones - 20 feet, unless a greater width is specified for the use in this Chapter.

2. If a home professional office, home occupation or an accessory use to a single family detached or two family detached dwelling requires ten (10) or more off-street parking spaces, the Planning Board shall consider the need for a buffer area and may require that buffer areas of twenty (20) feet in width be provided along side and rear property lines adjacent to such accessory use and/or off-street parking.

3. If a proposed single family detached or two family detached subdivision abuts a major collector or minor or principal arterial highway or an area zoned for or occupied by other uses, the Planning Board shall consider the need for buffer areas and may require:

a) That a buffer strip not exceeding fifty (50) feet in width be provided and maintained in its natural state and/or suitably planted with screening and landscaping, or

b) That the adjacent lots front on an interior street and have a depth of at least two hundred (200) feet with suitable screening and landscaping planted at the rear, or

c) That other suitable means of separation be provided.

4. Buffer areas shall be maintained and kept free of all debris, rubbish, weeds and tall grass.

5. No structure, activity, storage of materials or parking of vehicles shall be permitted within the buffer area, except that, where permitted by the Planning Board, the buffer area may be broken for vehicular or pedestrian access and appropriate directional and safety signs provided.

B. Screening. Within buffer areas required by Section 101-8.4, ~~As above~~, there shall be provided screening in accordance with the following regulations:

SECTION 101-8.4 BUFFER AREAS, SCREENING, LANDSCAPING AND SHADE TREES

A. Buffer Areas. All uses, other than single family detached and two family detached dwellings and their accessory uses (except as otherwise provided in this Chapter), shall provide buffer areas along all side and rear property lines which abut areas zoned residentially (including single family detached, two family or multi-family detached dwellings) and along front property lines on local, local collector, minor collector and major collector streets which abut areas zoned for such residential uses.

1. The width of the buffer area shall be determined in accordance with the following:

a) Uses in the Rural Highway Business, Regional Commercial, O-10 Office, O-15 Office, Industrial, Light Industrial, R-800, Rural, R-400, R-400C and R-200 Zones - 50 feet.

1. The location of screening within buffer areas wider than twenty (20) feet shall be arranged in order to provide maximum protection to adjacent properties and to avoid damage to or interference within desirable existing plant material and, shall be subject to approval by the Planning Board. Possible arrangements include, but are not limited to, those shown in Figures 1A, 1B and 1C.

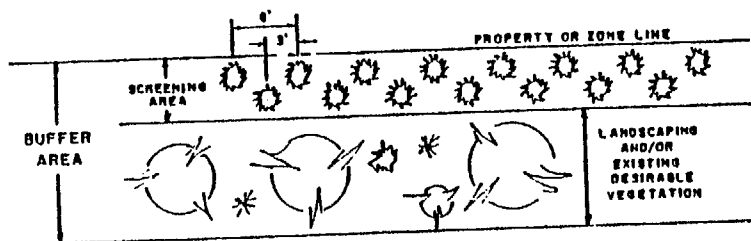


Figure 1A
PARALLEL SCREENING

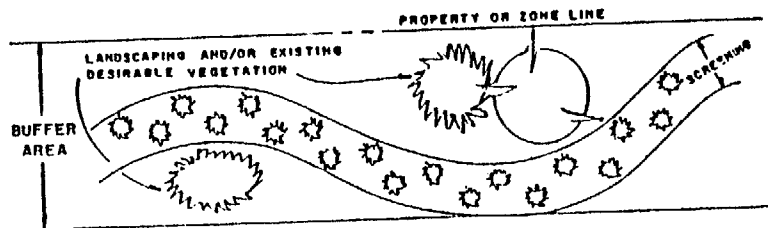


Figure 1B
SERPENTINE SCREENING

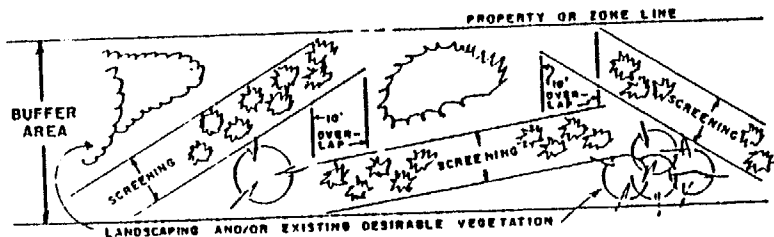
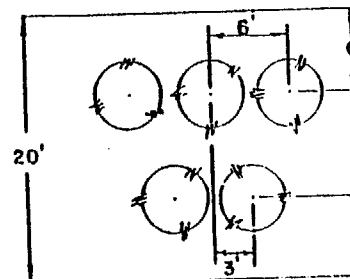


Figure 1C
BROKEN SCREENING

Those portions of the buffer area not included within the screening strip shall either contain existing vegetation approved by the Environmental Commission and/or be planted with trees and shrubs in accordance with a landscaping plan approved by the Dover Township Environmental Commission.

2. Except as otherwise provided herein, the screening area shall be a minimum of twenty (20) feet in width and shall be planted with evergreen trees approved by the Dover Township Environmental Commission (a list of suggested trees and species may be obtained from the Environmental Commission). Trees shall be planted in two staggered rows eight (8) feet apart and shall be between six (6) and eight (8) feet in height and shall conform to the current American Standard for Nursery Stock sponsored by the American Association of Nurserymen, Inc. Within each row, the trees shall be planted on six (6) foot centers (see Figure 2A below).

FIGURE 2A
STANDARD SCREENING



Double staggered rows of approved evergreen trees.

3. In cases where it is determined to be desirable by the Planning Board, evergreen trees planted with a minimum height of four (4) feet may be substituted for the six (6) to eight (8) foot trees required under Section 101-8.4, A provided that the developer shall install a solid six (6) foot high stockade fence along the outside of the required screening strips prior to commencing the construction of improvements on the site.

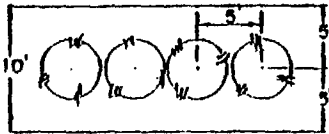
The stockade fence shall be maintained in good condition by the developer until such time as the evergreen trees have grown to a minimum height of ten (10) feet at which time, the developer may remove the stockade fence.

4. Where existing specimen trees, as defined in Chapter 142 of the Code of the Township of Dover, exists within a screening area, they should be retained and supplemented with shade tolerant evergreen trees to provide the equivalent of the required screening as determined by the Dover Township Environmental Commission.

5. Where all proposed buildings, parking areas and other improvements are located one hundred (100) feet or more from a property line abutting a residential zone, the Planning Board may permit a screening area ten (10) feet in width planted with a single row of evergreen trees in a location approved by the Dover Township Planning Board planted on five (5) foot centers with a minimum height of six (6) to eight (8) feet of a type and species to be substituted for the screening area required in Figure 2A (see Figure 2B below).

FIGURE 2B

MODIFIED SCREENING



Single row of approved evergreen trees.

6. The required height for a screening area shall be measured in relationship to the elevation of the land at the nearest required rear, side or front yard setback line of the abutting residentially zoned properties. Where the average ground elevation of the location at which the screening strip is to be planted is less than the average ground elevation at the nearest required rear, side or front setback line on the abutting residentially zoned property, the Planning Board may require the height of trees planted in the required screening strip be increased by an amount equal to the difference in elevation. Where the average ground elevation of the location

at which the screening strip is to be planted is greater than the average ground elevation at the nearest required rear, side or front setback line on the abutting residentially zoned property, the Planning Board may permit the height of trees planted in the required screening strips to be decreased by an amount equal to one-half the difference in elevation, except that in no case, shall the required height be reduced to less than four (4) feet.

7. All trees in a screening area shall be watered weekly through the first growing season. The developer shall construct a six inch (6) deep earth saucer around each tree to hold water and fill with woodchips or other suitable mulch. Trees shall be nursery grown, balled and bagged, sheared and shaped, of the required height and planted according to accepted horticultural standards.

8. At the following locations within required screening areas, evergreen shrubs with a maximum mature height of thirty (30) inches or less, approved by the Dover Township Environmental Commission as to type, location and spacing, shall be provided in lieu of the evergreen trees specified above:

- a) Within sight triangle easements.
- b) Within twenty-five (25) feet of intersections where sight triangle easements are not provided.
- c) Within twenty-five (25) feet of access drives.

9. Waiver: The Planning Board, after favorable recommendation by the Planning Board Engineer, Conservation Officer and Environmental Commission and after examination and review, may waive, fully or partially, provisions of this section in heavily wooded areas, in areas unsuitable for plantings or because of other exceptional conditions, and/or may require supplementary plantings.

C. Landscaping.

1. Topsoil Preservation: No topsoil shall be removed from the site or used as spoil, except as may be provided for in a Topsoil Removal Permit issued in accordance with the ordinances of Dover Township regulating mining operations, or excess topsoil remaining after all improvements have been installed in accordance with an approved site

plan or subdivision map after topsoil has been redistributed in accordance with this paragraph. All topsoil moved during the course of construction shall be redistributed on all regraded surfaces so as to provide an even cover and shall be stabilized by seeding or planting. All regraded areas and all lawn areas shall be covered by a four (4) inch minimum thickness of topsoil. If sufficient topsoil is not available on the site, topsoil meeting the requirements of the Standard Specifications shall be provided to result in a four (4) inch minimum thickness.

2. Tree Removal: All tree removal shall be in accordance with the requirements of Chapter 142 (Trees) of the Code of the Township of Dover.

3. Protection of Trees: No material or temporary soil deposits shall be placed within six (6) feet of any trees or shrubs designated to be retained on the preliminary and/or final plat. Where grading may be required, trees not shown for removal shall be walled in and extension tiled to the outer crown of the tree.

4. Removal of Debris: All tree stumps and other tree parts or other debris shall be removed from the site and disposed of in accordance with law. No tree stumps, portions of a tree trunk or limbs shall be buried anywhere in the development. All dead or dying trees, standing or fallen, shall be removed from the site. If trees and limbs are reduced to chips they may, subject to the approval of the Township Engineer, be used as mulch in landscaped areas.

5. Slope Plantings: Landscaping of the area of all cuts or fills and terraces shall be sufficient to prevent erosion, shall be approved by the Planning Board and shall be in accordance with applicable portions of Chapter 125A (Soil Erosion) of the Code of the Township of Dover. All roadway slopes steeper than one (1) foot vertically to three (3) feet horizontally shall be planted with suitable cover plants combined with grasses and/or sodding. Grasses or sodding alone shall not be acceptable.

6. Selective Thinning: Throughout the development except in areas specifically designated to remain in their natural state, in landscaped or buffer areas, on building lots and in open space areas for public or quasi-public use, the developer shall selectively thin to remove all dead or dying vegetation, either standing or fallen, and shall remove, including grubbing out stumps, all undesirable trees and other growth. The developer shall, in accordance with overall site development and his proposed landscaping

scheme, provide cleared, graded and drained pathways approximately four (4) feet wide through all public or quasi-public open space in heavily wooded areas. Such pathways should be sited to conform to the existing natural conditions and should remain unobstructed. They are not intended to provide improved walkways, but only to provide easy access through open space areas.

7. Additional trees in single family and two family subdivisions: Besides the screening and shade tree requirements, additional trees shall be planted throughout the subdivision in accordance with a planting plan approved by the Planning Board at the time of final approval. The number of trees planted shall be not less than ten (10) per acre, calculated on the basis of the entire subdivision tract. The variety of plantings may vary from those listed under shade tree requirements and may include flowering types and/or evergreens, not exceeding thirty percent (30%) of the total plantings.

8. Additional landscaping for non-residential uses: In conjunction with all uses other than single and two family homes, all areas of the site not occupied by buildings, pavement, sidewalks, required screening, required parking area landscaping, required safety islands, or other required improvements, shall be landscaped by the planting of grass or other ground cover acceptable to the Planning Board and a minimum of two (2) shrubs and one (1) tree for each two hundred fifty (250) square feet of open space.

9. Trees shall be planted with a minimum diameter of two (2) inches breast high.

10. Waiver: The Planning Board, after favorable recommendation by the Planning Board Engineer, Conservation Officer, and Environmental Commission and after examination and review, may waive, fully or partially, provisions of this section in heavily wooded areas, in areas unsuitable for plantings or because of other exceptional conditions, and/or may require supplementary plantings.

11. Specifications: All planting, clearing, selective thinning, topsoiling, seeding and other landscaping work shall conform to the applicable requirements of the Standard Specifications.

12. Landscaping Plan: The placement of landscaping shall be in accordance with a landscaping plan submitted with the final plat.

13. Relocated Plantings: Existing plants may be salvaged and/or relocated from clearing areas within the development and utilized to meet the planting requirements of Section 101-8.4, C, 7 and 8, provided that:

- a) Each three (3) items of salvaged and/or relocated plant material shall be considered equivalent to two (2) items of new plant material, and
- b) All such salvaged and/or relocated plant material shall be of a type, size and quality acceptable to the Conservation Officer and the Township Engineer, and
- c) All such salvaged and/or relocated plant material shall be dug, transported and replanted at a season of the year and using a schedule and equipment, methods and materials conforming to the requirements of the Standard Specifications and subject to the approval of the Conservation Officer and the Township Engineer.
- d) The developer has received the approval of the Conservation Officer and the Township Engineer of the items to be relocated and the schedule and methods of relocation prior to any work of salvaging and/or relocation taking place.

D. Shade Trees.

1. In each subdivision of land, the developer shall plant within the shade tree and utility easements or between the sidewalk and right-of-way line where such easements are not provided, proper shade and/or decorative trees at a maximum distance of fifty (50) feet between trees. The minimum distance between such trees planted shall be forty (40) feet. Planting sites shall be indicated on the final plat. Such plantings shall not be required within sight easements as required elsewhere herein.

2. All trees planted in accordance with the provisions of this Chapter shall be placed in a proper manner and in a good grade of topsoil and within the area of the tree well at the point where the tree is planted. In the event that any individual person or group of individual persons desire to plant a tree or trees in a tree well or within the jurisdiction of the Dover Township

Shade Tree Commission, such person or persons may do so, provided that they conform to the provisions of this Chapter, and further provided that permission of the said Dover Township Shade Tree Commission is obtained.

3. All shade trees to be hereafter planted in accordance with this Chapter shall be nursery grown, or of substantially uniform size and shape and shall have straight trunks. Ornamental trees need not have straight trunks, but must conform in all other respects with the provisions for trees and tree plantings outlined in this Chapter.

4. All trees planted pursuant to this Chapter shall be planted in a dormant state.

5. Subsequent or replacement plants shall conform to the type of existing tree in a given area, provided that if any deviation is anticipated, it must be done only with the permission of the Dover Township Shade Tree Commission. In a newly planted area, only one (1) type of tree may be used on a given street, unless otherwise specified by the Dover Township Shade Tree Commission.

6. A hole in which a tree is to be planted shall be in each case, one-third (1/3) larger in width and in depth than the existing root ball of the particular tree to be planted. The hole for a tree to be planted shall contain proper amounts of topsoil and peat moss, but no chemical fertilizer shall be added until the tree has been planted for one (1) year.

7. In areas adjacent to rivers, bays and lagoons, plantings shall be one (1) of the following kinds of trees. The maximum size and characteristics of which follows:

- a) Honey locust (*Gleditsia triacanthos inermis*) sixty (60) to seventy (70) feet high, fragrant white flowers, late in spring, grows well in poor soil, resists salt spray.
- b) Oriental plane (*Platanus orientalis*), seventy (70) to eighty (80) feet tall, rapid-growing shade tree, pyramid-shaped top.
- c) Weeping willow (*Salix babylonica*), forty (40) to fifty (50) feet high, with long pendulous branches, grows rapidly, especially when close to water.

d) Canoe birch (*Betula papyrifera*), fifty (50) to sixty (60) feet tall, stately with gray-white bark, fast growing.

e) European white birch (*Betula alba pendula*), forty (40) to fifty (50) feet high, graceful lacy leaves and drooping branches.

f) Japanese cherry (*Prunus quanzan*), thirty (30) to forty (40) feet high, large, double, deep pink pendulous flowers clustering among the leaves in May, vase form.

g) Hawthorn (*Crataegus*), twelve (12) to fifteen (15) feet high, produces a mass of scarlet double flowers in June, colorful red fruit in winter.

9. In the upland, which is away from rivers, bays and lagoons, and not adjacent to large bodies of water, plantings shall be one of the following kinds of trees, the maximum size and characteristics of which follows:

a) Pin oak (*Quercus palustris*), seventy-five (75) to ninety (90) feet high, shiny foliage, long-lived, turns scarlet in the fall, broad pyramid shape.

b) Norway maple (*Acer platanoides*), sixty (60) to seventy (70) feet high, leaves turn yellow in fall, globe shaped top.

c) Honey locust (*Gleditsia triacanthos inermis*), sixty (60) to seventy (70) feet high, fragrant white flowers, grows well in gravel or sandy soil, broad spreading top.

d) Crabapple (*Malus*), twelve (12) to fifteen (15) feet high, pink or red flowers, broad umbrella top, usually as wide as high, a good park tree.

e) Mountain ash (*Sorbus aucuparia* european), twenty-five (25) to thirty (30) feet high, great clusters of orange scarlet berries, shape: upright oval.

f) Dogwood (*Cornus florida*, white, and *florida rubra*, pink), twenty-five (25) to thirty (30) feet high, pink or white flowers in early spring, red berries and rich red foliage in fall.

g) White birch, european (*Betula alba pendula*), forty (40) to fifty (50) feet high, lacy leaves, paper white bark, tall column.

9. On waterfront property and property in the vicinity of large bodies of water, not covered above, plantings shall be one (1) of the following kinds of trees, the maximum size and characteristics of which follows:

a) Bolleana poplar (*Populus boleana*), seventy-five (75) to ninety (90) feet tall, growing stately and salt resistant.

b) Carolina poplar (*Populus eugenie*), seventy-five (75) to ninety (90) feet tall, exceedingly rapid growing shade tree, thrives in dry conditions.

c) Oriental plane (*Platanus orientalis*), seventy-five (75) to ninety (90) feet tall, rapid growing shade tree of pyramid habit with large leaves.

d) African tamarix (*Tamarix africana*), twelve (12) to fifteen (15) feet tall, drooping panicles of attractive pink flowers in spring and feathery gray foliage.

e) Smoke tree (*Rhus cotinus*), twelve (12) to fifteen (15) feet tall, carries a great mass of filmy purple flowers in July.

f) Almey crab (*Malus almey*), twelve (12) to fifteen (15) feet tall, fiery crimson flowers, very hardy, maroon colored fruit of spreading habit.

g) Hopa crab (*Malus hopa*), twelve (12) to fifteen (15) feet tall, rosy red flowers, red fruit, attractive purple foliage, upright vase shaped growth.

h) Bechtal crab (*Malus bechtal*), twelve (12) to eighteen (18) feet tall, with large double fragrant pink flowers which resemble small roses in early May: upright growth.

10. On outer beaches, both oceanfront and bay front, Japanese pine (*Pinus thunbergii*), thirty (30) to forty (40) feet tall.

11. All shade trees shall be planted in accordance with the landscaping requirements of the Standard Specifications.



Wilcox-Gravatt & Hacunda, Inc.

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• WASTE WATER ENGINEERING
• WATER SUPPLY DESIGN

June 16, 1978

Principals
Walter F. Wilcox, L.S.
John C. Gravatt, L.S. & P.P.
George A. VanSant, L.S. & P.P.
William F. Eng, P.E.
Associates
Harold Mathis, Jr., L.S.

WILCOX-GRAVATT & HACUNDA, Inc.

Page 2

PLEASE REFER TO:

State of New Jersey
Coastal Management Program
Bay and Ocean Shore Segment

Office of Coastal Zone Management
National Oceanic and Atmospheric Admin.
3300 White Haven Street, N.W.
Washington, D. C. 20235

ATTENTION: Ms. Kathryn Cousins

Dear Ms. Cousins:

I respectfully request an extension of time be granted from the June 19th deadline in order that the following comments can be synthesized with others from various Design Professionals to be submitted under a Ad Hoc task force of the New Jersey Shore Builders Association. In the advent that an extension cannot be granted, I request that the Environmental Impact Statement be denied for inconsistency with New Jersey Programs, a net environmental gain will not be derived and the inability of the State of New Jersey Department of Environmental Protection to adequately address the Primary and Tertiary impacts of their actions upon the Coastal Zone of New Jersey.

My remarks are more specifically predicated upon the following:

1. The stated policy, "Development on Dunes is prohibited, with the exception of the construction of limited pedestrian walkways supported in piles above the dune surface." (Page 55, paragraph 6.4.2.2) is not in the best interest of vegetation or structures created behind. With the experience encountered through the past Winter, it is

extremely dangerous to utilize the dunes for any purpose but as a protection element. The construction activity necessitates, by its very nature, loss of vegetation and erosion of sand which is vital to the preservation of the dune environment.

A more practical solution would be to construct the walkways along the back slope of the dunes with sufficient height to enjoy the natural beauty of the ocean.

2. "Unrestricted public access to beaches is encouraged" (Page 71, paragraph 6.5.1.4) while the population undeniably must use the beach environment unimpeded, they must do so via controlled access points which are designed and created that storm and wave action will not create undue problems behind. The enclosed documentation amply illustrates the rationale of restricted access
3. "The classification of municipalities...for the purposes of the location policies is based in part on...the State Development Guide Plan..." (Page 97, paragraph 6.6.8.2) The two documents differ significantly (See attached maps) and are justified by: "In preparing the Coastal Program, D.E.P. adopted the Guide Plan's distinction between "growth" and "limited growth" areas, but chose different criteria for defining each category." (Page 172)
4. "All high rise housing developments,...are encouraged to locate in areas of existing high density, high rise and/or intense settlements." (Page 134, paragraph 7.2.8) It is recognized that this form of housing is out of context with established rural communities, however, concentrating it yields the same secondary impacts as recreation: "Impacts of water runoff from roads and parking lots,...air quality degradation and local costs for wastewater treatment facilities..." (Page 211)

Further the six standards to be applied are arbitrary and in some respects insufficient to attain the goal:

- "a. high rise structures within the view of coastal waters must be separated from coastal waters by at least one public road or an equivalent park distance" (paragraph 7.2.8. a) In many cases the requirement of our equivalent park distance is simply not enough. The normal width of a

New Jersey Right of Way is 50' and to require this as a separator from the Ocean allows no margin of safety from storms. I would prefer at least 200' be the requirement.

"c. the proposed structure must not block the view of dunes...that are currently enjoyed from existing residential structures, roads or pathways." (paragraph 7.2.8.c) It is impractical to require this standard from a developer when he can erect a single family home without C.A.F.R.A. approval.

5. "Expanded or extended amusement piers,...are discouraged" (Page 137, paragraph 7.3.11) A grant for the extension of an Amusement Pier along with construction permits was just given in the Borough of Seaside Heights, New Jersey.
6. "The storm water pipes do not discharge water into surface or ground water without passing the effluent through treatment facilities, d. The applicant demonstrates that the effluent...meets all applicable water quality standards, ..." (Page 153, paragraph 8.6.2.c and d) while it is acknowledged that storm water runoff does more environmental harm than good, the imposition of having to construct extensive treatment facilities in urban areas is unreasonable. Rather, the paragraphs should be restated in order to acknowledge contributions of other point sources adjacent to the site specific and that a fair share allocation of cost be implemented.

I do not believe that the total impact upon the populace has been adequately determined: "Short term costs to developers, such as land prices, may increase." (Page 203) "Requirements to minimize environmental disruption during construction...may increase the short term costs of housing and increase infrastructure investments." (Page 204) "The short term costs to developers or units of government should be offset by the long term gains" (Page 207) "The costs and tax loss resulting from non-development of an area will be shared by the developer and the local municipality in the short-term" (Page 209) "...there will probably be a number of adverse impacts to both the natural and socio-economic environments which cannot be avoided" (Page 221) The State D.E.P. was asked in 1977 to assess the impact

of their actions on the people of New Jersey, to date this document has not been formulated yet the action of the Department of Environmental Protection is to press ever onward. The old adage: What's good for the goose is good for the gander prevails; "The probable secondary impacts of proposed development will be considered part of an application for a development." (Page 159, Paragraph 8.14.1)

I find in conclusion two cases for alarm:

1. If National Oceanic and Atmospheric Administration approves the document as written, the faults contained within will never be corrected: "The adopted regulations must be in place prior to federal approval of the Bay and Ocean Shore Segment, expected by late September 1978, in order to insure the enforceability of the Coastal Program;" (Page 197)
2. The changing mechanism is extremely difficult to realize; "The Coastal Program can be amended through administrative action of the Governor. Major revisions would require the approval of NOAA-OCAM" (Public comment No. 428, Coastal Management Strategy).

I again request that the extension of time be granted in order that the Department of Environmental Protection can review the Draft Environmental Impact Statement revising where necessary and inputs of a planning nature be provided.

In one last aspect, the document is, in my opinion, illegal and improper under New Jersey State law "...It shall be unlawful...to practice...professional planning in this state,...unless such person is duly licensed under the provisions of this Act." (NJSA 45:14A-1) "The term "Practice of Professional Planning"...shall mean the administration, advising, consultation or performance of professional work...intended primarily to guide governmental policy for the assurance of the orderly and coordinated development of municipal, county, regional, and metropolitan land areas, and the State or portions thereof" (NJSA 45:14A-2.C).

Very truly yours,



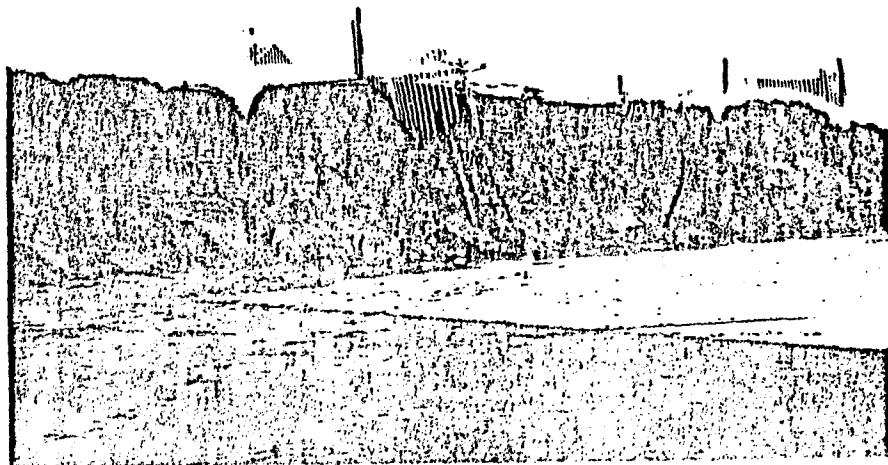
George A. VanSant
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GAV/1p

cc: Mr. Michael J. Gross, Esquire
Mr. David Kinsey
Lacey Township Chamber of Commerce

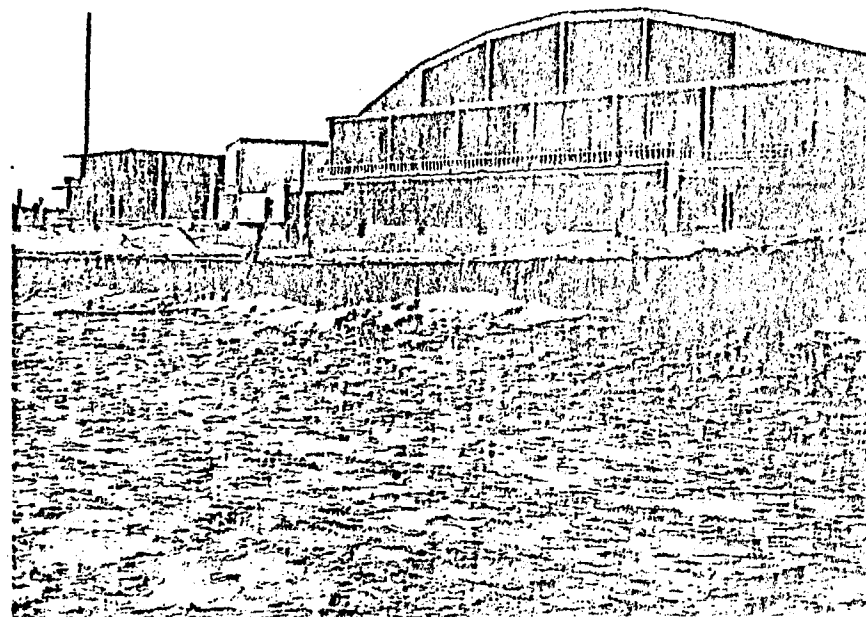
PREFACE

Natural forces are unpredictable and are capable of inflicting untold havoc within short time spans. In the period between February 2, 1978 and February 8, 1978 a severe Winter coastal snow storm occurred beginning during the evening hours of February 5 and continuing into February 7th. This snow storm produced rogue waves which destroyed valuable and irreplaceable beach front and dunes. The damage estimates previously recorded are no longer valid and are replaced within this report by an updated engineering cost estimate prepared by Mr. Paul J. Hacunda, P.E.

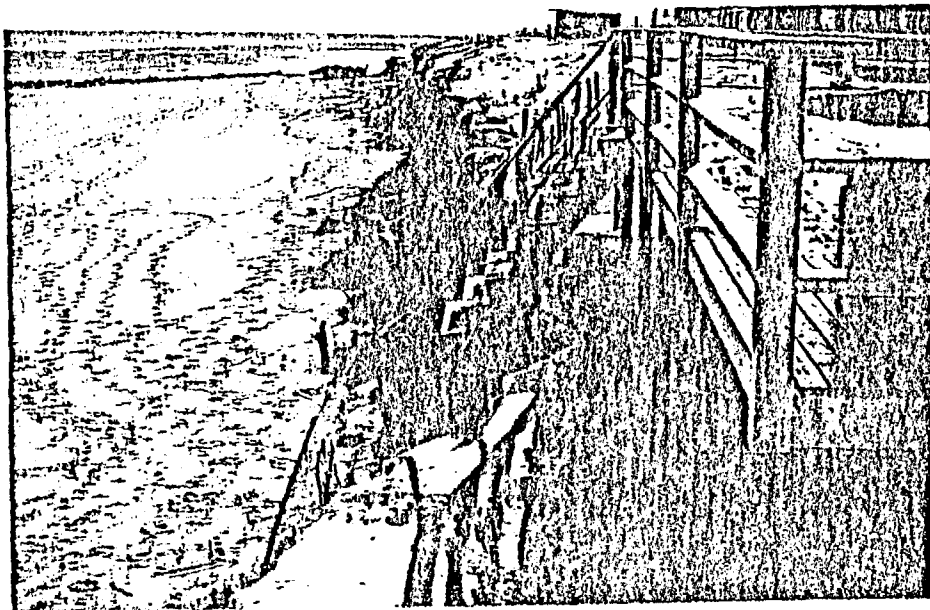


Historical reclamation procedures which have been used in the past in order to protect and rebuild beach front are not only futile but also insufficient material is available to perform an adequate job. The Borough of Beach Haven has enforced their Building Dune line set back requirements judiciously which has been the one significant element in minimizing private property damage. The preservation technique, because of current conditions as depicted within this report is no longer feasible or valid without support from various disaster control teams and agencies involved.

Nature must be controlled along our beach front communities because of the amount of people and private property which must be protected, therefore, although construction and development of lands forward of the building line has been curtailed, the Borough of Beach Haven must continuously redeposit materials lost for the safety and well being of the population.

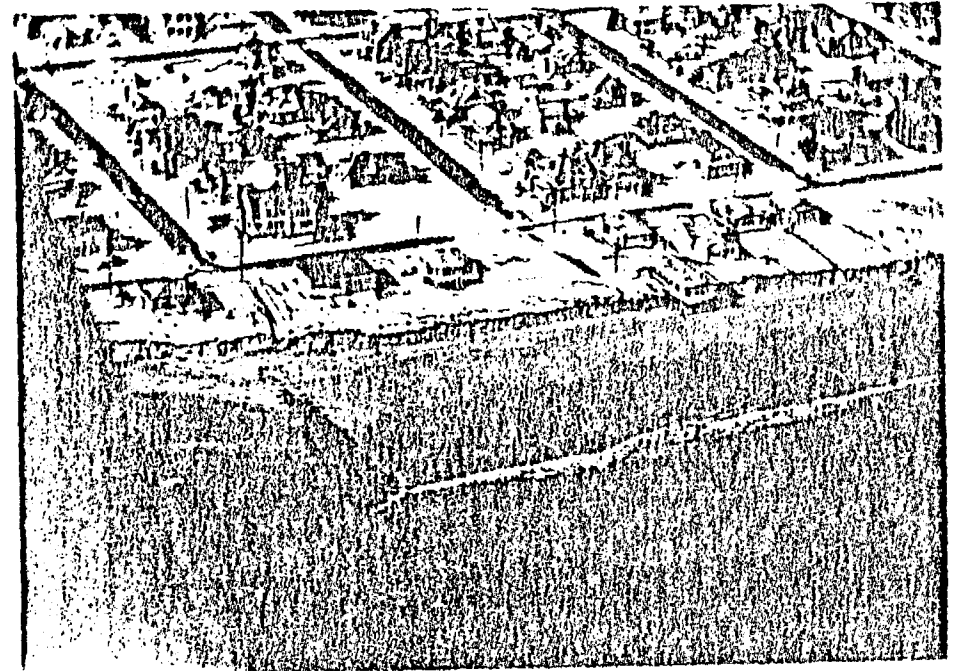


Of more importance though, are the Summer visitors to Beach Haven who come to occupy their homes and enjoy the magnificence and serenity of the Atlantic Ocean and its beaches. The loss of these partial year residents becomes an important factor in the immediate rehabilitation of the beaches. For not only the Borough of Beach Haven and its commercial enterprises lose essential revenues but also the Summer residents lose valuable recreational open space which is the primary criteria for this report.



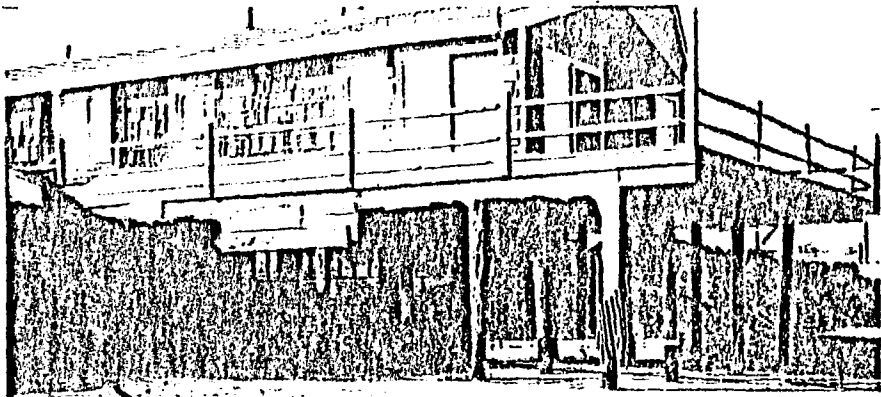
Overhanging Steps
February 8, 1978

19



In the view taken February 10, 1978, the fore slope of the dune has been destroyed exposing this house significantly to the ocean and indeed, as the photographs taken on the ground illustrate, the ocean has forged under the house through the ebb and flow of the tide exposing approximately 50% of the total structure.

23



February 8, 1978

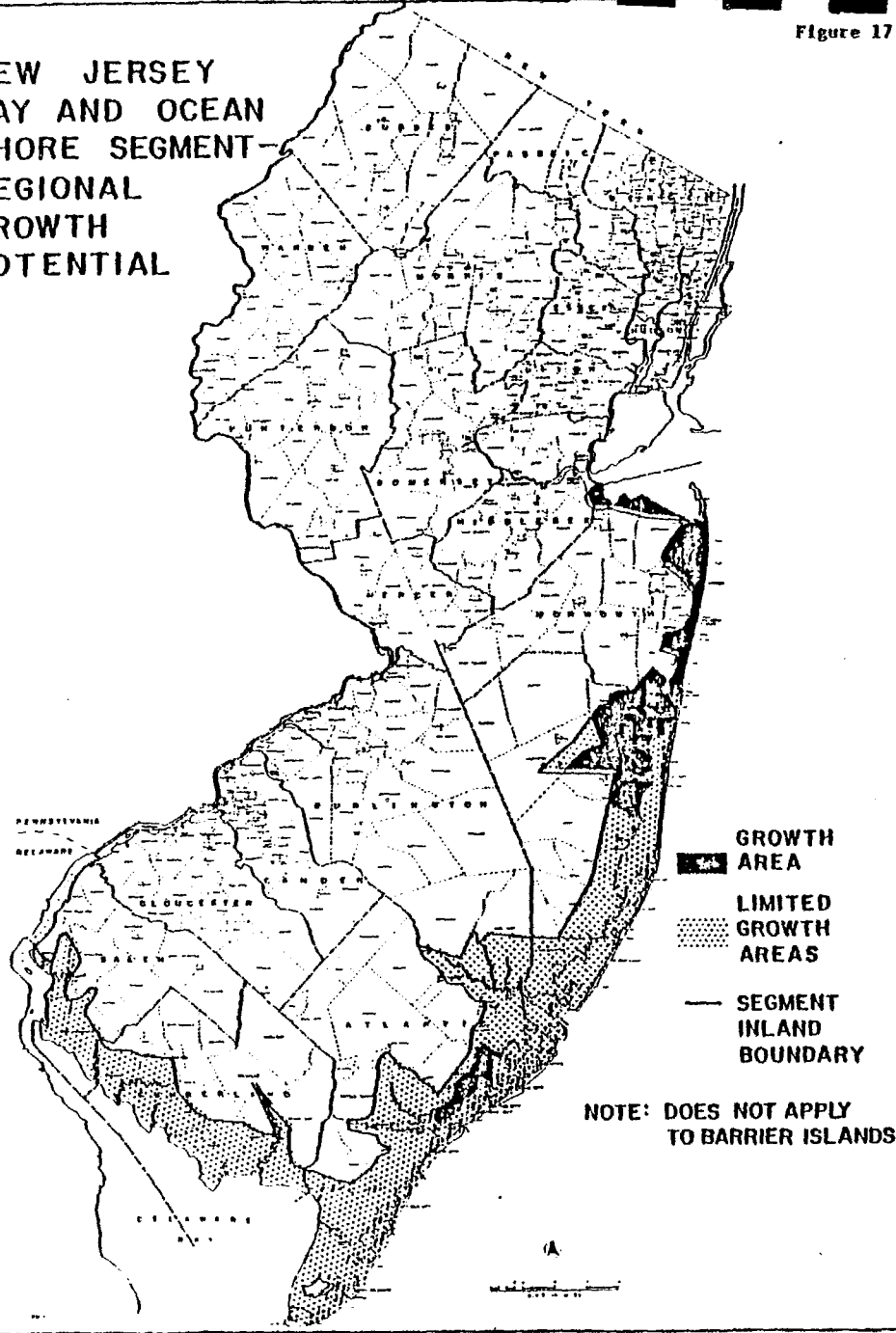


Snow Fencing and Wide Beaches,
Robert Spiegles "Sandpiper Motel" July 1977



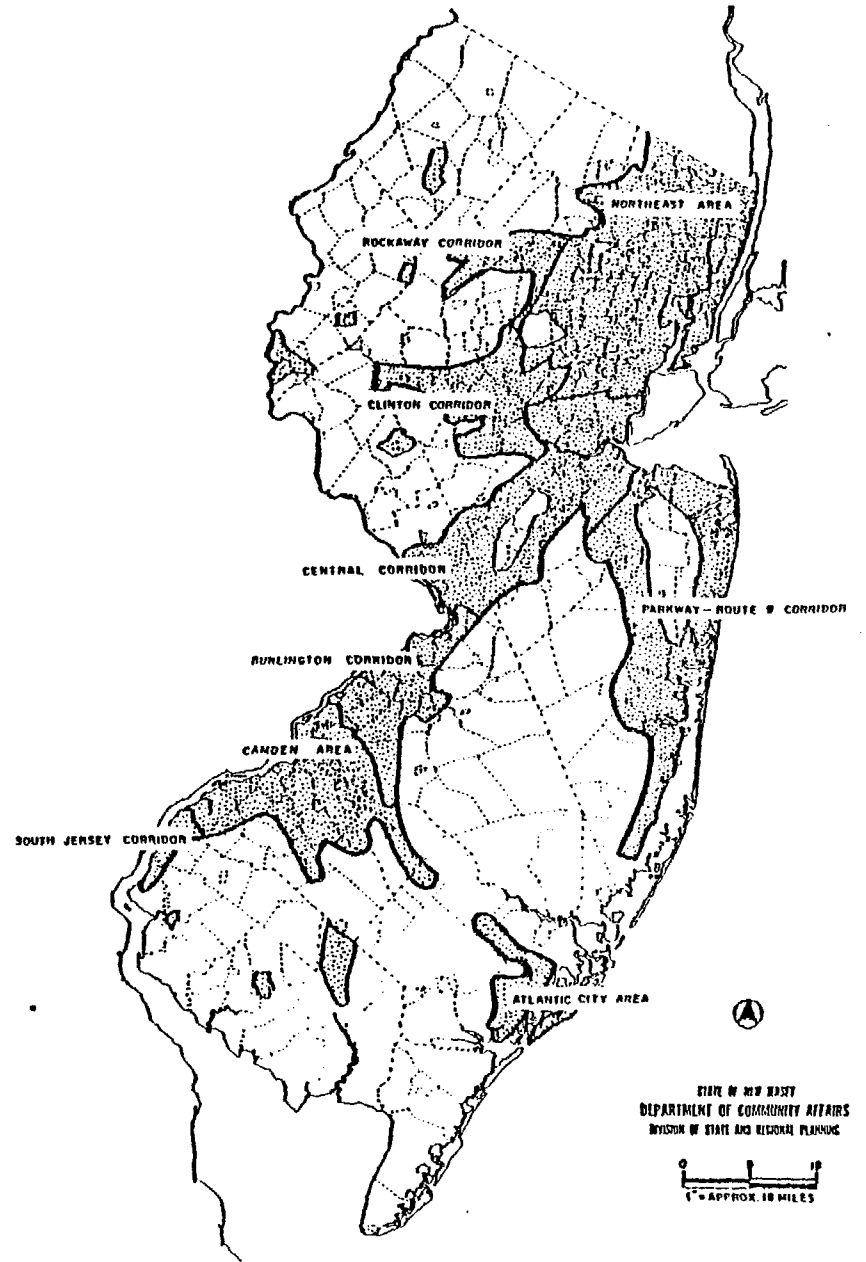
**NEW JERSEY
BAY AND OCEAN
SHORE SEGMENT
REGIONAL
GROWTH
POTENTIAL**

Figure 17



Map XII

GROWTH AREAS



June 16, 1978

MARINE TRADES ASSOCIATION OF
NEW JERSEY TESTIMONY CONCERNING
THE STATE OF NEW JERSEY COASTAL
MANAGEMENT PROGRAM, BAY AND OCEAN
SHORE SEGMENT

Ms. Kathryn Cousins
Regional Manager, North Atlantic Region
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Dear Ms. Cousins:

We are pleased to enclose the Marine Trades Association of New Jersey's written testimony critiquing the Draft Environmental Impact Statement for New Jersey's Coastal Management Program, Bay and Ocean Shore Segment. This program is of critical importance to our industry and we are gratified to be actively involved in its planning.

Further research on our part may result in additional comment concerning Chapter Three being provided to the New Jersey Office of Coastal Zone Management prior to their July 5 deadline. Should this be the case, we will provide you with an information copy.

Sincerely,

Michael L. Redpath
Michael L. Redpath
Executive Director

MLR:dgb

Enc.

cc: Richard Gardner
Daniel O'Hearn
Donald Graham
David Kinsey
John Weingart
Alan Davidson
Harold Rickborn
Mercedes Johnson

June 16, 1978

MARINE TRADES ASSOCIATION OF NEW JERSEY
TESTIMONY CONCERNING THE STATE OF NEW JERSEY COASTAL
MANAGEMENT PROGRAM, BAY AND OCEAN SHORE SEGMENT

The Marine Trades Association of New Jersey, representing the state's recreational boating industry, is pleased to be a part of the ongoing coastal planning process. We welcome the opportunity to comment on the Draft Environmental Impact Statement, recognizing the Department of Environmental Protection is making an effort to consider coastal user input, as evidenced by the changes made in the coastal management program since the close of the comment period on the Coastal Management Strategy.

The Draft EIS is of utmost importance to our industry, as it is to all coastal users, from both a restraining and a nurturing standpoint. The program obviously puts restraints on the growth, and even maintenance of recreational boating in New Jersey and its supporting industry. Properly applied, the program can also nurture recreational boating by providing for the most effective use of coastal land and by ensuring the continuance of an environment compatible with clean, family recreation such as boating.

Because of the importance of the Draft Environmental Impact Statement to the coastal zone, we must object to the short period available for study and comment. A document that has taken so long to prepare and is of such far-reaching impact, deserves a longer period for study and the preparation of incisive comment. For this reason, the Marine Trades Association's testimony has been prepared in two parts, a general verbal comment presented in public testimony; and this written testimony, which includes a revised version of our verbal testimony and an in-depth analysis of each segment of the statement that deals with or affects recreational boating.

We, in the association, see ourselves as realistic environmentalists, favoring environmental protection but also recognizing the need to balance that protection with economic realities. It is with that philosophy that we have reviewed the Draft Environmental Impact Statement.

On the whole, the Draft Environmental Impact Statement is a well thought-out document that reflects very well on the ability and professionalism of the staff that prepared it. Our major criticisms lie with the negative approach to management, a lack of working knowledge of the uses regulated, and inconsistencies and lack of clarity in some areas.

The Program is entirely too negative. More attention must be given to attracting and encouraging the uses desirable for the coastal zone. As stated in the Marine Trades Association's response to the Coastal Management Strategy for New Jersey, "New Jersey has traditionally been oriented towards solving problems through regulation. This is evident in the policies. Prohibiting and encouraging alone will not provide for the coastal zone envisioned by New Jersey's coastal zone planners. Encouragement must become a more positive approach. The state must actively assist in the development and maintenance of those private facilities that compliment the state's goals for the coastal zone through improved public access without serious environmental degradation." The association recognizes the Office of Coastal Zone Management cannot serve as an industrial development agency, but OCZM's regulatory philosophy must be structured so as to be more inviting rather than discouraging to acceptable growth. We are pleased to see the Draft Environmental Impact Statement is more positive than the strategy, but it still is not positive enough.

It is, unfortunately, obvious that the program was conceived by administrators who are not sufficiently in touch with the situation as it exists in the real-world environment. From a textbook standpoint, the Program is workable. From a real-world standpoint, there are sufficient shortcomings to make it unworkable. Incorrect definitions, that of "navigation channel" for example, and unrealistic water depths in various policies, cause the Program to lose credibility as well as to make it unworkable. The association's written testimony will elaborate on these shortcomings.

Further evidence of the lack of real-world knowledge is the failure to treat certain elements of the environment as transient, changeable entities and a down-playing of economic impacts. Elements of the environment such as shellfish beds, grasses and sand are capable of change and movement and the policies must recognize this. It must also be recognized that the economic impacts of the Program are much more probable and much longer-term than predicted.

There are numerous inconsistencies and a widespread need for clear definitions. The inconsistencies exist both between individual policies and in basic philosophy. Is the Program to be specific, as the intent appears to be, or general as the frequent lack of definitions or details would indicate?

In addition to the specific suggestions to be offered in written testimony, the Marine Trades Association has several general positive suggestions for revising the Draft Environmental Impact Statement and the proposed coastal zone management program.

Assistance in considering potential sites must be programmed. One of the restraints to desirable development in the coastal zone is the gamble involved in purchasing property or planning projects, not knowing whether necessary permits would be attainable. Some pre-purchase or pre-planning guidance is desirable including, perhaps, a general mapping of the coastal zone showing what uses would probably be acceptable in each area as well as what uses would probably not be acceptable.

Greater participation by people with direct working-knowledge in regulated uses must be included in drafting and applying policies and regulations. This can be accomplished through membership on the Coastal Area Review Board or through the use of consultants from regulated industries in all decisions affecting those industries. The Program cannot work if it is unable to recognize the day to day problems and realities of regulated uses.

Department of Environmental Protection permit procedures must be simplified. We agree with the need to protect the environment, but the process employed to do that is actually scaring away perfectly acceptable, perhaps beneficial, projects because of the economic and psychological strain caused by the permit process. Unless some overwhelming financial gain is evident, it just isn't worth pursuing a DEP permit. The kinds of businesses encouraged by the Coastal Zone Management program are essentially small, low-economic yield businesses. But the permit process is geared to being tackled by large, high-yield businesses capable of employing a battery of lawyers and consultants.

The CAFRA, Wetlands and Riparian permits must be consolidated. Once consolidated, they must be streamlined, without weakening their effectiveness. In order to gain a fresh perspective, an outside consultant should be brought in to guide the consolidation and streamlining. Working from within the department, it can never happen effectively because all proposals would be based on existing procedures. This must be accomplished with outside help.

A further simplified, easier to obtain permit process must be considered for small new projects or maintenance of approved existing projects. The restraint on these projects, which cause the least new disruption to the environment, are disproportionately higher than for larger projects. The permitting-cost to project-cost ratio is even further out of line than with larger projects. The result is either near-total discouragement of these small projects, or an incentive to do the work without permits. Look at the state of disrepair in many New Jersey marine facilities. The unwieldy expensive permit process actually encourages this lack of maintenance.

It is imperative that the Office of Coastal Zone Management develop a better understanding of the interrelations between the environment and the economy of the coastal zone. If the statement about supporting and promoting access to beaches and waterfront areas means using funds to build facilities and support programs like the Island Beach shuttle, we are adamantly opposed. Coastal zone management funds must not be used for projects. The need for research into all aspects of the coastal zone is so great, that spending coastal zone funds for projects rather than research is unconscionable.

The proposed study of recreational boating in New Jersey must be pursued. The nature of the sport, nature of the industry, users, demand, carrying capacity, restraints and prospects and recommendations for the future must be identified.

A study aimed at increasing the compatibility of boats and their support facilities with the environment should be undertaken. The state's dredging needs must be identified along with the agency or body responsible for the dredging. Proposals for accomplishing that dredging must be drafted.

As indicated in the Marine Trades Association's response to the Coastal Zone Management Strategy, "A concerted effort must be made to locate and develop spoils areas physically and economically accessible to both the public and private sector. Goals for site development based on dredging needs within specific geographic areas must be set. Investigation of alternative dredging methods and dredge spoils disposal and use must also be actively pursued, whether within state government or research institutes. Without the development of spoils areas, New Jersey's dredging needs will remain unfulfilled and the state's waterways will continue to deteriorate."

Unfortunately, some people claiming to be environmentalists give little regard to the serious economic impact of their actions. Well-founded environmental considerations are an important part of the permit process and must be encouraged. However, a stop must be put to the attacks on projects launched by people using environmental considerations as an excuse for opposing projects they just plain don't like. It would seem that for all the trouble and expense an applicant must go to, it would be only right that opponents to the application be required to substantiate their claims. A requirement that opponents be required to file an environmental impact statement supporting their contentions would assist both permit reviewers and applicants in considering objections.

By incorporating the suggestions included in our testimony we believe a workable coastal zone management program can be created. We look forward to living and working in the coastal zone which the program is directed towards creating and maintaining.

MARINE TRADES ASSOCIATION OF NEW JERSEY
SPECIFIC COMMENTS CONCERNING THE STATE OF NEW JERSEY
COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT

Page ii

"A most important element is absent from the list of what federal funds will allow New Jersey to do. This is most likely due to the apparent basic flaw in the philosophy of the New Jersey coastal zone management program which results in an essentially negative approach to coastal zone management." Item "a" on the list should be an identification of probable permissible uses in the various segments of the coastal zone.

The mention of mapping economic features in "b" suggests that consideration will be given economic concerns, but nowhere is there any elaboration of this consideration. The relationship between economic and environmental issues in the permitting process must be spelled out.

In a program representing concern for the entire coastal zone, in which there are many communities that will benefit from coordination with OCZM, it is inappropriate to single out Atlantic City as in item "g". This creates the impression Atlantic City will receive special consideration, which certainly must not be the case.

Further definition of "supporting and promoting access" in item "h" should be provided. This should not entail a commitment of funds and there must be no diminishing or private property rights.

Page iii

3. Summary of Environmental Impacts and Adverse Environmental Effects - The Marine Trades Association wholeheartedly agrees with restrictions or prohibitions on some land and water uses in some areas, balanced by the encouragement of development in others. The statement concerning economic impacts, however, is understated, inaccurate and contradictory. An irreversible commitment must result in long-term impacts. A more accurate statement would be "... there will be some adverse, short and long-term adverse economic impacts on some coastal users, and the Program will entail the irreversible commitment of coastal resources."

B.3 (State Alternatives) - While the enactment of coastal zone management should not have to wait for our slow-moving legislative processes to recodify the Wetlands Act, CAFRA and Riparian Laws, it is imperative that this recodification be undertaken as soon as possible in order to provide a more workable, efficient regulatory system.

Page 6

Purpose - While the intent of the Department of Environmental Protection (DEP) in preparing the program is "to protect the state's coastal resources while accommodating future needed development", the Marine Trades Association doubts that "accommodating future needed development" can be accomplished under the proposed program. Future needed development of a nature desirable for the coastal zone (i.e., recreational facilities) are to a great extent of low financial yield. The cost of going through the process of obtaining all the permits necessary for a project requiring most of the existing permits is such that the very projects desirable for the coastal zone are discouraged from siting there.

Page 7

The MTANJ is especially in accordance with the statements concerning water quality in paragraph three.

Page 31

6.2.1.2 Shellfish Beds Policy - For the purpose of maintenance dredging, consideration must be given to two special situations. The first would be where a shellfish bed has expanded into an existing dredged area. The other is where a channel or basin had been dredged near or partially into a condemned shellfish bed but the condemnation has been lifted at the time a permit for maintenance dredging is sought. Throughout the Program, recognition must be given the changing, transient nature of many of the factors entering into decisions on permits.

The association also questions why shellfish transplants cannot be considered in areas needing maintenance dredging, if shellfish mortality can be minimized?

Page 35

6.2.5.2 Submerged Vegetation Policy - Just as with shellfish beds, submerged vegetation is not necessarily a stationary resource. While destruction of submerged vegetation must be discouraged, a more flexible policy must be employed where vegetation has grown into an existing project in need of maintenance or where the only restraint to approval of a new project is a proposed minimal disturbance of a bed of vegetation.

Page 36

6.2.6.1 Navigation Channels Definition - This definition is incorrect in that it does not encompass the majority of the navigation channels in New Jersey. Many channels are marked by the state and are not identified on NOAA charts. Due to lack of maintenance of waterways, many channels in the state are less than five feet in depth at mean low water. Finally, there are channels that are not marked at all due to the presence of sufficient water depth for navigation from shore to shore.

The MTANJ suggests the following definition: "Areas providing the most direct practical route between existing dockage or launching facilities (including but not limited to marinas, service docks, launching ramps, fish processing plants and landings and residential areas with either communal or individual dockage) and larger bodies of water, or interconnecting bodies of water, or shown on NOAA National Ocean Survey Charts 12314, 12312, 12311, 12304, 12310, 12323, 12337 and 12343 as State or Coast Guard marked channels."

Specifically excluded from the original definition are areas such as Silver Bay in Toms River and the Metedeconk River in Brick Town. These are used as examples because they do not meet the definition and yet are no less important or less heavily used than areas meeting the definition. The Metedeconk River is unmarked for much of its length and a number of the markers in use mark danger areas rather than a specific channel. The river supports lagoon communities and at least seven marinas and one yacht club.

Silver Bay has no navigational markers except those marking access to the large lagoon communities fronting the bay. Yet Silver Bay's primary importance to recreational boating is as an access (channel) to the Barnegat Bay.

Maintenance dredging of commonly used areas of waterways such as Silver Bay and the Metedeconk River must also be encouraged. The adverse affect of shoaling in such a body of water is no less than it would be in a channel meeting the original definition.

6.2.6.2 Navigation Channels Policy: The Marine Trades Association agrees with the majority of this policy. However, the prohibition on subaqueous disposal of dredge spoil must be modified. The practicality and value of the creation of dredge spoil islands in certain areas is just coming to light. A total prohibition on subaqueous disposal precludes the possibility of this innovative technique ever being considered as a possible solution to New Jersey's serious dredge spoils disposal problem. The policy is also in conflict with the water acceptability table which shows disposal in deep and shallow ocean as well as shallow open bay as conditionally acceptable.

Pages 44, 45

6.3.7 Water Acceptability Table: This policy fails to deal with real world situations. From a theoretical, zero-base perspective, the policy generally makes sense. From a real-world perspective, the policy can't work. In essence, the maintenance dredging policy would result in the eventual abandonment of many channels in New Jersey and the dooming of many waterfront home owners to own lovely docks with no water access.

Most waterways in New Jersey are in abominable condition. Channels that should be eight feet or more in depth are in some places shoaled to only inches. Going back to the example of Silver Bay, which in many places is less than six feet in depth, should a serious shoal develop, its removal would apparently be prohibited. Another example: Goose Creek, in Toms River, supports two marinas and hundreds of lagoon front homes. Should the creek develop a serious shoal, its removal would be prohibited.

Acceptability of maintenance dredging for all areas must be changed to conditional. The additional permit considerations such as spoils disposal, presence of shellfish beds, etc., are sufficient to preclude harmful dredging projects while still allowing for continued access to existing developed areas.

The virtual prohibition of new dredging should be reconsidered. While the Marine Trades Association does not propose widespread new dredging projects, the flexibility to allow projects that satisfy all other criteria should be maintained. Changing all prohibited categories of new dredging to discouraged would allow this flexibility. The other siting criteria would provide sufficiently for the protection of the environment.

Spoil disposal should also be rethought. A virtual across-the-board prohibition does not allow for the consideration of possible disposal alternatives such as the creation of spoils islands.

The point in time to which the water depth refers must be defined. Is it depth at application, or project depth, or depth in 1800 or when? Depth at application is not acceptable because a transient shoal could preclude approval of an otherwise acceptable project. A definition of how the water depth is determined is also necessary. Is the depth a minimum, a maximum or an average of the depth throughout the body of water or is it a minimum, a maximum or an average of the depth in the projected area?

Page 47

6.3.8.5 Dredging - Maintenance: The association agrees with this policy. However, the policy appears to contradict the Water Acceptability Table. In addition, the adverse economic impacts of not performing proposed dredging should be weighed against possible negative environmental impacts when considering applications.

6.3.8.7 Dredged Spoil Disposal: This policy does not sufficiently deal with the disposal of dredged spoils. If maintenance dredging and some new dredging is to be allowed, then further consideration must be given to acceptable spoils disposal methods.

Page 49

6.3.8.15 Overhead Transmission Lines: Consideration must be given to mast heights in order to eliminate all possibility of contact between masts and transmission lines.

Page 53

The use of cost-benefit studies, weighing both economic and environmental values, is a good approach to many permit considerations.

Page 90

6.6.7.2.1 (g) (Marinas only) - First, a definition of "marina" must be established. Is a private home with dockage for several boats and a davit-type lift to be considered a marina? Is a commercial fishing facility servicing a number of large vessels to be considered a marina? A number of policies in the program affect marinas; the marina community is a major part of the state's tourism economy; yet there is no definition of what a marina is. This should be clearly defined in order to prevent confusion of uses and a resultant confusion of policies.

The Marine Trades Association suggests the following definition of marina: "A waterfront facility, predominantly used for the dockage, (wet or dry-stack) and/or moorage of recreational boats; for which dockage or moorage a fee is charged."

Consideration must also be given to defining "water harbor of adequate depth". If this means the site must include an existing or planned basin of adequate depth to accommodate the boats projected to be served by the facility, it makes sense. If it means the site must abutt a basin or channel with sufficient depth to accommodate anticipated clientel, it makes sense. Further definition is needed.

Finally, the need to properly define navigation channel is stressed once again.

6.6.7.2.3 (d) (Marinas only) - The preceding comments concerning "marinas only" high potential criteria apply.

Pages 136, 137

7.3.6 New Marinas

(a) How will the "demonstrated regional demand" be determined? Since this is to be part of regulatory function, the means of delineating regions and the method for establishing demonstrated demand within the region must be described. Consideration must also be given to the fact that in some areas demand would be far greater if additional facilities existed.

Further, how will the potential for the upgrading or expansion of existing marinas be determined. It can not be done strictly on a physical potential basis. Economic restraints, including permitting costs, must be considered. Most marinas have the room to expand or the potential for upgrading, but few have the financial resources to pay for upgrading or expanding, and in most instances the return on investment would be inadequate to justify the upgrading or expansion even if the money were available.

(b) Dry storage areas and public launching facilities must be defined. These terms can mean any number of things and as part of a regulatory function must be more clearly defined.

Should the terms mean a dry-stack, in-and-out system and a public launching ramp, the Marine Trades Association of New Jersey is opposed. Dry-stack operations and launching ramps are to be encouraged, but they are not feasible for all sites. Dry-stack systems have particular problems such as a need for considerable vertical relief and sufficient turning room for equipment in order to be feasible.

Launching ramps are effective means of serving transient small-boat owners but they also produce land use problems that make them unsuitable for some sites. A ramp-launched boat requires at least twice the land space, in-season, of a stack-stored or docked boat because of the presence of the trailer in addition to the owners car.

If the term public means "free", the Marine Trades Association is vehemently opposed. No businessman should be forced to give away services in return for being allowed to do business. Even government-owned launching ramps charge fees.

The Marine Trades Association suggests the following definitions:

Dry storage areas - Land space for the purpose of storing boats when they are removed from the water. This may be either for seasonal storage or for holding between uses (dry-sailing, dry-stacking, etc.). A major portion of seasonal storage area may be the same area used for parking during the boating season.

Public launching facilities - Any facilities, available for use by the general public on a fee or no-fee basis, used for launching and retrieving recreational boats. Facility operators retain the right to restrict usage of the launching facility when parking, docking or launching capacities are exceeded.

Finally, a policy must be established to cover instances where a required service is prohibited by municipal or county regulations.

(c) The Marine Trades Association supports the requirement for "adequate pump out stations for wastewater disposal" at all new marinas.

As an additional criteria, public (federal, state, county and municipal) development of marinas must be discouraged. They have an unfair competitive advantage over private enterprise and use land that would otherwise be available for privately financed businesses that provide tax revenues. Development of privately owned marinas must be fully pursued before public marinas are considered. Additionally, proposed publicly owned marinas must be required to file economic impact statements, giving particular attention to their effects on privately owned marinas in the area.

Pages 141-144

The association specifically supports sections 7.4.4, 7.4.5, 7.4.7 and 7.4.8 as particularly protective of resources important to recreational boating.

Page 147

7.4.15 Conservation and Alternative Technologies - This policy is commendable. The marine industry continues to study and develop energy conservation methods for both boats and facilities. Encouragement of similar efforts will benefit the entire citizenry.

Pages 149, 150

7.8.3 Shore Protection Use Policies - Adverse economic impacts as well as potential secondary impacts and an assignment of responsibility for correcting any impact not foreseen within the permit must be included in shore protection project permit considerations. In past shore protection projects, too little consideration has been given to the economic impact on nearby properties and the identification of impacts has not gone deeply enough. In addition, when these projects have resulted in unanticipated negative impacts, little has been done to correct the situation.

Page 151

6.2.1 Marine Fish and Fisheries Policy - This is a sensible approach to balancing economic and environmental needs. "Minimal feasible interference" serves both needs. This policy, however, does not appear to be in accordance with other policies within the program such as 6.2.1.2 which prohibit outright some uses.

Page 159

8.14.1 Secondary Impacts Policy - This policy must be expanded to include secondary environmental and economic impacts beyond those envisioned by the policy. An example would be a beach nourishment project in a high erosion area. A primary impact might be increased shoaling in an adjacent navigational channel. A secondary economic impact would be the restriction of boat traffic to a nearby marina. Responsibility for reversing impacts, both environmental and economic, not covered by the permit must be assigned within the permit. More specifically, the responsibility must revert to the permittee and ultimately to the authority that issued the permit.

Page 163

8.19.1 Traffic Policy - This policy should be modified slightly to recognize that marine traffic congestion may come about when a navigation channel, otherwise capable of handling large volumes of traffic, is restricted due to shoaling. The traffic volume and congestion should be projected on the basis of the ability of the waterways to carry traffic when they are properly maintained.

An example would be Wills Hole Thorofare. At this time, the waterway is congested due to shoaling caused by erosion of an adjacent island. Assuming a site were available on Channel Drive in Point Pleasant Beach, it would most likely be able to meet all other requirements of the program, but would be effected by the congestion caused by the shoaling. Failure of a property owner to properly maintain his property, or failure by the state to properly maintain the waterways should not adversely affect otherwise acceptable projects.

Page 166

The need to simplify the permit process to the greatest extent possible without weakening environmental protection programs cannot be stated frequently enough. The businesses coastal zone management encourages in the coastal zone are businesses of low economic yield operated by small, average businessmen. The economic and psychological strain of dealing with the permit process is such that these businesses are discouraged from locating in the coastal zone, leaving a vacuum which ultimately can only be filled by less desirable businesses.

Page 172

The Marine Trades Association would like to see greater participation by the Departments of Labor and Industry and the Public Advocate. While the association fully supports the necessity of maintaining a clean, productive environment, we also recognize the need to balance environmental concerns with economic and property rights considerations.

Page 181

Recreation - Recognition of the importance of recreation on the coast has been too long in coming. The Marine Trades Association of New Jersey applauds this recognition and calls upon the administration to show its support of this philosophy by returning a greater share of coastal recreation generated state revenues for coastal programs such as waterway maintenance and shore protection.

Page 183

Wetlands - While the protection of wetlands is in the national interest, the treatment of wetlands owners is not consistent with basic national philosophy. This nation came about through a tax revolt, to a great extent, and inequitable taxation flies in the face of the principals upon which the country is based. The courts have ruled that Wetlands Act regulations do not represent a taking of property by the state. That may be true, but wetlands are essentially useless for development and to tax them on the basis of being fully developable according to the tax rate for the area is totally unfair.

Page 203

A. Impacts of New Development and Land Values - Projections of the economic impact of land-use restrictions are consistently down-played. In order for the program to have credibility, it must be honest. Owners of regulated land may not just be unable to "realize the level of financial gain they had anticipated." More likely, they will loose money because of overtaxation and the fact that the price for which the land was purchased was based on it being fully usable and now its use is extremely restricted. The restrictions may be necessary, but so is honesty in identifying their probable economic impacts.

Page 210

(2) **Resort/Recreation** - The encouragement of maintenance is imperative. But, as part of a regulatory program, will this encouragement be passive, applying only to actual permit applications; or will the program truly function as a positive management tool for the coast and actively seek maintenance of the state's navigation channels? The latter should be the case.

Once again, the effect on private property owners is understated. The program must be honest in identifying probable economic impacts on private property owners.



NEW JERSEY STATE
CHAMBER OF COMMERCE
8 COMMERCE STREET □ NEWARK, N.J. 07102

July 5, 1978

Honorable Daniel O'Hern
Commissioner
New Jersey Department of
Environmental Protection
P. O. Box 1390
Trenton, New Jersey 08625

Dear Commissioner:

We are taking this means of responding to your department's Coastal Management Program, Bay and Ocean Shore Segment draft Environmental Impact Statement.

The post-hearing comment period for this document is open through July 5 and we are sending a copy of this letter to the Director of your Office of Coastal Zone Management, David N. Kinsey, with the request that he submit it as part of the hearing record. Our letter, however, is directed to you, because our Chamber's primary concern goes beyond the document itself.

We are disturbed over the direction which land use planning as a whole is taking in state government. Within your department alone citizens must contend with the mandates of the Wetlands Law, the Flood Plains Law, the Coastal Area Facility Review Act, Green Acres program and the pending extension of CAPRA-type land use controls under the Federal Coastal Zone Management Act. In many situations, a citizen must comply with the mandates of more than one of these programs. At the same time, the Department of Community Affairs is developing the State Development Guide Plan; the Department of Transportation has its Transportation Master Plan; the Department of Energy is developing its Energy Master Plan which has land use control aspects; the Department of Agriculture has programs involving farmland preservation and development rights transfer, and all of these programs are in addition to municipal and county land use plans. This is not to imply that the State Chamber is opposed to the objectives or even the methods of some of these programs. But we must emphasize that there is little or no coordination among their respective provisions and requirements. And this presents citizens with confusing, costly and time-consuming problems when proposing any kind of development.

We think it is time for state government to take an in-depth look at this multiplicity of programs in the light of its overall impact upon New Jersey's economy -- including the administrative and enforcement expenses which taxpayers must support. California's Proposition 13 and similar moves elsewhere clearly signal rising public discontent over governmental costs which have escalated in good measure due to the proliferation of regulatory bureaucracies.

As Mr. Kinsey learned at his most recent session with our Economic

Hon. Daniel O'Hern

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July 5, 1978

Development committee, we feel strongly that New Jersey should have one state-level program with respect to land usage, not six or seven. Such a program should be so constituted that it will accommodate the full scope of the public's interests in land use planning, not the much more limited, special concerns that are represented, for example, in the Wetlands or CAPRA laws.

We point out to you that, in the case of the draft EIS on the Bay and Ocean Shore Segment, the document's opening chapter, which discusses the program's purposes, etc., totally ignores one of the basic mandates of the CAPRA law, namely, "the legitimate economic aspirations of the inhabitants of the coastal area" which the Legislature stated it "wishes to encourage".

We do not feel that the Department of Environmental Protection is, due to the orientation and training of its people, the proper agency to be leading land use control in New Jersey. While environmental protection is a legitimate public concern in connection with land use planning, it is by no means the only consideration. The Governor recognizes that New Jersey's economic environment needs improvement and we are convinced that economic concerns must be given more emphasis within narrowly conceived programs such as CAPRA.

We are especially concerned over what has been announced as the "next stage" of the Coastal Management program development, namely, extension of CAPRA's provisions to cover the Delaware River and Hudson River-northern waters areas of our state under the aegis of the Federal Coastal Zone Management Act. This proposed program would be aimed primarily at heavily urbanized areas where the application of the stated purposes of Coastal Management in New Jersey would serve little purpose.

New Jersey's economy remains in relatively frail health, well below the national average in many accepted economic indices. Imposing an environmentally-oriented program of land use controls upon some of our most vital areas of commerce and industry is an idea that is, at best, difficult to justify.

We would welcome an opportunity to sit down with you personally to discuss this matter further in company with the chairman and members of our Chamber's Economic Development committee. In fact, we will gladly make the necessary arrangements for such a meeting in Trenton to be held on a date convenient to your personal schedule.

Sincerely,

DONALD H. SCOTT
President

DHB:lnk

cc: David N. Kinsey
Hon. John J. Horn
Stewart G. Pollock, Esq.



Sierra Club

NEW JERSEY CHAPTER
360 Nassau Street, Princeton, N.J. 08540
(609) 924-3141

Statement presented on the New Jersey Coastal Management Program,
Bay & Ocean Shore Segment & Draft EIS - June 15, 1978

My name is Diane Graves and I am Conservation Chairman for the Sierra Club's New Jersey Chapter.

We commend the DEP's Office of Coastal Zone Management for the Bay & Ocean Shore Segment (BOSS) document. We believe it will help protect New Jersey's coast from large, poorly sited and planned development, while allowing certain developments in appropriate locations. The Coastal Location Acceptability Method process seems clear and reasonable. The use and resource policies, also, for the most part, seem clear and forceful. We support the promulgation of Chapter 3 as rules and regulations.

We wish to express the following concerns, reservations, suggested actions and specific changes.

The decision not to conduct a proper inventory was a mistake. It may ^{be} remedied ultimately piece-meal through information provided by applications and EIS's, but meanwhile the DEP will continue to react to applications rather than for everyone, DEP and potential applicants, to know specifically where developments can and cannot be located.

We think it is important that the public not be lulled into assuming that Chapter 3's promulgation will actually protect the coast. It won't. The cumulative impacts of the many likely developments not covered by CAFRA/BOSS will be disastrous to the N.J. coast. The best planning and most stringent enforcement of rules and regulations will be of little use if, for instance, numerous housing developments of 24 units or less, which are not now covered by CAFRA, are constructed. Also, individual houses on dunes, small commercial establishments, expansions of small motels by a few units, and the like, can eventually destroy the coast.

Therefore, as one possible way to improve the situation, we urge the Legislature to reduce the threshold number for housing units, which is now 25 units or more. The DEP should be required to determine what the reduced threshold number should be in order to gain control over sequential development.

We are also concerned about the cumulative impacts of major facilities now covered by CAFRA/BOSS. As yet the DEP is not required to forecast or evaluate the cumula-

- 2 -
tive impacts of planned and likely major facilities on air and water quality, water supply, as well as other coastal resources. For instance, N.J. should know what impact can be expected on air quality 5, 10, 15 years hence, from Atlantic City's renewal and projected growth and traffic.

We believe it is crucial to the entire enterprise of protecting N.J.'s coastal resources that the DEP ^{be} required to assess cumulative impacts and to develop a plan, mechanism, or legislative measure to remedy the problem.

Another major continuing worry is the inadequacy of DEP/OCZM's resources to administer and enforce the coastal protection program. For instance, we understand that the OCZM's permit section has only 3 people and needs 8 - 10. Further, delays in filling authorized positions caused by Civil Service is a regrettable, long-term problem, but now, added to that, the Governor's office requires review of applicants and this is reported to be causing additional delay in hiring needed personnel. The OCZM must be staffed fully. If the Legislature wants permits reviewed properly within 90 days, it had best see to it that adequate staff is on hand.

Enacting a governmental program which the public is lead to expect will be effective, but which actually falls into confusion, indecision, poor decisions, and conflict due to inadequate resources - both money and staff - is a disservice and reinforces the public's tendency to disrespect government. Therefore, we urge that both the federal OCZM and the N.J. Legislature make certain that DEP/OCZM has the resources it needs to administer and enforce this program.

We are glad that the BOSS policy on pipelines specifically prohibits oil pipelines from the Central Pine Barrens. We feel both oil and gas pipelines should be prohibited, however, our main concern on this policy is the proposed power of the Dept. of Energy to override DEP's policies and decisions. We urge the Byrne Administration to enunciate a policy to protect absolutely the ^{Central} Pine Barrens from any energy facility, except perhaps a gas pipeline if there is no possible alternate route.

We have previously offered some specific wording changes in some policies. I will send them in later for the record.

Thank you.



Sierra Club

NEW JERSEY CHAPTER
360 Nassau Street, Princeton, N.J. 08540
(609) 924-3141

Supplemental statement to be included in the record on the New Jersey Coastal Management Program, Bay & Ocean Shore Segment - 6/15/78
(Please attach to statement presented at public hearing)

We urge the following specific wording changes in the use and resource policies:

- p. 60 - 6.4.5.2, line 3, change "discouraged" to prohibited. At least prohibit demolition of historic resources.
- p. 78 - 6.5.3.3 - next to last line, delete "hotels" & "restaurants". We disagree that such developments "are desirable."
- p. 137 - 7.3.6.(c) - add, and if wastewater disposal from such pump out stations is consistent with all applicable federal & state laws, rules & regs.
- p. 142 - 7.4.7 (e) - line 12, after "Segment" insert and the Central Pine Barrens.
- p. 144 - 7.4.9 - line 3, ditto the above.
- p. 148 - 7.5.8 - line 1, after "must" delete the remaining sentence and insert, be consistent with all applicable federal & state laws, rules & regs & standards.
 - 7.5.10 - line 1, delete "proper"; line 2, after "installation", delete ", and"; after "operation", insert and maintenance
 - 7.5.11 - reword to read, Wastewater treatment systems that recharge the groundwater are encouraged, provided that effluents and recharge techniques are consistent with all applicable federal and state laws, standards, rules & regs.
 - 7.6.1 (a), after "or" insert long-term
 - 7.6.2, line 3 "are acceptable" is unclear. If there is a law that applies, cite it. If "acceptable" reclamation plans are defined or described somewhere, reference where found. If DEF/CCZH is to determine what an acceptable reclamation plan consists of, CCZH should develop specific criteria.
- p. 149 - 7.6.3, line 4, after "not" delete "cause.....degradation" and insert violate federal and state laws, standards, rules & regs.
- p. 152 - 8.4.1, line 5, "disturbances" is unclear despite Glossary definition; if drawdown is what it meant, than change "disturbances" to drawdown.
- p. 159 - 8.14.1 - change the first sentence to read: Information on the probable secondary impacts of a proposed development must be included (or is required) in all applications for development.
- p. 161 - 8.16.1 - delete entire paragraph and start over. I suggest: Solid waste shall be handled & disposed of (or managed) in a manner consistent with the Resource Conservation & Control Act of 1976 (RCRA) and

...TO EXPLORE, ENJOY AND PRESERVE THE NATION'S FORESTS, NATURAL HERITAGE AND WILDLIFE.

New Jersey's Solid Waste Management Act (Chap. 326, N.J.S.A. 13:1E-1 et seq).

Coastal development is encouraged to recover material and energy from solid waste to the maximum extent practicable.

p. 162 - 8.17.1 - line 1, change "encouraged" to required

p.180 - Pipelines - line 6, after "feasible" insert that oil pipelines are prohibited from the Central Pine Barrens and gas pipelines shall, or refer to p. 141-142, section 7.4.7 (c), or both.

Submitted by Diane Graves,
Conservation Chmn.



Sierra Club

WEST JERSEY GROUP

"... TO EXPLORE, ENJOY AND PRESERVE THE NATION'S
FORESTS, WATERS, WILDLIFE AND WILDERNESS ..."

TESTIMONY RELATING TO THE BAY AND OCEAN SHORE SEGMENT OF THE COASTAL ZONE

This testimony is from the West Jersey group of the N.J. Chapter of the Sierra Club. We represent Sierra Club members in the southern half of the State and, specifically, of more importance in this case, those members in the CAFRA area from Atlantic City to Cape May and up the estuary to the Delaware Memorial Bridge. We thank you for the opportunity to present this testimony.

Our priorities for the coastal area are the same as yours: to protect and conserve the coastal ecosystem. To us, this is the overriding goal which gives rise to the objectives in policies two and three and will result in the protection of the health, safety and welfare of people who reside, work, and visit in the coastal zone.

We think the document shows great strengths, particularly in the decision making method which provides standards by which each application for development can be evaluated.

We also feel there are a number of weaknesses, however, which, if not corrected, can override all the good intentions and objectivity of the method. To begin with, there is the continued obelance to "home rule." Home Rule has always been a thorn in the side of conservationists (and reformers in general) who look to the state to see things more clearly, in a larger context. As is mentioned in the EIS, "...some municipalities (in their quest for ratable producing property) make individual development decisions with little regard for regional impacts..." Yet, principle

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Sierra Club-West Jersey Group
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July 6, 1976

number 1 seems to be saying the local municipalities will make the real decisions. Maybe we are overreacting, and we suspect you will point to the language used in the EIS and insist it means DEP will make the important decisions, but it doesn't say it clearly enough for us. The fundamental policy stance must be that DEP, because of its concern for the protection and conservation of the ecosystem, and its ability to objectively strive for that concern without the need to foster development to raise taxes, must make the decisions and the role of the local government should be to provide input. And it must be realized that this is not simply a question of semantics. If this is not the basic policy stance, DEP is reduced to deciding when to disagree with the municipality; when to take exception. That makes it an entirely different ball game!

A second major concern is that the EIS claims that the State is interested in regional decisions; that they will "...consider only coastal resource and coastal land and water use decisions of greater than local significance..." and yet provides no criteria for making regional decisions: whether such and such a use of such and such a resource is acceptable in a specific location. How, then, is the DEP to decide whether a particular development will violate regional standards?

In the long run, this is going to lead to significant problems because the individual towns will be able to "nickle and dime" the region to death. If development takes place in the non-prohibited areas in each town and gradually fills up all the non-prohibited areas, the entire coast will look like the barrier islands.

In general, we like the policies outlined in sections 6, 7, and 8

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of Chapter three; there is very little to disagree with. It's the spaces between the policies that concern us. It's the fact that a person can build houses anywhere he wishes on wetlands that he owns as long as he doesn't build more than 24. New or expanded public facility development is conditionally acceptable providing that they meet a demonstrated need. But building roads and sewers always seem to meet a demonstrated need, and they always seem to lead to more people which leads to more development which leads to a greater load on a sensitive environmental area and there seems to be no stopping it. When it comes to runoff (Section 8.6), nobody exceeds the standards but we keep having more floods and local governments seem to feel that it's the problem of the guy downstream. When it comes to groundwater (Section 8.5), the water supply people seem to allow excessive withdrawal rates to everybody, will you tell them they can't? In section 8.7, you require meeting the standards of the Soil Erosion and Sediment Control Act, but in many places the Soil District people can't cope with what they have to do now. So we like your policies, but we're concerned.

We commend the Department for publishing the Public Comments and DEP Responses. It is evidence that the Staff noted the comments and acted on them.

We would like to state that we would like to reinforce the comments of Diane Graves for the N.J. Chapter of the Sierra Club especially as it refers to the lack of conducting a proper inventory.

Allow us to finish with a few specific items.

6.2.6.2 "Maintenance dredging is encouraged." Only if a suitable

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place for putting spoils is specified beforehand.

6.4.1.2 "Development that contributes to further erosion of high risk erosion areas is discouraged." Why not simply prohibited?

6.5.1.4 "Development...is prohibited on beaches, unless..." We see no reason for the "unless" unless the structure is coastline dependent.

7.2.2 We, too, would encourage clustering provided the site does not have septic tanks and the developer makes the usable common space available to the public.

Finally, you should be searching for a method which allows citizen participation but does not require the citizen to read, understand, and balance, such a large amount of material. We're going to have to live with these regulations for a long time and it would be a shame to overlook some important features simply because there was too much to deal with.

Also along the line of public participation, we would recommend a different method than you have been using heretofore. We think you should have regular open meetings inviting environmentalists, county planners, industry, and legislators in order to share ideas without the constraints of a public hearing or the necessity of responding to a draft final plan. Workshops could be arranged as the plan is being developed.

COLUMBIA GAS SYSTEM SERVICE CORPORATION

ROBERT W. WELCH, JR.
VICE PRESIDENT
ENVIRONMENTAL AFFAIRS



20 MONTELIARD ROAD
WILMINGTON, DELAWARE 19807

June 19, 1978

Mr. Robert Knecht
Assistant Administrator for
Coastal Zone Management
U.S. Department of Commerce
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, NW
Washington, DC 20235

Dear Mr. Knecht:

Re: State of New Jersey - Coastal Management
Program - Bay and Ocean Shore Segment--
May 1978 - Draft Environmental Impact Statement

Columbia Gas System Service Corporation herewith files a response on behalf of Columbia Gas System (Columbia) to the above-captioned document issued April 28, 1978 by the Department of Commerce, National Oceanic and Atmospheric Administration.

Columbia is one of the largest natural gas systems in the United States and is composed of The Columbia Gas System, Inc., a registered public utility holding company, a service company and seventeen operating subsidiaries. The operating subsidiaries are primarily engaged in the production, purchase, storage, transmission and distribution of natural gas at wholesale and retail. Columbia supplies directly through its retail operations, or indirectly, through other utilities, the gas requirements of about 4,200,000 customers in an area having a population of approximately 18,000,000. Columbia's service area includes large parts of the states of Ohio, Pennsylvania, Kentucky, New York, Virginia, West Virginia, Maryland and the District of Columbia. Columbia serves at retail 1,850,000 customers residing in communities with a total population of 7,400,000.

Mr. Robert Knecht
June 19, 1978
Page 2

Columbia believes that the New Jersey Program is deficient and therefore does not meet the requirements of the Coastal Zone Management Act (CZMA) for the following reasons:

1. The New Jersey Department of Energy master energy plan is not contained in the New Jersey Program. Under the program, it is necessary for energy facilities to demonstrate consistency with the master plan. Absent an examination of the contents of the master energy plan, it is impossible to conduct a meaningful review of the State's program for energy facility siting.

2. The New Jersey Program lacks criteria for evaluating the consistency of a federally related project with the state Program. Absent such criteria, the consistency statement made by individuals pursuant to §6 of the CZMA [(16 USCA § 1456 (c)(3) (Supp. 1978)] in their application for authorization from a federal agency, would have no basis in that such criteria is missing from the New Jersey Program.

3. The Department of Environmental Protection (NJDEP) lacks the authority to implement the Program as contained in the DEIS. While it is questionable that the planning function assumed by NJDEP is authorized under Coastal Area Facility Review Act, there is no doubt that this agency does not have the authority to override local objection to any of its policy, plans or guidelines. This remains a fundamental weakness of the Program. (See EPA comment #245 in DEIS.) The need for state legislation to prevent local community opposition from frustrating state action through local land use planning is essential to a viable Program.

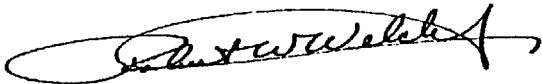
In addition to the above comments, the plan fails to consider the Clean Air Act Amendments of 1977. This is reflected in the Program's policy of clustering energy facilities. Such a policy would use up the increments of given pollutants (particulates, hydrocarbons, etc.) and virtually preclude construction of any major industrial facility.

Furthermore, it should also be noted that submission and approval of a partial Program as contemplated by the State of New Jersey does not trigger the federal consistency provisions of Section 6 of the CZMA [(16 USCA § 1453 (c)(3))]. This provision only applies to final approval of a complete CZMP, not final approval of a segmented plan.

Mr. Robert Knecht
June 19, 1978
Page 3

Columbia trusts that the National Oceanic and
Atmospheric Administration will give serious consideration
to the above comments.

Yours very truly,



RWWJr:che

Suggested Revisions to
State of New Jersey
Coastal Management Program
Bay and Ocean Shore Segment
Draft Environmental Impact Statement
May 1978

#1 Page 34 6.2.3.2 - continued at top of page

Delete last sentence referencing pipelines or
at a minimum delete words "or natural gas" in third to last
line. Should for some unanticipated reason a natural gas
pipeline leak, it will not impact prime fishing areas in
tidal water areas and water's edge areas. Pipeline con-
struction will not significantly alter bathymetric features
of ocean bottom nor impact fisherman's ability to utilize or
fish in pipeline corridors.

#2 Page 35 6.2.5.2 - last paragraph on page

In line 5, delete word "dredging" and insert word
"trenching." Further, at end of paragraph, delete the
phrase "and replanted with pre-development revegetation."
Should this deletion be unacceptable, then it is recommended
that the following phrase be added to existing paragraph: "if
after a period of three growing seasons submerged aquatic
vegetation does not naturally reinvade the trench area."

#3 Page 38 6.2.8.3

Recommend placing period after the word "value" at end of second line and deleting rest of the sentence. Initially, the Marine Sanctuaries Act allows development to take place but only under controlled circumstances and situations. The Act does not prohibit OCS oil and gas development in or through marine sanctuaries. The statement as written implies that such activities "could" impact such areas.

#4 Page 43 - add new definitions

6.3.6.19 Trenching

Trenching is the act of removing marine bottom sediments in a bucket for the purpose of installing a lineal facility where the removal of such sediments is accomplished by use of a backhoe, clam, dragline, shovel or similar method.

6.3.6.20 Temporary Trench Spoil Storage

Temporary trench spoil (excavated marine bottom sediments) storage is the act of placing trench spoil alongside the excavated trench in a lineal pile or at specifically designated marine locations for temporary storage while the pipeline is installed in the trench.

6.3.6.21 Backfilling

Backfilling is the act of removing trench spoil from its temporary spoil storage site(s) by a bucket-type piece of trenching equipment and replacing it in the trench to cover the pipeline. The original marine bottom contour is reestablished as close as feasible to the original bottom contour.

6.3.6.22 Jetting

Jetting, an alternative for trenching, is the process of liquefying and lightening the marine bottom sediments so that the weighted pipeline will sink into the now less dense or lightened sediments. Jetting is accomplished by blowing high pressure air and high pressure water into the marine sediments below the pipeline with a specially designed jet sled pulled along the pipeline such that only the sediments beneath the pipeline are lightened and liquefied.

#5 Page 45 - Figure 5

Line 16 should be all "C's" or "conditionally acceptable." For the "open bay" segment, the water acceptability factor for pipeline routes are shown as being discouraged for both the "deep"

and "medium" water depths and "prohibited" for the "shallow" water depth. As such, the prohibition of pipeline routes across the "shallow" segment of the "open bay" basin type will arbitrarily prohibit pipeline routes from the "medium" and "deep" areas of "open bays" where they are only "discouraged." Inasmuch as pipeline routes are lineal facilities as are cable routes, the acceptability factors for pipelines should therefore be equivalent to the cable route acceptability factors.

Further in this regard, neither pipeline routes nor cable routes should be prohibited from crossing "lakes and ponds." There is no justification for such a restrictive position. The acceptability factor should be "C" or "conditionally acceptable." Pipelines have for over one hundred years been laid across rivers, streams and creeks. If construction is properly carried out, no long-term impacts will result.

#6 Page 49 6.3.8.16

It is suggested that this paragraph be revised to be consistent with paragraph 6.3.8.14 - Cable Routes.

#7 Page 49 - add new definitions

6.3.8.18 Trenching

Trenching for pipeline facilities is conditionally acceptable in all water

bodies provided that the depth of the trench is (a) sufficiently deep to avoid pipeline puncturing or snagging by sea clam dredges, (b) sufficiently deep to avoid pipeline uncovering by erosion of water body currents, and (c) in compliance with the Corps of Engineers permit where the pipeline crosses navigation channels.

6.3.8.19 Temporary Trench Spoil Storage

Temporary trench spoil storage is conditionally acceptable provided that (a) all applicable water quality standards are met and (b) the bottom contours are reestablished following trench spoil removal to as near as practicable to the original bottom contours.

6.3.8.20 Backfilling

Backfilling the trench following pipeline installation is acceptable provided that the backfilling operation reestablishes the bottom contours over the trench to as near as practicable to the original bottom contours.

6.3.8.21 Jetting

Jetting pipelines into the bottom sediments is a conditionally acceptable burial method

provided (a) trenching and backfilling is impractical and (b) the depth of burial meets all applicable Corps of Engineers and/or U.S. Department of Transportation, Office of Pipeline Safety Operations Regulations regarding depth of burial.

#8 Page 94 6.6.7.5

In the last line of this definition, the term "moderate" is used. Is this term supposed to be "moderate" or "medium"?

#9 Page 131 6.10

The statement contained in 6.10 does not recognize four important conditions which are unique to natural gas transmission facilities subject to the Natural Gas Act:

- The Federal Energy Regulatory Commission has the final authority for determination of pipeline routes.
- The physical pipeline location on the ground is determined by the landowner.
- The FERC certificate provides some latitude to the pipeline company to move the pipeline alignment to accommodate landowners' wishes and deviate around an unforeseen or unanticipated obstacle.
- The FERC certificate gives the natural gas pipeline company the authority to do the final engineering and

pipeline alignment in accord with the route determined by the Commission in the certificate. Therefore, it is recommended that a new paragraph (e) be added to 6.10 as follows:

- (e) for natural gas pipeline facilities subject to the Natural Gas Act, the final pipeline alignment recommended by the appropriate state authorities as a result of the review process set forth in the New Jersey Coastal Management Program should be consistent with the pipeline alignment as determined by the FERC. Further, the alignment of the pipeline on the ground will be determined in accordance with the landowner's wishes.

Notwithstanding the above, the term "rights-of-way" in item (d) should be deleted and replaced by the term "transportation corridors" to be consistent with other statements in the Plan.

#10 Page 142 7.4.7(e)

The second sentence should be revised to read "To preserve the recreational and tourism character of the coastal areas, new major pumping stations and other ancillary facilities to the offshore oil and gas pipelines shall be prohibited from locations in the bay and ocean shore segment, except for major gas processing plants and compressor stations (see Section 7.4.9)."

The addition of compressor stations is logical because they are similar to gas processing plants in regard to land area requirements and can be designed to be unobtrusive.

#11 Page 144 7.4.10

It is suggested that the words "natural gas" be deleted from the title, from line one and the words "and gas" be deleted from line two. Natural gas is not stored in tanks similar to crude oil. The deletion of these suggested words will make the statement correct.

#12 Page 180 Paragraph "Pipelines"

I believe it was DEP's intent that the term "rights-of-way" included in line six of this paragraph was meant to be "transportation corridors." The use of the term "pipeline corridor" is properly used in line eight of this paragraph.

In this regard, it is important to remember that a grant of a right-of-way or an easement by a property owner is an instrument which permits the survey, construction, operation, maintenance and sometimes removal of a pipeline or other type of facility across a specific tract of land. The right-of-way holder obtains no interest in the land other than that which is generally specified above. A second person proposing to install another facility, be it a pipeline, electric power transmission line, telephone cable, etc. must also deal with the landowner to obtain the second right-of-way or easement across that property. It is

common courtesy that the second right-of-way or easement purchaser contact the holder of the first right-of-way or easement to determine appropriate technical arrangements. In all cases, the landowner's desires and wishes control the location of facilities on his property. In other words, it is possible that a property owner would grant a right-of-way or easement for a pipeline through the center of his property since it will be buried and not present any surface obstruction to farming or other possible land use while the landowner may require the owner of a pole line or other surface use facility to construct them along fence lines or property lines to prevent intermittent obstructions through the center of his property. It is for this reason that the term "corridor" is the proper term.

#13 Page 187 - Second full paragraph on page

Since specific natural gas pipeline alignments are not known and will not be known at the time DEP is considering a consistency determination, it is suggested that the following sentence be added to this paragraph following the second sentence: "The submission of a written notice to landowners is not required for natural gas pipeline facilities subject to the Natural Gas Act."

6/30/78

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ADMITTED IN ME ONLY

June 21, 1978

Mr. David N. Kinsey
Chief, Office of Coastal Zone
Management
New Jersey Department of
Environmental Protection
Trenton, New Jersey 08625

Dear Mr. Kinsey:

We represent Public Service Electric and Gas Company, Jersey Central Power and Light Company, and New Jersey Natural Gas Company with respect to the Secretary of Commerce's consideration of New Jersey's Coastal Management Program -- Bay and Ocean Shore Segment submitted for approval under the Coastal Zone Management Act. On June 19, 1978, we submitted the enclosed comments to the National Oceanographic and Atmospheric Administration. I thought you might be interested in receiving a copy.

Very truly yours,

J. Daniel Berry
J. Daniel Berry

JDB:ljd

BEFORE THE
OFFICE OF COASTAL ZONE MANAGEMENT
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE

In re
State of New Jersey
Coastal Management Program
Bay and Ocean Shore Segment

Comments of
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
JERSEY CENTRAL POWER AND LIGHT COMPANY
AND
NEW JERSEY NATURAL GAS COMPANY

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BACKGROUND OF COMMENTING COMPANIES

INTRODUCTION

Pursuant to the provisions of 15 C.F.R. §932.72(b), Public Service Electric and Gas Company (PSE&G), Jersey Central Power and Light Company (JCP&L), and New Jersey Natural Gas Company submit the following comments on the document entitled New Jersey Coastal Management Program, Bay and Ocean Shore Segment and Draft Environmental Impact Statement (hereinafter referred to as "Program" or Segment"). That document combines a draft of the New Jersey Coastal Management Program -- Bay and Ocean Shore Segment, which will be subject to additional revisions following a comment period ending in early July 1978, and a draft environmental impact statement prepared pursuant to the provisions of the National Environmental Policy Act. The following comments are directed primarily to the draft New Jersey Coastal Management Program -- Bay and Ocean Shore Segment and to NOAA's authority to approve that program under the Coastal Zone Management Act rather than to the adequacy of the draft environmental impact statement under NEPA.

Public Service Electric and Gas Company supplies electricity and gas to areas of New Jersey in which over three-fourths of the state's population reside and which include New Jersey's six largest cities. PSE&G serves the greater portion of this area with both electricity and gas, but small parts are served with gas only and other parts with electricity only. In addition, through its wholly-owned subsidiaries, PSE&G also owns an interest in 16 federal oil and gas leases off the Atlantic Coast (Energy Development Corporation) and is seeking to enter the business of importing, storing and processing LNG (Escogas LNG, Inc., Energy Terminal Services Corp. and Energy Pipeline Corp.). The New Jersey Coastal Management Program -- Bay and Ocean Shore Segment will affect PSE&G and its subsidiaries directly inasmuch as many of their facilities both are located and will be constructed in the New Jersey coastal zone.

Jersey Central Power and Light Company is a subsidiary of General Public Utilities Corporation, which is also the owner of Pennsylvania Electric Company and Metropolitan Edison Company, both of Pennsylvania, and GPU Service Corporation, a subsidiary which provides supporting services to the operating companies in the GPU system. JCP&L provides electric energy in a service territory comprising approximately 43% of the area of New Jersey with an estimated population of 2,000,000 people.

Among JCP&L's generating facilities are the Oyster Creek Station (a nuclear plant) and the Sayreville and Werner Stations (conventional coal-fired steam plants). JCP&L also owns the Forked River Station, a nuclear plant now under construction. These generating stations are located within the New Jersey coastal zone. JCP&L intends to construct a coal-fired generating facility in New Jersey for service in 1989, if New Jersey air pollution control regulations are relaxed to the point that makes this possible. That station probably would be located in the Segment area. Accordingly, JCP&L will be directly affected by the proposed New Jersey Coastal Program Management -- Bay and Ocean Shore Segment.

New Jersey Natural Gas Company purchases interstate natural gas and is engaged in the distribution of that gas throughout a service territory which includes portions of the area covered by the Bay and Ocean Shore Segment of the New Jersey Coastal Management Program. Accordingly, it will be directly affected by that Segment.

SUMMARY OF COMMENTS

The Bay and Ocean Shore Segment of New Jersey's Coastal Management Program, if adopted by New Jersey and approved by the Secretary, would impose extraordinarily stringent limitations on future construction, in the Segment area, of certain specified energy-related facilities: nuclear and coal-fired generating plants, liquefied natural gas (LNG) facilities and, to a somewhat lesser degree, interstate natural gas pipelines. New Jersey proposes to adopt these discriminatory limitations, however, for reasons that are unrelated to the central focus of the Coastal Zone Management Act -- protection of the unique characteristics of the coastal zone in a manner which gives "full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development...." (CZMA §303(c); 16 U.S.C. §1452(c)).

For example, among the reasons for the restrictions on nuclear power plants are "strong public concern regarding human health and safety..., public security and civil liberties," as well as "questions about the wisdom of nuclear energy" (§7.4.13, Rationale). LNG facilities are "discouraged" (i.e., virtually prohibited) because new Jersey perceives "risks to safety and health and the environment (which may not necessarily be restricted to one state)...." (§7.4.14, Rationale) (emphasis added).

It is apparent that the discriminatory restrictions are the result of New Jersey's general opposition to these sources

of energy rather than any concern over whatever unique effects such facilities might have on the coastal zone. Indeed, the Segment would encourage renewable sources of energy if:

these plants do not unreasonably affect scenic or recreational values and meet existing state and federal environmental requirements.

In contrast, new energy facilities in the coastal zone that use non-renewable resources are subject to an additional standard, even if they meet the environmental criteria applicable to renewable energy sources; they will be approved only if they are "necessary to meet the state's energy needs..." (§7.4.15) (emphasis added).

The vice of the Segment's proposals for nuclear and LNG facilities and interstate pipelines is essentially three-fold. Despite a clear mandate to consider the full range of national interests in energy development and facility siting (see 15 C.F.R. §923.52), the Segment reflects a consideration of only one policy -- that of the President's National Energy Plan. The Segment virtually ignores the national policies embodied in acts such as the Atomic Energy Act and the Natural Gas Act. Second, the Segment does not balance the national interest in energy production and distribution against possibly competing "Federal, State and local concerns involving adverse economic, social or environmental impacts" (15 C.F.R. §923.52(a)). Instead, the Segment simply rejects -- and thus thwarts -- the

national policies applicable to energy because of ill-defined "concerns" over certain energy sources.

Third -- and perhaps most importantly -- New Jersey would attempt to directly regulate health, safety and siting aspects of nuclear power plants and LNG facilities (as well as siting of interstate natural gas pipelines), even though it is without authority to do so; federal legislation comprehensively covers these subjects and preempts state jurisdiction. New Jersey may not intrude, as it purports to do, into the exclusive province of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission.

For these reasons and those set out in more detail below, PSE&G, JCP&L and New Jersey Natural Gas Co. submit that the Bay and Ocean Shore Segment does not meet the requirements of the Coastal Zone Management Act. Accordingly, the Secretary may not approve it unless it is substantially revised to eliminate the deficiencies we have enumerated.

DETAILED COMMENTS

I. THE NEW JERSEY PROGRAM FAILS TO GIVE ADEQUATE CONSIDERATION TO "NATIONAL INTERESTS" AS REQUIRED BY SECTION 306(c)(e) OF THE CZMA

Section 306(c)(8) provides that:

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: ...the management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

In order to satisfy this requirement, the regulations require that the program must:

- (1) describe which national interests in the planning for and siting of facilities were considered during the program development and the sources relied upon for such consideration;
- (2) indicate how and where the consideration of these national interests is reflected in the substance of the management program including, where appropriate, identification of when and where national interest in identified facilities may compete or conflict with other national interests in coastal resource conservation (and if so, how that conflict is to be weighed and resolved); and
- (3) describe a process for continued consideration of identified national interests during program implementation. (15 C.F.R. §923.52(b)).

A. The "National Interest" in Energy Facility Siting.

In describing those facilities which are of "national interest," the regulations specifically provide that energy production and transmission facilities (including oil and gas rigs, storage, distribution and transmission facilities, power

plants, and liquified natural gas (LNG) facilities) are that type of facility in which there may be a national interest in planning or siting.^{1/} Accordingly, the regulations as well as common sense mandate that the strong and identified national interest in electrical power generation facilities, LNG facilities, and natural gas pipelines must be given adequate consideration by the Program or it will not satisfy the requirement of Section 306(c).

The national policy in these regards is not contained in any one source. A number of statutes and Presidential documents must be resorted to in any consideration of national policy respecting energy development and distribution. One of these (and the only one considered in detail by New Jersey) is the President's major statement on energy policy of April 29, 1977.^{2/} There, national policy was overviewed as follows:

the diagnosis of the U.S. energy crisis is quite simple: the demand for energy is increasing, while supplies of oil and natural gas are diminishing. Unless the United States makes timely adjustment before the world's oil becomes very scarce and very expensive in the 1980s, the nation's economic security and the American way of life will be greatly in danger. (The National Energy Plan, at vii.)

^{1/} 15 C.F.R Part 923 (Table 1). Moreover, electrical generation power plants, petroleum refineries and associated facilities, gasification plants, facilities used for the transportation of LNG, oil and gas facilities including pipeline and transmission facilities, are included as energy facilities which may significantly affect the coastal zone for purposes of the energy facility planning process which must be incorporated into any management programs approved after October 1, 1978.

^{2/} The statement of policy incorporated the document "The National Energy Plan" prepared by the Executive Office of the President (Energy Policy and Planning).

Accordingly, the National Energy Plan contained "three overriding energy objectives":

- (1) "As an immediate objective that will become even more important in the future, to reduce dependence on foreign oil and vulnerability to supply disruptions;
- (2) in the medium term to keep U.S. imports sufficiently low to weather the period when world oil production approaches its capacity limitations; and
- (3) in the long term to have renewable and essential inexhaustible resources of energy for sustained economic growth." ^{1/}

There are other expressions of existing national policy regarding the development and use of energy resources which should have been considered by New Jersey, but were not. For example, in the Natural Gas Act (15 U.S.C. §717 et seq.), Congress declared that:

the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal legislation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest (15 U.S.C. §717(a)).

And, in the Mining and Minerals Policy Act of 1970, (30 U.S.C. § 21 a et seq.), Congress declared that:

It is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining minerals, metal and mineral reclamation industries; (2) the

^{1/} National Energy Plan at ix.

orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs... (30 U.S.C. §21a).

Congress also has recognized an "urgent need for further exploration and development of the oil and gas deposits of...the outer Continental shelf..." (43 U.S.C. §1337(a)). Finally, Congress passed the Atomic Energy Act in part to provide "a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes..." (42 U.S.C. §2013(d)).

In essence, the "national interests" to be considered in energy facility siting decisions are three-fold. First, that oil and natural gas exploration and development are to be encouraged and continued. Second, that the National Energy Policy is to reduce United States dependence on oil and, in turn, its reliance upon oil for the purpose of electric generation. And third, nuclear power specifically is to be encouraged. With that background, it can be determined that the "national interest" in planning and siting electric generation facilities is to provide for nuclear and coal-fired generation where feasible, ^{1/} and that natural gas exploration and development should be supported.

^{1/} "The strategy of the plan beyond 1985 is twofold... (2) the plan seeks to promote the economic and environmentally sound use of various forms of coal, supplemented by nuclear power, for the high temperature needs of power plants and industry" (National Energy Plan at 101).

Given this context, it is clear that the Program fails to give adequate consideration to these national interests in both electric generation facility siting decisions and LNG facility and natural gas pipeline siting criteria, as required by Section 306(c)(8). With respect to electric generation facility siting, the Program discourages and inhibits the generation of electricity by nuclear or coal-fired generating stations. Indeed, the Program is in direct contravention of the National Energy Policy and the Atomic Energy Act by not only precluding the construction of nuclear and coal-fired generating stations, but, in addition, by promoting the construction of oil and natural gas-fired generating stations. As to LNG facilities and natural gas pipelines, the Program effectively prohibits their construction and development in direct contravention of established national policy.

B. The Program fails to Give Adequate Consideration to the National Policy Regarding Nuclear Generating Facilities by Imposing Unreasonably Stringent Siting Standards.

With respect to nuclear generation, the Program establishes four criteria which must be met before nuclear-generating stations may be constructed in the coastal zone. These criteria are as follows:

- (1) that the NJDEP and the NJDOE are assured that the operation and disposal of spent fuel poses no unacceptable safety or environmental hazards to New Jersey residents;
- (2) that the two agencies receive clear proof through the Department of Energy's master plan that nuclear facilities are needed and are vitally important to the public health, welfare, and economic well-being of New Jersey residents (emphasis added);

- (3) that the NJDEP is assured the location of the facility will not result in nearby population density increases over the operating lifetime of the facility which might make suitable protective actions in the case of serious accident impossible, and an acceptable approved energy evacuation plan is filed; and
- (4) the Department of Environmental Protection and the Department of Energy are satisfied that no other feasible and economical energy alternatives exist for the timely and efficient production of needed electrical power (Program, §7.4.13; at 145).

The effect of these siting criteria is that no nuclear generating stations may be built in the coastal zone unless the NJDEP and NJDOE "receive clear proof" that the facility is vitally important to the well-being of New Jersey residents and that there are no other feasible and economical energy alternatives for the production of needed electric power. Therefore, nuclear generation must not only be more cost-efficient than other methods of generation before receiving approval, but there can exist no other feasible alternative method of electric generation available before construction is authorized under the Program. As oil and natural gas-fired generation stations constitute "feasible and economic energy alternatives" to nuclear generating stations, nuclear stations are therefore barred from construction in the coastal zone if the criteria established in the Program are enforced.

The national interest relevant to these criteria, however, is an express policy to discourage the use of oil for the generation of electric power and to rely instead upon nuclear and coal-fired generation. Thus, New Jersey's criteria -- which

prefer oil-fired generation over nuclear generation -- unquestionably conflict with the clearly defined national interest. While the health and safety considerations cited in the Program may constitute relevant factors to be weighed with regard to siting of energy facilities of national interest in the coastal zone, these factors have been thoroughly considered in the development of the national policy promoting nuclear generation.^{1/} Moreover, these health and safety concerns are the essence of the regulatory review by the Nuclear Regulatory Commission and are addressed thoroughly and completely prior to receiving authorization for the construction and operation of a nuclear generating facility.^{2/}

As the Program directs the implementation of a policy which directly contravenes the national energy policy based upon concerns^{3/} previously considered in the establishment of national policy, the Program has failed to satisfy the requirement of Section 306(c)(8).

C. The Program fails to Adequately Consider the National Interest by Severely Restricting the Construction of Coal-Fired Electric Generation Facilities.

The national energy policy regarding the use of coal for electric generation was set out in the National Energy Plan:

^{1/} See National Energy Plan at xx-xxi, 69-73.

^{2/} 10 C.F.R. Parts 50, 51 and 100.

^{3/} The Program states its concerns as follows: "The promise of nuclear power has raised strong public concern regarding human health and safety, effects on plants, wildlife and water, and public security and civil liberties" (Program §7.4.13 at 146).

Significant progress would be made to prepare the country for the period of oil stringency beyond the mid-1980s....The reductions in industrial and utility use of oil and natural gas, and the increase in the use of coal together would represent a very important shift from scarce to abundant resources (emphasis added) (National Energy Plan at 95).

With respect to coal-fired generating stations, the Program directs that the construction of plants will be "directed toward relatively built-up areas, consistent with applicable air and water quality standards."^{1/} This policy will significantly hamper -- and indeed may effectively bar -- future coal-fired generation in the coastal zone. As the 1977 Amendments to the Clean Air Act provided for the prevention of significant deterioration (PSD) of air quality, there will be, in most industrialized areas, only a limited number of increments of additional air emission available before development is stopped. Since new coal-fired generation will require such increments, a policy which directs that these plants be built in "relatively built-up" areas severely restricts the construction of coal-fired electric generation facilities and indeed may bar their construction.^{2/}

In effect, then, the Program expresses a preference for oil and natural gas-fired generation due to their lower air

^{1/} Program §7.4.12 at 145.

^{2/} Indeed, the NJDEP admitted that the effect of the Program's policies directs major energy facilities (such as refineries and power plants) out of the coastal zone (Coastal Management Strategy: Public Comments and DEP Responses, May 1978, comment 64).

pollution emission levels which, in turn, demand fewer air emission increments. This preference is the antithesis of the National Energy Plan's explicit preference for coal-fired generation over oil and natural-gas fired generation; thus, the Program fails to satisfy the requirement of Section 306(c)(8).

D. The Program Fails to Provide Adequate Consideration to the National Interest in Oil and Natural Gas Exploration, Development and Transmission

As discussed in Section IA, Congress has declared a national interest in the orderly exploration, development, and transmission of domestic oil and natural gas and importation of LNG, and, has directed the federal government to take steps necessary to ensure that result. However, the Program fails to recognize and adequately consider this national interest and has proposed policies which would run directly counter to existing national policy. The Program's policies with respect to LNG facilities, oil refineries, storage facilities and pipeline siting collectively discourage (1) development of the outer continental shelf ("OCS") resources and other energy sources designed to reduce this country's reliance upon foreign sources of oil, and (2) efforts to alleviate recurring shortages of natural gas (see, e.g., Pres. Proc. Nos. 4485 and 4495, 42 Fed. Reg. 6789, 18053, re natural gas emergency of 1976-77).

With specific reference to LNG facilities, the Program discourages^{1/} the construction of a terminal for transferring

^{1/} "Discouraged" is defined by Section 4.2 of the Program

[footnote continued on next page]

LNG unless:

- (1) rigorous and consistent criteria sitings are developed;
- (2) the risks inherent in tankering LNG onshore have been sufficiently analyzed and minimized; and
- (3) the Federal Energy Regulatory Commission responds affirmatively to the May 1976 petition by New Jersey for the issuance of siting criteria that adequately consider the safety hazards associated with this energy technology. (Program §7.4.14 at 146)

By establishing a policy which discourages the construction of LNG terminals until several acts occur (which may or may happen), the Program in effect precludes the construction of any LNG facility in New Jersey; it thereby hinders the ability of the U.S. to deal with natural gas shortages, and to the extent oil and natural gas are interchangeable fuels, hinders a reduced dependence on foreign oil in direct contravention of the National Energy Plan.

The only conclusion which can be reached from the innumerable restraints that New Jersey is proposing to impose on the exploration, development or transmission of natural gas or oil in the coastal zone is that New Jersey is seeking to thwart development of vital energy resources. Given the direct conflict between this apparent goal and the National Energy Policy, it is clear that New Jersey has not adequately considered the national interest in energy development in its coastal zone Program.

as meaning that a proposed development "will be denied unless certain specified findings can be made or conditions can be met."

II. NEW JERSEY'S AUTHORITY TO REGULATE NUCLEAR POWER PLANT SITING AND SAFETY, LIQUEFIED NATURAL GAS SITING AND SAFETY AND GAS PIPELINE SITING HAS BEEN PRE-EMPTED BY A PERVASIVE SCHEME OF FEDERAL LEGISLATION.

- A. NOAA May not Approve Any Program that Purports to Regulate Activities that are Within the Exclusive Province of the Federal Government.

For over a century and a half, it has been recognized, under the rubric of federal pre-emption, that States may not regulate activities where federal legislation is sufficiently pervasive as to occupy the field and leave no room for state regulation the same subject (Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1(1824)). See Ray v. Atlantic Richfield Co., -- U.S. --, 46 U.S.L.W. 4200 (March 6, 1978); Campbell v. Hussey, 368 U.S. 297 (1961); Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947).

The doctrine of federal preemption, of course, rests on both the Supremacy Clause and the Commerce Clause of the Constitution. Nothing in the Coastal Zone Management Act changed this fundamental rule; nor did the Act grant States any power over a subject matter as to which, previously, they had been precluded from regulating by virtue of the federal pre-emption doctrine. This conclusion follows inevitably from specific provisions of the Act as well as its legislative history.

Congress recognized that:

The States do have the resources, administrative machinery, enforcement powers, and constitutional authority on which to build a sound coastal zone management program. (S. Rep. No. 92-753, 92d Cong. 2d Sess. 5 (1972).)

Consequently, the Act embodied a policy

to encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs (CZMA §303, 16 U.S. §1452) (emphasis added).

To make clear that States were to utilize existing powers and were not to enter fields which Congress had occupied, Section 307(e) provided that:

Nothing in this title shall be construed... (2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies... (16 U.S.C. §1456(e)).

Thus, subjects that had been pre-empted prior to the enactment of the Act remained pre-empted subsequent to the Act. As to these subjects, the States have no authority and are powerless to act. Moreover, NOAA is prohibited from approving any Coastal Management Program that purports to regulate a pre-empted field. Section 307(c), 16 U.S.C. §1455(c) requires that before a State's management program may be approved, the Secretary must first find that:

(7) The state has the authorities necessary to implement the program...

This finding cannot be made with respect to any management program purporting to regulate a pre-empted subject matter; the states have no authority whatever over these subjects.

As noted below, the Bay and Ocean Shore Segment attempts to regulate the safety and siting of nuclear power plants and

LNG facilities; it also attempts to regulate siting of interstate natural gas pipelines. Pervasive federal legislation, however, covers all these fields, thereby excluding regulation by New Jersey. Inasmuch as New Jersey lacks authority over these subjects, the Section 307(e)(7) finding cannot be made and the Segment cannot be approved.

B. A Pervasive Scheme of Federal Legislation Applies to LNG Facilities and Interstate Gas Pipelines, Thereby Precluding Regulation by the States

The Bay and Ocean Shore Segment's provisions with respect to LNG facilities graphically illustrate New Jersey's attempt to enter a field exclusively occupied by federal legislation. Section 7.4.14 (p. 146) would prohibit any LNG facility in that area unless FERC responds in a certain way to a petition New Jersey has filed before the Commission. Section 7.4.14 provides that:

The location of terminals for transferring Liquefied Natural Gas (LNG) is discouraged... until... (c) the Federal Energy Regulatory Commission responds affirmatively to the May 1976 petition by New Jersey for the issuance of siting criteria that adequately consider the safety hazards associated with this energy technology (emphasis added). 1/

Thus, the Segment seeks to control both safety aspects of LNG facilities as well as their siting. Additionally, the Segment seeks to control siting of interstate (as well as intra-

1/ "discouraged" is defined by Section 4.2 as meaning that a proposed development "will be denied unless certain specified findings can be made or conditions can be met."

state) gas lines (\$7.4.7), gas processing plants (\$7.4.9), natural gas and other hazardous substance storage facilities (\$7.4.10) and tanker terminals (\$7.4.11). To the extent these provisions purport to regulate natural gas facilities that affect interstate commerce, they are impermissible intrusions into an area where a pervasive scheme of federal legislation exists.

Within the past month, Staff Counsel of the Federal Energy Regulatory Commission addressed the matter of federal pre-emption in the natural gas field (with particular reference to LNG facilities) and the consequent invalidity of California legislation purporting to regulate the siting of LNG facilities in that State. This analysis is contained in a Memorandum filed with the F.E.R.C. Commission in Docket Nos. CP75-140 and CP75-83-2. Rather than repeat the detailed legal argument made in that Memorandum, we have appended a copy of it to these Comments and adopt the arguments made therein.

C. The Bay and Ocean Shore Segment Infringes on the Exclusive Power of the Nuclear Regulatory Commission to Regulate Nuclear Generating Facilities

Because "the promise of nuclear power has raised strong public concern regarding human health and safety, effects on plants, wildlife and water, and public security and civil liberties" (\$7.14.13, Rationale, p. 146), the Segment proposes to virtually bar nuclear generating facilities from the area.

The Program establishes four criteria which must be met before nuclear-generating stations may be constructed.

These criteria are as follows (§7.4.13; p. 145):

- (a) the NJDEP and the NJDOE [must be] assured that the storage and disposal of spent fuel poses no unacceptable safety or environmental hazards to New Jersey residents;
- (b) the two agencies [must] receive clear proof through the Department of Energy's master plan that nuclear facilities are needed and are vitally important to the public health, welfare, and economic well-being of New Jersey residents [emphasis added];
- (c) the NJDEP [must be] assured that the location of the facility will not result in nearby population density increases over the operating lifetime of the facility which might make suitable protective actions in the case of serious accident impossible, and an acceptable approved energy evacuation plan [must be] filed; and
- (d) the DEP and the Department of Energy [must be] satisfied that no other feasible and economic energy alternatives exist for the timely and efficient production of needed electrical power.

These criteria would become enforceable regulations promulgated and enforced by a state and would touch on an area which is pervasively regulated by the Federal government through the Nuclear Regulatory Commission. Thus, the state regulations are preempted.

Federal preemption stems from the Supremacy^{1/} and Commerce Clauses of the Constitution. The Supreme Court has found it

^{1/} Article IV, Clause 2. The clause provides that "the Constitution, and Laws of the United States...shall be Supreme Law of the Land...anything in the Constitution or Laws of any State to the Contrary notwithstanding."

to occur when the federal regulatory scheme set out in legislation totally occupies the regulatory field, leaving no room for the state to regulate that activity even though its regulation may not conflict with the federal scheme.^{1/} Federal pre-emption in the area of nuclear generating stations was definitely recognized in Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd mem., 405 U.S. 1035 (1972). There the Court stated:

...[T]he Act, as amended, and its legislative history, when viewed together, provide the strongest manifestation of Congressional intent to pre-empt the field of regulation over the construction and operation of nuclear reactors... (supra., at 1152).

Accordingly, the Court rejected Minnesota's claim that it had authority to regulate nuclear generating facilities. In the Court's view, such

a dual system of licensing and regulation with control exerted by both the states and the federal government...would create 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' (447 F.2d at 1154).

When the provisions of the New Jersey Program are measured against applicable judicial decision, it is clear that they are preempted and are unenforceable.^{2/}

^{1/} Campbell v. Hussey, 368 U.S. 297, 300-301 (1967).

^{2/} New Jersey courts also have recognized federal preemption in the nuclear area. See Department of Environmental Protection v. Jersey Central Power & Light Co., 69 N.J. 102 (1976); Van Dissel v. Jersey Central Power & Light Co., 152 N.J. Super. 391; PIRG v. PSE&G, 152 N.J. Super. 191.

With respect to the first criterion -- that the storage and disposal of spent fuel pose "no unacceptable safety or environmental hazards" to state residents -- New Jersey is engaging in the very dual regulation over the health and safety aspects of nuclear generation specifically precluded by Northern States.^{1/} New Jersey's lack of authority in this area is confirmed by the legislative history of the 1959 Amendments to the Atomic Energy Act. The Joint Congressional Committee on Atomic Energy stated that:

It is not intended to leave any room for the exercise of dual or current jurisdiction by states to control radiation hazards by regulation by-product, source, or special nuclear material. ^{2/}

The third criterion -- dealing with population density and evacuation plans -- equally deals with an issue which is at the heart of federal regulation of the nuclear generation field: health and safety issues stemming from the construction and operation of a nuclear station.^{3/} Accordingly, New Jersey is without authority to enforce either the first or third criterion.

^{1/} In Northern States, the Court addressed just this problem; It concluded that "were the states allowed to impose stricter standards on the level of radioactive waste releases discharged from nuclear power plants, they might conceivably be so over-protective in the area of health and safety as to unreasonably stultify the industrial development and use of atomic energy for the production of electric power" (477 F.2d at 1143, 1154).

^{2/} U.S. Code, Congressional and Administrative News, (1959), vol. 2, p. 2879.

^{3/} Cf., Porter Cty. Ch. of Izzak Walton League v. AEC, 515 F.2d 513 (7th Cir. 1975), cert. denied _____ U.S. _____.

The second and fourth criteria similarly are pre-empted. They would apply a more stringent standard to nuclear plants with respect to "need for power" than is applied to conventional plants, and otherwise discriminate against nuclear facilities. While we recognize that States may require non-discriminatory need for power determinations prior to approving generating facilities, discriminatory need for power criteria, such as that contained in the Program, run afoul of the Atomic Energy Act and are pre-empted.^{1/}

^{1/} See Maun v. United States, 347 F.2d 970 (1965).

III. NEW JERSEY DOES NOT POSSESS ADEQUATE LEGISLATIVE
AUTHORITY TO IMPLEMENT THE PROGRAM

A. The Program Fails to Satisfy the Local Regulation Override
Requirement.

Section 306(e)(2) provides that:

Prior to granting approval, the Secretary shall find that the program provides:...(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude uses of regional benefit.

The applicable regulation provides that:

[I]n order to meet the requirements of the Section, States must identify those techniques, including authorities, that will be used to assure that unreasonable restrictions or exclusion by local land and water use regulations shall not be sustained. ^{1/}

The Program attempts, unsuccessfully, to satisfy this requirement by stating:

Local governments are prevented from unreasonably excluding these uses [of regional benefit] by one or more of four factors. The most significant is the state's power to overrule a local decision denying approval to any public utility (Program, Chapter 5, at 192).

However, an analysis of the "four factors" cited in the Program demonstrates that the State does not possess the "override authority" required by the Section 306(e)(2) and thus fails to satisfy the prerequisites for approval of the management plan.

^{1/} 15 C.F.R. §923.43(a).

The first statute cited by the Program is N.J.S.A. 40:55-50 regarding the authority of the Board of Public Utilities to overrule local zoning restrictions blocking the construction or operation of public utility facilities. However, this section was recently repealed^{1/} and replaced by N.J.S.A. 40:55D-19. That new section authorizes the Board of Public Utility Commissioners to override local ordinances blocking the construction or operation of public utility facilities if it finds it "necessary for service, convenience or welfare of the public." While this legislative authority may allow the State to assure that local ordinances could be overridden with respect to public utility facilities, this authority certainly would not satisfy the requirement with respect to non-utility facilities. Moreover, as the enabling legislation allowing the Board of Public Utility Commissioners to override local ordinances or regulations stems from the "necessity of service, convenience, or welfare of the public," it is highly questionable whether this legislative mandate could be used for comprehensive regulation of the coastal zone. Accordingly, N.J.S.A. 40:55-50 alone cannot satisfy the requirement that the Program contain authority to override local ordinances or regulations.

The Program secondly cites statutes empowering the State to exercise the power of eminent domain with respect to facili-

^{1/} By L. 1975, c. 291, §80 (effective August 1, 1976).

ities "necessary for state or national defense,"^{1/} state high-ways,^{2/} airports^{3/} and parks and open space.^{4/} However, the Program makes no attempt to describe how these powers will be used to override local ordinances or regulations, and it is self-evident that these statutes do not empower the State to implement the comprehensive land use policies described in the Program.

As a third factor providing the State with override authority, the Program cites certain decisions from state courts concerning fair housing opportunities.^{5/} The Program contends that these cases provide the requisite override authority because they recognize that a developer has standing, when denied a local construction or development permit, to appeal that denial on the grounds that the municipality denying the permit has not provided for its fair share of low cost housing. Conceding that these cases recognize the right to contest and possibly override local regulations regarding development of housing when and if the municipality has failed to provide adequately for low-cost housing, these decisions certainly do not constitute or contribute

1/ N.J.S.A. 20:1-3.1.

2/ N.J.S.A. 27:7-44.6.

3/ N.J.S.A. 20:1-3.1.

4/ N.J.S.A. 13:8A-24.

5/ Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975); Round Valley Inc. v. Clinton Township, Superior Ct. (January 1978).

to a state power designed for comprehensive coastal zone management.

The fourth factor cited in the Program is state authority to block development which could occur with municipal approval.^{1/} This authority is inapposite as the requirement imposed by Section 306(e)(2) is that the State be able to override local restrictions on regional uses.

In sum, the Program cites numerous "authorities" embodied in existing state legislation to support its contention that the override requirement set out in Section 306(e)(2) has been met. However, these authorities were not enacted for the purpose of providing for comprehensive land-use management of the coastal zone and consequently do not provide the override authority, individually or collectively, required by applicable regulations. Indeed, this fact is admitted by the Program's author, the NJDEP, in response to comments on the draft program.^{2/} Consequently, the Program is deficient in this regard and cannot be approved by the Secretary.

B. New Jersey's "Networking" Approach Falls to Satisfy Section 306(c)(7).

Section 306(c)(7) provides that:

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:...(7) [t]he state has the authorities necessary to implement the program...

1/ Program at 193.

2/ In response to a comment by the New Jersey Petroleum

In an attempt to satisfy this requirement, the Program employs what is described in the regulations as a "networking" approach. However, as discussed below, this "networking" approach fails to accomplish these requirements, and consequently fails to satisfy the requirement set out in the regulations that "[i]n applying existing authorities, the State must determine that they can be used to implement the full range necessary for coastal management purposes."^{1/}

The regulatory authority underlying the Program is based upon three groups of existing State statutes: (1) the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.); (2) the Wetlands (N.J.S.A. 12:5-1 et seq.); and (3) the riparian statutes (N.J.S.A. 12:5-1 et seq.). While these statutes form a sound foundation for the implementation of the policies set out in the Program, they do not authorize the state to implement comprehensively all of the policies as required by the CZMA. Specifically, the legislation does not authorize the State to exercise authority over new housing developments which contain less than 25 units or the expansion of existing development by less than 25 units.^{2/} The existence of this "regulatory gap"

Council that "the lack of state override of municipal decisions is a weakness of the program, the DEP stated "it is not true that the state cannot override municipal decisions except for public utilities (comments, supra, no. 358).

^{1/} 15 C.F.R. §923.42(d)(3).

^{2/} N.J.S.A. 13:19-1(c)(5).

defeats the ability of the state to implement the Program in the manner required by Section 306(c)(8) and thus precludes the Secretary from approving the Program until comprehensive legislation has been enacted.^{1/}

^{1/} It should be noted that there is some question as to whether the State can exercise authority under the riparian statutes to implement land-use policies in non-riparian areas other than those explicitly sanctioned under the Water-front Development portions of the statutes. (See N.J.S.A. §12:5-3 - §12:5-8).

IV. THE FEDERAL CONSISTENCY REQUIREMENT SHOULD APPLY ONLY TO THOSE AREAS WHICH ARE DEFINED AS "COASTAL AREAS" UNDER THE CZMA.

Section 306(c)(3) requires that:

After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of the state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program.

With respect to the implementation of this requirement, the issue is whether the CZMA's definition of "coastal zone"^{1/} is to be applied in determining whether an action will significantly affect the coastal zone, or whether the state's definition of the "coastal zone" will apply.^{2/} The regulations resolve that issue by applying the CZMA's definition of "coastal zone"^{3/} and restrict the requirement that applicants for federal licenses or permits certify their compliance with the management program to only those activities "significantly affecting the [CZMA] coastal zone."^{4/}

1/ The CZMA defines "coastal zone" as "coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches.---The zone extends inland from the shore lands, the uses of which have a direct and significant impact on the coastal waters". [16 USC § 1453(a)].

2/ Under the CAFRA (the statute which primarily implements the Program, the "coastal zone" is considerably greater in size than the area described in 16 USC §1453(a). (See map on p. 14 of the program).

3/ 15 CFR §930.10.

4/ 15 CFR § 930.52.

As a consequence, New Jersey is powerless to apply this requirement to the entire "coastal zone" defined in the Program and must restrict it to the zone defined in the CZMA. As the Program fails to delineate the limit of the CZMA's "coastal zone", (and thus the area to which the federal consistency requirement applies) it must do so in order to satisfy the requirement set out in the applicable regulation prior to receiving approval of the Program.

V. THE PROGRAM FAILS TO ADMINISTER LAND AND WATER USE REGULATIONS AND CONTROL DEVELOPMENT TO RESOLVE CONFLICTS AMONG COMPETING USES.

Section 306(d)(1) provides that:

Prior to granting approval of the management program, the Secretary shall find that the State... [shall have the authority]... (1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses (emphasis added).

The Program fails to resolve conflicts among the various uses, potential and existing, in the coastal zone and, indeed inevitably directs that conflicts will occur between those uses. The best example of this result is the Program's policies regarding energy facility siting. With respect to the construction of non-nuclear electric generation stations, the Program directs their construction "toward relatively built-up areas, consistent with applicable air and water quality standards",^{1/} areas where air emission increments are restricted or unavailable. Because a coalfired station (as well as other types of fossil fuel stations) would require the availability of air emission increments, the Program is, in effect, directing increased competition between electric generation facilities and other uses in the "relatively built-up areas" for remaining emission increments. Clearly, this is just the result the requirement of Section 306(d)(1) was intended to avoid. Moreover, even assuming that the Program should direct this increased competition for remaining air pollution

^{1/} Program §7.4.12 at 145.

increments, the Program fails to give any guidance concerning which uses will have priority in obtaining the remaining increments and whether these increments will be allocated on a first-come first-served basis or reserved for later development. Accordingly, the Program must be amended to remedy these deficiencies before it may be approved by the Secretary.

VI. SEGMENTATION OF THE PROGRAM IS INAPPROPRIATE

SECTION 306(h) provides that:

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments... Provided, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

The applicable regulations require that if a state proposes to develop the management plan in segments as in the instant case it must demonstrate, inter alia, that: "A timetable and budget have been established for the timely completion of the remaining segments."^{1/} While the Program sets late 1978 as a target date for the adoption and implementation of the Program's remaining segments, there is no reference or discussion of the establishment of a budget to effect the completion of the Program.^{2/} This failure to provide for a budget to assure the completion and implementation of the remaining segments is in clear contravention of the applicable regulations. The Program, therefore, cannot be approved until adequate provisions have been made for the budget.

It should also be noted that there is no state legislation, existing or proposed, which will empower the State to implement the remaining segments of the Program. In light of this fact,

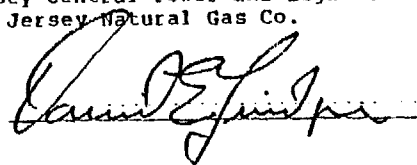
^{1/} 15 C.F.R. §923.61(a)(2).

^{2/} Program at 198-199.

serious questions can be raised as to whether the timetable established by the NJDEP has sufficient substance to satisfy the requirement set out in 15 C.F.R. 923.61(a)(2).

Respectfully submitted,

Public Service Electric and Gas Co.
Jersey Central Power and Light Co.
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**BEFORE THE NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Docket No. DEP-013-78-04

**COMMENTS OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
JERSEY CENTRAL POWER AND LIGHT COMPANY AND
NEW JERSEY NATURAL GAS COMPANY ON PROPOSED
REGULATIONS TO IMPLEMENT PROPOSED BAY AND OCEAN
SHORE SEGMENT OF NEW JERSEY'S COASTAL
MANAGEMENT PROGRAM**

July 5, 1978

David N. Kinsey, Chief
Office of Coastal Zone Management
Division of Marine Services
Department of Environmental Protection
Trenton, New Jersey 08625

Dear Mr. Kinsey:

I am enclosing the comments of Public Service Electric and Gas Co., Jersey Central Power & Light Co. and New Jersey Natural Gas Co. on the regulations proposed by New Jersey to implement the proposed Bay and Ocean Shore Segment of the State's Coastal Management Program.

Sincerely,


David E. Lindgren

DEL: jcw

Enclosure

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INTRODUCTION

On May 4, 1978, the New Jersey Department of Environmental Protection gave notice of, and invited comments on, proposed regulations in connection with the Bay and Ocean Shore Segment of the New Jersey Coastal Management Program (10 N.J. Register 104). Public Service Electric and Gas Company (PSE&G), Jersey Central Power & Light Company (JCP&L) and New Jersey Natural Gas Company submit the following comments on those proposed regulations.

These proposals were also contained in Chapter Three of the document entitled "New Jersey Coastal Management Program, Bay and Ocean Shore Segment and Draft Environmental Impact Statement," which combined a draft of the Bay and Ocean Shore Segment, and a draft environmental impact statement prepared pursuant to the provisions of the National Environmental Policy Act. Previously, PSE&G, JCP&L and New Jersey Natural Gas submitted comments to the National Oceanic and Atmospheric Administration on that document.

The following comments are directed to the proposed New Jersey regulations and set out the changes PSE&G, JCP&L and New Jersey Natural Gas believe are necessary. For convenience, the proposed regulations and the Bay and Ocean Shore Segment are referred to herein as "the Segment" or the proposed regulations.

BACKGROUND OF COMMENTING COMPANIES

Public Service Electric and Gas Company supplies electricity and gas to areas of New Jersey in which over three-fourths of the state's population reside and which include New Jersey's six largest cities. PSE&G serves the greater portion of this area with both electricity and gas, but small parts are served with gas only and other parts with electricity only. In addition, through its wholly-owned subsidiaries, PSE&G also owns an interest in 16 federal oil and gas leases off the Atlantic Coast (Energy Development Corporation) and is seeking to enter the business of importing, storing and processing LNG (Eascogas LNG, Inc., Energy Terminal Services Corp. and Energy Pipeline Corp.). The New Jersey Coastal Management Program -- Bay and Ocean Shore Segment will affect PSE&G and its subsidiaries directly inasmuch as many of their facilities both are located and will be constructed in the New Jersey coastal zone.

Jersey Central Power and Light Company is a subsidiary of General Public Utilities Corporation, which also owns Pennsylvania Electric Company and Metropolitan Edison Company, both of Pennsylvania, and GPU Service Corporation, a subsidiary which provides supporting services to the operating companies in the GPU system. JCP&L provides electric energy in a service territory comprising approximately 43% of the area of New Jersey with an estimated population of 2,000,000 people. Among JCP&L's generating

facilities are the Oyster Creek Station (a nuclear plant) and the Sayreville and Werner Stations (conventional coal-fired steam plants). JCP&L also owns the Forked River Station, a nuclear plant now under construction. These generating stations are located within the New Jersey coastal zone. JCP&L intends to construct a coal-fired generating facility in New Jersey for service in 1989, if New Jersey air pollution control regulations are relaxed to the point that makes this possible. That station probably would be located in the Segment area. Accordingly, JCP&L will be directly affected by the proposed New Jersey Coastal Program Management -- Bay and Ocean Shore Segment.

New Jersey Natural Gas Company purchases interstate natural gas and is engaged in the distribution of that gas throughout a service territory which includes portions of the area covered by the Bay and Ocean Shore Segment of the New Jersey Coastal Management Program. Accordingly, it will be directly affected by that Segment.

SUMMARY OF COMMENTS

The regulations pertaining to the Bay and Ocean Shore Segment of New Jersey's Coastal Management Program, if adopted by New Jersey, would impose extraordinarily stringent limitations on future construction, in the Segment area, of certain specified energy-related facilities, including nuclear and coal-fired generating plants, liquefied natural gas (LNG) facilities and, to a somewhat lesser degree, interstate natural gas pipelines. The effect of these limitations would be compounded, by virtue of the federal consistency requirements of the Coastal Zone Management Act, if the Segment were then approved by the Secretary of Commerce.

After a careful analysis of the Segment, PSE&G, JCP&L and New Jersey Natural Gas reluctantly have concluded that New Jersey proposes to adopt these discriminatory limitations for reasons that are unrelated to the central focus of the Coastal Zone Management Act -- protection of the unique characteristics of the coastal zone in a manner which gives "full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development" (CZMA §303(c); 16 U.S.C. §1452(c)) (emphasis added). For example, among the reasons for the restrictions on nuclear power plants are "strong public concern regarding human health and safety . . . , public security and civil liberties," as well as "questions about the wisdom of nuclear energy" (§7.4.13, Rationale). LNG facilities are

"discouraged" (i.e., virtually prohibited) because New Jersey perceives "risks to safety and health and the environment (which may not necessarily be restricted to one state) . . ." (§7.4.14, Rationale) (emphasis added).

It seems apparent that the discriminatory restrictions are the result of New Jersey's general opposition to these sources of energy rather than any concern over whatever unique effects such facilities might have on the coastal zone. Indeed, the Segment would encourage renewable sources of energy if:

these plants do not unreasonably affect scenic or recreational values and meet existing state and federal environmental requirements.

In contrast, new energy facilities in the coastal zone that use non-renewable resources, even if they meet all the environmental criteria applicable to renewable energy sources, are subject to an additional standard: they will be approved only if they are "necessary to meet the state's energy needs. . ." (§7.4.15) (emphasis added).

The vice of the proposed regulations with respect to nuclear and coal-fired plants, LNG facilities and interstate pipelines is essentially three-fold.

First -- and perhaps most importantly -- New Jersey would attempt to directly regulate health and safety (directly and indirectly under the guise of siting regulation) aspects of nuclear power plants and LNG facilities (as well as siting of interstate natural gas pipelines), even though it is without

authority to do so; federal legislation comprehensively covers these subjects and preempts state jurisdiction. New Jersey may not intrude, as it purports to do, into the exclusive province of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission.

Second, despite a clear mandate to consider the full range of national interests in energy development and facility siting (see 15 C.F.R. §923.52), the Segment reflects a consideration of only one policy -- that of the President's National Energy Plan -- and then the Segment considers only selected portions of that Plan. The Segment virtually ignores the national policies embodied in acts such as the Atomic Energy Act, the Energy Supply and Environmental Coordination Act and the Natural Gas Act.

Third, the Segment does not balance the national interest in energy production and distribution against possibly competing "Federal, State and local concerns involving adverse economic, social or environmental impacts" (15 C.F.R. §923.52(a)). Instead, the Segment simply rejects -- and thus thwarts -- the national policies applicable to energy because of ill-defined "concerns" over certain energy sources.

For these reasons and those set out in more detail below, PSE&G, JCP&L and New Jersey Natural Gas submit that the proposed regulations do not meet the requirements of the Coastal Zone Management Act. Accordingly, we believe -- and urge in the strongest possible terms -- that they must be revised

substantially to eliminate the deficiencies we have enumerated before they are adopted by New Jersey.

DETAILED COMMENTS

- I. NEW JERSEY'S AUTHORITY TO REGULATE NUCLEAR POWER PLANT SITING AND SAFETY HAS BEEN PRE-EMPTED BY A PERVASIVE SCHEME OF FEDERAL LEGISLATION.
 - A. New Jersey May not Adopt Regulations that Purport to Regulate Activities that are Within the Exclusive Province of the Federal Government.

For over a century and a half, it has been recognized, under the rubric of federal preemption, that States may not regulate activities where federal legislation is sufficiently pervasive as to occupy the field and leave no room for state regulation of the same subject (Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1(1824)). See Ray v. Atlantic Richfield Co., -- U.S. --, 46 U.S.L.W. 4200 (March 6, 1978); Campbell v. Hussey, 368 U.S. 297 (1969); Rice v. Santa Fe Elevator Corp. 331 U.S. 218 (1947).

The doctrine of federal preemption, of course, rests on both the Supremacy Clause and the Commerce Clause of the Constitution. Nothing in the Coastal Zone Management Act changed this fundamental rule; nor did the Act grant States any power over a subject matter as to which, previously, they had been precluded from regulating by virtue of the federal preemption doctrine. This conclusion follows inevitably from specific provisions of the Act as well as its legislative history.

Congress recognized that:

"the States do have the resources, administrative machinery, enforcement powers, and constitutional authority on which to build a sound coastal zone management program." (S. Rep. No. 92-753, 92d Cong. 2d Sess. 5 (1972))

Consequently, the Act embodied a policy

to encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs (CZMA §303, 16 U.S. §1452) (emphasis added).

To make clear that States were to utilize existing powers and were not to enter fields which Congress had occupied, Section 307(e) provided that:

"Nothing in this title shall be construed...(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies...." (16 U.S.S. §1456(e)).

Finally, as we note more fully infra, NOAA may not approve any State program that conflicts with "any applicable statute".

Thus, subjects that had been preempted prior to the enactment of the Act remained preempted subsequent to the Act. As to these subjects, New Jersey has no authority and is powerless to act. Moreover, NOAA would be prohibited from approving the segment so long as it purports to regulate a preempted field. Section 307(c), 16 U.S.C. §1455(c) requires that, before a State's management program may be approved, the Secretary must first find that:

"(7) the state has the authorities necessary to implement the program...."

This finding cannot be made with respect to the Segment as it presently stands, inasmuch as it purports to regulate

preempted subject matter; New Jersey has no authority whatsoever over these subjects.

As noted below, the Bay and Ocean Shore Segment attempts to regulate the safety and siting of nuclear power plants and LNG facilities; it also attempts to regulate siting of interstate natural gas pipelines. Pervasive federal legislation, however, covers all these fields, thereby excluding regulation by New Jersey. Inasmuch as New Jersey lacks authority over these subjects, the Section 307(e)(7) finding cannot be made and the Segment, as presently framed, cannot be approved by NOAA.

B. A pervasive Scheme of Federal Legislation Applies to LNG Facilities and Interstate Gas Pipelines, Thereby Precluding Regulation by the States

The Bay and Ocean Shore Segment's provisions with respect to LNG facilities graphically illustrate New Jersey's attempt to enter a field exclusively occupied by federal legislation. Section 7.4.14 (p. 146) would prohibit any LNG facility in that area unless FERC responds in a certain way to a petition New Jersey has filed before the Commission. Section 7.4.14 provides that:

The location of terminals for transferring Liquefied Natural Gas (LNG) is discouraged... until...(c) the the Federal Energy Regulatory Commission responds affirmatively to the May 1976 petition by New Jersey for the issuance of siting criteria that adequately consider the safety hazards associated with this energy technology (emphasis added). ^{1/}

^{1/} "Discouraged" is defined by Section 4.2 as meaning that a proposed development "will be denied unless certain specified findings can be made or conditions can be met."

Thus, the Segment seeks to control both safety aspects of LNG facilities as well as their siting. Additionally, the Segment seeks to control siting of interstate (as well as intrastate) gas lines (§7.4.7), gas processing plants (§7.4.9), natural gas and other hazardous substance storage facilities (§7.4.10) and tanker terminals (§7.4.11). To the extent these provisions purport to regulate natural gas facilities that affect interstate commerce, they are impermissible intrusions into an area where a pervasive scheme of federal legislation exists.

Within the past month, Staff Counsel of the Federal Energy Regulatory Commission addressed the matter of federal preemption in the natural gas field (with particular reference to LNG facilities) and the consequent invalidity of California legislation purporting to regulate the siting of LNG facilities in that State. This analysis is contained in a Memorandum filed with the Federal Energy Regulatory Commission in Docket Nos. CP75-140 and CP-75-03-2. Rather than repeat the detailed legal argument made in that Memorandum, we have appended a copy of it to these Comments and adopt the arguments made therein.

C. The Bay and Ocean Shore Segment Infringes on the Exclusive Power of the Nuclear Regulatory Commission to Regulate Nuclear Generating Facilities

Because "the promise of nuclear power has raised strong public concern regarding human health and safety, effects on

plants, wildlife and water, and public security and civil liberties" (§7.14.13, Rationale, p. 146), the Segment proposes to virtually bar nuclear generating facilities from the area.

The Segment lists the following four criteria which must be met before nuclear-generating stations may be constructed in the coastal zone:

- (1) that the NJDEP and the NJDOE are assured that the operation and disposal of spent fuel poses no unacceptable safety or environmental hazards to New Jersey residents;
- (2) that the two agencies receive clear proof through the Department of Energy's master plan that nuclear facilities are needed are are vitally important to the public health, welfare, and economic well-being of New Jersey residents (emphasis added);
- (3) that the NJDEP is assured the location of the facility will not result in nearby population density increases over the operating lifetime of the facility which might make suitable protective actions in the case of serious accident impossible, and an acceptable approved energy evacuation plan is filed; and
- (4) the Department of Environmental Protection and the Department of Energy are satisfied that no other feasible and economic energy alternatives exist for the timely and efficient production of needed electrical power (§7.4.13; at 145).

The phraseology of the criteria, together with the Rationale underlying them, make abundantly clear that the concern to which they are addressed is a concern over the perceived

possibility of radiological emissions. These criteria, which would become enforceable regulations promulgated and enforced by New Jersey, would touch on an area which is pervasively regulated by the federal government through the Nuclear Regulatory Commission. Thus, these portions of the Segment are preempted.

Federal preemption stems from the Supremacy and Commerce Clauses of the Constitution. The Supreme Court has found it to occur when the federal regulatory scheme set out in legislation totally occupies the regulatory field, leaving no room for the state to regulate the activity even though its regulation may not conflict with the federal scheme. Campbell v. Hussey, 368 U.S. 297, 300-01 (1967). Federal preemption in the area of nuclear generating stations was definitely recognized in Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd mem. 405 U.S. 1035 (1972).

There, the court stated:

"...[T]he Act, as amended, and its legislative history, when viewed together, provide the strongest manifestation of Congressional intent to preempt the field of regulation over the construction and operation of nuclear reactors...." (supra., at 1152).

Accordingly, the court denied Minnesota's claim that it had authority to regulate nuclear generating facilities. In the court's view, such

"a dual system of licensing and regulation with control exerted by both the states and the federal government...would create 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (447 F.2d at 1154).

New Jersey courts equally recognize federal preemption in the nuclear area.

"A state may not interfere, directly or indirectly, with a preempted matter, even though the state's proscription may not have been directed at the particular activity involved.... It has been held that in regulating the operation of a nuclear power plant, the federal government has, under the Atomic Energy Act, exclusively preempted that aspect which involves protection against radiation hazards." New Jersey Dept. of Envir. Protection v. Jersey Central Power & Light Co., 69 N.J. 102, 351 A.2d 337, 343 (1976).

Public Int. Res. Group v. New Jersey Dept. of Envir. Protection, 152 N.J. Super 191, 377 A.2d 915 (App. Div. 1977)

is even more explicit. There the court rejected a challenge to a finding by DEP under CAFRA that PSE&G's proposed method for disposing of radioactive waste from its Hope Creek station was adequate. The court based its holding on federal preemption:

"In view of the comprehensive nature of the federal legislation and regulations, the State Commissioner has no power under CAFRA to make an independent judgment as to the ability of the planned facility to protect against radiation hazards either from the operation of the plant or from the handling of radioactive waste material created by the nuclear process. The Commissioner does have the statutory obligation to satisfy himself that the applicant has conformed to the standards established by NRC. However, if such standards are met, he has no

authority to impose either lower or higher safety standards to regulate radiation hazards." (152 N.J. Super. at ___, 377 A.2d at 928).

Similarly, Van Dissel v. Jersey Central Power & Light Co., 152 N.J. Super. 391, 377 A.2d 1244 (L.Div. 1977) held that state regulation of a nuclear plant's once-through cooling system was also preempted by federal regulation.

When the provisions of the Bay and Ocean Shore Segment are measured against applicable judicial decision, it is clear that they are preempted and beyond the province of New Jersey.

With respect to the first criterion -- that the storage and disposal of spent fuel pose "no unacceptable safety or environmental hazards" to state residents -- New Jersey is engaging in the very dual regulation over the health and safety aspects of nuclear generating specifically precluded by Northern States and PIRG v. N.J.D.E.P.^{1/} New Jersey's lack of authority in this area is confirmed by the legislative history of the 1959 Amendments to the Atomic Energy Act. The Joint Congressional Committee on Atomic Energy stated that:

1/ In Northern States, the Court addressed just this problem; it concluded that "were the states allowed to impose stricter standards on the level of radioactive waste releases discharged from nuclear power plants, they might conceivably be so overprotective in the area of health and safety as to unreasonably stultify the industrial development and use of atomic energy for the production of electric power". (447 F.2d at 1143, 1154).

"It is not intended to leave any room for the exercise of dual or for current jurisdiction by states to control radiation hazards by regulation by-product, source, or special nuclear material." ^{1/}

The third criterion -- dealing with population density and evacuation plans -- equally deals with an issue which is at the heart of federal regulation of the nuclear generation field: health and safety issues stemming from the construction and operation of a nuclear station.^{2/}

The second and fourth criteria would apply a more stringent standard to nuclear plants with respect to "need for power" than is applied to conventional plants, and they otherwise discriminate against nuclear facilities. While New Jersey may require non-discriminatory need for power determinations prior to approving generating facilities, discriminatory need for power criteria, such as that contained in the Segment, run afoul of the Atomic Energy Act and are preempted.^{3/}

^{1/} U.S. Code, Congressional and Administrative News, (1959), vol. 2, p. 2879.

^{2/} Cf. Porter Cty. Ch. of Izzak Walton League v. AEC, 515 F.2d 513 (7th Cir. 1975), cert. denied ___ U.S. ___.

^{3/} Cf. Maun v. United States, 347 F.2d 970 (9th Cir. 1965).

II. THE BAY AND OCEAN SHORE SEGMENT DOES NOT ADEQUATELY CONSIDER THE "NATIONAL INTEREST" IN ENERGY FACILITY SITING AS REQUIRED BY SECTION 306(c)(8) OF THE COASTAL ZONE MANAGEMENT ACT

A. The Meaning of "Consideration of the National Interest"

Section 306(c)(8) of the Coastal Zone Management Act

(CZMA) provides that:

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: . . . (8) the management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature.

It is clear that Section 308(c)(8) requires far more than passing references to the national interest in energy production. Indeed, CZMA provides that the Segment must accommodate, and may not impede, the various national interests. As the House Merchant Marine and Fisheries Committee noted when it reported out the original Coastal Zone Management Act:

"[T]he State must take into account and must accommodate its program to the specific requirements of various Federal laws which are applicable to its coastal zone To the extent that a State program does not recognize these overall national interests, as well as the specific national interest in the generation and distribution of electric energy or is construed as conflicting with any applicable statute, the Secretary may not

approve the State program until it is amended to recognize those Federal rights, powers, and interests." H.R. Rep. No. 92-1049, 94th Cong., 2d Sess. 17-18 (1972) (emphasis added).

To underscore the importance it attached to coastal energy facilities, Congress amended CZMA in 1976 to specifically include one national interest as being among those that States must consider -- the national interest in "energy facilities". §306(c)(8), 16 U.S.C. §1455(c)(8). This term specifically includes electric generating plants, LNG facilities, oil and gas facilities, pipelines and transmission facilities. §304(5), 16 U.S.C. §1453(5). While CZMA requires that the Segment adequately consider (i.e., accommodate) all relevant national interests, NOAA's regulations contain more detailed provisions with which the Segment also must comply.

They require that the program

- (1) describe which national interests in the planning for and siting of facilities were considered during the program development and the sources relied upon for such consideration;
- (2) indicate how and where the consideration of these national interests is reflected in the substance of the management program including, where appropriate, identification of when and where national interest in identified facilities may compete or conflict with other national interests in coastal resource conservation (and if so, how that conflict is to be weighed and resolved); and
- (3) describe a process for continued consideration of identified national interests during program implementation. (15 C.F.R. §923.52(b)).

In describing those facilities which are of "national interest," the regulations specifically provide that power plants, LNG facilities and distribution and transmission facilities are among those in which there may be a national interest in planning or siting.^{1/} Thus CZMA, its legislative history and the regulations -- as well as common sense -- all mandate that the strong and identified national interest in electrical power generation facilities, LNG facilities and natural gas pipelines must be given adequate consideration and accommodated by the Segment or it will not satisfy the requirement of Section 306(c).

B. The National Interests That Must Be Accommodated

The national policy in these regards is contained in a number of sources, including "Federal laws and legislation [and] . . . Policy statements from the President, as for example the National Energy Plan" 15 C.F.R. §923.52(g). The only one of these considered in any detail by New Jersey is the President's National Energy Plan. There, national policy was overviewed as follows:

the diagnosis of the U.S. energy crisis is quite simple: the demand for energy is increasing, while supplies of oil and natural gas are diminishing. Unless the United States makes timely adjustment before the world's oil becomes very scarce

^{1/} 15 C.F.R. Part 923 (Table 1). Moreover, these same facilities are included as energy facilities which may significantly affect the coastal zone for purposes of the energy facility planning process which must be incorporated into any management programs approved after October 1, 1978. 15 C.F.R. §923.14(d).

and very expensive in the 1980s, the nation's economic security and the American way of life will be greatly in danger. (The National Energy Plan, at vii.)

Accordingly, the National Energy Plan stated two of its "overriding energy objectives" as follows:

- (1) "As an immediate objective that will become even more important in the future, to reduce dependence on foreign oil and vulnerability to supply disruptions;
- (2) in the medium term to keep U.S. imports sufficiently low to weather the period when world oil production approaches its capacity limitations; ^{1/}

Although the Segment referred to these objectives, it did not mention any specific policies proposed by the Plan to achieve these objectives. Among them were policies favoring increased reliance on coal and nuclear power:

"During the remainder of this century, however, [the U.S.] will have to rely for the bulk of its energy supply on the conventional sources now at hand: oil, natural gas, coal, nuclear, and hydroelectric power. Federal policy should stimulate the expanded use of coal, supplemented by nuclear power and renewable resources" (NEP at 63).

Thus:

"The strategy of the Plan beyond 1985 is two fold Second, the Plan seeks to promote the economical, environmentally sound use of various forms

^{1/} National Energy Plan at ix.

of coal, supplemented by nuclear power, for the high temperature needs of power plants and industry." ^{1/} (NEP at 101; see also pp. xix, 70).

With respect to LNG, the Plan stated "It can, however, be an important supply option through the mid-1980's and beyond, until additional gas supplies may become available." (NEP at 57). Finally, the Plan places a significant emphasis on development of new natural gas sources. (NEP at 58).

There are other definitive expressions of national interest which New Jersey must consider and accommodate. They include 1) the Atomic Energy Act, passed in part to provide "a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes . . ." (42 U.S.C. §2013(d)); 2) the Energy Supply and Environmental Coordination Act (ESECA), which provides for mandatory conversion of certain electric generating plants and industrial facilities to coal in order "to provide for a means to assist in meeting the essential needs of the United States for fuel . . ." 15 U.S.C. §791; 3) the Natural Gas Act, in which Congress declared:

the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal legislation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest (15 U.S.C. §717(a)).

^{1/} The first element dealt with low temperature energy.

4) the Mining and Minerals Policy Act of 1970, (30 U.S.C. 21a), where Congress declared that:

it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining minerals, metal and mineral reclamation industries; (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs . . . (30 U.S.C. §21a).

and 5) Congressional recognition of an "urgent need for further exploration and development of the oil and gas deposits of . . . the outer Continental shelf . . ." (43 U.S.C. §1337(a)).

In essence, the "national interests" to be considered in energy facility siting decisions are three-fold. First, our domestic resources are to be developed and supplemented by other sources, such as LNG. Second, the National Energy Policy is to reduce United States dependence on oil and, in turn, its reliance upon oil for the purpose of electric generation. And third, nuclear and coal-fired generation specifically are to be encouraged. With that background, it is apparent that the "national interest" depends on nuclear and coal-fired generation where feasible.

We believe the Segment clearly does not adequately consider these national interests in energy facility siting decisions, as it must under Section 306(c)(8).

The Segment does not even mention the Atomic Energy Act, ESECA, the Natural Gas Act or the portions of the National Energy Plan that specifically deal with coal and nuclear generation, LNG and natural gas. Moreover, the Segment does not identify, as required by 15 C.F.R. §923.52(b), "when or where national interest in identified facilities may compete or conflict with other national interests in coastal resource conservation"; nor does the Segment state "how that conflict is to be weighed and resolved".

C. The Program Does Not Accommodate National Policy Regarding Nuclear Generating Facilities

With respect to nuclear generation, the Program establishes four criteria (quoted supra) which must be met before nuclear-generating stations may be constructed in the coastal zone. These siting criteria would bar nuclear generating stations from the coastal zone unless the NJDEP and NJDOE "receive clear proof" that the facility is vitally important to the well-being of New Jersey residents and there are no other feasible and economical energy alternatives for the production of needed electric power. In other words, nuclear generation not only must be more cost-efficient than other methods of generation; there also can exist no other feasible alternative to nuclear generation before the Segment would permit construction of a nuclear facility. As oil and natural gas-fired generation stations constitute "feasible and economic energy alternatives", nuclear stations

effectively would be barred from the coastal zone if the criteria established in the Program are adopted.

The relevant national interest is exactly the opposite of these criteria, however. The nation has an express policy of discouraging the use of oil for the generation of electric power and encouraging instead nuclear generation. Thus, the Segment -- which prefers oil-fired generation over nuclear generation -- unquestionably conflicts with the clearly defined national interest. While the health and safety considerations cited in the Segment may constitute relevant factors to be weighed with regard to siting of energy facilities of national interest in the coastal zone, these factors have been thoroughly considered in the development of the national policy promoting nuclear generation.^{1/} Moreover, these health and safety concerns are the essence of the regulatory review by the Nuclear Regulatory Commission and are addressed thoroughly and completely prior to authorization for the construction and operation of a nuclear generating facility.^{2/}

As the Segment directs the implementation of a policy which directly contravenes the national energy policy based upon concerns^{3/} previously considered in the establishment of national policy, it does not satisfy the requirement of Section 306(c)(8).

^{1/} See National Energy Plan at xx-xxi, 69-73.

^{2/} 10 C.F.R. Parts 50, 51 and 100.

^{3/} The Segment states its concerns as follows: "The promise of nuclear power has raised strong public concern regarding human health and safety, effects on plants, wildlife and water, and public security and civil liberties" (Program §7.4.13 at 146).

D. The Segment Does Not Accommodate the National Interest in the Construction of Coal-Fired Electric Generation Facilities.

The national energy policy regarding the use of coal for electric generation was set out in the National Energy Plan:

Significant progress would be made to prepare the country for the period of oil stringency beyond the mid-1980s...The reductions in industrial and utility use of oil and natural gas, and the increase in the use of coal together would represent a very important shift from scarce to abundant resources (NEP at 95) (emphasis added).

With respect to coal-fired generating stations, the Segment directs that the construction of plants will be "directed toward relatively built-up areas, consistent with applicable air and water quality standards."^{1/} This policy will significantly hamper -- and indeed effectively may bar -- future coal-fired generation in the coastal zone. As the 1977 amendments to the Clean Air Act provided for the prevention of significant deterioration (PSD) of air quality, there will be, in most industrialized areas, only a limited number of increments of additional air emission available before development is stopped. Since new coal-fired generation will require such increments, a policy which directs that these plants be built in "relatively built-up" areas severely restricts the construction of coal-

^{1/} Program §7.4.12 at 145.

fired electric generation facilities and indeed may bar their construction.

In effect, then, the Segment again expresses a preference for oil and natural gas-fired generation. This preference is the antithesis of ESECA's and the National Energy Plan's explicit preferences for coal-fired generation over oil and natural-gas fired generation; thus, again the Segment does not satisfy the requirement of Section 306(c)(8).

E. The Segment Does Not Accommodate the National Interest in Natural Gas Availability.

As discussed previously, there is a national interest in the availability of sufficient supplies of natural gas, including imported LNG. However, the Segment does not consider or accommodate this national interest; instead it proposes policies which run directly counter to existing national policy. The Segment's policies with respect to LNG facilities, oil refineries, storage facilities and pipeline siting collectively discourage (1) development of the outer continental shelf resources and other energy sources designed to reduce this country's reliance upon foreign sources of oil, and (2) efforts to alleviate recurring shortages of natural gas (see, e.g., Pres. Proc. Nos. 4485 and 4495, 42 Fed. Reg. 6789, 10853, re natural gas emergency of 1976-77).

With specific reference to LNG facilities, the Segment discourages ^{1/} the construction of a terminal for transferring LNG unless:

- (1) rigorous and consistent siting criteria are developed;
- (2) the risks inherent in tankering LNG onshore have been sufficiently analyzed and minimized; and
- (3) the Federal Energy Regulatory Commission responds affirmatively to the May 1976 petition by New Jersey for the issuance of siting criteria that adequately consider the safety hazards associated with this energy technology. (Program §7.4.14 at 146).

By establishing a policy which prohibits the construction of LNG terminals until several acts occur (which may never happen), the Segment in effect precludes the construction of any LNG facility in New Jersey; it thereby hinders the ability of the U. S. to deal with natural gas shortages, and to the extent oil and natural gas are interchangeable fuels, hinders a reduced dependence on foreign oil in direct contravention of the National Energy Plan.

Thus, we believe that the innumerable restraints that New Jersey is proposing to impose on the exploration, development or transmission of natural gas (including LNG) in the coastal zone effectively thwart development of vital

^{1/} "Discouraged" is defined by Section 4.2 of the Program as meaning that a proposed development "will be denied unless certain specified findings can be made or conditions can be met."

energy resources. Given the direct conflict between this result and the National Energy Policy, it is clear that New Jersey has not adequately considered or accommodated the national interest in energy development in the Segment.

III. NEW JERSEY DOES NOT POSSESS ADEQUATE LEGISLATIVE AUTHORITY TO IMPLEMENT THE SEGMENT

A. The Segment Does Not Satisfy the Local Regulation Override Requirement.

Section 306(e)(2) provides that:

"Prior to granting approval, the Secretary shall find that the program provides...(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude use of regional benefit."

The applicable regulation provides that (15 C.F.R. §923.43(a)):

"[I]n order to meet the requirements of the Section, States must identify those techniques, including authorities, that will be used to assure that unreasonable restrictions of exclusion by local land and water use regulations shall not be sustained."

The Segment attempts, unsuccessfully, in our view, to satisfy this requirement by stating:

"local governments are prevented from unreasonably excluding these uses [of regional benefit] by one or more of four factors. The most significant is the state's power to overrule a local decision denying approval to any public utility." (segment, Ch. 5 at 192).

However, an analysis of the four factors cited demonstrates that New Jersey does not possess the "override authority" required by Section 306(e)(2) and thus fails to satisfy the prerequisites for approval of the management plan.

The first statute cited is N.J.S.A. 40:55-50 regarding the authority of the Board of Public Utilities to overrule local zoning restrictions blocking the construction or operation of public utility facilities. However, this section was recently repealed^{1/} and replaced by N.J.S.A. 40: 55D-19. The new section authorizes the Board of Public Utility Commissioners to override local ordinances blocking the construction or operation of public utility facilities if it finds such "necessary for service, convenience or welfare of the public". While this legislative authority may allow New Jersey to assure that local ordinances could be overridden with respect to public utility facilities, this authority certainly would not satisfy the requirement with respect to non-utility facilities. Moreover, as the enabling legislation allowing the Board of Public Utility Commissioners to override local ordinances or regulations stems from the "necessity of service, convenience, or welfare of the public." While this legislative authority may allow New Jersey to assure that local ordinances could be overridden with respect to public utility facilities, this authority certainly would not satisfy the requirement with respect to non-utility facilities. Moreover, as the enabling legislation allowing the Board of Public Utility Commissioners to override local ordinances or regulations stems from the

^{1/} By L. 1975, C. 291, §80 (effective August 1, 1976).

"necessity of service, convenience, or welfare of the public," it is highly questionable whether this legislative mandate could be used for comprehensive regulation of the coastal zone. Accordingly, N.J.S.A. 40: 55-50 alone cannot satisfy the requirement that the Segment contain authority to override local ordinances or regulations.

The Segment secondly cites statutes empowering New Jersey to exercise the power of eminent domain with respect to facilities "necessary for state or national defense,"^{1/} state highways,^{2/} airports^{3/} and parks and open space.^{4/} However, the Segment makes no attempt to describe how these powers will be used to override local ordinances or regulations, and it is self-evident that these statutes do not empower New Jersey to implement the comprehensive land use policies described in the Segment.

As a third factor providing New Jersey with override authority, the Segment cites certain decisions from state courts concerning fair housing opportunities.^{5/} The Segment contends that these cases provide the requisite override

^{1/} N.J.S.A. 20:1-3.1.

^{2/} N.J.S.A. 27:7-44.6.

^{3/} N.J.S.A. 20:1-3.1.

^{4/} N.J.S.A. 13:8A-24.

^{5/} Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975); Round Valley Inc. v. Clinton Township, Superior Ct. (January 1978).

authority because they recognize that a developer has standing when denied a local construction or development permit, to appeal that denial on the grounds that the municipality denying the permit has not provided for its fair share of low cost housing. Conceding that these cases recognize such a right, they certainly do not constitute or contribute to a comprehensive coastal zone management power.

The fourth factor cited in the Segment is state authority to block development which could occur with municipal approval.^{1/} This authority is inapposite, as Section 306(3)(2) requires that the State be able to override local restrictions on regional uses.

In sum, the Segment cites numerous "authorities" embodied in existing state legislation to support its contention that the override requirement set out in Section 306(3)(2) has been met. However, these authorities were not enacted for the purpose of providing for comprehensive land-use management of the coastal zone; they do not provide the override authority, individually or collectively, required by applicable regulations. Indeed, this fact is admitted by DEP in response to comments on the draft program.^{2/} Consequently, the Segment is deficient in this regard.

^{1/} Program at 193.

^{2/} In response to a comment by the New Jersey Petroleum Council that "the lack of state override of municipal decisions is a weakness of the program, the DEP stated "It is true that the state cannot override municipal decisions except for public utilities" (comments, supra. no. 358).

B. New Jersey's "Networking" Approach Fails to Satisfy Section 306(c)(7).

Section 306(c)(7) provides that:

"Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:...(7) [t]he state has the authorities necessary to implement the program...."

In an attempt to satisfy this requirement, the Segment employs a "networking" approach. However, as discussed below, this "networking" approach does not meet the requirement of the regulations that "[i]n applying existing authorities, the State must determine that they can be used to implement the full range necessary for coastal management purposes".^{1/}

The regulatory authority underlying the Segment is based upon three groups of existing State statutes: (1) the Coastal Area Facility Act (CAFRA) (N.J.S.A. 13:19-1 et seq.); (2) the Wetlands Act (N.J.S.A. 12:5-1 et seq.); and (3) the Riparian Statutes (N.J.S.A. 12:5-1 et seq.). While these statutes form a sound foundation for the implementation of some of the policies set out in the Segment, they do not authorize the state to implement comprehensively all of the policies as required by the CZMA. Specifically, the legislation does not authorize New Jersey to exercise authority over new housing developments which contain less than 25 units or the expansion of existing development by less than

^{1/} 15 C.F.R. §923.42(d)(3).

25 units.^{1/} The existence of this "regulatory gap" defeats the ability of the state to implement the segment in the manner required by Section 306(c)(8) and thus would preclude NOAA from approving the Program until comprehensive legislation has been enacted.^{2/}

^{1/} N.J.S.A. 13:19-1(c)(5).

^{2/} It should be noted that there is some question as to whether the state can exercise authority under the riparian statutes to implement land-use policies in non-riparian areas other than those explicitly sanctioned under the Waterfront Development portions of the statutes. (See N.J.S.A. §12:5-3 - §12:5-8).

IV. THE FEDERAL CONSISTENCY REQUIREMENT SHOULD APPLY ONLY TO THOSE AREAS WHICH ARE DEFINED AS "COASTAL AREAS" UNDER THE COASTAL ZONE MANAGEMENT ACT.

Section 306(c)(3) requires that:

After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of the state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complied with the state's approved program and that such activity will be conducted in a manner consistent with the program.

With respect to the implementation of this requirement, the issue is whether the CZMA's definition of "coastal zone"^{1/} is to be applied in determining whether the state's definition of the "coastal zone" will apply.^{2/} The regulations resolve that issue by applying the CZMA's definition of "coastal zone"^{3/} and restricting the federal consistency

^{1/} The CZMA defines "coastal zone" as "coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches.---The zone extends inland from the shore lands, the uses of which have a direct and significant impact on the coastal waters". (16 USC §1453(a)).

^{2/} Under the CAFRA (the statute which primarily implements the segment, the "coastal zone" is considerably greater in size than the area described in 16 USC §1453(a). (See map on p. 14 of the segment).

^{3/} 15 CFR §930.10.

requirement to only those activities "significantly affecting the [CZMA] coastal zone."^{1/}

As a consequence, New Jersey may not apply the federal consistency requirement to the entire CAFRA "coastal zone"; New Jersey must restrict it to the zone defined in the CZMA. We believe the Segment must be modified to reflect the appropriate "coastal zone" for federal consistency purposes.

^{1/} 15 CFR §930.52.

V. THE SEGMENT FAILS TO ADMINISTER LAND AND WATER USE REGULATIONS AND CONTROL DEVELOPMENT TO RESOLVE CONFLICTS AMONG COMPETING USES.

Section 306(d)(1) provides that:

"Prior to granting approval of the management program, the Secretary shall find that the State...[shall have the authority]...(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses."
(emphasis added).

The Segment does not resolve conflicts among the various uses, potential and existing, in the coastal zone. Indeed, it inevitably directs that conflicts will occur between those uses. The best example is the segment's policies regarding energy facility siting. With respect to the construction of non-nuclear electric generation stations, the Segment directs their construction "toward relatively built-up areas, consistent with applicable air and water quality standards"^{1/} areas where air emission increments are restricted or unavailable. Because a coal-fired station (as well as other types of fossil fuel stations) would require the availability of air emission increments, the Segment is, in effect, directing increased competition between electric generation facilities and other uses in the "relatively built-up areas" for remaining emission increments. Clearly, this is just the result Section 306(d)(1) intended to avoid. Moreover, even

^{1/} Program §7.4.12 at 145.

assuming that the Segment should direct this increased competition for remaining air pollution increments, the Segment does not give any guidance concerning which uses will have priority in obtaining the remaining increments or whether these increments will be allocated on a first-come, first-served basis or reserved for later development. Accordingly, the Segment should be amended to remedy these deficiencies before it is adopted finally by New Jersey.

VI. SEGMENTATION OF THE PROGRAM IS INAPPROPRIATE

Section 306(h) provides that:

"At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments... Provided, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

The applicable regulations require that if a state proposes to develop a management plan in segments, as New Jersey does, it must demonstrate, inter alia, that: "A timetable and budget have been established for the timely completion of the remaining segments."^{1/} While the Segment sets late 1978 as a target date for the adoption and implementation of the remaining segments of New Jersey's Management Program, there is no reference or discussion of the establishment of a budget to effect the completion of the Program.^{2/} This failure to provide for a budget to assure the completion and implementation of the remaining segments is in clear contravention of the applicable regulations.

It should also be noted that there is no state legislation, existing or proposed, which will empower the State

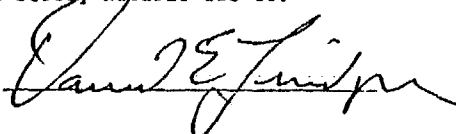
^{1/} 15 C.F.R. §923.61(a)(2).

^{2/} Segment at 198-199.

to implement the remaining segments of the Program. In light of this fact, serious questions can be raised as to whether the timetable established by the NJDEP has sufficient substance to satisfy the requirement set out in 15 C.F.R. 923.61(a)(2).

Respectfully submitted,

Public Service Electric and Gas Co.
Jersey Central Power & Light Co.
New Jersey Natural Gas Co.

by 

David E. Lindgren
J. Michael McGarry, III
Donald B. Myers

Debevoise & Liberman
700 Shoreham Building
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SUSAN LITMAN
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HOWARD P. SHAW

IRVING RIKER (1931-1989)
CHARLES DANZIG
EVERETT M. SCHERER
DICHINSON B. DEBEVOISE
WILLIAM F. RIKER (1951-1973)
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ROBERT FISCHER, III

July 5, 1978

Hon. Stewart G. Pollock
Counsel to the Governor
State House
Trenton, New Jersey 08625

Re: New Jersey Coastal Management Program -
Jersey Central Power & Light Company

Dear Stu:

I have made an appointment for us to meet with Shepard Bartnoff and John Graham to discuss Jersey Central's concerns about the New Jersey Coastal Management Program which has been submitted for approval by the Department of Environmental Protection ("DEP") to the Federal Government and which has also been promulgated as proposed New Jersey regulations. As you requested, there follows a summary of the somewhat complicated statutory and procedural background within which the Coastal Management Program operates together with a statement of Jersey Central's concerns. Enclosed are copies of the pertinent materials.

I. Statutory and Procedural Background

The Federal Coastal Zone Management Act of 1972, as amended, ("CZMA") provides that states which have an approved coastal management program are eligible for matching funds for the purpose of implementing and administering the program. Funds are also available for planning so as to develop the coastal management program to be approved by the Federal Government. We understand that New Jersey has already received several such planning grants

Hon. Stewart G. Pollock

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and is now at the stage of wanting to obtain implementation and administration funds. The federal agency charged with responsibility for approving state programs and carrying out the purposes of CZMA is the Office of Coastal Zone Management ("OCZM") in the National Oceanic and Atmospheric Administration ("NOAA") within the United States Department of Commerce. Before NOAA can approve any state's coastal management program, CZMA requires that the Secretary of Commerce find that the state agency chosen to promulgate and implement the program has sufficient local authority to do so. (16 U. S. C. A. Section 1455(c)(7) and Section 1455(d)). Further, the federal program provides for one or a combination of three specified techniques for control of land and water uses within the state's coastal zone. One of these, which New Jersey has chosen, is direct state land and water use planning and regulation. (16 U. S. C. A. Section 1455(e)). In addition, the Governor of the state requesting approval of its management program must have first reviewed and approved that program. (16 U. S. C. A. Section 1455(c)(4)).

In September, 1977, DEP issued a report to the Governor and Legislature pursuant to the requirements of the New Jersey Coastal Area Facilities Review Act ("CAFRA") entitled "A Coastal Management Strategy for New Jersey." There is enclosed, as Document 1, a copy of the face page, transmittal letter and summary section of that document. At page iii, it is stated that this document is intended to both satisfy the requirements of CAFRA and to "also be applicable to the part of New Jersey to be considered the 'coastal zone' under the Federal Coastal Zone Management Act." It is then stated that the Coastal Management Strategy is intended as the draft of the coastal program to be submitted for federal approval for the CAFRA area of New Jersey. As to that part of the federal zone that is not included within the geographical boundaries of CAFRA, it is intended that a subsequent document would be prepared. As will be discussed further below, DEP has taken the position that, notwithstanding the fact that the coastal zone area defined in the federal CZMA exceeds the geographical limitations of that described by CAFRA, the "network" of state statutes consisting of CAFRA, the Wetlands Act and the Riparian Regulation Statutes would, read together, provide sufficient legislative authority for DEP to satisfy 16 USCA Section 1455(c)(7) and to plan and administer a coastal management program in New Jersey, at least with respect to the geographic area defined in CAFRA.

Opportunity for comment upon the Coastal Management Strategy was provided. This opportunity included public hearings, an opportunity to submit comments, and informal meetings with interested groups. A meeting with the energy utilities of the state was included. Jersey Central submitted comments, copies of

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which are attached as Documents 2 and 3. In these documents, Jersey Central referred to the law governing federal preemption of state regulation of health and safety aspects of nuclear generating stations. Additionally, the Company addressed the fact that the requirement of locating fossil-fueled generating units in relatively "built-up" areas would be very difficult or impossible to implement in the face of requirements of the Federal Clean Air Act and New Jersey air quality standards. (See page 3 of Document 3).

After this opportunity for comment, DEP issued its responses to the public comments which had been received. With respect to Jersey Central's comments regarding the preemption of regulation of nuclear generating stations by the Federal Government, DEP said:

"The Federal Government has not specifically addressed the needs, opportunities, preferences, and conflicts of the people of New Jersey."

The Coastal Management Strategy document then, with certain revisions, evolved into the "State of New Jersey Coastal Management Program, Bay and Ocean Shore Segment." A copy of this is attached as Document 4. This was, as required by federal law, approved by Governor Byrne and was then filed with NOAA. It was reissued by that agency as a draft environmental impact statement to satisfy the requirements of the National Environmental Policy Act. As noted in the NEPA summary in the document, this was part of the review and approval process of the New Jersey Coastal Management Program under CZMA, and an immediate effect of approval would be the qualification of New Jersey for the federal matching funds for use in administering the coastal program. At the same time, Chapter 3 of that document, pages 19 through 163, was promulgated as "Proposed Rules on Coastal Resource and Development Policies." (10 N.J.R. 184 (May 4, 1978)). According to the Notice of Rulemaking, these proposed regulations "define the substantive policies" of DEP "regarding the use and development of coastal resources, to be used by the Division of Marine Services... in reviewing permit applications" under CAFRA, the Wetlands Act, and the Waterfront Development Permit Program. It is noted that these are the same policies, expressed as regulations, which have been submitted for federal approval under CZMA. The time for comment upon these proposed rules expired on July 5, 1978.

Jersey Central and the State's other energy utilities are very seriously concerned about the policies expressed in these documents. There is enclosed as Document 5 a letter to the Governor from Mr. R. I. Smith, the Chairman of Public Service Electric and

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Gas. He "strongly urged" the Governor to withhold approval of the Coastal Management Program (Document 4) stating that it "contains many negative provisions that apply to nuclear and LNG plants which would effectively exclude the siting of these facilities in the coastal zone." He also commented upon the brief time that was made available for review and comment upon these critical documents.

Jersey Central, together with Public Service and New Jersey Natural Gas, has filed comments with NOAA and with DEP concerning these policies and proposed regulations. There is enclosed as Document 6 a copy of our joint comments submitted to NOAA in this regard. A copy of our joint comments being submitted to DEP, which substantially parallel the federal comments, will be supplied to you when it has been finalized. I will return to the substance of these comments subsequently in this letter.

The procedure which NOAA must now follow is to consider the comments received in response to the draft environmental impact statement and to then issue a final environmental impact statement. That document is then circulated among federal agencies for a 30-day period. At the expiration of this time, NOAA may approve or disapprove New Jersey's Coastal Management Program. The CZMA requires that certain findings be made by the Secretary of Commerce before a state's program can be approved. One such required finding is that the state have a valid state regulatory scheme in place prior to federal approval. The proposed New Jersey regulations which are incorporated in Chapter 3 of New Jersey's program must, therefore, first be adopted by DEP before NOAA can approve New Jersey's program. Thus, federal approval depends upon adoption of the regulations by the State.

We understand New Jersey is interested in federal funds for both planning and implementation purposes. There probably will be pressure, therefore, to secure NOAA approval of the Coastal Management Program on or before September 30, 1978, the end of the federal fiscal year, although we do not know this is necessarily essential since funds may also be available in the next budget period. NOAA must issue its final environmental statement sufficiently in advance to allow for the 30 day comment period required by NEPA and for time to review the comments received before a decision is made to approve or disapprove the program. Accordingly, DEP will have to adopt its proposed rules by the end of July or the beginning of August to give NOAA sufficient time to act prior to the close of the fiscal year, if this indeed is essential.

It is our understanding that a meeting was held by NOAA on June 12, as part of the NEPA review, which was attended by representatives of New Jersey DEP and various federal agencies including the United States Department of Energy and the Nuclear Regulatory Commission ("NRC"). At that meeting, we are told, at

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least one federal agency, NRC, expressed the view that some policies in the New Jersey Plan were inconsistent with national interests and pre-empted by federal law. We do not know what position, if any, other agencies (such as USDOE, EPA, and FERC) may take or have taken. We are taking steps to obtain any information available to us as to the input from other federal agencies to NOAA with respect to the New Jersey Plan and will share that with you when it becomes available.

II. Jersey Central's Concerns with the New Jersey Coastal Plan.

The comments which we have submitted to the state and federal agencies set forth, in some detail, the bases for our concerns with respect to the impact of the New Jersey Coastal Plan upon the ability of Jersey Central to provide sufficient electric energy to satisfy the needs of the people of this state. The portions of the Plan relating to energy facilities are found at pages 137 to 147. Sections 7.4.1, 12, 13 and 15 are of the most direct concern to Jersey Central. As here pertinent, there are three grounds for finding these provisions of the New Jersey program to be in violation of federal law. These are set forth as Roman numerals I, II, and III at pages 7 through 29 in the comments submitted to NOAA. (Document 6).

First, in our view, the New Jersey program fails to give adequate consideration to "national interests" as required by CZMA (See pages 7 through 16 of Jersey Central's comments to NOAA). The statute requires that the Secretary of Commerce must find, prior to granting approval of a management program submitted by a coastal state, that the program provides for adequate consideration of the national interests involved in siting facilities necessary to meet requirements which are other than local in nature. Electric generation and transmission facilities clearly fit that category. Among these is the fact that nuclear power is specifically to be encouraged and that the United States should reduce its dependence on oil, including the use of oil for electric generation. The New Jersey program would do exactly the opposite. It clearly discourages and inhibits the generation of electricity by nuclear or coal-fired generating stations. Indeed, as will be detailed later, the program is in direct contravention of the National Energy Policy and the Atomic Energy Act, not only by precluding the construction of nuclear and coal-fired generating stations, but, in addition, by promoting the construction of oil and natural gas-fired generating stations. Additionally, the program fails to give adequate consideration to national policy regarding nuclear generating stations by imposing unreasonably stringent siting standards. These are found in the program at Section 7.4.13 (page 145), which states:

"No future nuclear electric generating stations will be approved in the coastal zone unless:

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- (a.) the Department of Environmental Protection and the New Jersey Department of Energy are assured that storage and disposal of the spent fuel poses no unacceptable safety or environmental hazards to New Jersey residents,
- (b.) the two agencies receive clear proof through the Department of Energy's Master Plan that nuclear facilities are needed and vitally important to the public health, welfare, and economic well-being of New Jersey residents,
- (c.) the Department of Environmental Protection is assured that the location of the facility will not result in nearby population density increases over the operating lifetime of the facility which might make suitable protective actions in the case of serious accident impossible, and that an acceptable, approval emergency evacuation plan is filed, and
- (d.) the Department of Environmental Protection and the Department of Energy are satisfied that no other feasible and economical energy alternative exists for the timely and efficient production of needed electrical power."

The effect of these siting criteria is that no nuclear generating stations may be built in the Coastal Zone unless DEP and DOE "receive clear proof" that the facility is vitally important to the well-being of New Jersey residents and that there are no other feasible and economical energy alternatives for the production of needed electric power. Therefore, nuclear generation must not only be more cost-efficient than other methods of generation before receiving approval, but there can exist no other feasible alternative method of electric generation before construction is authorized under the program. Conceivably, such other alternatives could include the construction of generating capacity in another state, e.g., Pennsylvania, where we now find a tax imposed upon the generation capacity owned by New Jersey utilities, presumably to compensate for the environmental burden carried by that state. Oil and natural gas-fired generations are feasible and economical energy alternatives to nuclear generating stations; but the national interest is clearly not served by forcing the utilities to these forms of generation. The program, therefore, requires the implementation of a policy which directly contravenes the national energy policy.

Further, the program fails to consider adequately the national interest by severely restricting the construction of coal-fired electric generating facilities. The National Energy

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Plan clearly anticipates an increase in the use of coal. This plan would, however, direct the construction of plants "toward relatively built-up areas, consistent with applicable air and water quality standards." (Section 7.4.12). This policy will significantly hamper and, indeed, may effectively bar future coal-fired generating stations in the Coastal Zone. The 1977 amendments to the Clean Air Act seek to prevent significant deterioration of air quality. There will, therefore, in most industrial areas, be only a limited number of increments of additional air emissions available before development is stopped. Since new coal-fired generation will require such increments, a policy which directs that these plants be built in "relatively built-up" areas severely restricts construction of coal-fired electric generation facilities and indeed may effectively bar their utilization.

The second basis for finding this plan to be illegal is that New Jersey's authority to regulate nuclear power plant siting and safety, liquefied natural gas siting and safety, and gas pipeline siting has been preempted by a pervasive scheme of federal legislation. (See pages 11 through 24 of Jersey Central's comments to NOAA.) With respect to nuclear generating facilities, the New Jersey program infringes on the exclusive power of the Nuclear Regulatory Commission to regulate these activities. The Plan proposes a virtual bar to additional nuclear generating facilities in the coastal area. The four criteria which must be met before a nuclear generating station can be constructed have been set forth previously. These criteria would, however, touch on areas which are pervasively and exclusively regulated by the Federal Government. Federal preemption in the area of nuclear generating stations has been definitely recognized. See Northern States Power Co. vs. Minnesota, 447 Fed. 2d 1143 (8th Cir. 1971) Aff'd Mem. 405 U. S. 1035 (1972). State vs. Jersey Central Power & Light Co., 69 N. J. 102 (1976); Van Dissel vs. Jersey Central Power & Light Co., 152 N. J. Super. 391; Public Interest Research Group vs. State, 152 N. J. Super. 191. For your convenience, we are enclosing copies of the three New Jersey authorities.

In the Northern States Power case, the Court stated:

" (T)he Act, as amended, and its legislative history, when viewed together, provide the strongest manifestation of Congressional intent to preempt the field of regulation over the construction and operation of nuclear reactors...." (supra., at 1152).

Accordingly, the Court rejected Minnesota's claim that it had authority to regulate nuclear generating facilities. In the Court's view, such

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" a dual system of licensing and regulation with control exerted by both the states and the federal government... would create 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (44 F.2d at 1154).

New Jersey decisions, previously cited, have equally recognized federal preemption in the nuclear area.

"A state may not interfere, directly or indirectly, with a preempted matter, even though the state's proscription may not have been directed at the particular activity involved.. ..It has been held that in regulating the operation of a nuclear power plant, the federal government has, under the Atomic Energy Act, exclusively preempted that aspect which involves protection against radiation hazards." State v. Jersey Central Power & Light Co., supra.

Public Interest Research Group v. State, supra, is even more explicit. There the Court rejected a challenge to a finding by DEP under CAFRA that PSE&G's proposed method for disposing of radioactive waste from its Hope Creek station was adequate. The Court based its holding on federal preemption:

"In view of the comprehensive nature of the federal legislation and regulations, the State Commissioner has no power under CAFRA to make an independent judgement as to the ability of the planned facility to protect against radiation hazards either from the operation of the plant or from the handling of radioactive waste material created by the nuclear process. The Commissioner does have the statutory obligation to satisfy himself that the applicant has conformed to the standards established by NRC. However, if such standards are met, he has no authority to impose either lower or higher safety standards to regulate radiation hazards."

Similarly, Van Dissel v. Jersey Central Power & Light Co., supra, held that state regulation of a nuclear plant's once-through cooling system was also preempted by federal regulation.

When the provisions of the Bay and Ocean Shore Segment are measured against applicable judicial decisions, it is clear that they are preempted and beyond the province of New Jersey.

July 5, 1978

With respect to the first criterion -- that the storage and disposal of spent fuel pose "no unacceptable safety or environmental hazards" to state residents -- New Jersey is engaging in the very dual regulation over the health and safety aspect of nuclear generating specifically precluded by the Northern States Power case. As to the third criterion, dealing with population density and evacuation plans, this, again, deals with an issue which is at the very heart of federal regulation of nuclear generation, i.e., health and safety issues stemming from the construction and operation of a nuclear station. The second and fourth criteria are similarly preempted. They would apply more stringent standards to nuclear plants with respect to "need for power" than is applied to conventional plants and would otherwise discriminate against nuclear facilities. While we recognize that the states may require non-discriminatory need-for-power determinations prior to approving generating facilities, a discriminatory need-for-power criterion, such as that contained in the program, would run afoul of the Atomic Energy Act.

In connection with the preemption problem, enclosed is a copy of an opinion of the Attorney General of the State of California dated April 25, 1978 (Document 7). The State of California enacted a siting law which is quite similar to the provisions of the New Jersey program as regards the location of nuclear generating facilities in that state. The Attorney General was asked to express his opinion as to the validity of that law in the light of the Atomic Energy Act and decisions such as Northern States Power. He concluded that the California law was invalid.

Finally, the third ground for finding the New Jersey Program to violate Federal law is that New Jersey does not possess adequate state legislative authority to implement the program. See pages 25 through 29 of the comments to NOAA. CZMA requires that the state program must provide for a method of assuring that local land and water use regulations within the Coastal Zone do not unreasonably restrict or exclude uses of regional benefit. It is only with respect to public utilities that the State has adequate power to overrule a local decision denying approval for the construction of a facility. Here, however, that power does not rest in the Department of Environmental Protection but, in fact, is found in the Board of Public Utilities. See NJSA 40:55D-19. While the program cites numerous "authorities" embodied in existing State legislation to support its contention that the local override requirement of CZMA has been met, these authorities were not enacted for the purpose of providing for a comprehensive land-use management of the Coastal Zone, and consequently, do not provide the prerequisite state override authority, either individually or collectively. Further, New Jersey's "networking" approach fails to satisfy the requirement of CZMA that the state has the authority necessary to implement the program. In an attempt to satisfy this

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requirement, the New Jersey program employs what it describes as a "networking" approach. It attempts to take three major New Jersey areas of statutory law, CAFRA, wetlands and the riparian regulation statutes, and use these as the basis for satisfying the Federal Act. They do not, however, authorize New Jersey to implement comprehensively all of the policies required by the CZMA.

III. Conclusion.

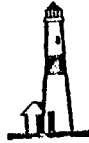
The effect of all of these provisions in the New Jersey program is to make it virtually impossible for an electric utility in this State to site any major generating facility within the Coastal Zone. The provisions relating to nuclear generating facilities are obviously designed to give DEP a basis for refusing to approve the construction of any additional nuclear facilities. The burden upon nuclear construction reflected in the document is obvious. The burden upon coal construction is more subtle but is no less pervasive. Representatives of DEP have stated flatly that the only location an additional coal-fired generating station might be constructed in this state would be in the rural areas of southern New Jersey. It is only in this way, they say, that the requirements of federal and state air quality laws could be met. Because of the need for water to cool the facility, it would probably be necessary that it be built within the Coastal Zone. The program, however, would only allow construction of such a facility within the urban areas of the Coastal Zone. It is perfectly clear that regulations as to sulphur in coal found in state and federal law could not be met in any of these areas. Thus, the effect of the program, taken with the air quality laws, is to make the construction of a coal-fired station in New Jersey impossible. In total, then, with this program it will be virtually impossible for New Jersey's utilities to supply the electric energy needs which are so essential to the social and economic life of this state.

We are looking forward to meeting with you to discuss further these problems and to attempt to find a satisfactory basis for resolution of them. We recognize the desirability of having the New Jersey Coastal Zone Management Plan approved by the Federal Government, but Jersey Central cannot, consistent with its obligation to this state and to its citizens, allow the plan to stand in its current form without having pursued all available legal remedies.

Very truly yours,

William F. Hyland
William F. Hyland

cc Hon. John N. Degnan
Attorney General



JESSE S. MORIE & SON, INC.
PRODUCERS OF INDUSTRIAL SANDS
Morie, Goff, Brinfield, Accurez & Georgia Silica Divisions, Mauricetown, New Jersey 08329
609-785-1300

Page

JESSE S. MORIE & SON, INC.

June 15, 1978

U.S. Department of Commerce
National Oceanic and Atmospheric
Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Attn: Mr. Richard Gardner
Director of Program Development and Research

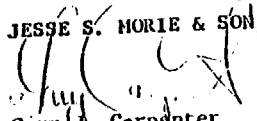
Dear Mr. Gardner:

Please accept the enclosed comments on behalf of the mentioned mining companies. Should you require clarification or further explanations of any of the issues, please do not hesitate to call.

Thanking you in advance for your consideration given these matters.

Very truly yours,

JESSE S. MORIE & SON, INC.


Gary J. Carpenter
Director of Governmental Affairs

GJC/jmg
Enclosure

Comments by Gary Carpenter on behalf of

Jesse S. Morie & Son, Inc.
Pennsylvania Glass Sand Corporation
Whitehead Brothers Company
George F. Pettinos, Inc.
Unimin Corporation

pertaining to Coastal Management Program Bay and
Shore Segment. Draft Environmental Impact Statement
dated May 1978.

JESSE S. MORIE & SON, INC. • ANOTHER COMPANY



These comments were prepared following the public meeting that was held June 13, 1978 in Bridgeton, N.J. and are intended to reinforce and elaborate our position. In addition, we are requesting that an extension of time be granted to receive additional comments on the draft.

The Draft Environmental Impact Document does not satisfactorily address itself, on page 148 Section 7.6.2, to the importance and necessity of the mineral extractions industry.

While it is recognized that operations for the extraction and processing of mineral resources must comply with applicable Federal and State Environmental laws. It should be noted that Mineral resource development is a valid and important land use to Southern N.J. It should be recognized that mineral resources occur only in certain limited areas and quantities. Therefore, it is absolutely essential in planning to make adequate provisions so as to allow for the recovery of such limited valuable mineral resources.

In order to promote the mining industry to the greatest extent possible, the mining of New Jersey's mineral resources should be included in a positive light in all Coastal Management strategies.

Secondly the document has not adequately taken into consideration the adverse social and economic impact that would result to the state should the industry be forced to leave behind the valuable mineral resources located within the CAFRA boundaries.

The coastal zone of New Jersey, though not heavily mineralized, contains some important mineral resources which are essential in enriching the local economy while contributing to employment and industrial activity over a vast part of our State. As New Jersey is dependent on other areas for certain essential minerals, other regions of the nation look to New Jersey for some key items. The glass industry

is a large employer in New Jersey. It is estimated that over 25,000 people are employed in the state's glass industry. In Cumberland County alone it is estimated that over eighteen percent (18%) of the work force is directly employed by the glass manufacturing industry. In order that this important industry remain viable, it is necessary that adequate reserves of glass sand are available to supply the needs of the industry.

In view of the facts, that the present language was not acceptable and the relatively short comment period, we respectfully request immediate consideration be given to all comments raised in this paper and that the comment period be extended to July 31, 1978.

JESSE S. MORIE & SON, INC.

Testimony given before Mr. Richard Gardner, Director of Program Development and Research in the Federal Office of Coastal Zone Management and Mr. David Kinsey, Chief of the New Jersey Office of Coastal Zone Management, at the New Jersey Coastal Management Program Bay and Ocean Shore Segment Public Hearing on June 13, 1978, Bridgeton, N.J.

My name is Gary Carpenter, I am commenting on behalf of:

Jesse S. Morie & Son, Inc.
 Pennsylvania Glass Sand Corporation
 Whitehead Brothers Company
 George F. Pettinos, Inc.
 Unimin Corporation

All of which are Industrial Sand producers either with operations or holdings within the CAFRA boundaries.

My concern is for the following:

- 1) The document takes a very negative approach to any industry which is so basic to our economy and existence - Glass, Iron & Steel, Water & Sewer filtration.
- 2) Has consideration been given to all economic impact that this would have on the mining and associated industries.
- 3) The OCZM has been very uncooperative in meeting with our industry to work out agreeable development policies.

Thank you for your time and consideration with this important matter.



JESSE S. MORIE & SON, INC.
 PRODUCERS OF INDUSTRIAL SANDS

Morie, Goff, Brimfield, Accurez & Georgia Silica Divisions, Mountaintown, New Jersey 08329
 609-785-1300

June 27, 1978

State of New Jersey
 Department of Environmental Protection
 Division of Marine Services
 Office of Coastal Zone Management
 P.O. Box 1889
 Trenton, New Jersey 08625

Attn: Mr. David N. Kinsey, Chief

Dear Mr. Kinsey:

Please accept the enclosed recommended language changes which pertain to the mining segment of the document. I urge this language be incorporated in place of the present language in order that our industry may remain viable.

After you have had time to review our proposed changes, we would very much appreciate an opportunity to sit down at your convenience to discuss any recommendations which you may have.

Thank you for the time and consideration which you have given this matter and also for taking the time to come and meet with the various members of our industry on Monday.

Very truly yours,

JESSE S. MORIE & SON, INC.

Gary J. Carpenter

GJC:jc
 Enc.

JESSE S. MORIE & SON, INC. • ANOTHER COMPANY



Draft Environmental Impact Statement

7.6.2 Mining is an acceptable land use provided that it is conducted with an approved reclamation plan. Mining is prohibited in Lower Water's Edge Areas but is otherwise exempt from the Location Policies (Section 6.0).

Rationale

Mining contributes many millions of dollars to the state's economy and through the careful planning of mining operations, aesthetic and environmental values can be protected. It is further recognized that mineral resource development is a valid and important land use to New Jersey and that mineral resources occur only in certain limited areas. Mineral extraction certainly should not represent a terminal use of the land. Therefore, it is important in the planning process to make adequate provisions so as to reasonably allow for the recovery of such valuable mineral resources. Land properly restructured and revegetated following mineral extraction can serve many useful purposes. In such instances these properties can be converted to attractive lakes, home sites, recreation centers and other useful purposes.

Comments prepared and submitted by the following:

- Jesse S. Morie & Son, Inc.
- Pennsylvania Glass Sand Corp.
- Whitehead Brothers Company
- George F. Pettinos, Inc.
- Unimin Corporation

pertaining to the Coastal Management Program Bay and Shore Segment. Draft Environmental Impact Statement date May 1978.



Public Service Electric and Gas Company 80 Park Place Newark, N.J. 07101 201/430-5858

James A. Shissias General Manager
Environmental Affairs

June 15, 1978

Mr. David N. Kinsey, Chief
Office of Coastal Zone Management
State of New Jersey
Department of Environmental Protection
P. O. Box 1889
Trenton, New Jersey 08625

Dear Mr. Kinsey:

PSEG COMMENTS ON THE STATE OF NEW JERSEY
COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT (MAY 1978),
AND U. S. DEPT. OF COMMERCE, NOAA, OCZM
DRAFT ENVIRONMENTAL IMPACT STATEMENT

Attached is a copy of our detailed comments on the New Jersey Coastal Management Program and Draft Environmental Impact Statement. In addition, I have attached my oral statement presented at the Trenton hearing on June 15, 1978.

You will note our strong suggestion that the Governor not approve this program in its present form, specifically in regard to the nuclear power and LNG sections.

Sincerely yours,

Encl.

CC: Dept. of Energy
Board of Public Utility Commissioners
Commissioner - N. J. Dept. of Environmental Protection
Director, Division of Marine Services - N. J. Dept. of Environmental Protection
Commissioner - N. J. Dept. of Labor and Industry
Commissioner - N. J. Dept. of Community Affairs

STATEMENT OF JAMES A. SHISSIAS
GENERAL MANAGER - ENVIRONMENTAL AFFAIRS
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT (MAY 1978)
U.S. DEPARTMENT OF COMMERCE, NOAA, OCZM
DRAFT ENVIRONMENTAL IMPACT STATEMENT

JUNE 15, 1978
TRENTON, NEW JERSEY

The Energy People

10-1444 (7-78) B //

STATEMENT OF JAMES A. SHISSIAS
GENERAL MANAGER - ENVIRONMENTAL AFFAIRS
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM
BAY AND OCEAN SHORE SEGMENT (MAY 1978)
U.S. DEPARTMENT OF COMMERCE, NOAA, OCZM
DRAFT ENVIRONMENTAL IMPACT STATEMENT
TRENTON, NEW JERSEY

Good morning. I am James A. Shissias - General Manager-Environmental Affairs of Public Service Electric and Gas Company. The Company welcomes the opportunity to present this statement on the recently released "Coastal Management Program" for New Jersey. In addition to my general statement, we have submitted detailed specific comments for your review.

Public Comment Procedure

Before I begin to discuss the contents of the Coastal Management Program, I would like to express the Company's concern with the brief time allowed for review by the State of the comments submitted at each phase of the public comment procedure over the last several months. We believe that, for a subject of this importance, insufficient time has been provided for proper consideration of all relevant factors and of the comments submitted from the public sector.

It was disappointing, procedurally, that earlier source documents for the "Coastal Management Strategy" (September 1977) were not circulated for comment until after the "Strategy" itself was formulated and published. Procedurally, the time span given industry to respond to these weighty documents was insufficient. In fact, in several instances, the abbreviated time schedule allowed to incorporate public comments before a new version or draft was issued precluded the consideration by the Department of Environmental Protection of comments submitted on earlier versions.

Consistency with Intent of Congress and National Coastal Zone Management Act

In spite of all that has previously been submitted by our Company and others on this Program, it still contains many negative provisions which tend to specifically discourage nuclear power and LNG facilities. Thus, in our opinion, the Coastal Management Program is still in conflict with both the spirit and intent of Congress when it formulated and passed the Coastal Zone Management Act of 1972 and the 1976 Amendments. Specifically, the Act stated that, "there is a national interest in the effective management, beneficial use, protection and development of the coastal zone."¹

The Coastal Management Program proffered does not provide adequate development prospects, in particular with respect to energy facilities. We find it disturbing that the objectives of Congress for the beneficial use and development of the coastal zone in the national interest have been de-emphasized. We believe the New Jersey Coastal Management Program does not adequately provide for the national and regional interests regarding electric power and LNG energy facility siting in New Jersey, and in fact discriminates, discourages, and effectively excludes those vital energy facilities from the coastal zone.

Furthermore, when Congress amended the Act in 1976, it stressed the "national objective of attaining a greater degree of energy self-sufficiency...resulting from new or expanded energy activity in or

1. Act § 302(a)

affecting the coastal zone."² In this regard, nuclear generation facilities qualify as being in the national interest by providing large scale regional electric power needs to the State as well as to numerous federal military installations. As defined on Page 178 of the Coastal Management Program, another overriding objective in the national interest is to "reduce dependence on foreign imported oil and vulnerability to supply interruptions." Each nuclear plant can save approximately 12,000,000 barrels of foreign oil a year. Nuclear plants currently operating in New Jersey actually saved over 790,000,000 gallons of oil in 1977, and an equivalent amount in 1976. These combined quantities nearly equal the total amount of heavy residual oil used in the entire State of New Jersey in 1975.

Nuclear electric facilities also qualify as uses of "Regional Benefit" under the New Jersey Coastal Management Program, as do liquefied natural gas facilities. As defined on Page 192 of the State Program:

"uses of regional benefit include energy facilities using oil, gas, electric, and renewable sources of energy, etc."

According to the federal Coastal Zone Management Act (subsection 306(e)(2) quoted on Page 192 of the State Program), the State must provide "a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." Yet the State itself, through the provisions

2. Act §302 (i)

of its Coastal Program, tends to exclude these facilities from the coastal zone from a practical standpoint.

We do not believe the Office of Coastal Zone Management implementing regulations and therefore the New Jersey Program conform to the goals of the national Coastal Zone Management Act or to the intent of Congress in applying the "federal consistency provision" to other than new facilities. The present permit renewal process for existing facilities effectively brings all previously existing facilities in the coastal zone, which require periodic permit renewal, under the New Jersey Program. This could cause considerable cost to existing facilities which may have heretofore been "grandfathered" from compliance with earlier laws written to specifically avoid this economic hardship.

Keeping Energy Options Open

In view of the State's substantial future energy needs, it is essential that all viable ^{energy} options be kept open. We simply cannot afford to peremptorily eliminate any valid options. Furthermore, to assure rational decisionmaking, each option must in turn be considered on the true economic and environmental merits.

In meeting future energy requirements, it is important to recognize that the Company has no commitment nor bias for any technology. We are committed to serving our customers' needs at the most reasonable costs and with a proper concern for the environment. Our current studies

show nuclear to be clearly more economic and more environmentally acceptable than fossil fueled stations. Still, prudence suggests that the fossil fuel option remain open. This Program, however, makes it very difficult, if not impossible, to maintain this option. It directs future expansion of fossil fuel stations into built-up areas. As an individual strategy this might appear acceptable. However, the restrictions of the Coastal Management Program when combined with provisions under the Clean Air Act regarding non-attainment areas, emissions trade-off policy, and prevention of significant deterioration could make the siting of fossil fuel plants virtually impossible anywhere in New Jersey.

We are disturbed that each of the many environmental protection regulations, when analyzed individually, may be determined to be logical and worthy of support, but when viewed collectively, may result in excessive restrictions. It is likely that this Program could eliminate both the nuclear and fossil options leaving only the exotic energy types available. These exotic sources, which are encouraged in the report, are neither technically nor economically justified.

Liquefied Natural Gas (LNG)

Moving on to another energy technology, it appears that the Coastal Management Program still maintains the mistaken assumption that LNG is of such a hazardous nature that it is unacceptable. I would like to remind you that such projects are operating safely both in this country and throughout the world with minimal environmental

impact. The Department of Environmental Protection position to deny approval until the FPC, now the Federal Energy Regulatory Commission, responds to the motion of New Jersey to establish a general siting criteria, is impractical for two reasons.

First, the FPC has stated on the record that it will consider siting for LNG facilities only on a case-by-case basis. Secondly, the petition filed by New Jersey two years ago for the issuance of siting criteria will probably never be answered because it was procedurally deficient and impermissible. The Company believes that any attempt by New Jersey and/or other states, either singly or together, to regulate siting or set standards for the safety of LNG facilities would be pre-empted and is an unconstitutional interference with interstate commerce.

Legal Issues

There are a number of legal issues which appear to have been virtually ignored by the State Office of Coastal Zone Management in putting together this Coastal Program. These deal with the question of the federal government having pre-emptive regulations concerning the handling of radioactive waste, safety precautions from radiation, and the siting of LNG facilities; the consistency of the New Jersey Program with the intent of Congress and the national Coastal Zone Management Act; procedural questions; inadequate statutory authority; as well as other issues. These are specifically detailed in the "Legal Comments" section of the

material we have submitted. They must be addressed by the New Jersey Coastal Management Program before submission of its plan for approval.

Summary

It should be emphasized that siting flexibility is needed and must be provided in the final Program. If the State is to continue to prosper, additional sites for energy facilities will be needed. We feel that if the siting of energy facilities is reviewed in a positive light, it would be possible to set aside small portions of the coastal area specifically for vital energy uses. This affirmative site specification by the Department of Environmental Protection could go far toward removing the uncertainty of energy facility siting in the coastal zone.

In the course of reviewing the Coastal Management Program for New Jersey, we are concerned with the procedural shortcomings of the review process, the lack of adequate consideration of the national interest in energy siting, the discouragement and effective exclusion of nuclear power and LNG facilities, the impractical policy regarding fossil fueled electric plants, the application of the "federal consistency" provision to previously existing facilities, the legal and federal pre-emptive issues, and the failure to specify or earmark future sites in the coastal zone for vitally needed energy facilities. We hope that the public hearing and review process will serve to resolve these problems. Consequently, we urge that the State Program not be

approved in its present form by the Governor of New Jersey. If this program is submitted by the Governor to NOAA for federal approval with its present provisions on nuclear power and LNG, we strongly urge that it be denied approval.

PSE&G DETAILED COMMENTS FOR
STATE OF N. J. COASTAL MANAGEMENT PROGRAM -
BAY AND OCEAN SHORE SEGMENT (MAY 1978), AND
U. S. DEPARTMENT OF COMMERCE, NOAA, OCZM
DRAFT ENVIRONMENTAL IMPACT STATEMENT
JUNE 15, 1978, TRENTON, N. J.

In addition to these detailed comments, an oral statement was delivered by Mr. J. A. Shissias, General Manager Environmental Affairs, at the public hearing in Trenton, N. J. on June 15, 1978.

These detailed comments are composed of three parts as follows:

- I Generic Comments
- II Legal Comments
- III Specific Text Related Comments

I Generic Comments

We are concerned that the NJ CMP may not be consistent with the intent of Congress and the purposes of the national Coastal Zone Management Act. While the proscribing of electric energy and LNG facilities from the coastal zone is not intended by the Act, this can be the result of the implementation of the N. J. CMP with its present provisions. As an example, Part IV, Page 215-219 describes reasons why the Assistant Administrator of OCZM can deny or delay Program approval which include the following:

1. Page 216 - "The Assistant Administrator could delay or deny approval of the New Jersey Bay and Ocean Shore Segment if the segment does not adequately achieve the goals of the Coastal Zone Management Act as expressed by Congress in Section 303 of the Act."

We do not believe the OCZM implementing regulations and therefore the N. J. CMP conform to the objectives and policies of the National Coastal Zone Management Act (CZMA) or the intent of Congress in applying the "federal consistency provision" to other than new facilities. The present permit renewal process for existing facilities in effect brings all previously existing facilities in the coastal zone which require periodic permit renewal under the N. J. Program. This could cause considerable economic hardship to existing facilities which may have heretofore been "grandfathered" from compliance with earlier laws to specifically avoid this economic hardship. To this extent, we feel the Plan does not comply with the federal Act provision for "wise use of the coastal zone," and "giving full consideration to needs for economic development," as stated on page 216 of the N.J. CMP.

Unless the N. J. CMP provides for "grandfathering" of previously existing facilities in the coastal zone, we believe that it should be denied approval by the Governor of N. J. and by the Assistant Administrator of OCZM as inconsistent with the intent of Congress and the Coastal Zone Management Act of 1972 and the 1976 Amendments.

2. Page 217 - If the national interest in the siting of facilities in the Bay and Ocean Shore Segment were not adequately considered, the Assistant Administrator could delay or deny approval of the Program Segment.

We do not believe the N. J. CMP provides "adequate consideration of the national interest involved in the siting of "electric energy facilities and LNG facilities "necessary to meet requirements which are other than local in nature" as required on Page 217, para. 3 of the N. J. CMP.

The N. J. Plan actively discourages and effectively excludes nuclear and LNG facilities from the coastal zone per the following references:

Page 212, first para. - "No further nuclear facilities will be approved until DEP and DOE have had time to investigate the feasibility of alternative energy production methods." This is already a requirement of every federal license for a nuclear plant and the State redundancy can lead to indefinite delay of vitally needed facilities of regional as well as national benefit and interest. It is not within DEP's function, expertise or statutory authority to determine "alternate energy production methods."

Page 145, sect. 7.4.13 - "No future nuclear electric generating stations will be approved in the coastal zone unless." This quote is then followed by a series of provisions which are again duplicative and redundant to the federal licensing process and include federally preemptive items more specifically delineated below. Strict enforcement of these provisions will effectively exclude nuclear electric generating stations from the coastal zone and deny access to the large amounts of cooling water necessary for their operation. Our suggestion for totally rewriting the nuclear energy section is detailed later.

Nuclear generation facilities qualify as being in the national interest by providing large scale regional electric power needs to the State as well as to the numerous federal military installations. As defined on Page 178 of the plan, another overriding objective in the national interest is to "reduce dependence of foreign imported oil and vulnerability to supply interruptions." Each nuclear plant can save approximately 12,000,000 barrels of foreign oil a year. Nuclear plants currently operating in New Jersey actually saved over 790,000,000 gallons of oil in 1977, and an equivalent amount in 1976. These combined quantities nearly equal the total amount of heavy residual oil used in the entire State of New Jersey in 1975.

II. Legal Comments

Nuclear facilities also qualify as uses of "Regional Benefit." The federal Coastal Zone Management Act, as quoted on Page 192 of the N. J. CMP, requires that State provide a "method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." In the next line, the N. J. CMP defines electric and gas energy facilities as "uses of regional benefit." Yet the State itself, through the provisions of its plan, excludes these facilities from the coastal zone from a practical standpoint.

The N. J. CMP discourages liquefied natural gas (LNG) facilities in the coastal zone. As stated in the National Energy Plan quote on page 181 of the N. J. CMP, LNG "can be an important supply option through the mid 1980's and beyond until additional gas supplies may become available," and "the previous Energy Resources Council guidelines are being replaced with a more flexible policy that sets up no upper limit on LNG imports."

Nevertheless, the N. J. CMP again on Page 146 states "the location of LNG terminals is discouraged in the Bay and Ocean Shore Segment until----." On Page 181 it states "No LNG terminal shall be approved in the coastal zone until----." In both cases what follows next in the N. J. CMP is a series of restrictive and federally preempted conditions on LNG which could effectively preclude its utilization in the coastal zone. (see detailed comments below).

For the above reasons, we believe the N. J. CMP does not adequately provide for the national and regional interests in electric power and LNG energy facility siting in the State of N. J. and in fact discriminates, discourages and effectively excludes those vital energy facilities from the coastal zone. Consequently, we urge that the State Program not be approved in its present form by the Governor, and that should NOAA receive this Program for approval with its present provisions on nuclear and LNG, that approval be denied by the Assistant Administrator of OCZM, NOAA.

In our opinion, the N. J. CMP should not be approved for various legal reasons, primary of which is the State's violation of the Doctrine of Federal Pre-emption in the areas of nuclear power generation and liquefied natural gas facilities. It has been well established by the United States Supreme Court and by the New Jersey Supreme Court that the Doctrine of Federal Pre-emption applies to questions concerning radiological health and safety. The lead case on this issue is Northern States Power Company vs. Minnesota, 405 U.S. 1035 (1972), in which the Supreme Court held that the Nuclear Regulatory Commission has exclusive jurisdiction over all matters relating to radiological health and safety in connection with the construction and operation of nuclear generating facilities licensed by the United States Nuclear Regulatory Commission. In addition, the New Jersey Supreme Court held in State vs. Jersey Central Power & Light Company, 69 N.J. 102 (1976), that the Nuclear Regulatory Commission has exclusive and pre-emptory jurisdiction over the New Jersey Department of Environmental Protection on matters dealing with radiological health and safety. With reference to the Coastal Area Facilities Review Act, the courts in the State of New Jersey have held that Section 11 of the Act, requiring the DEP to certify the safety of the proposed method for radioactive wastes disposal, is in violation of the Doctrine of Federal Pre-emption and that the DEP has no power under CAFRA to

judge the ability of the facility to protect against the hazards of radioactivity as long as NRC standards are met. Public Interest Research Group vs. State, 152 N.J. Super. 191 (App.Div. 1977), cert. den., 75 N.J. 538 (1978). The provisions contained in Section 7.4.13 of the New Jersey Plan are clearly in violation of the Doctrine and of the above-cited case law to the extent that the provisos contained therein seek to usurp the regulatory authority of the NRC. In connection with the review conducted by the NRC prior to the licensing of nuclear facilities, issues of storage and disposal of spent fuel, the need for power, population density and alternate sources of power are all resolved by the NRC.

With reference to issues concerning the need and siting of liquefied natural gas facilities, our Company has been involved in the licensing of such facilities on Staten Island. In connection with these facilities, litigation has been commenced in the U.S. District Court for the Eastern District of New York seeking to have declared unconstitutional a New York Act which endeavors to give the State regulatory powers over issues of need and siting of LNG facilities. The plaintiff in this action, Energy Terminal Services Corporation, is arguing that the regulation of siting LNG facilities is pre-empted by the federal government. It is our opinion that this case will result in a finding that the states have been pre-empted. In support of this argument, we note the following cases:

Transcontinental Gas Pipeline Corporation v. Hackensack Meadowlands Development Commission, 464 F.2d 1358 (3rd Cir. 1972), cert. den. 409 U.S. 118 (1973); Tenneco Inc. v. Public Service Commission of West Virginia, 489 F.2d 334 (4th Cir., 1973), cert. den. 417 U.S. 946 (1974); United Gas Pipeline Co. v. Terrebonne Parish, 319 F. Supp. 1138 (E.D. La., 1970), aff'd. 445 F.2d 301 (5th Cir. 1971).

In addition to the above comments concerning the Doctrine of Federal Pre-emption, it further appears that the New Jersey Plan ought not to be adopted for its failure to abide by the policies, objectives and intent of the Coastal Zone Management Act of New Jersey. The Plan clearly fails to take into account a realistic analysis of the national interest in energy facility siting. Rather than provide for and encourage the siting of energy facilities in the coastal zone as called for in the Act, the New Jersey Plan actually seeks to exclude nuclear and LNG facilities from the coastal zone. It is noteworthy that the Coastal Management Strategy, Public Comments and DEP Responses, distributed on June 8, 1978, admits "major energy facilities are directed out of CAFRA" (Response to Comment No. 64). It is also noteworthy that whereas the Act requires that a State Plan must provide a "method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit," the

New Jersey Plan endeavors to exclude energy facilities which, as discussed above, are clearly for the regional benefit.

The New Jersey Plan is likewise legally deficient for its failure to provide for the protection of facilities already existing in the coastal zone prior to the adoption of the Plan in conjunction with the federal consistency clause. In this connection it would appear that the State's adoption of the Plan and its approval by NOAA would be arbitrary and capricious and a denial of equal protection under the law. It would also appear that the State's hasty development of the Plan and its failure to consider and incorporate into the Plan meaningful comments from the public and from companies, such as Public Service, are in violation of the procedural requirements of both NOAA and the National Environmental Policy Act. Furthermore, the Plan is prima facie in violation of these regulations for its failure to be a complete document as evidenced by Section 6.6.7.5, Energy Facility Criteria. This Section states only, "this Section is reserved pending completion of joint coastal energy facility siting studies by DEP and DOE. In the interim, the development potential of energy facilities is assumed to be moderate." Finally, as of this time the State of New Jersey lacks the statutory authority to resolve conflicts between state and local governments as sought by the New Jersey Plan. The DEP and DOE have no authority other than

that given to them by the Legislature. The adoption of the Plan is beyond the scope of their respective authorities and thus, ultra vires. Prior to the passage of the necessary legislation, the State, through the DEP or DOE, does not have the authority to overrule local determinations on projects of regional and national interest.

III Specific Text Related Comments

Part I - Introduction, pg. 1

The Coastal Management Plan (CMP) reads:

- "1. Protect the coastal ecosystem
2. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort-oriented development and encourage the preservation of open space
3. Employ a method for decision-making which allows each coastal location to be evaluated in terms of both the advantages and disadvantages it offers for development
4. Promote the health, safety and welfare of people who reside, work and visit in the coastal zone."

The four basic policies of the Strategy presented are clearly intended for the protection of the coastal zone of New Jersey. However, the beneficial use and developmental aspects leave much to be desired. The Strategy is still, in our opinion, in conflict with both the spirit and intent of Congress when it formulated and passed the Coastal Zone Management Act of 1972. Specifically, the Act stated that, "there is a national interest in the effective management, beneficial use, protection and development of the coastal zone."*

We recommend that the first policy be reworded to read:

"Protect the coastal ecosystem while permitting its beneficial use and development."

The second coastal policy calls for concentration of industrial development. Nuclear generating stations cannot be located in concentrated development areas. They must be remote and have access to large water supplies.

* Act §302 (a)

The Coastal Management Strategy reads:

"Energy facilities will be approved only after review by DEP and the New Jersey Department of Energy (P.L. 1977, C. 146, N.J.S.A. 52:27-1 et seq.) to insure the protection of both the built and natural environment of the coast and of public health, safety and welfare, to the maximum extent feasible. The overlapping responsibilities of the Department of Environmental Protection and the Department of Energy require early consultation between these two agencies to promote efficiency and the orderly siting in the coastal zone of clearly needed energy facilities. (See the draft Memorandum of Understanding between DEP and DOE, in Appendix J). Energy facilities must demonstrate consistency with the master plan to be prepared by the Department of Energy for the production, distribution, consumption and conservation of energy. Prior to completion of the Energy Master Plan, need will be defined by DEP and DOE in part on the basis of information submitted by developers of proposed energy facilities.

Where the Department of Energy and the Department of Environmental Protection do not agree on a specific energy facility application (for example, on a specific proposed site for one type of energy facility), the disputed decision shall, in accord with state law, be submitted to the State's Energy Facility Review Board for final administrative action.

This policy calls for a review of proposed energy facilities by both the Department of Environmental Protection (DEP) and the Department of Energy (DOE) which would result in areas of overlapping responsibility which could easily lead to additional significant delays in development of needed energy facilities. The lack of adequate energy is probably the worst possible concern we all face. This could result in the loss of thousands of jobs for New Jersey residents and serious economic repercussions. We are also concerned that the creation of responsibilities which to some extent are duplicative of certain federal agencies. For example, the "public health and safety" of proposed nuclear power plants is reviewed extensively by the Nuclear Regulatory Commission while the "public health and safety" of LNG terminals is reviewed in similar depth by the Federal Energy Regulatory Commission. It does not seem reasonable, practical or economic for a state agency(s) to create another layer to simply duplicate an existing federal review process. We therefore suggest that a phrase be added to the existing paragraph indicating:

"State reviews should not duplicate and extend existing fact finding studies and should be limited to those areas not already covered in detail by the Federal regulatory process."

This section places severe obstacles in the path of nuclear energy, and includes stipulations covering areas that have already received extensive safety and environmental evaluations. It is duplicative, unduly restrictive, and in many cases contains requirements concerning matters which have been pre-empted by federal agencies. In fact, we are of the opinion that this entire attempt to regulate nuclear on the part of the State DEP may be preempted by NRC.

Pg. 145, Sect. 7.4.12 - Base Load Electric Generating Stations - Fossil

The CMP reads:

"New or expanded non-nuclear fossil fueled plants will be directed toward relatively built-up areas, consistent with applicable air and water quality standards."

We find these words, at best, to be confusing and possibly directed to disallowing fossil fueled stations in the coastal area. Since the provisions of the Clean Air Act may prevent the siting of coal plants in built up areas, this CMP policy may be tantamount to ruling out the fossil option. Public Service has no commitment or bias for any methodology or technology regarding the selection of future energy sources. While our current studies show nuclear to be more economic and environmentally acceptable than fossil plants at present, future circumstances might dictate the desirability of allowing the fossil fuel option to remain open. This fossil option, however, would be difficult to accommodate considering the policy to restrict fossil plants to built-up areas, with the potential of air quality compliance problems.

For example, under the Clean Air Act and its Amendments of 1977, the relatively built-up areas to which fossil plants are directed undoubtedly will be declared "non-attainment" air quality areas for certain pollutants. Under this classification major new sources of air emissions can only be constructed under a trade-off emission policy which requires that emissions from a new source must be more than balanced by a reduction in emissions from existing sources. Combining the non-attainment policy and the prevention of significant deterioration policy with the Coastal Management Plan would appear to severely limit, if not prohibit, construction of new major fossil sources statewide.

We suggest that Paragraph 7.4.12 be reworded as follows:

"New or expanded fossil fuel electric generating stations powered by coal and oil may be sited in areas where a balancing of costs and environmental factors indicate acceptability."

Pg. 145, Sect. 7.4.13 - Nuclear Electric Generating Stations

This entire section is written in a biased manner, implying that nuclear plants are unsafe. President Carter has indicated that nuclear power plants must play a key role in solving the nation's energy crisis. The excellent safety record of nuclear power stations is a documented fact. As facilities of national as well as regional benefit, their use and licensing should be expedited and encouraged rather than discouraged.

We suggest that section 7.4.13 be deleted in its entirety and replaced by the following underlined sections:

"Nuclear electric generating stations will only be approved in the coastal zone if the applicant presents sufficient evidence to the Department of Environmental Protection to demonstrate:"

"(a) that the disposal of the spent fuel will comply with all safety and environmental requirements of the Nuclear Regulatory Commission or other requirements which have been established after presentation of evidence that such requirements are reasonable."

P. S. Comment:

The disposal of spent fuel from nuclear plants poses no unacceptable safety or environmental hazards to New Jersey residents. Furthermore, the topic of spent fuel is unrelated to the scope of the report. Spent fuel disposition is strictly regulated by the NRC in facilities which are separately licensed from generating stations. No depository is planned nor expected to be built in New Jersey. ERDA is looking for acceptable sites in 45 of the 48 mainland states not including New Jersey. Again, a state review is unnecessarily duplicative. Furthermore, the court has ruled that the federal government has preemption in this area.

Public Interest Research Group v. State 152 NJ Super 191 Cirt. denied 1977. The Coastal Area Facility Review Act (CAFRA) N.J.S.A. 13:19-11, requires the Department of Environmental Protection (DEP) to certify that the proposed method for radioactive waste disposal will be safe and conforms to AEC standards before issuing a nuclear plant construction permit. However, the Court ruled that the federal government has preempted all regulation involving safety precautions from radiation, and that DEP has no power under CAFRA to judge the ability of a facility to protect against the hazards of radioactivity as long as NRC standards are met.

"(b) that the facilities are included in the Department of Energy Master Plan or they are important to the public health, welfare, and economic well-being of New Jersey residents."

P. S. Comment:

It was shown during the winter of 1976-77 that lack of sufficient energy (gas) can have a significant adverse impact on the welfare and economic well-being of New Jersey residents. The same thing holds true for electrical energy. If this state can't provide an adequate growth climate in all energy areas, it will stagnate and continue to lose industry to the ultimate detriment of all who live here. Nuclear energy provides the safest and least expensive means to meet the State's needs now and in the immediate future.

(c) This paragraph regarding "population density" should be deleted entirely for the following reasons.

P. S. Comment:

Expected population increases over the operational lifetime of a nuclear facility are required to be factored into the safety analysis prepared by an applicant and submitted to the Nuclear Regulatory Commission. Furthermore, DEP is already involved in land use controls surrounding nuclear stations to insure that population projections are not significantly exceeded during the facility lifetime. NRC also requires emergency evacuation plans for every nuclear facility. Since DEP through this program, the CAFRA permit process, and other land use permits has control of land development in coastal areas, this criteria is superfluous and should be deleted.

In addition, since the population density is a safety criteria designed to protect the public against radiation dangers, it is preempted by the NRC. REF: Public Interest Research Group v. State 152 NJ Super 191 Cirt. denied (1977) regarding The Coastal Area Facility Review Act (CAFRA) N.J.S.A. 13:19-11. The Court ruled that the Federal Government has preempted all regulation involving safety precautions from radiation, and that DEP has no power under CAFRA to judge the ability of a facility to protect against the hazards of radioactivity as long as NRC standards are met.

"(d) that the proposed nuclear facility has been proven to the Department of Energy as the most effective alternative from a cost/benefit standpoint."

P. S. Comment:

The Company believes that the DEP does not have the authority and jurisdiction to consider feasibility and economics. The New Jersey Legislature has mandated that the DOE shall have that jurisdiction and mandated that it is solely within that Department's responsibility. To quote the legislation creating the DOE, N. J. Laws of 1977, Chapter 146, Section 2 reads:

"The Legislature hereby finds and determines that a secure, stable, and adequate supply of energy at reasonable prices is vital to the State's economy and to the public health, safety, and welfare; that this State is threatened by the prospect of both near-and long-term energy shortages; that the existing dispersion of responsibilities with respect to energy and energy related matters among various State departments, divisions, agencies, and commissions inhibits comprehensive and effective planning for our future energy needs;...

"The Legislature further finds and determines that only an agency with comprehensive powers can collect, collate, and analyze the information necessary to determine the amount of energy that is or may be available....

"...contribute to the proper siting of energy facilities necessary to serve the public interest; coordinate New Jersey's energy policies and actions with Federal energy policies....

"The Legislature, therefore, declares it to be in the best interest of the citizens of this State to establish a principal department in the Executive Branch of State Government to coordinate authority, regulation and planning by the State in energy related matters."

And Section 3 reads:

"'Department' means the Department of Energy established by this act;"

The Company believes, therefore, that DEP is acting outside of its authority in stating stipulations or criteria concerning "feasible and economical energy alternative" to nuclear stations.

Page 146, under "Rationale", last para.

The Atlantic Generating Station application was docketed for licensing review with the federal government for OPS on June 15, 1973 (Docket No. STN-50-437). The PSE&G application was docketed (No. STN 50-477 and 478) on March 1, 1974. Consequently, the statement that the AGS application was filed since 1975 appears to be in error.

Page 180 and 181 - Nuclear

The same nuclear stipulations commented on above appear again verbatim on page 180 and 181 of the N.J. CMP and should also be accordingly modified in the identical way suggested for pages 145 and 146 above.

Sect. 7.4.14 - Liquefied Natural Gas (LNG) Pg. 146

The CMP reads:

The location of terminals for transferring Liquefied Natural Gas (LNG) is discouraged in the Bay and Ocean Shore Segment until: (a) rigorous and consistent siting criteria are established, (b) the risks inherent in tankering LNG along New Jersey's rivers and waters and transferring LNG onshore have been sufficiently analyzed and minimized, and (c) the Federal Energy Regulatory Commission responds affirmatively to the May 1976 petition by New Jersey for the issuance of siting criteria that adequately consider the safety hazards associated with this energy technology. Even if such criteria were established, LNG terminals are nevertheless acceptable only at sites remote from population centers.

Rationale

LNG facilities have been proposed in recent years for Deptford and Logan Townships in Gloucester County, and on Staten Island, New York from where the LNG would be pipelined to New Jersey. Because tankering, transfer and storage of LNG pose significant risks to safety and health and the environment (which may not necessarily be restricted to one state), New Jersey recommends that the siting of LNG facilities be treated on an interstate regional basis.

P. S. Comment:

It appears that the CMP maintains the basic assumption that LNG projects are of such a hazardous nature that they are unacceptable. As we've repeatedly pointed out, LNG projects exist throughout the world operating safely and with minimal environmental impact. A general siting criteria should not be established for LNG facilities.

The N. J. CMP discourages liquefied natural gas (LNG) facilities in the coastal zone. As stated in the National Energy Plan quote on page 181 of the N. J. CMP, LNG "can be an important supply option through the

mid 1980's and beyond until additional gas supplies may become available," and "the previous Energy Resources Council guidelines are being replaced with a more flexible policy that sets up no upper limit on LNG imports."

Nevertheless, the N.J. CMP again on page 146 states "the location of LNG terminals is discouraged in the Bay and Ocean Shore Segment until---." On page 181 it states "No LNG terminal shall be approved in the coastal zone until---." In both cases what follows next in the N. J. CMP is a series of restrictive and federally preempted conditions on LNG which could effectively preclude its utilization in the coastal zone.

It is impractical for the NJDEP to take the position that no LNG terminals shall be approved until the FPC (now FERC) responds to the motion of New Jersey to establish such siting criteria. First of all, the FPC has stated on the record in LNG proceedings repeatedly that it will consider siting for LNG facilities only on a case-by-case basis. Secondly, the petition filed by New Jersey two years ago for the issuance of siting criteria will probably never be answered because it was procedurally deficient and impermissible.

The siting, safety, and operation of LNG facilities to be used in interstate commerce are under the express authority of the Federal Energy Regulatory Commission (FERC) and the Federal Department of Transportation, Office of Pipeline Safety Operations. Both have pre-emptive authority over all other agencies, including federal and state: FERC with respect to site selection for proposed facilities under the Natural Gas Act and the Office of Pipeline Safety Operations with respect to safety of LNG facilities and pipeline facilities under the Natural Gas Pipeline Safety Act of 1968. Any attempt by New Jersey and/or other states, either singly or together to regulate siting or set standards for the safety of LNG facilities, would be an unconstitutional interference with interstate commerce.*

In summary, for New Jersey to recommend that siting be treated on a regional basis is unrealistic in view of the abovementioned pre-emptive authority and can only result in delays and the loss to New Jersey of this nonpolluting fuel.

Sect. 7.4.14, Page 146

The LNG facility referred to on Staten Island is not a "proposed" facility as listed but rather is an actually existing facility on which approximately \$180 million in funds have been expended.

Page 181 - LNG

The same LNG stipulations commented on above appear again verbatim on page 181 of the N. J. CMP and should also be accordingly modified in the identical way suggested for page 146.

* Transcontinental Gas Pipeline Corporation v. Hackensack Meadowlands Development Commission, 464 F.2d 1358 (3rd Cir. 1972), cert. den. 409 U.S. 118 (1973); Tenneco Inc. v. Public Service Commission of West Virginia, 489 F.2d 334 (4th Cir., 1973), cert. den. 417 U.S. 946 (1974); United Gas Pipeline Co. v. Terrebonne Parish, 319 F. Supp. 1138 (E.D. La., 1970), aff'd. 445 F.2d 301 (5th Cir. 1971).

Dept. of Energy - Page 170:

The Coastal Management Program reads:

For the coastal zone, this means that the Department must have an opportunity to comment on any energy facility permit application pending before DEP. If it disagrees with the decision, the Department of Energy may request that the Governor establish an Energy Facility Review Board composed of the Director of DOE's Division of Energy Planning and Conservation, the Commissioner of DEP and a third member appointed by the Governor. The Review Board will make the final decision on the energy facility permit application. A draft memorandum of understanding between DEP and DOE which will establish the procedures necessary to insure coordination and consistency is included in this document as Appendix J.

P. S. Comments:

The makeup of this board is not broad enough to provide diverse and complete input. The entire burden to arbitrate any differences between the Department of Environmental Protection and the Department of Energy would fall on one individual appointed by the Governor. We suggest that consideration be given to provide a larger representation for handling areas of disagreement, including input from the Department of Labor and Industry and the Department of Community Affairs. This would be in keeping with the precedent set in establishing the Coastal Area Review Board (Chapter 185 P.L. 1973 Section 13). We suggest that the second half of the above statement be reworded to read as follows:

"...and if it disagrees with the decision, it may request that the Governor establish an Energy Facility Review Board composed of a representative of the Department of Energy, the Department of Environmental Protection, the Department of Labor and Industry, the Department of Community Affairs, plus a fifth member appointed by the Governor."



Unimin Corporation
Greenwich Office Park 4
Greenwich, Conn. 06830
203-661-0011

Millville, New Jersey
Gore, Virginia
Crystal City, Missouri
Ottawa, Minnesota

June 30, 1978

Mr. David Kinsey
State of New Jersey
Department of Environmental Protection
Office Coastal Zone Management
P. O. Box 1889
Trenton, NJ 08625

Dear Mr. Kinsey:

Thank you very much for the opportunity afforded by you and Mr. Wiener on Monday, June 26, 1978, to present our comments on the Draft Environmental Impact Statement recently issued concerning the Coastal Management Program Bay & Shore Segment. I felt the meeting was worthwhile and informative and trust you felt the same.

Through this letter I wish to once again state the position of UNIMIN CORPORATION regarding Section 7.6.2 on Page 148 of the Environmental Impact Statement. The statement as written presents a negative picture of mining operations in the area and fails to recognize certain basic facts relating to mining in general.

As was presented at the meeting on Monday, a mining location is not selected on the basis of geography, but rather on geology. The location is where it is because that is where "Mother Nature" decided to place the material.

Section 7.6.2 fails to recognize this fact since it attempts to "draw a line" within which mining cannot take place without recognizing the fact that it cannot take place outside of the line because this mineral deposit is not there! High purity silica sands are not a common geological phenomenon. Therefore, one must mine wherever the deposit is.



Mr. David Kinsey
June 30, 1978
Page 2

Therefore, I personally urge that you consider revising the statements presented in Sections 7.6.2, Page 148 to provide for well managed regulated mining in these coastal areas. Responsible reclamation programs are a much better alternative than elimination of mining from the southern New Jersey region.

Also, if your department should desire more information on reclamation plans and processes, please feel free to contact me at your earliest convenience, and I will arrange for my technical people to meet with you.

Sincerely,

UNIMIN CORPORATION

Kenneth A. Brunk
Vice President Technology

KAB:LJ

PROPOSED

7.6.2

Mining is an acceptable land use provided that it is conducted with an approved reclamation plan. Mining is prohibited in lower water's edge areas but is otherwise exempt from the Location Policies (Section 6.0).

Rationale

Mining contributes many millions of dollars to the state's economy and through the careful planning of mining operations, aesthetic and environmental values can be protected. It is further recognized that mineral resource development is a valid and important land use to New Jersey and that mineral resources occur only in certain limited areas. Mineral extraction certainly should not represent a terminal use of the land. Therefore, it is important in the planning process to make adequate provisions so as to reasonably allow for the recovery of such valuable mineral resources. Land properly restructured and revegetated following mineral extraction can serve many useful purposes. In such instances these properties can be converted to attractive lakes, home sites, recreation centers and other useful purposes.

2111 River Avenue
Camden, New Jersey 08105
June 15, 1978

Office of Coastal Zone Management
Department of Environmental Protection
P. O. Box 1889
Trenton, New Jersey 18625

Gentlemen:

After all the effort put out on our part to meet the requirements of the New Jersey D. E. P., and , after reviewing New Jersey Coastal Management Program, Bay & Ocean Shore segment and appreciating the effort put out by your department to present a workable program, and after attending the public hearing held June 13, 1978 in Bridgeton, we feel we must express our views for the record also.

We have tried various ways and means to try to impress upon the D. E. P. the necessity of simplifying application of the rules and regulations for obtaining a riparian grant, lease, or license and a construction permit needed for minor repair and maintenance of the various docks, piers, walkways, catwalks, etc. of private citizens and home owners along the Delaware Bay.

Our repeated efforts have only led to the involvement of persons less informed than we are, who refer us back to the D. E. P. The riparian law of New Jersey is tough. There is no getting away from it. However, its implementation, to a private individual, with no desire to make any kind of profit or to engage in any form of business is ridiculous.

It is our understanding that the intent of the C.Z.M. act was not to propose hardship on the private individual but to prevent wanton damage to our coastal zone by commercial or industrial developments. After reviewing the management program, Bay and Ocean shore segment, we can only conclude that you are concerned only with the large developers and commercial enterprises.

The private home and property owner are not even mentioned, therefore not considered. Everything is geared to the concern of big business--large developments, acres of land, not the small 50 x 150 ft. lot owner who happens to be on the waterfront. He is the individual who must constantly fight whims of nature to keep and maintain that small piece of property.

Ice and storm damage are yearly occurrences and when permits must be applied for year after year at rates set for developers who can write it off as a business expense, the logic of your rules and regulations becomes questionable. Private home owners do not have access to lawyers or surveyors or engineers as large companies do. These services are costly. Your rules and regulations will not accept less than certified forms and sketches and notarized legal documents. All this BEFORE we can even begin to apply for a grant, lease or license.

We are hard working, average citizens trying to maintain and keep what we own or thought we owned. We are lawabiding taxpayers willing to do what is required of us and therefore trying to reason with you to include some simple, easy to follow regulations for our benefit.

It is already evident that big business has had an influence on your program. One has only to read ' "If your construction project exceeds \$500,000 the State of New Jersey has a unique service for you" '. Wouldn't it be equally justifiable to be able to read "If your construction project is less than \$5000, the State of New Jersey has a unique service for you. Call our small claims department located in your area, manned by people familiar with your type of construction with minimal cost to you " '?

We feel these are the thoughts of hundreds of property owners all along the Delaware Bay. We are tangled in bureaucratic regulations and red tape. We need someone to look at our side from our side, before hard and fast rules are set.

Perhaps this letter will set some gears in motion. Thank you for taking time to read it.

Sincerely yours,

Mary A. Dowhy
John Dowhy

Mary A. Dowhy

John Dowhy

Members Bay Point Rod & Gun Club Assoc.

28 Paris Road, Bay Point, N.J. (summer residence)

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
DIVISION OF MARINE SERVICES
OFFICE OF COASTAL ZONE
MANAGEMENT

IN THE MATTER OF NEW JERSEY :
COASTAL MANAGEMENT PROGRAM - :
BAY AND OCEAN SEGMENT - :
DRAFT ENVIRONMENTAL IMPACT :
STATEMENT. :

State Museum
John Fitch Plaza
Trenton, New Jersey
June 15, 1978
Thursday, 10 a.m.

B E F O R E:

DAVID N. KINSEY, CHIEF,
OFFICE OF COASTAL ZONE MANAGEMENT.

RICHARD GARDNER,
OFFICE OF COASTAL ZONE MANAGEMENT,
U. S. DEPARTMENT OF COMMERCE.

BY: ANNA MARIE SANFORD,
CERTIFIED SHORTHAND
REPORTER.

SILVER & RENZI REPORTING SERVICE
CERTIFIED SHORTHAND REPORTERS
824 WEST STATE STREET
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1 MR. GARDNER: Good morning,
 2 ladies and gentlemen. I would like to
 3 welcome you to this joint federal and
 4 state public hearing which has been called
 5 for the dual purpose of receiving
 6 testimony on the Draft Environmental
 7 Impact Statement and the proposed
 8 adoption of Chapter 3 on Coastal Resource
 9 and Development Policies as an administra-
 10 tive rule for the State of New Jersey
 11 Coastal Management Program for the Bay
 12 and Ocean Shore Segment.

13 My name is Richard Gardner and
 14 I represent the Office of Coastal Zone
 15 Management, an arm of the National
 16 Oceanic and Atmospheric Administration
 17 in the United States Department of
 18 Commerce. On my left is David Kinsey of
 19 the Office of Coastal Zone Management for
 20 the New Jersey Department of Environmental
 21 Protection.

22 As a prelude to the more formal
 23 part of this hearing and in order to
 24 introduce the objectives and content of
 25 the New Jersey Program, we will first

1 have a brief slide presentation prepared
 2 by the New Jersey Department of Environ-
 3 mental Protection.

4 (Whereupon the slide
 5 presentation was shown.)

6 MR. GARDNER: With that
 7 introduction, I would like to describe a
 8 little bit about the purpose of this
 9 hearing on the federal prospective. This
 10 hearing is being held partially as a part
 11 of procedures of the National Environmental
 12 Policy Act of 1969, as indicated in the
 13 slide presentation, which calls for the
 14 preparation of draft and final environmental
 15 impact statements concerning proposed major
 16 federal actions which may significantly
 17 affect the human environment.

18 As part of the process of
 19 considering environmental effects, one or
 20 more public hearings may be called in
 21 order to receive public testimony and
 22 this is one of three such public hearings
 23 on this Draft Environmental Impact State-
 24 ment for the New Jersey Coastal Management
 25 Program for the Bay and Ocean Shore

1 Segment.

2 The major federal action being
3 considered here is federal approval of the
4 Coastal Program for the Bay and Ocean
5 Shore Segment for the State of New Jersey
6 by the Assistant Administrator for Coastal
7 Zone Management on behalf of the United
8 States Secretary of Commerce under the
9 terms of Section 306(h) of the Coastal
10 Zone Management Act of 1972, as amended.

11 The federal approval of the
12 New Jersey Program would allow substantial
13 federal program administration grants to
14 be awarded to the state and, in addition,
15 would require that federal actions be
16 consistent with the terms of the state's
17 program.

18 As pointed out in the slide
19 presentation, the program being presented
20 here for federal approval covers only a
21 portion of the state's shoreline along
22 Delaware Bay, roughly south of the Delaware
23 Memorial Bridge, along the Atlantic Shore
24 from Cape May to Sandy Hook and along the
25 south shore of Raritan Bay. While this

1 segment includes approximately 80 per cent
2 of the state's coastal area, it does not
3 include areas along the Delaware and
4 Hudson Rivers and other waterways which
5 must be included in a complete state
6 coastal management program.

7 Section 306(h) of the Coastal
8 Zone Management Act specifically permits
9 federal approval of a program for a
10 segment of the state's coastal area with
11 the proviso that programs for all segments
12 be coordinated and integrated into a
13 single unified program as soon as is
14 reasonably practical.

15 The Federal Office of Coastal
16 Zone Management has printed the Draft
17 Environmental Impact Statement which
18 contains in it the New Jersey Coastal
19 Program for this segment. The document
20 contains, in addition to a description of
21 the state's program and an analysis of
22 the practical impacts of the New Jersey
23 Program, a listing of the alternatives
24 to the proposed action and identification
25 of unavoidable environmental effects,

1 a discussion of long-range versus short-
2 term effects and a listing of irreversible
3 or irretrievable commitment of resources
4 resulting from program approval. In
5 addition, it includes a number of
6 appendices containing detailed information
7 and legal documents referred to in the
8 program.

9 Before this Draft Environmental
10 Impact Statement was issued, the Federal
11 Office of Zone Management prepared a
12 preliminary determination that this
13 segment of the New Jersey Program could
14 be approved. A period of public review of
15 the document began on May 5th, 1978 when
16 a notice of public availability was
17 published in the Federal Register. The
18 document was distributed to federal, state,
19 county and municipal governments and to
20 national special interests groups during
21 the month of May.

22 In addition, copies were sent
23 to all New Jersey depositories and
24 libraries in this segment of New Jersey.
25 Additional copies are available on the desk

1 outside the auditorium or can be obtained
2 from the Federal Office of Coastal Zone
3 Management in Washington or from the New
4 Jersey Department of Environmental
5 Protection here in Trenton.

6 Newspaper advertisements
7 announcing the availability of documents
8 and the date and location of these public
9 hearings were placed in the Atlantic City
10 Press, the Trenton Times, the Trentonian,
11 the Newark Star Ledger, the Vineland
12 Times Journal and the Toms River Daily
13 Observer during the last week in May.
14 A notice of this public hearing was also
15 printed in the Federal Register on May
16 16th, 1978.

17 The period for receiving public
18 comments on this document closes on June
19 19th, 1978. That's next Monday. All
20 comments received at this hearing and all
21 written comments received by June 19th
22 will be considered fully in a final
23 determination on federal approval of the
24 New Jersey Coastal Management Program for
25 the Bay and Ocean Shore Segment.

1 Written comments can be sent to
2 Katherine Cousins, Office of Coastal Zone
3 Management, 3300 Whitehaven Street, Northwest,
4 Washington, D. C. 20235, and I'll have that
5 address available for anybody who wants it
6 after the hearing.

7 It's perhaps appropriate to say
8 a word here about the role of the federal
9 government and that of the state government
10 in coastal management.

11 The basic purpose of the Coastal
12 Zone Management Act is to encourage and
13 assist coastal states to develop and carry
14 out coherent programs for the protection
15 and wise management of the lands and waters
16 of the state's coastal areas. States often
17 acting in concert with local units of
18 government are the primary focus of this
19 effort.

20 Not only is it the state's
21 prerogative to participate in the program
22 or not as it wishes, because this is a
23 voluntary program, but state coastal
24 management programs are built upon legal
25 authorities contained in state legislation.

1 Implementation of these programs, likewise,
2 is the responsibility of state and often
3 local government.

4 The federal government offers
5 two principal incentives for states to
6 participate in coastal management. First,
7 it makes funds available both to develop
8 programs which meet certain minimum
9 criteria established in federal law and
10 upon federal approval, to carry those
11 programs out.

12 Second, it requires that the
13 actions of federal agencies must be
14 carried out in a manner that is consistent
15 with the terms of a coastal state-approved
16 program.

17 Federal approval is considered
18 on the basis of completion of a number of
19 criteria contained in the Coastal Zone
20 Management Act which address primarily
21 the process by which the state's program
22 was developed, but also address national
23 interests, concerns and assurances that
24 sufficient state legal authority exists
25 to carry out the program.

1 Briefly stated, it is the intent
2 of the Coastal Zone Management Act that a
3 unified set of enforceable policies be
4 applied to the use of vital coastal resources
5 and that those policies apply to local,
6 state and private and federal actions.

7 In order to explain the State of
8 New Jersey's portion of this hearing, at
9 this time, I would like to turn the meeting
10 over to David Kinsey who holds principal
11 responsibility for the development and
12 administration of the coastal program.

13 MR. KINSEY: On behalf of the
14 Commissioner, let me welcome you to this
15 third in a series of three formal hearings
16 on the New Jersey Coastal Program for the
17 Bay and Ocean Shore Segment.

18 I would like to first stress that
19 Chapter 3 of the state program, the Coastal
20 Resource and Development Policies have
21 been proposed for adoption as a formal
22 administrative rule under New Jersey's
23 Administrative Procedures Act. So notice
24 of consideration of adoption appeared in
25 the New Jersey Register in May, 1978.

1 The comment period on Chapter 3
2 as part of the state's rule-making process
3 closes July 5th. However, at the same time,
4 the State Department of Environmental
5 Protection responsdly would appreciate
6 comments on the entire document, but it is
7 important to note that the deadline for
8 comments on the Draft Environmental Impact
9 Statement is next Monday, June 19th.

10 While this is a formal public
11 hearing and we are transcribing comments
12 with a Court Stenographer, this is but one
13 of the various formats that we have used in
14 the course of the coastal planning process
15 and will continue to use a wide range of
16 formats. Various meetings and workshops
17 have taken place to date and will continue
18 to take place. My staff is available to
19 arrange appropriate workshops with interest
20 groups, user groups and individuals and to
21 answer questions that may arise in the
22 course of your review of this document.

23 This morning, I will attempt to
24 answer some of the comments that may be
25 addressed here, but a more thorough set

1 of responses will be made in the course of
2 preparing the Final Environmental Impact
3 Statement jointly by NOAA and the State of
4 New Jersey.

5 I would also like to acknowledge
6 there is a fair number of colleagues from
7 other agencies, for example, representatives
8 from the Department of Energy, the Department
9 of Labor and Industry, the Department of
10 Community Affairs and the Health Department.

11 With that, I will return it to
12 you, Mr. Gardner.

13 MR. GARDNER: Thank you, Mr.
14 Kinsey.

15 Just a couple of ground rules
16 that we will use for the carrying out of
17 this hearing. I think everybody has been
18 asked to sign in and sign an attendance
19 card and indicate if they would like to
20 make a statement. I believe I have most
21 of them up here.

22 The speakers are to be heard on
23 a first-come basis. Statements should
24 be limited to 10 minutes and the federal
25 and state staff here may wish to ask any

1 questions following the presentation of
2 his or her statement.

3 As indicated, a verbatim trans-
4 cript of this hearing is being made. If
5 you do have a prepared statement, I would
6 appreciate a copy for our records.

7 Speakers are asked to come to
8 the podium on the stage here and speak
9 clearly so that everyone can hear. I
10 think the public address system is pretty
11 good here. I have also been requested to
12 ask that there be no smoking at this meeting.

13 It is important to note that
14 this hearing is for the purpose of
15 receiving your comments in general. There
16 will be no rebuttal comments on behalf of
17 either the Coastal Zone Management, the
18 federal office or the state office, although
19 we may want to make some clarifying remarks
20 if that is appropriate.

21 Are there any questions regarding
22 the procedures that we are going to use
23 this morning? If not, I think we will
24 proceed directly into the receipt of
25 testimony.

1 Our first speaker who has
2 indicated interest in making a presentation
3 is James A. Shissias of PSE&G. That is
4 Public Service Electric and Gas Company.

5 Mr. Shissias?

6 MR. SHISSIAS: Do you have copies
7 of mine?

8 MR. GARDNER: I have a copy of
9 your testimony.

10 MR. SHISSIAS: Good morning. I
11 am James A. Shissias, General Manager of
12 Environmental Affairs of Public Service
13 Electric and Gas Company. The company
14 welcomes the opportunity to present this
15 statement on the recently released
16 "Coastal Management Program" for New Jersey.
17 In addition to my general statement, we
18 have submitted detailed specific comments
19 for your review. These comments are
20 attached to the oral statement.

21 Before I begin to discuss the
22 contents of the Coastal Management Program,
23 I would like to express the Company's
24 concern with the brief time allowed for
25 review by the state of the comments

1 submitted at each phase of the public
2 comment procedure over the last several
3 months. We believe that, for a subject
4 of this importance, insufficient time has
5 been provided for proper consideration of
6 all relevant factors and of the comments
7 submitted from the public sector.

8 It was disappointing, procedurally,
9 that earlier source documents for the
10 "Coastal Management Strategy" which was
11 first released in September of 1977 were
12 not circulated for comment until after
13 the "Strategy" itself was formulated and
14 published. Procedurally, the time span
15 given industry to respond to these many
16 documents was insufficient.

17 In fact, in several instances,
18 the abbreviated time schedule allowed to
19 incorporate public comments before a new
20 version or draft was issued precluded the
21 consideration by the Department of
22 Environmental Protection of comments
23 submitted on earlier versions.

24 In spite of all that previously
25 has been submitted by our Company and

1 others on this Program, it still contains
2 many negative provisions which tend to
3 specifically discourage nuclear power and
4 LNG facilities.

5 Thus, in our opinion, the
6 Coastal Management Program is still in
7 conflict with both the spirit and intent
8 of Congress when it formulated and passed
9 the Coastal Zone Management Act of 1972
10 and the 1976 Amendments.

11 Specifically, the Act stated
12 that, "there is a national interest in the
13 effective management, beneficial use,
14 protection and development of the coastal
15 zone."

16 The Coastal Management Program
17 proffered does not provide adequate
18 development prospects, in particular with
19 respect to energy facilities. We find it
20 disturbing that the objectives of Congress
21 for the beneficial use and development of
22 the coastal zone in the national interest
23 have been de-emphasized.

24 We believe that the New Jersey
25 Coastal Management Program does not

1 adequately provide for the national and
2 regional interests regarding electric
3 power and LNG energy facility siting in
4 New Jersey, and in fact discriminates,
5 discourages, and effectively excludes
6 those vital energy facilities from the
7 coastal zone.

8 Furthermore, when Congress
9 amended the Act in 1976, it stressed the
10 "national objective of attaining a greater
11 degree of energy self-sufficiency...
12 resulting from new or expanded energy
13 activity in or affecting the coastal
14 zone."

15 In this regard, nuclear
16 generation facilities qualify as being
17 in the national interest by providing
18 large scale regional electric power needs
19 to the state as well as to numerous
20 federal military installations.

21 As defined on page 178 of the
22 Coastal Management Program, another
23 overriding objective in the national
24 interest is to "reduce dependents on
25 foreign imported oil and vulnerability

1 to supply interruptions."

2 Each nuclear plant can save
3 approximately 12 million barrels of foreign
4 oil a year. Nuclear plants currently
5 operating in New Jersey actually saved
6 over 790 million gallons of oil in 1977,
7 and an equivalent amount in 1976. These
8 combined quantities nearly equal the total
9 amount of heavy residual oil used in the
10 entire State of New Jersey in 1975.

11 Nuclear electric facilities also
12 qualify as uses of "Regional Benefit" under
13 the New Jersey Coastal Management Program,
14 as do liquified natural gas facilities.

15 As defined on page 192 of the
16 State Program: "uses of regional benefit
17 include energy facilities using oil, gas,
18 electric, and renewable sources of energy,
19 et cetera."

20 According to the federal
21 Coastal Zone Management Act, subsection
22 306(e)(2) quoted on page 192 of the State
23 Program, the state must provide "a method
24 of assuring that local land and water use
25 regulations within the coastal zone do not

1 unreasonably restrict or exclude land and
2 water uses of regional benefit."

3 Yet, the state itself, through
4 the provisions of its Coastal Program,
5 tends to exclude these facilities from the
6 coastal zone from a practical standpoint.

7 We do not believe the Office of
8 Coastal Zone Management implementing
9 regulations and therefore the New Jersey
10 Program conform to the goals of the
11 national Coastal Zone Management Act or
12 to the intent of Congress in applying
13 the "federal consistency provision" to
14 other than new facilities.

15 The present permit renewal
16 process for existing facilities effectively
17 brings all previously existing facilities
18 in the coastal zone, which require
19 periodic permit renewal, under the New
20 Jersey Program. This could cause consider-
21 able cost to existing facilities which
22 may have heretofore been "grandfathered"
23 from compliance with earlier laws written
24 to specifically avoid this economic
25 hardship.

1 In view of the state's substantial
2 future energy needs, it is essential that
3 all viable energy options be kept open.
4 We simply cannot afford to peremptorily
5 eliminate any valid options.

6 Furthermore, to assure rational
7 decisionmaking, each option must in turn
8 be considered on the true economic and
9 environmental merits.

10 In meeting future energy
11 requirements, it is important to recognize
12 that the Company has no commitment nor
13 bias for any technology. We are committed
14 to serving our customers' needs at the
15 most reasonable costs and with a proper
16 concern for the environment.

17 Our current studies show nuclear
18 to be clearly more economic and more
19 environmentally acceptable than fossil
20 fueled stations. Still, prudence suggests
21 that the fossil fuel option remain open.

22 This Program, however, makes it
23 very difficult, if not impossible, to
24 maintain this option. It directs future
25 expansion of fossil fuel stations into

1 built-up areas. As an individual strategy
2 this might appear acceptable.

3 However, the restrictions of
4 the Coastal Management Program when
5 combined with the provisions under the
6 Clean Air Act regarding nonattainment
7 areas, emissions trade-off policy, and
8 prevention of significant deterioration
9 could make the siting of fossil fuel
10 plants virtually impossible any where in
11 New Jersey.

12 We are disturbed that each of
13 the many environmental protection
14 regulations, when analyzed individually,
15 may be determined to be logical and worthy
16 of support, but when viewed collectively,
17 may result in excessive restrictions.
18 It is likely that this program could
19 eliminate both the nuclear and fossil
20 options leaving only the exotic energy
21 types available. These exotic sources,
22 which are encouraged in the report, are
23 neither technically nor economically
24 justified.

25 Moving on to another energy

1 technology, it appears that the Coastal
 2 Management Program still maintains the
 3 mistaken assumption that LNG is of such a
 4 hazardous nature that it is unacceptable.
 5 I would like to remind you that such
 6 projects are operating safely both in this
 7 country and throughout the world with
 8 little or minimal environmental impact.

9 The Department of Environmental
 10 Protection's position to deny approval
 11 until the FPC, now the Federal Energy
 12 Regulatory Commission, responds to the
 13 motion of New Jersey to establish a
 14 general siting criteria, is impractical
 15 for two reasons.

16 First, the FPC has stated on
 17 the record that it will consider siting
 18 for LNG facilities only on a case-by-case
 19 basis.

20 Secondly, the petition filed by
 21 New Jersey two years ago for the issuance
 22 of siting criteria will probably never be
 23 answered because it was procedurally
 24 deficient and impermissible.

25 The Company believes that any

1 attempt by New Jersey and/or other states,
 2 either singularly or together, to regulate
 3 siting or set standards for the safety of
 4 LNG facilities would be preempted and is
 5 an unconstitutional interference with
 6 interstate commerce.

7 There are a number of legal
 8 issues which appear to have been virtually
 9 ignored by the State Office of Coastal
 10 Zone Management in putting together this
 11 Coastal Program.

12 These deal with the question of
 13 the federal government having preemptive
 14 regulations concerning the handling of
 15 radioactive waste, safety precautions from
 16 radiation, and the siting of LNG facilities;
 17 the consistency of the New Jersey Program
 18 with the intent of Congress and the
 19 national Coastal Zone Management Act;
 20 procedural questions; inadequate statutory
 21 authority; as well as other issues.

22 These are specifically detailed
 23 in the "Legal Comments" section of the
 24 material we have submitted. They must be
 25 addressed by the New Jersey Coastal

1 Management Program before submission of its
2 plan for approval.

3 In summary, it should be emphasized
4 that siting flexibility is needed and must
5 be provided in the final Program. If the
6 state is to continue to prosper, additional
7 sites for energy facilities will be needed.

8 We feel that if siting of energy
9 facilities is reviewed in a positive light,
10 it would be possible to set aside small
11 portions of the coastal area specifically
12 for vital energy uses. This affirmative
13 site specification by the Department of
14 Environmental Protection could go far toward
15 removing the uncertainty of energy
16 facility siting in the coastal zone.

17 In the course of reviewing the
18 Coastal Management Program for New Jersey,
19 we are concerned with the procedural
20 shortcomings of the review process, the
21 lack of adequate consideration of the
22 national interest in energy siting, the
23 discouragement and effective exclusion
24 of nuclear power and LNG facilities, the
25 impractical policy regarding fossil fueled

1 electric plants, the application of the
2 "federal consistency" provision to previous-
3 ly existing facilities, the legal and
4 federal preemptive issues, and the failure
5 to specify or earmark future sites in the
6 coastal zone for vitally needed energy
7 facilities.

8 We hope that the public hearing
9 and review process will serve to resolve
10 these problems. Consequently, we urge
11 that the State Program not be approved in
12 its present form by the Governor of New
13 Jersey. If this program is submitted by
14 the Governor to NOAA for federal approval
15 with its present provisions on nuclear
16 power and LNG, we strongly urge that it
17 be denied approval.

18 Thank you.

19 MR. GARDNER: Thank you, Mr.
20 Shissias.

21 Our next speaker is Mercedes
22 Johnson, representing Marine Trades
23 Association of New Jersey.

24 Miss Johnson.

25 MISS JOHNSON: Mr. Gardner, Mr.

1 Kinsey, ladies and gentlemen, the Marine
 2 Trades Association of New Jersey, represent-
 3 ing the state's recreational boating
 4 industry, is pleased to be a part of the
 5 ongoing planning process. We welcome the
 6 opportunity to comment on the Draft
 7 Environmental Statement, recognizing the
 8 Department of Environmental Protection is
 9 making an effort to consider coastal user
 10 input, as evidenced by the changes made in
 11 the coastal management program since the
 12 close of the comment period on the Coastal
 13 Management Strategy.

14 The Draft EIS is of utmost
 15 importance to our industry, as it is to
 16 all coastal users, from both a restraining
 17 and a nurturing standpoint. The program
 18 obviously puts restraints on the growth,
 19 and even maintenance of recreational
 20 boating in New Jersey and its supporting
 21 industry.

22 Properly applied, the program
 23 can also nurture recreational boating by
 24 providing for the most effective use of
 25 coastal land and by ensuring the continuance

1 of an environment compatible with clean,
 2 family recreation such as boating.

3 Because of the importance of the
 4 Draft Environmental Impact Statement to the
 5 coastal zone, we must object to the short
 6 period available for study and comment.
 7 A document that has taken so long to prepare
 8 and is of such far-reaching impact,
 9 deserves a longer period for study and the
 10 preparation of incisive comment.

11 For this reason, the Marine
 12 Trades Association's testimony is being
 13 prepared in two parts, this general verbal
 14 testimony and a written testimony, to be
 15 submitted later, which includes a revised
 16 version of our verbal testimony and an
 17 in-depth analysis of each segment of the
 18 statement that deals with or affects
 19 recreational boating.

20 We, in the association, see
 21 ourselves as realistic environmentalists,
 22 favoring environmental protection but
 23 also recognizing the need to balance that
 24 protection with economic realities. It
 25 is with that philosophy that we have

1 reviewed the Draft Environmental Impact
2 Statement.

3 On the whole, the Draft
4 Environmental Impact Statement is a well
5 thought-out document that reflects very
6 well on the ability and professionalism
7 of the staff that prepared it. Our major
8 criticisms lie with the negative approach
9 to management, a lack of working knowledge
10 of the uses regulated, and inconsistencies
11 and lack of clarity in some areas.

12 The Program is entirely too
13 negative. More attention must be given to
14 attracting and encouraging the uses
15 desirable for the coastal zone.

16 As stated in the Marine Trades
17 Association's response to the Coastal
18 Management Strategy for New Jersey, "New
19 Jersey has traditionally been oriented
20 towards solving problems through regulation.
21 This is evident in the policies. Prohibi-
22 ting and encouraging alone will not
23 provide for the coastal zone envisioned by
24 New Jersey's coastal zone planners.
25 Encouragement must become a more positive

1 approach. The state must actively assist
2 in the development and maintenance of those
3 private facilities that compliment the
4 state's goals for the coastal zone through
5 improved public access without serious
6 environmental degradation."

7 The association recognizes the
8 Office of Coastal Zone Management can not
9 serve as an industrial development agency,
10 but OCZM's regulatory philosophy must be
11 structured so as to be more inviting
12 rather than discouraging to acceptable
13 growth. We are pleased to see the Draft
14 Environmental Impact Statement is more
15 positive than the strategy, but it still
16 is not positive enough.

17 It is, unfortunately, obvious
18 that the program was conceived by
19 administrators who are not sufficiently in
20 touch with the situation as it exists in
21 the real-world environment. From a textbook
22 standpoint, the Program is workable. From
23 a real-world standpoint, there are
24 sufficient shortcomings to make it unwork-
25 able. Incorrect definitions, that of

1 "navigation channel" for example, and
 2 unrealistic water depths in various
 3 policies, cause the Program to lose
 4 credibility as well as to make it unwork-
 5 able. The association's written testimony
 6 will elaborate on these shortcomings.

7 Further evidence of the lack of
 8 real-world knowledge is the failure to
 9 treat certain elements of the environment
 10 as transient, changeable entities and a
 11 down-playing of economic impacts. Elements
 12 of the environment such as shellfish beds,
 13 grasses and sand are capable of change and
 14 movement and the policies must recognize
 15 this. It must also be recognized that the
 16 economic impacts of the Program are much
 17 more probable and much longer-term than
 18 predicted.

19 There are numerous inconsistencies
 20 and a widespread need for clear definitions.
 21 The inconsistencies exist both between
 22 individual policies and in basic philosophy.
 23 Is the Program to be specific, as the
 24 intent appears to be, or general as the
 25 frequent lack of definitions or details

1 would indicate?

2 In addition to the specific
 3 suggestions to be offered in written
 4 testimony, the Marine Trades Association
 5 has several general positive suggestions
 6 for revising the Draft Environmental
 7 Impact Statement and the proposed Coastal
 8 Zone Management Program.

9 Assistance in considering
 10 potential sites must be programmed. One
 11 of the restraints to desirable development
 12 in the coastal zone is the gamble involved
 13 in purchasing property or planning projects,
 14 not knowing whether necessary permits
 15 would be attainable. Some prepurchase or
 16 preplanning guidance is desirable including,
 17 perhaps, a general mapping of the coastal
 18 zone showing what uses would probably be
 19 acceptable in each area as well as what
 20 uses would probably not be acceptable.

21 Greater participation by people
 22 with direct working-knowledge in
 23 regulated uses must be included in drafting
 24 and applying policies and regulations.
 25 This can be accomplished through membership

1 on the Coastal Area Review Board or through
 2 the use of consultants from regulated
 3 industries in all decisions affecting those
 4 industries. The Program can not work if it
 5 is unable to recognize the day-to-day
 6 problems and realities of regulated uses.

7 Department of Environmental
 8 Protection permit procedures must be
 9 simplified. We agree with the need to
 10 protect the environment, but the process
 11 employed to do that is actually scaring
 12 away perfectly acceptable, perhaps
 13 beneficial, projects because of the
 14 economic and psychological strain caused
 15 by the permit process. Unless some
 16 overwhelming financial gain is evident,
 17 it just isn't worth pursuing a DEP permit.

18 The kinds of businesses
 19 encouraged by the Coastal Zone Management
 20 Program are essentially small, low-economic
 21 yield businesses. But the permit process
 22 is geared to being tackled by large, high-
 23 yield businesses capable of employing a
 24 battery of lawyers and consultants. The
 25 CAFRA, Wetlands and Riparian permits must

1 be consolidated. Once consolidated, they
 2 must be streamlined, without weakening
 3 their effectiveness. In order to gain a
 4 fresh perspective, an outside consultant
 5 should be brought in to guide the consoli-
 6 dation and streamlining. Working from
 7 within the department, it can never happen
 8 effectively because all proposals would be
 9 based on existing procedures. This must
 10 be accomplished with outside help.

11 A further simplified, easier to
 12 obtain permit process must be considered
 13 for small new projects or maintenance of
 14 approved existing projects. The restraint
 15 on these projects, which cause the least
 16 new disruption to the environment, are
 17 disproportionately higher than for larger
 18 projects. The permitting-cost to project-
 19 cost ratio is even further out of line
 20 than with larger projects. The result is
 21 either near-total discouragement of these
 22 small projects, or an incentive to do the
 23 work without permits. Look at the state
 24 of disrepair in many New Jersey marine
 25 facilities. The unwieldy expensive permit

1 process actually encourages this lack of
2 maintenance.

3 It is imperative that the Office
4 of Coastal Zone Management develop a
5 better understanding of the interrelations
6 between the environment and the economy of
7 the coastal zone. If the statement about
8 supporting and promoting access to beaches
9 and waterfront areas means using funds
10 to build facilities and support programs
11 like the Island Beach shuttle, we are
12 adamantly opposed. Coastal Zone Management
13 funds must not be used for projects. The
14 need for research into all aspects of the
15 coastal zone is so great, that spending
16 coastal zone funds for projects rather
17 than research is unconscionable.

18 The proposed study of recreational
19 boating in New Jersey must be pursued. The
20 nature of the sport, nature of the industry,
21 users, demand, carrying capacity, restraints
22 and prospects and recommendations for the
23 future must be identified.

24 A study aimed at increasing the
25 capability of boats and their support

1 facilities with the environment should be
2 undertaken. The state's dredging needs
3 must be identified along with the agency
4 or body responsible for the dredging.
5 Proposals for accomplishing that dredging
6 must be drafted.

7 As indicated in the Marine
8 Trades Association's response to the
9 Coastal Zone Management Strategy, "A
10 concerted effort must be made to locate
11 and develop spoils areas physically and
12 economically accessible to both the public
13 and private sector. Goals for site
14 development based on dredging needs within
15 specific geographic areas must be set.
16 Investigation of alternative dredging
17 methods and dredge spoils disposal and use
18 must also be actively pursued, whether
19 within state government or research
20 institutes. Without the development of
21 spoils areas, New Jersey's dredging needs
22 will remain unfilled and the state's
23 waterways will continue to deteriorate."

24 Unfortunately, some people
25 claiming to be environmentalists give

1 little regard to the serious economic
2 impact of their actions. Well-founded
3 environmental considerations are an
4 important part of the permit process and
5 must be encouraged. However, a stop
6 must be put to the attacks on projects
7 launched by people using environmental
8 considerations as an excuse for opposing
9 projects they just plain don't like.

10 It would seem that for all the
11 trouble and expense an applicant must go
12 to, it would be only right that opponents
13 to the application be required to
14 substantiate their claims. A requirement
15 that opponents be required to file an
16 environmental impact statement supporting
17 their contentions would assist both permit
18 reviewers and applicants in considering
19 objections.

20 By incorporating the suggestions
21 included in this testimony and in the
22 association's written testimony, we believe
23 a workable coastal zone management program
24 can be created. We look forward to living
25 and working in the coastal zone which the

1 program is directed towards creating and
2 maintaining.

3 Thank you.

4 MR. KINSEY: I think I might
5 address some of the points presented in
6 your testimony.

7 In terms of the beach shuttle,
8 I think it's important for all of us to
9 consider that the 1977 beach shuttle was
10 a special research program sponsored by
11 the Department of Environmental Protection
12 with financial support from the federal
13 Coastal Zone Management. A small, actually
14 \$20,000, grant was obtained through the
15 good office of Dick Gardner of NOAA and
16 it laid the way to demonstrating a
17 different way of providing access to that
18 splendid barrier island.

19 In fact, this summer, the same
20 project will be repeated, but using state
21 funds. The Department of Energy is
22 contributing funds and the New Jersey
23 Highway Authority. I believe we have made
24 the case that this is a different approach
25 to providing public access.

1 We agree with your recommendation
2 for environmental sensitivity mapping and
3 such a project is one reason that the state
4 seeks federal approval of the Program,
5 because with federal approval will come
6 additional funds that can be used to
7 carry out some of the long endeavored
8 projects, including the recreational
9 boating study.

10 Permit simplification and
11 consolidation is also one of the long-
12 standing goals of the Division of Marine
13 Services. The one reason for proposing
14 and adopting Coastal Resource and
15 Development policies is to have a visible
16 substantial framework in place indicating
17 the basis for decisions, so that the
18 procedural work of simplifying and
19 consolidating the permit procedures can
20 then take place.

21 Dredging is a long-standing
22 issue of major concern. One of the
23 difficulties for the division has simply
24 been the inadequate level of state
25 appropriations to dredge the state-maintained

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1 waterways. So it's a continuing difficulty.
2 And I look forward to the continuing
3 support of the Marine Trades Association
4 in our work in this area.

5 Thank you.

6 MR. GARDNER: Our next speaker
7 is G. Oliver Papps, Associate Director of
8 the New Jersey Petroleum Council in
9 Trenton.

10 Mr. Papps.

11 MR. PAPPS: Good morning. My
12 name is Oliver Papps and I'm Associate
13 Director of the New Jersey Petroleum
14 Council, a Division of the American
15 Petroleum Institute. We are a trade
16 association representing the major oil
17 companies doing business in the state.

18 This morning we will not be
19 presenting a formal statement on the
20 Draft Environmental Impact Statement, but
21 would like to announce at this time we
22 will be submitting a detailed analysis
23 of the DEIS before the official closing
24 of the record.

25 Thank you very much.

1 MR. GARDNER: Thank you, Mr. Papps.
2 We look forward to your comments.

3 Our next speaker is Diane
4 Graves, representing the New Jersey Chapter
5 of the Sierra Club.

6 MS. GRAVES: My name is Diane
7 Graves and I am Conservation Chairman for
8 the Sierra Club's New Jersey Chapter.

9 We commend the DEP's Office of
10 Coastal Zone Management for the Bay and
11 Ocean Shore Segment document. We believe
12 it will help protect New Jersey's coast
13 from large, poorly sited and planned
14 development while allowing certain
15 developments in appropriate locations.

16 The Coastal Location Acceptability
17 Method process seems clear and reasonable.
18 The use and resource policies, also, for
19 the most part, seem clear and forceful.
20 We support the promulgation of Chapter
21 3 as rules and regulations.

22 We wish to express the following
23 concerns, reservations, suggested actions
24 and specific changes.

25 The decision not to conduct a

1 paper inventory was a mistake. It may be
2 remedied ultimately piecemeal through
3 information provided by applications and
4 EIS's, but meanwhile the DEP will continue
5 to react to applications rather than for
6 everyone, DEP and potential applicants,
7 to know specifically where developments
8 can and can not be located.

9 We think it is important that
10 the public not be lulled into assuming
11 that Chapter 3's promulgation will
12 actually protect the coast. It won't.
13 The cumulative impacts of the many
14 likely developments not covered by
15 CAFRA/BOSS will be disastrous to the
16 New Jersey coast.

17 The best planning and most
18 stringent enforcement of rules and
19 regulations will be of little use if, for
20 instance, numerous housing developments
21 of 24 units or less, which are not now
22 covered by CAFRA, are constructed. Also,
23 individual houses on dunes, small
24 commercial establishments, expansions of
25 small motels by a few units and the like,

1 can eventually destroy the coast.

2 Therefore, as one possible way
3 to improve the situation, we urge the
4 Legislature to reduce the threshold
5 number for housing units, which is now
6 25 units or more. The DEP should be
7 required to determine what the reduced
8 threshold number should be in order to
9 gain control over sequential development.

10 We are also concerned about the
11 cumulative impacts of major facilities
12 now covered by CAFRA/BOSS. As yet the
13 DEP is not required to forecast or
14 evaluate the cumulative impacts of planned
15 and likely major facilities on air and
16 water quality, water supply, as well as
17 other coastal resources.

18 For instance, New Jersey should
19 know what impact can be expected on air
20 quality 5, 10, 15 years hence, from
21 Atlantic City's renewal and projected
22 growth and traffic.

23 We believe it is crucial to the
24 entire enterprise of protecting New
25 Jersey's coastal resources that the

1 DEP be required to assess cumulative
2 impacts and to develop a plan, mechanism,
3 or legislative measure to remedy the
4 problem.

5 Another major continuing worry
6 is the inadequacy of the Office of Coastal
7 Zone Management's resources to administer
8 and enforce the coastal protection program.
9 For instance, we understand that the
10 OCZM's permit section has only 3 people
11 and needs 8 to 10.

12 Further, the delays caused by
13 Civil Service in filling authorized
14 positions is a regrettable, long-term
15 problem, but now, added to that, the
16 Governor's office requires review of
17 applicants and this is reported to be
18 causing additional delay in hiring needed
19 personnel. The OCZM must be staffed
20 fully. If the Legislature wants permits
21 reviewed properly within 90 days, it
22 best see to it that adequate staff is on
23 hand.

24 Enacting a governmental program
25 which the public is led to expect will be

1 effective, but which actually falls into
 2 confusion, indecision, poor decisions, and
 3 conflict due to inadequate resources, both
 4 money and staff, is a disservice and
 5 reinforces the public's tendency to
 6 disrespect government. Therefore, we
 7 urge that both the federal OCZM and the
 8 New Jersey Legislature make certain that
 9 DEP's Office of Coastal Zone Management
 10 has the resources it needs to administer
 11 and enforce this program.

12 We are glad that the BOSS policy
 13 on pipelines specifically prohibits oil
 14 pipelines from the Central Pine Barrens.
 15 We feel both oil and gas pipelines should
 16 be prohibited; however, our main concern
 17 on this policy is the proposed power of
 18 the Department of Energy to override
 19 DEP's policies and decisions.

20 We urge the Byrne administration
 21 to enunciate a policy to protect absolutely
 22 the Central Pine Barrens from any energy
 23 facility, except perhaps a gas pipeline
 24 if there is no possible alternate route.

25 We have previously offered some

1 specific wording changes in some policies
 2 and I will send them in later for the
 3 record.

4 MR. GARDNER: Thank you very
 5 much, Mrs. Graves.

6 MR. KINSEY: Thank you. Let
 7 me report some good news in terms of the
 8 staffing. The actual number of professional
 9 staff is four, but we are expecting another
 10 two within the next two or three weeks, so
 11 that is one plus.

12 And, also, just very briefly,
 13 the suggestion that the Coastal Program is
 14 a reactive document or reactive policy
 15 rather than more prescriptive -- perhaps
 16 the best form of comment is to state the
 17 comment that the representative of the
 18 New Jersey Builders Association made at
 19 the hearing last night. I don't believe
 20 he or the representative of that
 21 organization is here today, but one of
 22 their comments was that the Coastal
 23 Location Acceptability method is indeed
 24 a plan, a vigorous plan that spells out
 25 the acceptable incentives of the development.

1 I believe their comment is one
 2 that this was too inflexible, a statement
 3 of the future division in the State of
 4 New Jersey. But, more importantly, the
 5 environmental sensitivity mapping that we
 6 hope to do and the other efforts underway
 7 in conjunction with the Department of
 8 Energy and continuing work with the
 9 Department of Community Affairs will lead,
 10 I believe, to an increasingly specific
 11 Coastal Management document and program
 12 and the various documents, maps of various
 13 scales that will spell out that division.

14 MR. GARDNER: Thank you, Mr.
 15 Kinsey.

16 Our next speaker is George
 17 Clark.

18 MR. CLARK: I will waive it.

19 MR. GARDNER: You prefer not to
 20 be heard?

21 MR. CLARK: Prefer not.

22 MR. GARDNER: The next speaker is
 23 Ruth Fisher, representing the Citizens
 24 Association for Protection of the
 25 Environment.

RECORDED BY: [illegible]

1 MS. FISHER: Thank you very much.
 2 My name is Ruth Fisher. I represent the
 3 Citizens Association for Protection of the
 4 Environment.

5 Earlier you said that many of
 6 your colleagues from the state government
 7 were here today. May I be permitted to
 8 ask for a show of hands on how many are
 9 state employees?

10 MR. GARDNER: I'm sorry, ma'am,
 11 but we are here to receive your testimony.

12 MS. FISHER: Very well. I was
 13 just curious as to the audience I was
 14 addressing.

15 We, too, would object to the
 16 amount of time allotted and if industry
 17 has little time to prepare statements, we
 18 certainly have less. We are totally
 19 unfunded, except for donations.

20 We are concerned that this
 21 appears to be a dramatic way to preserve
 22 the cost. Yet, experience has shown us
 23 that these are just words.

24 I would like to quote from the
 25 very beginning of the document, on the first

1 page, and I think it is wise to keep this
2 in mind throughout and throughout the
3 decision-making process: "whether there
4 will be a net environmental gain as a
5 result of Program approval and implemen-
6 tation."

7 It is sad to say that our
8 experience has shown that we do not feel
9 that many of these decisions to date have
10 shown an interest in net environmental
11 gain. One of the permits that we have
12 appealed -- and I don't know how many
13 permits have been appealed, but we have
14 been involved in appeals of three decisions.

15 The first one I would like to
16 talk about is Stone Harbor. It's in the
17 southern part of this state and is at the
18 very end of the Marmora Beach Island.
19 A permit has been issued. We have
20 appealed it. There have been endless
21 hearings and permit discussions.

22 I brought with me pictures of
23 the area. This is the end of the Barrier
24 Beach. This is housing as it comes down
25 the island from the north, and I don't

1 know how well you can see this.

2 On this island, this is what
3 is left of it. This is a major drain
4 that is badly eroded.

5 The proposal calls for
6 development into all of this area some
7 time in the future, but for the immediate
8 lot sale adjacent to this existing lot
9 sale, of course, the municipality claims
10 that they want the revenue and they even
11 hope to dredge from the back basin here
12 to spoil upon this last area.

13 And it is surprising to us to
14 find comments, such as on page 51 of
15 this document, and this is under "High
16 Risk Erosion Areas" under 6.4.1.2 "Policy,"
17 -- "In principal development in areas
18 that will be eroded in the mid-term
19 future beyond 50 years is discouraged."

20 It seems inconceivable that
21 any consideration of this permit should be
22 given if you are following this kind of a
23 policy.

24 Again, I think the photograph
25 and the general -- if you have walked the

1 area, especially in a storm, you know how
2 vulnerable it is.

3 This is a -- sketches of some
4 of the changes made in the coast range in
5 the area disputed by the department and
6 you can see that, in as late as 1952,
7 there was hardly any area left there for
8 development. It is increased now, but it
9 is subject to storm continually.

10 Again, we don't believe that
11 these policies are being followed in the
12 action which the department is making.

13 One of the other permits that
14 we appealed in vain was for Hope Creek
15 I & II. They might be better called
16 Salem III & IV, because they are adjacent
17 to existing plains.

18 We appealed on two grounds.
19 One, there was no state policy on energy
20 at the time. Two, that no one knew what
21 to do with the waste then. They still
22 don't know what to do with the radioactive
23 waste there now.

24 And we have been involved in the
25 hearings before the NRC attempted to

1 intervene on the Salem I & II, again, in
2 vain. But we might have been spared a lot
3 of grief. The state might have been forced
4 to make some decisions on what to do with
5 nuclear waste. We might not have had a
6 huge nuclear complex there if the CAFRA
7 section had denied the permits in the
8 first place.

9 Comments by a previous speaker
10 say that this document discourages nuclear
11 power and LNG activities. He also stated
12 that all energy options must be kept open.

13 We have repeatedly said that
14 you can't go in many directions at one
15 time. You can't go after nuclear power
16 and solar power at the same time. We just
17 can't buy it all.

18 Therefore, our direction, as
19 far as this particular permit has proceeded,
20 was to attempt to block it at all costs,
21 to continue to make it economically
22 unviable.

23 But in this document, I don't
24 understand why a PSE&G representative
25 would say that the nuclear power is

1 discouraged. They have gotten all the
2 permits that they ever wanted from the
3 state.

4 I will quote from page 94,
5 "Energy Facility Criteria." "This section
6 is reserved pending completion of joint
7 coastal energy facility siting studies
8 by DEP and DOE. In the interim, the
9 development potential of energy facilities
10 is assumed to be moderate."

11 I would presume from that that
12 the policy is go ahead, in fact, on all
13 energy sitings, especially on dangerous
14 nuclear power plants. The policy seems
15 to be if you don't know what to do with
16 waste, for instance, proceed anyhow.

17 I don't want to use too much
18 time.

19 With regard to our most recent
20 appeal, the Cape May Region sewage
21 treatment plant, we appealed for many
22 reasons; primarily, because one of the
23 Commissioners was one of the owners of
24 one of the major sites. That was not
25 being considered. The secondary impacts

1 of the site that was being considered were
2 and may lead to development of the barren
3 rural area.

4 With regard to secondary impacts,
5 I will quote from page 159, "Policy."
6 This is under 8.14, "Secondary Impacts."
7 "The probable secondary impacts of
8 proposed development will be considered
9 part of an application for a development.
10 The probable secondary impacts as well as
11 the proposed development itself must
12 conform with the Resource and Development
13 Coastal Policies."

14 Again, it is not clear how any
15 decision-making process is going to insist
16 that the secondary impacts from sewage
17 placement are going to be considered at
18 all.

19 The next one is Tranquillity
20 Park. This is a big development proposed,
21 I believe, 170 units adjacent to the
22 Cape May Canal.

23 The permit was initially turned
24 down. The department then issued without
25 public hearing a reversal and gave a

1 permit. We feel that, because this was
 2 done in such a deceitful manner, that a
 3 new hearing must be held on this particular
 4 tract and our own county planning board is
 5 also urging the department to do this.
 6 This kind of manipulation, regardless of
 7 how many wonderful words are written, can
 8 not be permitted.

9 The next area I wish to address
 10 is Diamond Beach. And I brought a
 11 newspaper with me. This is not an area
 12 that we have personally researched, but
 13 Diamond Beach is in the south end of our
 14 county, just before you reach the Cape
 15 May Canal.

16 This is a motel unit. They
 17 did not receive a CAFRA permit, so what
 18 they simply did is break it into two, have
 19 two motels, the same design and everything,
 20 side by side. And they got essentially
 21 what they wanted without the CAFRA process.

22 This kind -- there are comments
 23 that it may be turned over to the Attorney
 24 General, et cetera. The developer is
 25 Gem Corporation. And, of course, it will

1 lead to enormous strain on the existing
 2 sewage treatment plant.

3 We would urge the department,
 4 as Miss Graves has already noted, to take
 5 note of how this nit-picking and evasiveness
 6 may destroy the coast just as readily as
 7 big development.

8 But we would also ask you at
 9 this hearing: How are you going to
 10 contend with things like this? How are
 11 you going to solve this problem, obvious
 12 deceit at best? And it's a solution that
 13 we all need to have an answer to. I'm
 14 sorry I can't be as kind as Miss Graves.

15 In short, this whole book
 16 contains many wonderful pretty generaliza-
 17 tions about the coastal area, but it's
 18 almost like a naive school boy, once he
 19 receives a cum laude, it is put aside for
 20 reality. The reality is the big boys with
 21 the fancy briefcases are going to take
 22 over.

23 It is time to stop this balancing
 24 act which we have heard about so often.
 25 The balance was tipped long ago the wrong

1 way, not in the favor of the department or
2 of the environment. Stop giving out
3 permits that have been comprised in back
4 rooms. Get tough and be a department of
5 environmental protection or don't get
6 paid.

7 Thank you.

8 MR. GARDNER: Thank you very
9 much, Miss Fisher.

10 MR. KINSEY: Miss Fisher, I
11 wanted to explain one point about the
12 various individual matters that you have
13 talked about in relationship to this
14 document.

15 This document was released, I
16 guess, late April of this year as proposed
17 rules in Chapter 3 of how DEP should make
18 its decisions under the criteria of the
19 Wetlands and CAFRA permit programs.

20 These policies simply did not
21 exist in many of the cases and in many of
22 the specific matters that you addressed.
23 But, also, through the course of the
24 CAFRA and the Wetlands or Riparian permit
25 programs in the past several years, the

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1 department has developed a number of
2 policies that have been refined or expanded
3 and are placed in this framework.

4 For example, one of the depart-
5 ment's strong positions in Lower Cape May
6 County has been to protect certain very
7 important sensitive areas where there are
8 associations of dunes and beach and
9 wetlands. And I think it was the Higbee Beach-Ford
10 Creek area where the DEP denied a CAFRA
11 permit for a camp ground because the camp
12 ground was in the middle of that area.

13 The same types of policies that
14 were first articulated in those individual
15 decisions have found their way by a public
16 process into this document.

17 The purpose of this meeting and
18 various sets of meetings that have been
19 taking place is to gain the widespread
20 public opinion on this set of proposals so
21 that we can use these policies for making
22 the decisions from here on in, as well as
23 our work with planning agencies at various
24 levels of government.

25 On some of the matters that were

1 raised, they are still going through the
 2 process, particularly the one appeal, the
 3 Cape May sewage appeal, that is going
 4 through the standard administrative appeals
 5 process, which is the proper forum.

6 On Stone Harbor, we held a public
 7 hearing in April and we are reviewing the
 8 plans submitted by the municipality and
 9 looking forward to the submissions of
 10 information by the municipality to carry
 11 on forward.

12 And I, too, read the Atlantic
 13 City Press and I am aware of the alleged
 14 or possible violations of CAFRA that are
 15 brought to our attention through the press.

16 You have asked a question: How
 17 is the Department of Environmental
 18 Protection to keep track of what goes on?
 19 And one of the best answers is an active
 20 and concerned citizenry, with groups such
 21 as yours, as well as the Coast Watch Group
 22 and the American Littoral Society has been
 23 helping to draw this to our attention and
 24 please draw it to the attention of the
 25 field inspectors of the department areas

1 where you may think there may be a violation
 2 going on, so that it can be brought to our
 3 attention. And I look forward to your
 4 continuing working with us to draw those
 5 possible things to our attention long
 6 before the construction really begins.

7 MS. FISHER: Are you saying
 8 that under these guidelines, for instance,
 9 that you would deny, for instance, the
 10 Hope Creek permits now and you still have
 11 a chance to deny Stone Harbor and
 12 Tranquillity Park and Cape May Region?

13 MR. KINSEY: What I'm saying is
 14 each new permit application that is
 15 submitted will be reviewed under the
 16 adopted rules as they are adopted, as well
 17 as go through this rule-making process.

18 The timetable is by September to
 19 have revised the proposed policies. It's
 20 not guidelines. The policy statements are
 21 proposed as administrative rules, which
 22 will have the force of law once adopted,
 23 and each new application that is submitted
 24 will be reviewed using those standards of
 25 law.

1 MS. FISHER: Can you show me in
2 this document now any place where the
3 Hope Creek permits under the policy -- any
4 policy that you can find in here that
5 might possibly have been denied by the
6 department?

7 MR. KINSEY: Mrs. Fisher, I think
8 it is inappropriate to address hypotheticals
9 at this time. The New Jersey Supreme
10 Court has upheld the department's decision
11 and that's the state of the regulatory
12 process in that particular matter.

13 I will be glad to talk about the
14 future, perhaps after the meeting, about
15 prospective cases that might happen or
16 projects that you are aware of, and I
17 think that's the proper way of evaluating
18 these problems. That is why there is an
19 appendix of case studies. I think that
20 is the best way to explain the policies.

21 MS. FISHER: Thank you. I hope
22 that things get better.

23 MR. GARDNER: Thank you, Mrs.
24 Fisher.

25 Our next speaker is Anne Penna,

1 representing the American Littoral Society.

2 MS. PENNA: Good morning. My
3 name is Anne Penna and I represent the
4 American Littoral Society. We are a
5 conservation organization that has some
6 1,500 members in the State of New Jersey.

7 We have been participating in
8 the process of reviewing the coastal
9 management plans actively since 1969
10 during the implementation or drawing up
11 of the Wetlands Legislation. And I am
12 happy to note that each document that
13 comes out of the Office of Coastal Zone
14 Management in the state has shown
15 improvement and gotten more specific.

16 This document, too, is an
17 improvement over the CAFRA strategy that
18 was released in September of last year,
19 but it, too, we feel needs improvement
20 and strengthening.

21 In particular, we are interested
22 in seeing an environmental inventory as is
23 required by NEPA and will be, I understand,
24 added by the NOAA office.

25 But I think that some of the

1 existing data which is cited in the
2 appendices, which are required for
3 preapplication conferences and application
4 conferences, could have been -- the
5 information cited in those appendices
6 could have been incorporated into a map of
7 existing data to give a more predictable
8 means of anticipating where a particular
9 development can be cited. I think, also,
10 the geographic areas of particular concern
11 -- one area was incorporated into the
12 current Coastal Zone Management Plan out
13 of a suggested 176 nominations -- would
14 be helpful in the inventory mapping, as
15 well.

16 This would answer some of the
17 questions, I think, that was raised by the
18 energy company, the PSE&G representative,
19 as far as where pipelines and nuclear
20 power plants would be acceptable or would
21 be banned outright.

22 Again, cumulative impacts, which
23 is something that has been brought up by
24 numerous speakers today and at the other
25 hearings, is something that has bothered

1 the Littoral Society and many environmental
2 groups as well.

3 Once again, it seems that in
4 failing to address this problem, it's a
5 reaction, not a plan. Where, in the
6 document, it's stated that the Office of
7 Coastal Zone Management is relying on the
8 creativity of developers and individuals,
9 as well as relying on experience from the
10 opening of the permit office in '73 through
11 '77, that, again, is reactionary and not
12 projecting.

13 Cumulative impact or secondary
14 impact, also, I feel should be addressed
15 as upland impact on wetlands that
16 particularly have developments that fall
17 below the CAFRA freehold.

18 I would like to see some sort of
19 more defined state and municipal coordina-
20 tion. For example, the three options
21 which are outlined in the introduction --
22 it's stated that the state chooses option
23 B, which is state administration of the
24 plan; wherein, in reality, it says that
25 there is a case-by-case review.

1 We have seen the effects of
2 allowing the municipalities the sole right
3 to administer or to control growth in the
4 coastal zone, which is why the CAFRA Act
5 was passed in the first place. It's
6 almost impossible to resist developmental
7 pressure on the local level.

8 We would like to see, also, some
9 tightening of the vague wording in the
10 specificity. The greater the specificity,
11 the greater the predictability, which is
12 really the stated goal, the third basic
13 policy regarding decisionmaking for the
14 coastal zone plain.

15 We will be submitting more
16 specific comments hopefully within the
17 deadline and this will address some of the
18 more -- some changes in wording, as you
19 have requested in the past, as well as
20 more specific policies.

21 Thank you.

22 MR. GARDNER: Thank you very
23 much, Ms. Penna.

24 MR. KINSEY: Thank you very
25 much. We look forward to the detailed

1 comments.

2 MR. GARDNER: Our next speaker
3 is Michael Havrisko, representing the
4 League for Conservation Legislation in
5 Trenton.

6 Mr. Havrisko.

7 MR. HAVRISKO: Good morning,
8 thank you for giving me this opportunity
9 to speak on the Coastal Management Program,
10 Bay and Ocean Shore Segment. My name is
11 Michael Havrisko. I am the legislative
12 agent for the League for Conservation
13 Legislation.

14 I would like to commend the
15 DEP's Office of Coastal Zone Management
16 for their conscientious work in putting
17 together this document. I have a few
18 comments on how it may be improved.

19 The lack of an inventory of
20 coastal zone resources and of detailed
21 mapping causes some concern. One of the
22 first steps in preparing a comprehensive
23 management document would be to completely
24 inventory the natural areas, fisheries,
25 historic sites, industrial development,

1 residential housing, wildlife habitats,
2 and other features of the coastal zone.
3 I do not believe this has been adequately
4 developed in this document.

5 The Department may now regulate
6 construction of housing developments of
7 25 or more units. Haphazard developments
8 along the coastal zone could have an
9 adverse effect.

10 At this time, there seems to be
11 a lack of coordination between local
12 zoning laws and the Bay and Ocean Shore
13 Segment. There should be careful monitoring
14 of development not covered by CAFRA. The
15 cumulative impact of numerous housing
16 developments should be addressed in this
17 document.

18 A policy statement in the document
19 discourages development which would damage
20 or destroy the value of historic resources.
21 Development which would allow demolition of
22 historic sites should be prohibited.

23 The CAFRA policies and guidelines
24 must be specifically outlined with respect
25 to energy siting in the coastal zone. With

1 new legislation being proposed which would
2 give the DOE the lead role in the siting
3 of energy, it is imperative that specific
4 guidelines be developed.

5 Furthermore, Commissioner
6 Jacobson's statement that pipelines may
7 have to go through the Pine Barrens raises
8 further concerns. The Pine Barrens must
9 be protected from exploitation by the oil
10 and gas industries.

11 The Coastal Plan asks that
12 conservation of energy be encouraged in
13 coastal development. The League feels
14 this policy should be required.

15 The Plan mentions policies
16 directed towards the preservation of open
17 spaces. By naming hotels and restaurants
18 as desirable structures along the coastline,
19 the above policy seems to be self-contradictory.

20 In closing, I hope that the vast
21 resources necessary to administer and
22 enforce the coastal program will be made
23 available. If properly administered, the
24 program should provide an equitable
25 management program for the New Jersey

1 Coastal Zone.

2 Thank you.

3 MR. GARDNER: Thank you very
4 much, Mr. Havrisko.

5 MR. KINSEY: Thank you. Perhaps
6 I might clarify my understanding of state
7 policy on oil and gas pipelines in the
8 Pine Barrens.

9 The first key statement is the
10 reference in the DEP's Coastal Management
11 Program and I believe the reference in
12 the Department of Energy's Master Plan is
13 to the Central Pine Barren Region, a very
14 specific, I believe, 760 square mile area,
15 defined now under state regulations as
16 a critical area for sewage purposes, as
17 well as an area for which there is a
18 special nondegradation service and ground
19 water service.

20 The Coastal Management Program
21 for the Bay and Ocean Shore Segment does
22 recommend a change from the Coastal
23 Management Strategy in the policy on oil
24 and gas pipelines with regard to the
25 Pine Barrens.

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1 The current policy states that oil
2 pipelines are prohibited in the Central
3 Pine Barrens Region and that gas pipelines
4 in the related facilities are discouraged
5 from that Central Pine Barren Region.

6 This, in part, is a recognition
7 that there are significant technical
8 differences between oil and gas and their
9 effects on the environment.

10 So that there is a stringent
11 standard imposed by the proposed rule on
12 the location of gas pipelines, really, a
13 twofold standard.

14 First, the gas pipeline must meet
15 the nondegradation of water quality standards
16 and, second, there must be a stand that we
17 know no significant adverse long-term
18 implemental impacts associated with the
19 gas pipeline.

20 It is also important to bear in
21 mind there are today various gas pipelines
22 of various diameters, 12, 18 inches,
23 crisscrossing various parts of the state,
24 including parts of the state that have
25 pine barrens vegetation, but outside of the

1 Central Pine Barrens Region.

2 I think it is also important
3 that the various state agencies and
4 county planning agencies and environmental
5 groups and industry continue to work
6 together, so we can learn more about the
7 on-shore and off-shore, both oil and gas
8 pipelines, so that we can do the
9 cooperative transportation planning that is
10 necessary to bring on-shore and off-shore
11 hydrocarbons in the most efficient and
12 safest way for our environment.

13 MR. HAVRISKO: I think I know
14 the section you are speaking of and I
15 understand those and how you address the
16 problem.

17 My concern was with specifically
18 the new legislation which will give the
19 Department of Energy the right to override
20 your decisions, which I feel at this
21 point are the right decisions, but our
22 concern is how your department -- how are
23 they going to react if an override does
24 take place by the Department of Energy,
25 which most likely will come in some time.

1 MR. KINSEY: Well, clearly, the
2 program before us today is based on existing
3 state laws, the four key laws, the Depart-
4 ment of Energy Act, the CAFRA Statute, the
5 Wetlands Act, the Riparian Statutes and
6 decisionmaking.

7 There is a draft understanding
8 of the two agencies that is intentionally
9 left in a draft stage for public comment
10 at this time, but it is no accident that
11 the policies and procedures in the Coastal
12 Management Program for the Bay and Ocean
13 Shore Segment and the Department of Energy
14 Master Plan and its various elements are
15 identical or compatible, because the two
16 agencies are working together and plan to
17 do so in the future.

18 MR. GARDNER: Thank you.

19 Our next speaker is Frances
20 Beinecke, representing Natural Resources
21 Defense Council from Washington, D. C.

22 MS. BEINECKE: My name is Frances
23 Beinecke and I'm with the Natural Resources
24 Defense Council.

25 The Atlantic City Coast Project

1 of the Natural Resources Defense Council
 2 has reviewed the Bay and Ocean Shore
 3 Segment of the New Jersey Coastal
 4 Management Program and would like to
 5 comment on those key areas of particular
 6 interest to NRDC.

7 NRDC is a national public
 8 interest organization which specializes
 9 in natural resources and environmental
 10 problems. We have more than 2,000 or
 11 3,000 members in the State of New Jersey.
 12 In 1976, NRDC established an Atlantic
 13 Coast Project to focus on protection of
 14 productive and fragile coastal resources.

15 New Jersey became an early focus
 16 of the Project with the scheduling of the
 17 first Atlantic offshore lease sale, number
 18 40, off its coastline. NRDC was a
 19 plaintiff in the lawsuit over the
 20 inadequacy of the environmental impact
 21 statement for Sale 40.

22 The Project's involvement with
 23 New Jersey's coastal program was a direct
 24 result of that litigation in which onshore
 25 impacts of OCS activities were a major issue.

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1 The offshore oil and gas leasing program
 2 is an example of one major federal program
 3 which could have a determining effect on
 4 the extent of development and its location
 5 in New Jersey's coastal zone.

6 It is this kind of activity which
 7 the federal coastal zone management
 8 program was designed to address through a
 9 statewide planning and management program.

10 The second largest contribution
 11 to New Jersey's economy is tourism and
 12 recreation, and the long term survival of
 13 that economy is dependent on the continued
 14 health and vitality of the coastal resource.

15 By participating in the federal
 16 coastal zone management program, New
 17 Jersey has been provided with financial
 18 assistance and certain guidelines with
 19 which to design a program geared to its
 20 unique problems. In return, it must
 21 produce a program which meets the
 22 requirements of the federal Coastal
 23 Zone Management Act.

24 Over the past two years, NRDC
 25 has worked with statewide environmental

1 organizations and the Department of
2 Environmental Protection in an effort to
3 have our concerns for New Jersey's coastal
4 resources considered throughout the planning
5 process.

6 Today, we would like to comment
7 briefly on those parts of the coastal
8 program which have improved significantly
9 over the past six months, as well as
10 those which continue to need improvement
11 to qualify for federal approval under
12 the Coastal Zone Management Act.

13 New Jersey has been involved in
14 the coastal planning process since the
15 state legislature passed the Wetlands Act
16 in 1970 and the Coastal Area Facilities
17 Review Act in 1973. Over the past three
18 years, the Department of Environmental
19 Protection has designed a coastal program
20 that is based on those two statutes, as
21 well as the state's older riparian
22 statutes.

23 During this planning phase, the
24 DEP has developed a very innovative review
25 process for evaluating applications under

1 these programs: the Coastal Location
2 Acceptability Method.

3 We commend the Department for
4 designing a methodology that so thoroughly
5 considers the interrelationship of a
6 natural ecosystem in its permit review
7 process. One of its most commendable
8 features is its predictability for project
9 applicants, as well as for the interested
10 public.

11 Although there are certain
12 modifications in the specific policies
13 that we would like to see, we can support
14 the thorough approach which the DEP has
15 developed.

16 The second area where we see
17 substantial improvement from the initial
18 coastal Strategy is in the energy policies.
19 We feel that this document represents a
20 significant effort to tighten up these
21 policies and make some clear distinctions
22 between what is to be permitted within the
23 boundaries of the Bay and Ocean Shore
24 Segment and what is not.

25 Although there are policy changes

1 we would like to see, we commend the DEP
2 for the substantial improvements in this
3 document. We believe the policies clearly
4 reflect the intent of the legislature to
5 protect the natural resources within the
6 coastal boundary.

7 Recognizing that coastal
8 management is a constantly evolving process,
9 and that the Bay and Ocean Shore Segment
10 is still in draft form, we would like to
11 indicate those areas where we think
12 improvement is required before federal
13 approval can be given to this plan. The
14 general points we would like to address
15 are:

16 1. The program must meet the
17 requirements for segmented approval by
18 showing significant progress towards a
19 completed statewide program.

20 2. As enforceability is a
21 major requirement for an approvable
22 program, Chapter 3 of the document must
23 be adopted as a rule before New Jersey
24 can qualify for federal approval.

25 3. As all policies of the

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1 coastal program must be enforceable and
2 legally binding, New Jersey must obtain
3 an Attorney General's opinion on the binding
4 nature of the memorandum of understanding
5 between the Department of Environmental
6 Protection and the Department of Energy.

7 4. The program does not
8 adequately protect fragile ecosystems,
9 particularly dunes and barrier islands,
10 from cumulative impacts of a number of
11 small scale projects.

12 5. The program is not adequate
13 to meet the requirement for geographic
14 areas of particular concern.

15 6. The program does not adequately
16 define a procedure for designation of areas
17 for preservation and restoration.

18 As New Jersey has chosen to
19 submit a segmented program to the Office
20 of Coastal Zone Management, it must
21 comply with the federal requirements for
22 segmentation. These include an indication
23 that the remainder of the program will be
24 completed in a timely manner and that the
25 boundary and national interest component

1 of the entire coastal program be included
 2 in the first segment. In this document,
 3 New Jersey has not demonstrated the timeliness
 4 of boundary provisions satisfactorily.

5 One of the basic federal
 6 requirements for an approval program is
 7 enforceability of a program's policies.
 8 At this time, New Jersey's program is not
 9 enforceable because the policies are not
 10 yet adopted as regulations governing the
 11 riparian, wetland and CAFRA review process.

12 Although the document states that
 13 Chapter 3 will be adopted as a regulation
 14 under the Administrative Procedures Act,
 15 we would like to point out that this is
 16 essential before the program can be
 17 considered for approval. We understand
 18 that this can be done by the Commissioner
 19 as soon as the program is finalized and
 20 urge that it be done as expeditiously as
 21 possible.

22 Furthermore, we urge that the
 23 policies included in Chapter 3 be applied
 24 to any DEP decisions which would affect
 25 coastal resources within the Bay and Ocean

1 Shore Segment. At a minimum, this should
 2 include actions undertaken pursuant to the
 3 state water statutes which were passed
 4 last year. Other DEP actions should be
 5 evaluated for possible inclusion under
 6 this regulation.

7 An additional requirement of
 8 enforceability is a demonstration that a
 9 memorandum of understanding is legally
 10 binding. The Draft MOU between the
 11 Department of Environmental Protection and
 12 the Department of Energy does not adequately
 13 demonstrate enforceability. The DEP must
 14 obtain an Attorney General's opinion which
 15 indicates that both the Department of
 16 Energy and the Energy Facility Review
 17 Board are bound by the energy policies and
 18 can be challenged if these policies are
 19 not followed.

20 The second concern to NRDC is
 21 whether this program is adequate to protect
 22 critical natural resources within the
 23 coastal boundary. These resources are
 24 now protected only from major projects
 25 which require a CAFRA permit, but not from

1 small scale but cumulatively destructive
2 residential and commercial development.

3 We recommend that the DEP
4 evaluate mechanisms to enable cumulative
5 impact review of many small projects in
6 critical resource areas, especially
7 barrier islands and dunes.

8 These resources have been most
9 critically ignored throughout the evolution
10 of this program. They serve essential
11 natural functions of flood protection,
12 buffers to productive wetlands, recreation,
13 and wildlife habitat. In addition, they
14 are fragile and vulnerable to human
15 impacts from small scale development.

16 The program ignores both their
17 contribution to natural ecosystems, as well
18 as their fragility and flood potential.
19 New Jersey must include in its program a
20 mechanism for protecting these valuable
21 resources.

22 The Coastal Zone Management Act
23 provides a mechanism for attention to
24 special areas by designating them
25 geographic areas of particular concern.

1 This component of New Jersey's coastal
2 program is seriously inadequate.

3 A year ago, the DEP recognized
4 public concern for coastal resources by
5 requesting public nomination for geographic
6 areas of particular concern. The DEP
7 received nearly 200 nominations. However,
8 only three areas are proposed for this
9 status in the document and two of those,
10 wetlands and wet sand beaches, are
11 already protected by state statutes.

12 GAPC status is an essential
13 component of a coastal program because
14 it is a protective, rather than reactive,
15 device. Once an area is designated as a
16 GAPC, a special management program must be
17 designated which is geared towards the
18 reasons for which an area was nominated.

19 NRDC is concerned that New
20 Jersey has adopted an approach based on
21 two basic errors. The first was to seek
22 and then ignore public comment; the second,
23 to avoid using GAPC's as a mechanism to
24 protect critical resources.

25 Another requirement of the

1 federal program is a procedure for
 2 designating and managing Areas of Preserva-
 3 tion and Restoration. The program gives
 4 one page of this process with little
 5 explanation, except to say it will be
 6 part of the Green Acres Program. There
 7 is no discussion of how the process is
 8 intended to work, who will be in charge
 9 of it, or how we are to be assured that
 10 the program staff will be tied into and
 11 act consistently with the program's
 12 policies.

13 In conclusion, although there
 14 are a number of key areas where New
 15 Jersey's coastal program requires
 16 additions or modifications, which we
 17 will comment on in detailed written
 18 comments, this document shows substantial
 19 improvement over previous drafts and we
 20 commend the DEP for its effort in these
 21 areas, particularly the energy policies.
 22 We hope that the next draft will
 23 incorporate even more modifications and
 24 will address the concerns we have raised
 25 today.

1 Thank you.

2 MR. GARDNER: Thank you, Miss
 3 Beinecke.

4 MR. KINSEY: Thank you. Let
 5 me perhaps address briefly two points.

6 With regard to the rules, the
 7 formal notice of consideration of adoption
 8 of the rules appeared in the New Jersey
 9 Register, I believe, on May 4th, 1978 and
 10 in the Commissioner's formal notice,
 11 he indicated that after the close of those
 12 hearings and the comment period, he could,
 13 under New Jersey Administrative Procedures
 14 Act, then adopt the rules on his own
 15 motion.

16 And it's the department's intent
 17 to review the comments and prepare the
 18 appropriate revisions and have the rules
 19 adopted in place prior to program approval
 20 under Section 306 of the Federal Coastal
 21 Zone Management Act.

22 In terms of the geographic areas
 23 of particular concern, this has been an
 24 area of, let's say, continuing discussion
 25 between your group and our office and I

1 know we will continue that discussion.

2 Many of the suggestions of areas
3 or types of areas that were singled out by
4 individuals and from New Jersey and other
5 states and other organizations have been
6 incorporated in various parts of the
7 Coastal Management Program; particularly,
8 in the classification of land and water
9 types in the Coastal Location Acceptability
10 Methods.

11 In addition, two specific areas
12 are singled out for the designation of
13 GAPC in fulfillment of the particular
14 requirements of the federal Coastal Zone
15 Management Act, but I am not aware of any
16 particular prospective status that is
17 association directly with that designation
18 under the federal Coastal Zone Management
19 Act. But my interpretation is a rather
20 strong guideline or directive to the
21 states to look at the geography of coastal
22 areas and identify special areas and
23 devise appropriate management mechanisms
24 for certain areas.

25 MS. BEINECKE: That's right. My

1 point is that there are certain areas,
2 particularly barrier islands and dunes,
3 where you could use that status, in fact.

4 I have a letter from you which
5 says that barrier islands were going to be
6 GAPC's and they are not in this document
7 represented that way. And all I'm saying
8 is it's a mechanism that you can use to
9 develop these special management program
10 for critical resource areas which are
11 only, in this document, protected from
12 major activities or activities which would
13 come under wetlands or riparian permits
14 and that leaves a big gap. And this is
15 a mechanism to take care of that gap that
16 you haven't fully utilized.

17 MR. KINSEY: Okay. As always,
18 this document is the latest document, the
19 latest millstone and I am quite confident
20 there will continue to be documents for,
21 first, the other parts of the state's
22 coastal zone, but also increasing the
23 specific policies and statements of views
24 of people who are concerned, one of which
25 is clearly barrier islands.

1 MS. BEINECKE: I would certainly
2 like to see something more stronger on the
3 protection of barrier islands, instead of
4 the one that presently exists.

5 MR. KINSEY: One possible vehicle
6 will be the state's work on the Shore
7 Protection Master Plan to carry out the
8 bond issue passed last year by the voters.

9 MS. BEINECKE: Okay. We will
10 see.

11 MR. GARDNER: Thank you.

12 Our next speaker, and this is
13 the last speaker who has indicated interest
14 in making a presentation, is Robert Bowen,
15 representing the United States Labor Party
16 in Trenton.

17 Mr. Bowen.

18 MR. BOWEN: Good morning. The
19 first thing I would like to say is that my
20 comments will be directed to Section 7.4,
21 "Energy Use Policies."

22 I find the statement contradictory,
23 reflecting a very narrow prospective and
24 also reflecting some basic ignorance of
25 fundamental matters with respect to energy.

1 The first place to start in
2 considering energy policy questions is to
3 consider what are going to be the energy
4 requirements of the near-term and long-term
5 future.

6 I would submit and the U. S.
7 Labor Party submits that the standard of
8 living presently enjoyed by skilled working
9 families in the United States is a standard
10 of living indispensable to a population
11 prepared with the skills and intelligence
12 to solve very difficult problems that the
13 human race is going to face both in the
14 near-term and long-term future.

15 We would submit and I would
16 submit that in order to maintain and
17 extend that standard of living to the world's
18 population, energy production and energy
19 consumption rates will increase on the
20 order of 15 to 20 per cent per year.

21 I further submit that if various
22 attempts by people in the Carter Administra-
23 tion are successful for implementing an
24 aggressive export policy in the United
25 States as the basis for reversing the trade

1 deficit, for a stabilizing international
2 relationship, that the demands for energy
3 within the United States will exceed and
4 will grow at the rate of 15 to 20 per cent
5 per year.

6 From that point, we think that
7 the development of nuclear technologies,
8 nuclear fission and nuclear fusion
9 technologies are absolutely indispensable
10 to meet that growing demand for energy
11 consumption.

12 There has been a lot of debate
13 nationally and internationally on the
14 question of nuclear technologies and
15 various proposals as alternatives to that,
16 lumped together under so-called soft
17 technologies and, specifically, solar
18 technology.

19 There is a primary characteristic
20 of any energy technology which ultimately
21 determines both its economic impact and
22 its environmental impact, and that primary
23 characteristic is energy density or energy
24 flux density.

25 For solar energy at the earth's

1 surface, the energy flux density is
2 approximately 200 watts per square meter.
3 For solar energy in the form of bio-mass
4 conversion, either through wood burning
5 and so forth, that figure is considerably
6 less.

7 For fossil fuels, a dissimilar
8 characteristic is roughly 10,000 kilowatts
9 per square meter and for fission nuclear
10 technology, energy flux density is
11 approximately 20,000 kilowatts per square
12 meter and for fission technology, the
13 energy flux density will exceed 70,000
14 kilowatts per square meter.

15 Starting with that is the basic
16 characteristic and you can go back to a
17 lot of documentation both from advocates
18 of solar energy and from advocates of
19 nuclear energy and develop the statistics
20 on your own. But what we have put together
21 is a comparison of those two from the
22 standpoint of cost, the availability of
23 energy and the creation of jobs.

24 Firstly, from the standpoint of
25 cost, solar energy is 8 times as expensive

1 as fossil fuels, 20 times as expensive as
2 fission and 80 times as expensive as
3 electrical power produced using fission
4 power. And I would include under solar,
5 so-called solar synthetic or bio-mass
6 conversion technologies to produce liquid
7 fuels, like methane gas, various things
8 like that.

9 The second area of energy
10 availability is that for a five billion
11 dollar investment in converting homes
12 presently using natural gas for heating
13 purposes, which is the proposal on the
14 table in California, that five billion
15 dollar investment would yield a negative
16 energy growth rate of 6 per cent and
17 would create the loss of employment of
18 4.2 million people.

19 A similar five billion dollar
20 investment split between expanding
21 productions of natural gas and expanding
22 nuclear energy generating capabilities
23 would yield an 18 per cent annual growth
24 rate in energy produced and the net effect
25 in terms of employment would be 7.2 million

1 new jobs.

2 The second broad area of impact
3 in energy technology is the environmental
4 impact. The energy flux density of whatever
5 technology is being used is to measure the
6 efficiency of that technology to transform
7 energy in one form -- in the case of
8 nuclear energy, it's energy in the form of
9 a fission reaction -- into usable energy
10 for human consumption, mainly, electrical
11 power, that in turn being converted into
12 heat, various things like that.

13 The very low energy flux density
14 of solar technologies and other so-called
15 soft technologies from every standpoint in
16 terms of the allocation of resources and
17 so forth necessary to produce solar
18 collectors in sufficiently large quantities
19 to provide even a small percentage of the
20 total electrical consumption requirements
21 for maintaining the present economy of
22 the United States is totally absurd,
23 especially from the standpoint of the goals
24 that are stated in the document here today;
25 namely, to insure the protection of both

1 the built and natural environment of the
2 coast and of public health, safety and
3 welfare to the maximum extent feasible.

4 Solar collectors have several
5 hundred square miles, which would be the
6 size of a collector that would be required
7 to produce sufficient electrical generating
8 capacity to fuel, say, New York City or,
9 similarly, for the State of New Jersey
10 and would, in fact, if sited in coastland
11 areas, as is encouraged in the present
12 document, wipe out those coastland areas.

13 On the other hand, a similar
14 commitment to hard technology energy
15 development, specifically to expanding
16 nuclear power generating capabilities and,
17 further, specifically to the offshore
18 nuclear power plants proposed by PSE&G,
19 would not only not endanger the coastland
20 from an environmental standpoint, but, in
21 fact, would preserve a significant portion
22 of that coastland by removing the necessity
23 or even possibility of solar energy
24 collectors being built in those areas and
25 would, at the same time, provide the state

1 with a vastly increased energy supply for
2 both our own purposes and would also provide
3 New Jersey with the capability of exporting,
4 in fact, energy to other parts of the
5 country.

6 We see New Jersey as integral --
7 as an energy state. They are given a
8 relatively high percentage of labor force,
9 the high percentage of research facilities
10 in the state, the major fission research
11 at the University of Princeton, and so on,
12 that New Jersey is ideally situated in the
13 most highly concentrated industrial
14 production center in the nation to be the
15 energy think tank and energy supplier for
16 that entire area. There is a third area
17 which is not -- well, it's addressed, but
18 only coincidental in the report, and that
19 is the question of legality.

20 There is a recent Supreme Court
21 ruling in the case of a nuclear power
22 plant built in Michigan which said that
23 the federal courts and the lower courts
24 did not have legislative authority above
25 that of the U. S. Congress.

1 I would submit that Section 7.4.13,
 2 paragraphs B and D are an attempt, although
 3 not by adjudication authority, but an
 4 attempt to usurp the authority of the
 5 U. S. Congress, an authority mandated to
 6 the states for the regulation of nuclear
 7 power production and so on. I would further
 8 submit that -- well, going back to my
 9 original written statement, that the
 10 rationale for that same section, 7.4.13;
 11 namely, the possibility of nuclear
 12 technology developments which would
 13 provide greater numbers of jobs and enable
 14 the production of energy at more of a
 15 community regional scale, has also raised
 16 further questions about the wisdom of
 17 nuclear energy.

18 Both of those sentences are
 19 just clearly out of line with the
 20 established scientific facts about nuclear
 21 power and established scientific facts
 22 about the "alternative" technology,
 23 specifically, solar and other so-called
 24 soft technologies.

25 And then in Section 7.4.15,

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1 Conservation Alternative Technologies --
 2 I won't bother to read the paragraph. It's
 3 pretty straightforward that the use of
 4 recoverable energy resources and so-called
 5 renewable energy resources, such as solar
 6 bio-mass conversion and so forth, are
 7 encouraged is simply directly in
 8 contradiction to the established policy
 9 commitment in the first section of this
 10 energy-related statement and just simply
 11 contradicts the scientific evidence that
 12 is available from any competent source.

13 Thank you.

14 MR. GARDNER: Thank you very much,
 15 Mr. Bowen.

16 MR. KINSEY: Thank you, Mr.
 17 Bowen.

18 MR. GARDNER: That concludes the
 19 list of people who have indicated interest
 20 in making presentations at this hearing.
 21 I would like to give the members of the
 22 audience an opportunity to be heard if
 23 they did not sign that list.

24 I now open it up to anyone who
 25 may wish to make an additional statement.

1 If not, that appears to bring us to the
2 conclusion of this hearing.

3 I would like to express the
4 thanks of the federal Office of Coastal
5 Zone Management to you individually for
6 coming and presenting a diverse array of
7 new points on the segment for the New
8 Jersey Coastal Management Program and
9 express my own personal thanks to the
10 State of New Jersey, collectively, for
11 its hospitality in the last three days of
12 hearing and, particularly, David Kinsey
13 and the Department of Environmental
14 Protection for the assistance they have
15 provided us in conducting these hearings.

16 MR. KINSEY: Thank you, Mr.
17 Gardner. Let me close with one final
18 announcement. On the sign-up table, as
19 you entered the auditorium, there is a
20 questionnaire seeking your feedback on
21 this hearing and what you thought of it.
22 So I kindly invite you to fill out that
23 questionnaire and simply leave it on the
24 table out in front. If you didn't
25 pick up one, pick up one on your way out.

1 Let me thank you again and I
2 look forward to seeing you at further
3 meetings.

4 (Whereupon the hearing was
5 adjourned at 12:15 p.m.)
6
7

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C E R T I F I C A T E

I, ANNA MARIE SANFORD, a Certified
Shorthand Reporter and Notary Public of the
State of New Jersey, do hereby certify that
the foregoing is a true and accurate
transcript of my original stenographic notes
taken at the time and place hereinbefore set
forth.

Anna Marie Sanford
ANNA MARIE SANFORD, CSR.

DATE: 1/2/35

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
OFFICE OF COASTAL ZONE
MANAGEMENT

PUBLIC HEARING IN THE MATTER OF: :
NEW JERSEY COASTAL MANAGEMENT :
PROGRAM - BAY AND OCEAN SHORE :
SEGMENT - DRAFT ENVIRONMENTAL :
IMPACT STATEMENT. :

Wednesday-June 14, 1978
7:30 P.M.
Ocean County Administration
Building
Freeholders Meeting Room
Hooper Avenue & Washington Street
Toms River, New Jersey

B E F O R E:

MR. RICHARD GARDNER, DIRECTOR OF PROGRAM
DEVELOPMENT and RESEARCH, Federal Office
of Coastal Zone Management.

MR. DAVID KINSEY, CHIEF OF THE NEW JERSEY
OFFICE OF COASTAL ZONE MANAGEMENT.

BY: CINDY CALU, C.S.R.

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1 MR. GARDNER: Good evening, ladies and
2 gentlemen. I would like to welcome you to this
3 joint Federal and State public hearing which
4 has been called for the dual purpose of
5 receiving public testimony on the draft environ-
6 mental impact statement and the proposed
7 adoption of Chapter 3, Coastal Resource and
8 Development Policies, as an administrative rule
9 for the State of New Jersey's Coastal Manage-
10 ment Program for the bay and ocean shore
11 segment.

12 My name is Richard Gardner and I
13 represent the Office of Coastal Zone Management,
14 an arm of the National Oceanic and Atmospheric
15 Administration of the United States Department
16 of Commerce. On my right is David Kinsey,
17 Chief of the Office of Coastal Zone Management
18 for the New Jersey Department of Environmental
19 Protection.

20 As a prelude to the more formal part
21 of this hearing, and in addition to the intro-
22 duction of the objectives and content of the
23 New Jersey program, we will first have a brief
24 slide presentation prepared by the New Jersey
25 Department of Environmental Protection.

1 (At this time, the slide presentation
2 prepared by the New Jersey Department of
3 Environmental Protection was presented.)

4 MR. GARDNER: I would like to thank
5 the New Jersey Department of Environmental
6 Protection for providing that introduction to
7 the New Jersey program.

8 The Federal portion of this hearing
9 is being held as a part of the provisions of
10 the National Environmental Policy Act of 1969,
11 as indicated in the slide presentation, which
12 calls for the preparation of draft and final
13 environmental impact statements concerning pro-
14 posed major Federal actions which may signifi-
15 cantly affect the human environment. As part
16 of the process of considering environmental
17 effects, one or more public hearings may be
18 called in order to receive public testimony.
19 This is one of three such public hearings on
20 the draft environmental impact statement for
21 the New Jersey Coastal Management Program for
22 the bay and ocean shore segment. The major
23 Federal action being considered here is
24 Federal approval of the Coastal Management
25 Program for the bay and ocean shore segment

1 for the State of New Jersey by the Assistant
2 Administrator for Coastal Zone Management on
3 behalf of the United States Secretary of
4 Commerce under the terms of Section 306 of the
5 Coastal Zone Management Act of 1972, as amended.

6 Federal approval of the New Jersey
7 program would allow substantial Federal program
8 administration grants to be awarded to the
9 State, and, in addition, would require that
10 Federal actions be consistent with the terms
11 of the State's program.

12 As pointed out in the slide presenta-
13 tion, the program being presented here for
14 Federal approval covers only a portion of the
15 State's shoreline along the Delaware Bay, roughly,
16 south of the Delaware Memorial Bridge, along
17 the Atlantic shore from Cape May to Sandy Hook,
18 and along the south shore of the Raritan Bay.
19 While this segment includes approximately 80
20 percent of the State's coastal area, it does
21 not include areas along the Delaware and Hudson
22 Rivers and their associated waterways which
23 must be included in a complete State coastal
24 management program. Section 306(h) of the
25 Coastal Zone Management Act specifically permits

6
1 Federal approval of a program for a segment of
2 the State's coastal area, which it provides so
3 that programs for all segments can be coordinated
4 and integrated into a single unified program
5 as soon as is reasonably practicable.

6 The Federal Office of Coastal Zone
7 Management has prepared the draft environmental
8 impact statement which I think a number of you
9 have seen and which contains New Jersey's
10 Coastal Management Program for this segment.
11 The document contains a description of the
12 State's program, an analysis of the probable
13 impacts of the New Jersey program, a listing
14 of the alternatives to the proposed action, an
15 identification of unavoidable environmental
16 effects, a discussion of the long-range versus
17 short-term effects, and a listing of the
18 irreversible or irretrievable commitment of
19 resources from program approval. In addition,
20 it includes a number of appendices containing
21 detailed information and legal documents
22 referred to in the program.

23 Before this draft environmental
24 impact statement was issued, the Federal
25 Office of Coastal Zone Management made a

1 preliminary determination that this segment
 2 of the New Jersey program could be approved.
 3 A period of public review of the document began
 4 on May 5, 1978, when a notice of public
 5 availability was published in the Federal
 6 Register. The document was distributed to
 7 Federal, State, County, and Municipal Governments,
 8 and to national special interest groups during
 9 the month of May. In addition, copies were sent
 10 to all New Jersey depository libraries in this
 11 segment of New Jersey. We have additional
 12 copies still available here if you care to pick
 13 them up, and other copies can be obtained from
 14 the Office of Coastal Zone Management in Wash-
 15 ington or from the New Jersey Department of
 16 Environmental Protection in Trenton. Newspaper
 17 advertisements announcing the availability of
 18 the document and the date and location of these
 19 public hearings were placed in the Atlantic
 20 City Press, the Trenton Times, the Trentonian,
 21 the Newark Star Ledger, the Vineland Times
 22 Journal, and the Toms River Daily Observer
 23 during the last week in May. A notice of this
 24 public hearing was also printed in the Federal
 25 Register on May 16, 1978. The period for

1 receiving public comments on this document
 2 closes on June 19, 1978, next month. All
 3 comments received at this hearing and all
 4 written comments received by June 19 will be
 5 considered fully in the final determination on
 6 Federal approval of the New Jersey Coastal
 7 Management Program for the bay and ocean shore
 8 segment. Written comments can be sent to
 9 Kathryn Cousins, Office of Coastal Zone Manage-
 10 ment, 3300 Whitehaven Street, N.W., Washing-
 11 ton, D.C. 20235. I will have that address
 12 available for anyone who wants it after the
 13 hearing.

14 Now, a word about the role of the
 15 Federal Government and the State Government
 16 in Coastal Management is probably appropriate.
 17 The basic purpose of the Coastal Zone Management
 18 Act is to encourage and assist coastal states
 19 to develop and carry out coherent programs for
 20 the protection and wise management of the land
 21 and waters of the state's coastal areas. States
 22 often acting in concert with local units of
 23 government are the primary focus of this effort.
 24 Not only is it the state's prerogative to
 25 participate in the program or not, as it wishes,

1 since this is a voluntary program, but state
2 coastal management programs are built upon
3 legal authorities contained in state legisla-
4 tion. Implementation of these programs, likewise,
5 is the responsibility of state and, often,
6 local governments.

7 The Federal Government offers two
8 principle incentives for states to participate
9 in coastal management. First, it makes funds
10 available to develop programs which meet certain
11 minimum criteria established in Federal law,
12 and, upon Federal approval, to carry them out.
13 Second, it requires that the actions of Federal
14 agencies be consistent with the terms of a
15 coastal state's approved program. Federal
16 approval is awarded on the basis of completion
17 of a number of criteria contained in the
18 Coastal Zone Management Act which primarily
19 address the process by which the State's program
20 was developed, but which also address national
21 interest concerns and assurances that sufficient
22 state and legal authority exists to carry out
23 the program. Briefly stated, it is the intent
24 of the Coastal Zone Management Act that a
25 unified set of enforceable policies be applied

1 to the use of vital coastal resources and that
2 these policies apply to local, state, private,
3 and Federal actions.

4 Before we go any further tonight, I
5 would like to introduce two staff members from
6 the Federal Office of Coastal Zone Management
7 who are here to assist you in any way that they
8 can. First, we have Richard O'Connor, the
9 Deputy Regional Manager for the North Atlantic
10 Region who has worked directly with the State
11 in the development of its program, and, June
12 Kratid, the Environmental Analyst from our
13 office who assisted in the preparation and draft
14 of the environmental impact statement.

15 In order to explain and discuss the
16 State of New Jersey's portion of this hearing,
17 at this time, I would like to turn the hearing
18 over to David Kinsey who holds the principle
19 responsibility for the development and adminis-
20 tration of the New Jersey Coastal Management
21 Program.

22 MR. KINSEY: Thank you. I would like
23 to thank the freeholders of Ocean County for
24 their hospitality this evening. I would also
25 like to thank the Ocean County Planning Board

1 for publicizing tonight's hearing.

2 I would like to welcome all of you to
3 this meeting. This is the latest in a series
4 of various types of meetings that the Department
5 of Environmental Protection has held in the
6 past three years in the course of the coastal
7 planning process. I would like to stress that
8 Chapter 3 of this document has been proposed
9 as an administrative rule of the State of New
10 Jersey by the Commissioner of the Department
11 of Environmental Protection. The formal notice
12 was published in the New Jersey Register in May,
13 1978, with a comment period that closes on July
14 5th. Any comments on the rule should be
15 addressed to Chapter 3. However, the New Jersey
16 Department of Environmental Protection seeks
17 comments on the entire document, just as the
18 Federal Office of Coastal Zone Management seeks
19 comments on the entire document as part of the
20 draft environmental impact statement process.
21 Copies of the document are available tonight
22 for those of you who do not have copies.

23 I would also like to stress that
24 tonight is a formal public hearing. That's one
25 reason for a court stenographer taking down the

1 testimony. In addition, copies of written
2 testimony that may be available will be helpful.
3 They will be included in the record.

4 We have also had less formal sessions
5 in the past and meetings and workshops, and we
6 will continue to have such sessions in the
7 future as the coastal management process con-
8 tinues. Some specific workshops are scheduled
9 in the next two or three weeks to meet with
10 individual groups such as the builders and
11 the mining industry. My staff is available
12 for setting up all those meetings that are
13 necessary to continue this process.

14 Tonight, I will attempt to give some
15 responses to some of the comments that may be
16 offered, but a more thorough response will be
17 made in an appendix in the final environmental
18 impact statement. Each comment will be noted
19 and a response will be given.

20 I would like to introduce a number
21 of the members of the staff of the Department
22 of Environmental Protection who are here tonight
23 to help, and, perhaps, answer some of your
24 questions after the meeting. First, John
25 Weingart is the Assistant Chief of the Office

1 of Coastal Zone Management. In the rear, we
 2 have Michael Hochman, a Principal Environmental
 3 Specialist in the Office of Coastal Zone
 4 Management. We have Helga Baseman, who is in
 5 Energy Planning with the Office of Coastal Zone
 6 Management. We have Andrea Topper, a Senior
 7 Planner in the Office of Coastal Zone Management;
 8 Steven Whitney, Supervisor of the CAFRA Permit
 9 Section in this office; John Sparmo, Senior
 10 Marine Inspector; and Mike Pisani, Staff
 11 Coordinator for the beach shuttle which I believe
 12 is scheduled to open next weekend, going from
 13 Toms River to Island Beach State Park.

14 With that, let me turn the meeting
 15 over to Dick.

16 MR. GARDNER: There are just a couple
 17 of ground rules that we intend to use for this
 18 hearing. I think everybody has been asked to
 19 sign the attendance cards and indicate if they
 20 would like to make a statement. I think I
 21 have just about all of those up here now.
 22 Speakers will be heard on a first come, first
 23 serve basis. Statements should be limited to
 24 10 minutes or less. The staff here may wish
 25 to ask questions of any speaker following the

1 presentation of his or her statement. As indi-
 2 cated, a verbatim transcript of this hearing is
 3 being made as an aid in preparing a summary of
 4 the hearing. If you have a prepared statement,
 5 I would appreciate a copy of it for our records,
 6 if possible. As the speakers make their pre-
 7 sentations, I think they should probably move
 8 to the nearest aisle and then speak clearly so
 9 that they can be heard throughout the room.
 10 Also, I have been asked to indicate that there
 11 will be no smoking during this hearing.

12 It is important to remember that this
 13 hearing is for the purpose of receiving your
 14 comments. In general, there will be no rebuttal
 15 to the comments on behalf of the New Jersey
 16 Coastal Management Program or the Federal
 17 Office of Coastal Zone Management, although
 18 we may wish to make clarifying statements if
 19 that seems appropriate. All statements will
 20 be accepted and duly noted.

21 Again, I would like to remind you
 22 that the closing date for comments on the
 23 Federal portion for the draft environmental
 24 impact statement is June 19, and, for the
 25 State administrative rule, July 5.

1 Are there any questions regarding the
2 procedures that we are going to use tonight?

3 (At this time, there was no response.)

4 MR. GARDNER: If not, I think we will
5 proceed directly to the receipt of comments
6 then. Our first speaker tonight is Michael
7 L. Redpath of the Marine Trades Association of
8 New Jersey from Island Heights.

9 MR. REDPATH: The Marine Trades
10 Association of New Jersey, representing the
11 State's recreational boating industry, is
12 pleased to be a part of the ongoing coastal
13 planning process. We welcome the opportunity
14 to comment on the draft environmental impact
15 statement. We recognize that the Department
16 of Environmental Protection is making an effort
17 to consider coastal user input, as evidenced by
18 the changes made in the Coastal Management
19 Program since the close of the comment period
20 on the Coastal Management Strategy.

21 The draft E.I.S. is of utmost impor-
22 tance to our industry, as it is to all coastal
23 users, from both a restraining and nurturing
24 standpoint. The program obviously puts re-
25 straints on the growth and maintenance of

1 recreational boating in New Jersey and its
2 supporting industry. Properly applied, the
3 program can also nurture recreational boating
4 by providing for the most effective use of
5 coastal land and by pursuing the continuance of
6 an environment compatible with a clean family
7 recreation such as boating.

8 Because of the importance of the
9 draft environmental impact statement to the
10 Coastal Zone, we must object to the short
11 period of time available for study and comment.
12 A document that has taken so long to prepare
13 and is of such far-reaching impact deserves a
14 longer period for study and for the preparation
15 of incisive comment. For this reason, the
16 Marine Trades Association's testimony is being
17 prepared in two parts; this general verbal
18 testimony and a written testimony to be sub-
19 mitted later, which includes a revised version
20 of our verbal testimony and an in-depth analysis
21 of each segment of the State that deals with
22 or affects recreational boating.

23 We in the Association see ourselves
24 as realistic environmentalists favoring
25 environmental protection, but also recognizing

1 the need to balance that protection with economic
2 reality. It is with that philosophy that we
3 have reviewed the draft environmental impact
4 statement. On the whole, the draft environmental
5 impact statement is a well thought out document
6 that reflects very well on the ability and
7 professionalism of the staff that prepared it.
8 Our major criticisms lie with the negative
9 approach to management, a lack of working know-
10 ledge of the uses regulated, and inconsistencies
11 and lack of clarity in some areas. The program
12 is entirely too negative. More attention must
13 be given to attracting and encouraging the
14 uses desirable for the Coastal Zone. As stated
15 in the Marine Trades Association's response to
16 the Coastal Management Strategy for New Jersey,
17 New Jersey has traditionally been oriented
18 toward solving problems through regulations.
19 Encouragement must become a more positive
20 approach. The State must actively assist in
21 the development and maintenance of those private
22 facilities that compliment the State's goals
23 for the Coastal Zone through improved public
24 access without serious environmental degradation.
25 The Association recognizes that the Office of

1 Coastal Zone Management cannot serve as an indus-
2 trial development agency, but O.C.Z.M.'s regu-
3 latory philosophy must be structured so as to
4 be more inviting rather than discouraging to
5 acceptable growth.

6 We are pleased to see that the draft
7 environmental impact statement is more positive
8 than the strategy, but, still, it's not positive
9 enough. It is unfortunately obvious that the
10 program was conceived by administrators who are
11 not sufficiently in touch with the situation as
12 it exists in the real world environment. From
13 a textbook standpoint, the program is workable.
14 From a real world standpoint, there are suffi-
15 cient shortcomings to make it unworkable. There
16 are many incorrect definitions that cause the
17 program to lose credibility, as well as to make
18 it unworkable. The Association's written tes-
19 timony will elaborate on those shortcomings.

20 Further evidence of the lack of real
21 world knowledge is the failure to treat certain
22 elements of the environment as transient change-
23 able entities. Certain elements of the environ-
24 ment such as shellfish beds, grasses, and sands
25 are capable of change and movement, and the

1 policy must recognize this. It must also be
 2 recognized that the economic impacts of the
 3 program are much more probable and much longer-
 4 term than predicted. There are numerous incon-
 5 sistencies and a need for clearer definitions.
 6 The inconsistencies exist both between indivi-
 7 dual policies and in basic philosophy. Is the
 8 program to be specific, as the intent appears
 9 to be, or general, as the specific lack of
 10 definitions or details would indicate?

11 In addition to the specific suggestions
 12 to be offered in the written testimony, the
 13 Marine Trades Association has several general
 14 positive suggestions for revising the draft
 15 environmental impact statement and the proposed
 16 Coastal Zone Management Program. One of the
 17 restraints to desirable development in the
 18 Coastal Zone is the gamble involved in purchas-
 19 ing property or planning projects not knowing
 20 whether necessary permits would be attainable.
 21 Some pre-purchase or pre-planning guidance is
 22 desirable, including, perhaps, a general mapping
 23 of the Coastal Zone showing what uses would
 24 probably be acceptable in each area, as well
 25 as what uses would probably not be acceptable.

1 Greater participation by people with
 2 direct working knowledge in regulated uses must
 3 be included in drafting and applying policies
 4 and regulations. This could be accomplished
 5 through membership on the Coastal Area Review
 6 Board or through the use of consultants from
 7 regulated industries in all decisions affecting
 8 those industries.

9 The program cannot work if it is unable
 10 to recognize the day-to-day problems and real-
 11 ities of regulated uses. The Department of
 12 Environmental Protection permit procedures
 13 must be simplified. We agree with the need to
 14 protect the environment, but the process
 15 employed to do that is actually scaring away
 16 perfectly acceptable and perhaps beneficial
 17 projects because of the economic and psycholo-
 18 gical strain caused by the permit process.
 19 Unless some overwhelming financial gain is
 20 evident, it's just not worth pursuing a D.E.P.
 21 permit. The kinds of businesses encouraged by
 22 the Coastal Zone Management Program are essen-
 23 tially small, low economic yield businesses,
 24 but the permit process is geared to be tackled
 25 by large, high yield businesses capable of

1 employing a battery of lawyers and consultants.

2 The CAFRA, wetlands, and riparian
3 permits must be consolidated. Once consolidated,
4 they must be streamlined without weakening
5 their effectiveness. In order to gain a fresh
6 perspective, an outside consultant must be
7 brought in to guide the consolidation and
8 streamlining. Working from within the Department
9 can never happen effectively because all pro-
10 posals would be based on existing procedures.
11 This must be accomplished with outside help.

12 A further simplified and easier to
13 obtain permit process must be considered for
14 small, new projects or the maintenance of approval
15 for existing projects. The restraints on these
16 projects which caused the least new disruption
17 to the environment are disproportionately higher
18 than for larger projects. The project cost
19 ratio is even further out of line than that
20 with larger projects. The result is either
21 near total discouragement of these small pro-
22 jects or incentives to do the work without
23 permits. Look at the state of disrepair in
24 many New Jersey marine facilities. The expensive
25 permit process actually encourages that lack

1 of maintenance. It is imperative that the
2 Office of Coastal Zone Management develop a
3 better understanding of the interactions between
4 the environment and the economy of the Coastal
5 Zone.

6 If the statement about sporting and
7 prohibiting access to beaches and waterfront
8 areas means using funds to build facilities
9 and sport programs like the Island Beach shuttle,
10 we are adamantly opposed. Coastal Zone Manage-
11 ment funds must not be used for projects. The
12 need for research into all aspects of the
13 Coastal Zone is so great that spending Coastal
14 Zone funds for projects is unconscionable. The
15 proposed study of recreation and boating in
16 New Jersey must be pursued. The nature of the
17 sport, the nature of the industry, the demand,
18 the restraints, and the prospects and recommen-
19 dations for the future must be identified. A
20 study aimed at increasing the compatibility
21 of boats and their sport facilities with the
22 environment should be undertaken.

23 The State's dredging needs must be
24 identified, along with the agency or body res-
25 ponsible for the dredging. Proposals for

1 accomplishing that dredging must be drafted.
 2 As indicated in the Marine Trades Association's
 3 response to the Coastal Zone Management
 4 Strategy, a concerted effort must be made to
 5 locate and develop spoils areas that are physi-
 6 cally and economically accessible to both the
 7 public and private sector. Goals for site
 8 development based on dredging needs within
 9 specific geographic areas must be set. Inves-
 10 tigation of alternative dredging methods and
 11 dredge disposal and use must also be actively
 12 pursued, whether within State Government or
 13 research institutes. Without the development
 14 of the spoils areas, New Jersey's dredging
 15 needs will remain unfilled. The State's water-
 16 ways will continue to deteriorate.

17 Unfortunately, some people claiming
 18 to be environmentalists give little regard to
 19 the serious economic impacts of their actions.
 20 Well-founded environmental considerations are
 21 an important part of the permit process and
 22 must be encouraged. However, a stop must be
 23 put to the attacks on projects launched by
 24 people using environmental considerations as
 25 an excuse for opposing projects they just don't

1 like. It would seem that for all the trouble
 2 and expense an applicant must go through, it
 3 would only seem right that opponents to the
 4 application be required to substantiate their
 5 claims. A requirement that opponents be
 6 required to file an environmental impact state-
 7 ment supporting their contentions would assist
 8 the permit reviewers and applicants in consid-
 9 ering objections.

10 By incorporating the suggestions
 11 included in this testimony and in the Assoc-
 12 iation's written testimony, we believe a work-
 13 able Coastal Zone Management Program can be
 14 created. We look forward to living and working
 15 in the Coastal Zone which the program is directed
 16 toward creating and maintaining.

17 Thank you.

18 MR. KINSEY: Let me just address some
 19 of the points you raised. Your suggestion that
 20 mapping of the Coastal Zone take place is one
 21 that I agree with completely. Various mapping
 22 efforts have taken place in the past decade.
 23 One reason that the State is seeking Federal
 24 approval is that with Federal approval will
 25 come funds. The expected grant is \$800,000.

1 It is our hope and our commitment to do environ-
 2 mental mapping at the scale of one inch equals
 3 2,000 feet. This is one of a number of projects
 4 that have had to be deferred for lack of funds.
 5 A boating study of commercial and, particularly,
 6 recreational boating also had to be deferred
 7 for the same funding reasons. Permit simpli-
 8 fication and consolidation of coastal permits
 9 is another one of the Department's goals that
 10 we hope to continue to work toward with the
 11 financial assistance that will be available
 12 upon program approval, but, also, with the
 13 clarity of having in-place rules on how the
 14 decisions are going to be made and what will
 15 be the basis for the decisions. That should
 16 help in the process of decision making.

17 We too, of course, look forward to
 18 continuing working with the Marine Trades Asso-
 19 ciation.

20 MR. GARDNER: Thank you. The second
 21 speaker is Alvin R. Wagner, Secretary-
 22 Treasurer of Sunrise Beach, Incorporated, For-
 23 ked River, New Jersey.

24 MR. WAGNER: I'm sorry, sir, but
 25 there is a "no" on that as far as a presentation

1 is concerned; isn't there?

2 MR. GARDNER: It says yes. It's up
 3 to you.

4 MR. WAGNER: All right. First of
 5 all, the reason I didn't expect to make a pre-
 6 sentation is because of the short notice. I
 7 didn't have a chance to read this over suffi-
 8 ciently, but all I can say is that I have to
 9 agree. I'm with a company that is a real
 10 estate developer and I am a wetlands owner on
 11 Barnegat Bay and Forked River. We have been
 12 there since 1955. I can only agree with most
 13 of what Mr. Redpath has said. As a wetlands
 14 owner, I would like to say that I feel that
 15 there is no such thing as all white or all
 16 black. Everything is sort of a gray issue.
 17 We consider ourselves to have been careful in
 18 the development of our property. I feel that
 19 the way the environmentalists and a lot of
 20 the D.E.P. consider developers today is a
 21 little bit unfair. Let's face it, folks, if
 22 it weren't for developers and home builders,
 23 a lot of us wouldn't be in Ocean County today.
 24 I think that consideration should be given
 25 to those real estate developments which have

1 been in operation before the Wetlands Act or
 2 before CAPRA was passed. I think that some
 3 kind of a grandfather clause should be included
 4 as an amendment to those acts to permit real
 5 estate developments which were in the process
 6 of development to be given consideration to
 7 the point where they can be included in such
 8 a manner that they will be an asset to the
 9 community rather than left as a bunch of
 10 piles which are detrimental, not only to the
 11 community in general, but to the neighbors in
 12 that particular area.

13 That's ^{all}/I have to say. Thank you.

14 MR. KINSEY: Mr. Wagner, it's impor-
 15 tant to realize that five years ago when the
 16 legislature passed the Coastal Area Review
 17 Act, the legislature did include a specific
 18 grandfather clause so that those projects
 19 that were in the process of development were
 20 specifically excluded. The Department set
 21 up a procedure to make sure that people could
 22 realize whether they were or were not exempt.
 23 That process has run its course for the past
 24 four years.

25 MR. WAGNER: I agree with you, but

1 the Wetlands Act has no such provision and
 2 everything right now is up in the air.

3 MR. KINSEY: You are correct. There
 4 is a permit application process and I'm sure
 5 the staff of the Office of Wetlands Management
 6 would be glad to sit down with you in the pre-
 7 application process to discuss any proposals
 8 you may have.

9 MR. WAGNER: We have gone through
 10 that and we have an application which has been
 11 pending for the past six months. Correspon-
 12 dence has gone back and forth. So far, I
 13 think that we have spent close to \$10,000 on
 14 engineering fees, legal fees, and fees for
 15 marine biologists. Now we have to spend even
 16 more money for additional water tests, over
 17 \$1,000 in additional water tests. Of course,
 18 this will not guarantee that we are ever going
 19 to get any kind of approval.

20 Thank you.

21 MR. GARDNER: Thank you, Mr. Wagner.
 22 Our next speaker is Winifred D. Meyer, repre-
 23 senting the American Association of University
 24 Women, Brant Beach, New Jersey.

25 MS. MEYER: My name is Winifred D.

1 Meyer and I represent approximately 7,000
2 college educated women in New Jersey, members
3 of the American Association of University
4 Women.

5 In April, 1978, at the New Jersey
6 Division's meeting, their representatives
7 unanimously approved the Division's legislative
8 program--I'm sorry that I don't have one for
9 all of you--which, as part of its community
10 policy, has the following statement:

11 "We support the protection and con-
12 servation of water resources through local and
13 State implementation of the National Environ-
14 mental Policy Act, the Federal Water Policy
15 Act, the Federal Water Pollution Control Act
16 Amendments of 1972, and the Coastal Area
17 Facilities Review Act, including citizen
18 participation in Water Quality Planning (208),
19 ocean and wetlands protection, and preservation
20 of fresh water resources such as the Pinelands."

21 In a volunteer organization such as
22 ours, it is impossible to study thoroughly a
23 document as far-reaching as the bay and ocean
24 shore segment within the reaction time limit
25 set by the National Oceanic and Atmospheric

1 Administration and our own Office of Coastal
2 Zone Management. In fact, to get better
3 citizen participation, longer study time would
4 be most desirable. However, we have some
5 isolated reactions based upon our policies.

6 One is on ocean dumping. We have
7 felt for some time that the demand of the
8 American Littoral Society and of other coastal
9 groups to stop ocean dumping now will save us
10 much grief. The need for immediate action was
11 emphasized by Doctor Donald W. Lear, Program
12 Advisor for E.P.A. Region III, when he told
13 the A.A.U.W. Middle Atlantic Regional Confer-
14 ence this past weekend that there is a poten-
15 tial danger in the reappearance this spring
16 of green slime on the ocean floor, indicating
17 the possibility of oxygen loss. We all remember
18 what happened two years ago when a combination
19 of green slime and strong southwest winds caused
20 a massive fish kill off our coast. He believes
21 we could face more of the same unless programs
22 to diminish ocean dumping and to institute
23 better sewerage treatment be given immediate
24 and emergency attention.

25 Regarding high risk erosion areas,

1 I suspect that after the damage done by our
 2 northeasters to the barrier islands this winter,
 3 plus the additional building permitted on the
 4 dunes this spring--and I give you Long Beach
 5 Island as an example--that not only Barnegat
 6 Light and others which are listed, but other
 7 areas of these barrier islands are now high
 8 risk erosion areas. The segment on Page 51,
 9 Section 6.4.1.2. states, "Development in high
 10 risk erosion areas is prohibited except for
 11 shore protection measures that satisfy the
 12 shore protection use policies", and again on
 13 Page 55, Section 6.4.2.2., "Development on
 14 dunes is prohibited, with the exception of the
 15 construction of limited pedestrian walkways
 16 supported on piles above the dune surface."
 17 We hope that this means that there will be a
 18 big improvement in preserving all of New Jersey's
 19 barrier islands' protective dunes. Figure 8
 20 on Page 56 of the segment dramatically shows
 21 how man has violated nature's protection. In
 22 fact, it's hard to understand why parts of our
 23 barrier islands were never declared national
 24 seashores like Hatteras and parts of Cape Cod
 25 with similar exposures to the sea. However,

1 although nature's northeasters and other eroding
 2 factors are out of our jurisdiction, the
 3 curtailment of building that threatens and
 4 destroys our dunes is not. It is in our inter-
 5 est to sacrifice a bit economically now so
 6 that we do not ultimately destroy our constant
 7 economy by losing our beaches, and, consequently,
 8 the summer and other seasonal visitors who are
 9 most responsible for our shoreland's economy.

10 A major impact upon our bays and
 11 shores is, of course, that of offshore drilling.
 12 We commend the D.E.P.'s encouragement of outer
 13 continental shelf related facilities only in
 14 developed areas, and the fact that pipelines
 15 will be conditionally acceptable only if they
 16 follow already developed rights-of-way.
 17 Furthermore, although the segment prohibits
 18 pipeline corridors for landing oil in the central
 19 Pine Barrens area of the Mullica River, the
 20 Cedar Creek watershed, and portions of the
 21 Rancocas Creek and Toms River watersheds, we
 22 feel strongly that the same prohibition should
 23 apply to all possible pollutants, and in a
 24 much larger section of the Pine Barrens area.
 25 The reason for this thinking is the fact that

1 our underground water reserves in the Pine
 2 Barrens are all one big lake, and whatever
 3 pollutes one section pollutes it all. We
 4 cannot afford to pollute our water reserves
 5 whether it be through development and its
 6 attendant pollutants, or through possible oil
 7 or gas leakage. There can be no guarantee
 8 that pollution will not occur in those cases.
 9 To cite a local instance, recent events indi-
 10 cate that we may need those water reserves
 11 sooner than expected. For instance, see the
 12 Beach Haven Times of June 7, which reports
 13 pleas for a regional water system for southern
 14 Ocean County because the salt level in the
 15 water from the wells on Long Beach Island,
 16 and, ultimately, on the mainland, is increasing
 17 notably, the result of the increased use of
 18 water since the county sewerage installation.
 19 The recommendation given is that present wells
 20 will be abandoned and water piped in from the
 21 Pinelands where drilling would take place. I,
 22 for one, didn't expect it this soon.

23 Conservation becomes a most impor-
 24 tant factor in these energy related matters.
 25 Therefore, we applaud the segment's policy of

1 (1) concentrating rather than disbursing the
 2 pattern of coastal residential, commercial,
 3 industrial, and resort oriented development,
 4 and (2) encouraging the preservation of open
 5 space.

6 Conservation in energy leads us to
 7 alternate sources, as mentioned in the segment.
 8 The A.A.U.W. feels strongly that there should
 9 be stringent limitations on the use of nuclear
 10 reactors and acceleration of the technology
 11 leading to the development of adequate energy
 12 sources other than nuclear, with emphasis on
 13 renewable sources; sun, wind, tides, co-gener-
 14 ation, and geothermic. What area can better
 15 lend itself to the use of sun and wind than
 16 the Coastal Area with practically no shade
 17 and an almost constant wind? If we can put
 18 a man on the moon, we certainly can utilize
 19 sun and wind more inexpensively and efficiently
 20 than we do now. We feel that all we need is
 21 to accelerate the technology. I'm sure we
 22 have it. We urge New Jersey to use all means
 23 on all levels of government to meet that
 24 challenge.

25 We wish to compliment the Office of

1 Coastal Zone Management, not only on its well
 2 thought outdocument, but also on its intense
 3 efforts to encourage citizen participation in
 4 the planning stage of the direction that New
 5 Jersey will go. This is the democratic way,
 6 based originally on the town meetings in the
 7 13 colonies where everybody had his say.
 8 Certainly, the gentleman here tonight has made
 9 it quite evident that everybody shall have
 10 his say here. We sometimes feel that we get
 11 useless ideas by this method, but we also get
 12 more good ideas. As a result, government by
 13 the people becomes government for the people
 14 and of the people.

15 The New Jersey Division of the
 16 American Association of University Women offers
 17 its cooperation to the Office of Coastal Zone
 18 Management in moving forward our mutual recom-
 19 mendations for a better New Jersey.

20 Thank you.

21 MR. GARDNER: Thank you very much.
 22 That was a very thoughtful statement. I would
 23 like to point out that the responsibility for
 24 ocean dumping is primarily a Federal respon-
 25 sibility held by the Environmental Protection

1 Agency.

2 MS. MEYER: The recommendation
 3 shall come from whom?

4 MR. GARDNER: The recommendation
 5 should be handled by the Federal Environmental
 6 Protection Agency.

7 MS. MEYER: Directly?

8 MR. GARDNER: I would think so.

9 MS. MEYER: Thank you.

10 MR. GARDNER: The next speaker is
 11 Joseph M. Heeney, President of the Lacey
 12 Township Chamber of Commerce, Forked River,
 13 New Jersey.

14 MR. HEENEY: Yes. I would like to
 15 preface my remarks with a statement that this
 16 gentleman has brought out. We havon't had
 17 that much time. I had to call an emergency
 18 meeting of my organization as late as yester-
 19 day and I have henpecked my notes tonight.

20 Basically, we support the concept
 21 of long-range planning to protect the ecology
 22 and our natural resources. However, the
 23 Lacey Township Chamber of Commerce strongly
 24 opposes the adoption of this program as it
 25 is presently proposed. We find it an extreme

1 set of regulations that take away from the
 2 vital and necessary home rule features of
 3 townships and counties. It can impose, and
 4 probably will, a tremendous tax hardship on
 5 communities and the taxpayers, as all tax losses
 6 will have to be borne locally and not with the
 7 State. It has built in regulations that will
 8 result in such tax ratable losses. It contains
 9 unrealistic standards, such as for drain water
 10 runoff. The section pertaining to wetlands
 11 definitions is far too severe, and many tax-
 12 payers will find that they don't even own the
 13 homes they have bought and paid taxes on for
 14 many years. I find myself in that same posi-
 15 tion. I came from Hudson County, Jersey City.
 16 I bought a home that was built on filled-in
 17 land, and I'm very grateful that I sold out
 18 and I'm not up there now because it could
 19 possibly belong to the State. I would say
 20 it would be worth about \$70,000 today. The
 21 State could take it away from me.

22 We object to one section of the
 23 State, South Jersey, being programmed first,
 24 and the other areas of Hackensack, the Meadow-
 25 lands, the Delaware River, et cetera, being

1 developed later with possibly different stan-
 2 dards. This is piecemeal and arbitrary. If
 3 the regulations are acceptable to one area,
 4 then the same standards should apply uniformly.

5 In general, the acceptance of the
 6 program can impose a financial disaster to
 7 every community it encompasses, which takes
 8 in, as you are aware, 1,382 square miles. Our
 9 Chamber of Commerce has sent letters to our
 10 elected officials, both State and local, to
 11 protest the program in its present form. We
 12 are contacting every chamber of commerce in
 13 Ocean County to solicit their support in our
 14 protest.

15 In conclusion, all powers of these
 16 regulations lie within one department, once
 17 it is enacted, not with our elected officials.
 18 This then becomes taxation without represen-
 19 tation. I think we fought that fight a lot
 20 of years ago. We don't need to go through
 21 that again. When the tax stability is dis-
 22 turbed, the senior citizens also are hurt
 23 in our own area of the State. That means one
 24 third of the population. We have to be pro-
 25 tected. We can't give them pennies that we

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take in from Atlantic City and take their homes away from them and take their tax ratable properties away from them.

Thank you.

MR. KINSEY: I would like to clarify that the Coastal Management Program rests on four existing State laws passed, in some cases, 50, 60, or 70 years ago, and, most recently, the CAFRA statute in 1973, but the four laws are the CAFRA statute, the wetlands and riparian statutes, as well as the Department of Energy Act in 1977. What the program does is to spell out policies for carrying out those existing State laws so that the discretion of the administrators in the Department of Environmental Protection and the Department of Energy will be diminished intentionally. That's the purpose of spelling out policies and the adopting of the rules, rather than simply letting the legislative standards, which are sometimes broad and more general, be the basis for decision making.

MR. HEENEY: Isn't it correct that you are changing what constitutes a wetland from the tidal height to the vegetation, that

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sort of thing?

MR. KINSEY: I'm not aware of any change proposed in this document on the definition of wetlands. The wetlands policies contained in the bay and ocean shore segment document are exactly the same wetlands policies in the adopted wetlands regulations. They went through an exhaustive public hearing process with notification to all wetland property owners beginning in the early 1970's. They are just stated in this framework so that one can see how decisions will be made on the wetlands, riparian, and CAFRA permit decisions.

MR. GARDNER: Thank you, Mr. Heeney. The next speaker is Edward Perry, representing the Fish and Wildlife Service of the United States Department of the Interior. He has journeyed here from the State College of Pennsylvania.

MR. PERRY: I will have an official copy of this for you probably within a week or so.

Because of the broad based responsibility for managing and conserving fish and wildlife resources, we have reviewed New Jersey's

1 Coastal Management Program in some detail. These
2 comments represent the official views of the
3 Fish and Wildlife Service at this time, and
4 not necessarily those of the Department of
5 the Interior as yet. A copy of these comments
6 will be forthcoming within a few weeks.

7 One of the major strengths of New
8 Jersey's Coastal Management Program is that
9 it recognizes the importance of protecting
10 existing valuable coastal resources for fish,
11 wildlife, and recreational purposes. The
12 Service fully supports these objectives, and
13 we will work with New Jersey to provide assis-
14 tance during the implementation of their coastal
15 program. We are also particularly pleased
16 with the first basic coastal policy, which is
17 to protect the coastal eco-system.

18 Although the program is oriented
19 toward coastal resource protection, there are
20 a number of weaknesses that should be corrected
21 to strengthen the coastal resource protection
22 element of the program. For example, despite
23 the fact that the Coastal Zone Management Act
24 and the CAFRA State law require an inventory
25 of coastal resources, we believe that the

1 inventory has not been fully completed. New
2 Jersey has published a second publication
3 entitled, "An Inventory of the New Jersey
4 Coastal Area". However, in our opinion, this
5 document is just a listing of bibliographic
6 terms and does not fully meet the inventory
7 requirements of both State and Federal law.
8 A suitable inventory should have identified
9 and mapped areas of unique or vulnerable
10 habitat, critical habitat for endangered
11 species, recreational areas where development
12 is dependent on access to coastal waters, areas
13 of significance for commercial or industrial
14 development, high hazard areas from storms,
15 erosion, and floods, prime fishing sites for
16 areas, fish pathways, special wildlife habitats,
17 and other coastal areas suitable for develop-
18 ment and preservation. Much of this information
19 is already available. These areas should have
20 been mapped and incorporated into the CLAM
21 process. To plan for the future, it is essen-
22 tial to know what resources are available in
23 what quantity and quality and where they are
24 located. A comprehensive inventory would have
25 fulfilled this need. Because these inventories

1 have not been fully completed, we believe that
 2 the CLAM process lacks an adequate data base.
 3 Although CLAM appears to be an excellent mech-
 4 anism for evaluating permits, CLAM does not go
 5 into effect until a permit is applied for.
 6 Because of the lack of a complete coastal
 7 resource inventory, a permit applicant will
 8 not be knowledgeable of where important coastal
 9 resources are located until they actually go
 10 through the permit process. Maps that clearly
 11 show the most important coastal areas would
 12 serve to guide development and increase the
 13 predictability of the permit process. Therefore,
 14 we recommend that the basic coastal resource
 15 inventory be completed.

16 The second weakness of the program
 17 is that it fails to address the cumulative
 18 impacts of small development projects. Housing
 19 developments of less than 25 units are not
 20 subject to the CAFRA permit process.

21 Another concern relates to the loca-
 22 tion policies. Although the rationale behind
 23 the location policies are excellent, we believe
 24 some of the policies need strengthening by the
 25 elimination of ambiguous words and the vague

1 phraseology.

2 It is the Service's opinion that it
 3 is especially important to prevent further
 4 habitat destruction in special water areas in
 5 New Jersey. Our review of the program reveals
 6 that it fails to provide a buffer zone around
 7 geographic areas of particular concern or
 8 G.A.P.C.'s. We are pleased that the wetlands
 9 located inland of the CAFRA boundary and within
 10 the Coastal Zone boundary are designated as
 11 G.A.P.C.'s. However, the shoreline uses adja-
 12 cent to those G.A.P.C.'s are not regulated by
 13 the program. Thus, some uses can be expected
 14 to cause significant adverse impacts. Therefore,
 15 we recommend the buffer zone be established
 16 around all G.A.P.C.'s, and that uses within
 17 the buffer zone be regulated by the Coastal
 18 Zone Management Program.

19 Despite these weaknesses, we believe
 20 that this Coastal Zone Management Program is
 21 a significant step toward the wise use of a
 22 finite resource base. With some modifications,
 23 it can be the plan that will enable New Jersey
 24 to grow and prosper while preserving a heritage
 25 of national significance for its citizens now

1 and in the future.

2 Thank you.

3 MR. GARDNER: Thank you very much,
4 Mr. Perry. I appreciate that and I appreciate
5 your coming a long distance to attend this
6 hearing.

7 MR. KINSEY: Thank you, Ed. The
8 comment about the inventory is a useful one.
9 The point about a data base is a very impor-
10 tant one. The data base, in my mind, is really
11 never finished because it keeps changing.
12 Your comment that CLAM is not yet affirmative
13 or that the Coastal Location Acceptability
14 Method will not be able to give people advanced
15 guidance of likely sites that are appropriate
16 is a good one, but I respectfully disagree.
17 I'm quite encouraged to find some of the
18 county planning agencies have been using this
19 method for comparing their plan with the types
20 of policies inherent in the Coastal Location
21 Acceptability Method. We have to do much more
22 work to make this clearer to all and make
23 whatever refinements might be necessary. We
24 look forward to the continuing cooperation of
25 the Service in doing that.

1 MR. GARDNER: Just one comment about
2 the inventory. The Federal statutes and
3 regulations don't require a comprehensive
4 inventory of all coastal resources in the
5 State, although we certainly encourage it to
6 the extent that it is necessary to carry out
7 the program, but a comprehensive inventory is
8 not required. A lot of states, as they begin
9 to implement their approved programs, will,
10 as David indicated, be getting increasingly
11 into the inventory mapping stage in an extremely
12 detailed way as a device for assisting in the
13 permit activities.

14 Mr. Perry, I would like to ask you
15 one question. Do I understand that these,
16 indeed, are the official Fish and Wildlife
17 Service comments, but they are not necessarily
18 those that will be provided through the
19 Department of the Interior; is that true?

20 MR. PERRY: They probably will be.
21 They haven't tied all the comments together
22 as yet. These are the official comments of
23 the Fish and Wildlife Service at this time.

24 MR. GARDNER: Thank you. The next
25 speaker is David Morris, Jr., representing the

1 Monmouth County Planning Board, from Freehold,
2 New Jersey.

3 MR. MORRIS: I guess we have two
4 cards in.

5 MR. GARDNER: Did you indicate that
6 you wished to speak?

7 MR. HUGULEY: There will just be
8 one of us speaking. I'm Bob Huguley.

9 MR. GARDNER: Please proceed.

10 MR. HUGULEY: My name is Robert W.
11 Huguley, Principal Environmental Planner with
12 the Monmouth County Planning Board. I don't
13 have any prepared comments tonight because we
14 haven't completed the analysis of this document.

15 We have looked at the CLAM procedure,
16 and I want to compliment the State. We think
17 it has done a very good job and it looks like
18 something that will be quite equitable. It's
19 based on something that we can put our hands
20 on and use as a working procedure. We are in
21 the process of using it to look at some CAFRA
22 applications that we have in at the moment.
23 In general, the Monmouth County Planning Board
24 supports the CAFRA program. We are under
25 contract with the D.E.P. to perform some

1 elements of the Coastal Zone Management
2 Plan. We really don't have any big quarrel
3 with the Coastal Zone Management Program or
4 the CAFRA process. We don't see eye to eye
5 all the time, but we have found that the
6 Office of Coastal Zone Management is very
7 reasonable and we usually can sit down with
8 them. After we scream at each other for a
9 while, we come to some understanding.

10 I would like to make one comment
11 though on the bay and ocean shore document. On
12 Page 45, Figure 5, you have the water accept-
13 ability table. You have a number of types of
14 water bodies and estuarine bodies and so forth.
15 Then you have a number of different uses and
16 so forth. Under "dredging-maintenance", we
17 do disagree with your designations for lakes
18 and ponds in the inland basin, and with the
19 small creeks and streams in the channel segment.
20 You have "P", which is prohibited. We feel
21 that this will further restrict maintenance,
22 desalting, and desnagging in streams and small
23 rivers within the CAFRA area for mosquito
24 control purposes and for general flooding
25 purposes. In Monmouth County, we have a

1 Drainage and Waterways Agency which works with
 2 the Mosquito Extermination Commission. We
 3 have a program whereby we go around and clean
 4 out streams and so forth for mosquito control.
 5 The reason we have a Drainage and Waterways
 6 Agency is because of the very stringent D.E.P.
 7 regulations on this process. We feel very
 8 strongly about this because in Monmouth County,
 9 we have over 200,000 people in the Coastal
 10 Region and we have some very, very severe
 11 mosquito control problems. We would like to
 12 see exemptions for mosquito commissions, pro-
 13 viding they perform a certain standard of
 14 work.

15 We will be submitting more formal
 16 comments later.

17 MR. GARDNER: Thank you very much.

18 MR. KINSEY: Thank you for that
 19 suggestion. My copy of that table, and, in
 20 fact, many other pages of this document have
 21 lots of markings on them of suggestions and
 22 changes and things to consider. If you can
 23 provide us with alternate language or the
 24 appropriate condition that you think should
 25 be inserted at this point, that will be

1 particularly helpful.

2 MR. HUGULEY: We will do that.

3 MR. GARDNER: Thank you. The next
 4 speaker is Derry W. Bennett, representing the
 5 American Littoral Society in Highlands, New
 6 Jersey.

7 MR. BENNETT: Good evening. I
 8 represent about 1,500 members in New Jersey
 9 who have been interested in coastal environ-
 10 mental protection since 1969 when the Wetlands
 11 Act was drawn up, and then through the whole
 12 process of CAFRA and into the Federal plan.

13 When CAFRA was passed in 1973, the
 14 legislature found that the State should regulate
 15 land uses "within the framework of a compre-
 16 hensive environmental design strategy which
 17 preserves the most ecologically sensitive and
 18 fragile area from inappropriate development."

19 Measured against that phraseology,
 20 we believe that the draft document under con-
 21 sideration today falls short of the legislative
 22 intent of CAFRA, but goes much of the way
 23 toward coping with land use decision making
 24 in the Coastal Zone. We believe, and we have
 25 said it in the past, that both the inventory

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and the alternative management strategies which the Department of Environmental Protection presented as required under CAFRA were weak documents, and they led to a final management plan presented to the legislature last September which does not fulfill the legislative intent of CAFRA. That D.E.P. document has now been refined and appears today as the State's presentation to the National Oceanic and Atmospheric Administration to fulfill a segment of its coastal plan. If the plan is followed, it will lead to better environmental protection along the coast, and, to that extent, we can support it, but there are deficiencies in the document, places where the language can be strengthened or rewritten so that the natural coastal resources can better survive. Let me make some general comments on this document.

Each draft of this document that we have seen does a better job of being specific about what can and cannot be done to land and water in the Coastal Zone. It now seems to us as if a developer or proposer of development can, with the CLAM method, go through the

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steps and pretty much understand what his chances are of getting a permit or not. There doesn't seem to be any reason why an applicant cannot go through the process. There is no reason for the applicant to be surprised by a decision from the D.E.P.

It is obviously legal for the State to control some land use decisions in the Coastal Zone because what happens in the Coastal Zone influences areas outside of the specific areas of development. So, to that extent, the document protects the coastal environment and does so in a clear and predictable manner. We support that. However, there are some weaknesses that need to be fixed up.

First of all, it is our feeling that CLAM is reaction, not planning. The D.E.P. still leaves the important first step-- what should happen to the land--to the developer, contrary to the intent of CAFRA, which emphasized a statewide interest in the well-being of coastal water and land. Instead of a vision of the coast, the D.E.P. has decided to design "a program which accommodates the creativity and initiative of individual

landowners and developers and others." Rather than directing development or non-development on the coast, the State will react to the plans of others. This is not to say that CLAM is not a useful tool in coastal planning, but CLAM will work better if a plan, drawn from an inventory, sketches in some general vision of the coast.

We believe that the growth areas need better definition. The map on Page 98 is the one that concerns us. It shows growth areas that are at odds with the State Development Guide Plan, partly because the D.E.P. has added to the growth areas of that guide plan. "Likely areas of development pressure based on the experience from 1973-78 in the CAFRA permit program of regulating major residential development." This is another example of reacting to development pressure rather than planning it. Delineation of growth areas needs refinement.

We believe that cumulative impacts are not well measured and should be. Without an inventory or a plan, the D.E.P. will wait for permit applications to arrive, weighing

the impact of each against environmental constraints, without acknowledging that an accumulation of developments can cause environmental stress. Also, because residential construction of less than 25 units does not require a permit, there can be an accumulation of small impacts through small developments. There are cases, I'm sure, where more than 25 units can be permitted with little environmental impact, and other cases where a single unit can cause serious environmental damage. Environmental sensitivity, not the number of units, should guide land use.

We believe that the G.A.F.C. nomination process was mishandled. The D.E.P. received some 170 nominations from citizens for designations of coastal places to be G.A.P.C.'s or geographic areas of particular concern. The citizens themselves were asked to spot parts of the coast that they wanted protected that had some kind of special significance. Yet, the D.E.P. has finally included only one of those. It mentions two others; the coastal wetlands and wet sand beaches, but both of these are already protected

1 under wetlands and riparian statutes. Higbee
 2 Beach certainly deserves G.A.P.C. status, but
 3 so do many other nominations. Coupled with the
 4 D.E.P.'s decision to not map critical areas of
 5 special biological significance, it has missed
 6 a prime opportunity to delineate areas where
 7 development would be banned. Citizen partici-
 8 pation in the G.A.P.C. process was good. State
 9 reaction to citizen participation was not.

10 On energy, we believe that the section
 11 covering energy is strong and much improved
 12 over earlier drafts. It appears to set into
 13 perspective the relative needs for new energy
 14 facilities. We believe the new energy facilities
 15 in the Coastal Zone are very low, with natural
 16 coastal productivity which, of course, is very
 17 high. We do have concerns about how the D.E.P.
 18 will maintain its premier position as controller
 19 of coastal land use in the face of the efforts
 20 of the new Department of Energy to enter the
 21 energy siting discussion. Legislation now
 22 in the Assembly Committee on Energy and Natural
 23 Resources can weaken D.E.P.'s powers on the
 24 coast. In particular, we question the legal
 25 strength of the memo of understanding between

1 the two departments and its effectiveness in
 2 protecting marine resources. We note that
 3 on Page 280, the Energy Facility Review Board,
 4 which will settle disputes over energy siting
 5 between the two departments, is heavily weighted
 6 toward energy interests and does not provide
 7 for third party participation.

8 Coastal authority. We believe that
 9 the State must maintain control over land use
 10 decisions in the Coastal Zone and not delegate
 11 its authority to counties and municipalities.
 12 Beyond that, the State needs to approach
 13 communities to see that their zoning ordin-
 14 ances conform to coastal policies. Already,
 15 we see development of coastal land for 24
 16 units to avoid CAFRA. I do include a clipping.
 17 I'm sure you have seen it in the local paper.
 18 While this document speaks about dune protec-
 19 tion--and this was stressed in an earlier
 20 testimony--it fails to come to grips with
 21 single-family development on dunes. As I
 22 understand it now; under this document, the
 23 State really has nothing to say about a single-
 24 family dwelling constructed on sand dunes.
 25 There are some local ordinances, but no State

1 law. So, it is my understanding that as it
 2 stands right now, any town without a sand
 3 dune ordinance can do nothing, nor can the
 4 State do anything about the construction of
 5 24 units on sand dunes. Barrier beaches can
 6 be heavily developed under present regulations.
 7 A coastal plan that cannot control construction
 8 on dunes and barrier beaches is too weak.
 9 Further, mosquito commissions impact heavily
 10 on coastal natural resources. Their work
 11 should also fall within the coastal plan's
 12 regulations.

13 Manpower needed to process permits.
 14 The D.E.P. does not have enough staff to do a
 15 thorough job of processing CAFRA applications.
 16 While this document states that its policies
 17 can be enforced under present law; Wetlands,
 18 CAFRA, Riparian, and Shore Protection, this is
 19 only true if there are enough people to process
 20 applications. The staff in both the CAFRA and
 21 Wetlands Sections must be doubled. We also
 22 suggest that procedures for regulating land
 23 use through the Office of Shore Protection be
 24 made a part of this document as CAFRA and
 25 Wetlands regulations are, (Page 285).

1 In general, we support the policies
 2 outlined in this document, but we cannot support
 3 all of the document's details. In addition to
 4 the more general comments contained here, we
 5 plan to submit more details on specific wording.

6 In summary, we think that the document
 7 under discussion is a step toward coastal
 8 environmental protection with room for improve-
 9 ment. We recommend its approval along the
 10 lines that we recommend.

11 MR. KINSEY: Thank you. I would like
 12 to clarify the role of the growth area map
 13 or the growth potential factor in the Coastal
 14 Location Acceptability Method. It is important
 15 to bear in mind that that map and that factor
 16 is but one of six factors that are weighed in
 17 the process of determining the acceptability
 18 of land for development. In that sense, it
 19 is very different from the State Development
 20 Guide Plan prepared by the Department of
 21 Community Affairs. There are differences in
 22 the areas in the two documents for reasons.
 23 There are some areas in the coastal document
 24 that are more sensitive than the D.C.A. plan.
 25 Also, there are some areas that are less

1 sensitive. It goes both ways. There is a
 2 difference. One factor is that one is a
 3 prospective document. In terms of the Coastal
 4 Location Acceptability Method, it maps out
 5 what should or should not take place, and
 6 that still stands. I again respectfully dis-
 7 agree that CLAM is not reactive. It's a plan
 8 for laying out what the future should be. I
 9 have a clear sense from some of the user groups
 10 in the Coastal Zone that they are very well
 11 convinced that the document does represent a
 12 clear statement of what will take place in
 13 the future.

14 We look forward to your more detailed
 15 comments.

16 MR. GARDNER: Thank you very much.
 17 The next speaker is Michael J. Gross, represent-
 18 ing the New Jersey Builders Association from
 19 Toms River.

20 MR. GROSS: I would like to defer
 21 that to Joseph Todino, who has some general
 22 comments, and then I have more specific comments.

23 MR. GARDNER: Mr. Todino.

24 MR. TODINO: Good evening. My name
 25 is Joseph Todino and I am Chairman of the New

1 Jersey Builders Association, CAFRA Committee.
 2 We have been involved with CAFRA
 3 since its inception in 1973 and have seen the
 4 program grow in scope and content. Previously,
 5 we have been asked to comment upon the Coastal
 6 Zone Management Interim Land Use and Density
 7 Guidelines, the Coastal Zone Management Strategy,
 8 and received, in March of this year, a pre-
 9 publication working draft of the document under
 10 discussion this evening. We distributed copies
 11 of the draft environmental impact statement
 12 to numerous builders and their consultants,
 13 including engineers, planners, environmental
 14 consultants, and realtors. A workshop meeting
 15 was held with representatives of the Office
 16 of Coastal Zone Management on June 7, 1978.
 17 At this workshop, the discussion focused upon
 18 the glaring engineering and planning defici-
 19 encies in the document, as well as inadequacies
 20 in the scope of the draft environmental impact
 21 statement. Therefore, we have requested that
 22 the comment period be extended for at least
 23 60 days. The draft environmental impact
 24 statement was submitted to the Federal Envir-
 25 onmental Protection Agency on April 28, 1978,

1 and a notice of availability was published in
2 the Federal Register on May 5, 1978. The
3 period for public comment to the Federal Office
4 of Coastal Zone Management extends only to
5 June 19, 1978. Furthermore, it is proposed
6 that Chapter 3 of Part II of this document be
7 adopted as formal rules and regulations some-
8 time in September. The deadline for comments
9 to the State Department of Environmental
10 Protection is July 5. We feel it is unfair,
11 to say the least, to mandate that comments on
12 a 350-page document be submitted within such
13 a short period of time. No environmental
14 benefits will accrue by expediting the
15 acceptance of this draft environmental impact
16 statement by the Federal Government. It would
17 appear that the more prudent course would be
18 to allow a sufficient time to comment and
19 then discuss those comments and resolve the
20 issues involved. We were informed at the
21 June 7 workshop meeting that the policy on
22 runoff would be altered and there was a docu-
23 ment that would be published to that effect.
24 Certainly, this is a change in the proposed
25 rules and regulations that cannot possibly be

1 implemented until there is another announcement
2 of that substantive change in the New Jersey
3 Register and time is afforded for comment on
4 this change.

5 The usual course of events utilized
6 by the D.E.P. is exemplified by a document
7 entitled, "Coastal Management Strategy - Public
8 Comments and D.E.P. Responses". In that docu-
9 ment, D.E.P. synthesizes many of the comments
10 on the Coastal Management Strategy, some 434
11 in number, and offers a response to those
12 comments. It is unfortunate, however, that
13 the response, in some instances, is the first
14 indication of D.E.P.'s position on some of
15 the criticisms. Wouldn't it be far better to
16 engage in a dialogue on these comments? Very
17 often, our questions remain unanswered at
18 face-to-face meetings until such a public
19 written document is published, with no oppor-
20 tunity to respond.

21 Above and beyond the lack of dialogue,
22 with respect to the previous comments and
23 criticisms of documents published by the New
24 Jersey Office of Coastal Zone Management, there
25 are some glaring inadequacies in the present

1 documents. For instance, the section on runoff
2 would, in effect, prohibit development in almost
3 all areas of the CAFRA Zone. The section on
4 definitions of waters edge areas is confusing
5 and, in some cases, misleading. There are
6 certain engineering and planning decisions em-
7 bodied in the draft environmental impact state-
8 ment which are questionable and have no basis
9 in any documents that have thus far been made
10 available. The land acceptability tables on
11 Pages 103 through 111 are actually a detailed
12 plan for the acceptable development of the bay
13 and ocean shore segment of the Coastal Area.
14 The Office of Coastal Zone Management has failed
15 to analyze how much of the bay and ocean shore
16 segment of the Coastal Area will be eligible
17 for high and moderate intensity development
18 based upon the land acceptability tables. This
19 is extremely important because, pursuant to
20 the provisions of the draft environmental im-
21 pact statement, if high and moderate intensity
22 development is not allowed, then the use and
23 resource policies need not even be considered
24 because they will not result in the allowance
25 of moderate or intense development. Thus, there

1 is absolutely no analysis of the effect of
2 the land acceptability table on the bay and
3 ocean shore segment of the coast, nor is there
4 a basis for the conclusions drawn on each line
5 of the location acceptability table. Until
6 that basis is clearly set forth, there is no
7 way to evaluate the validity of the land accept-
8 ability table. Thus, there is no rationale
9 for the decisions reflected in the land accept-
10 ability tables. It is a table which, in effect,
11 serves as a plan for the bay and ocean shore
12 segment of the Coastal Zone.

13 There are other significant defici-
14 encies, the most glaring of which is that the
15 document in question leaves no room for flex-
16 ibility, judgment, and imaginative planning.
17 Most of the policies, as set forth, are com-
18 pletely inflexible. As a matter of fact, at
19 the June 7 workshop, it was the opinion of
20 the Chief of the CAFRA Permit Section that if
21 the criteria on the location acceptability
22 table are not met for medium and high intensity
23 development, that there is not enough flex-
24 ibility in the document to allow for such
25 medium and high intensity development.

1 Furthermore, there is little rationale
 2 set forth for many of the policies in this
 3 document. The restrictions on high-rise
 4 development are simply not based on any logical
 5 and professional planning concepts and, in
 6 fact, do not make common sense. On the one
 7 hand, there is a policy to encourage and foster
 8 low and moderate income housing. Obviously,
 9 the greater density, the more opportunity for
 10 low and moderate income housing, and the
 11 greatest density of all is high-rise develop-
 12 ment. By restricting high-rise development
 13 to areas which already contain such develop-
 14 ment, such as Keansburg, Atlantic City, and
 15 Asbury Park, as a practical matter, you may
 16 be discouraging the construction of high-rise
 17 dwellings because there is very little incen-
 18 tive to construct low and moderate income
 19 high-rise housing in these towns. As a matter
 20 of fact, Federal monies may not be available
 21 for high-rise developments containing children.
 22 There is no question about the fact that in
 23 some areas, high-rises would be completely
 24 incompatible with surrounding uses. However,
 25 where high-rises are not incompatible with

1 surrounding uses, they should be explored and
 2 not discouraged or prohibited.

3 The idea that dwellings along the
 4 shore should not block the view of the ocean
 5 afforded to other people who live in the area
 6 is reflective of the most regressive "last
 7 in shut the door" thinking. Why should people
 8 expect that just because they buy property
 9 near the shore that has a view of the ocean,
 10 that they can enjoy this view forever, not-
 11 withstanding the fact that another property
 12 owner owns land between their dwelling and
 13 the ocean.

14 There are numerous examples of
 15 planning policies and engineering decisions
 16 set forth with absolutely no basis in fact.
 17 For instance, what is the source for allowable
 18 percentage of impermeable paving, permeable
 19 paving, and structures? For instance, for
 20 high density development, 90 percent impermeable
 21 paving is allowed, and for moderate density
 22 development, 30 percent impermeable paving
 23 is allowed. What is the level of density
 24 allowed for impermeable paving between 30
 25 and 90 percent? Where is the basis for the

1 definition of stream head and the 300-foot
2 buffer around a stream head? We understand
3 that this very issue is the subject of a
4 contract for study that has not yet even been
5 completed. How can the Office of Coastal
6 Zone Management possibly include definitions
7 of areas without absolutely any basis in fact?
8 The same holds true for the definition of
9 upper water's edge, which is defined, partially,
10 as 50 foot horizontally from the lower limit.
11 Where is the basis for this 50 feet? Again,
12 we are of the understanding that this is the
13 subject matter of a contract for study, and
14 no conclusion has yet been reached with respect
15 to this topic.

16 The policies in this environmental
17 impact statement are also inconsistent with
18 other State policies. For instance, the
19 State Development Guide Plan seems to encourage
20 high-rise development along a certain
21 portion of the New Jersey coast, which is
22 not encouraged by this environmental impact
23 statement. How are these two differing
24 policies reconciled? The policy on siting
25 of industrial facilities within the Coastal

1 Area is also much too inflexible and has no
2 basis in fact. Only if existing industrial
3 sites are demonstrated to be impractical will
4 new sites be acceptable, providing that there
5 is a high ratio of jobs created, as opposed
6 to the acres of the site utilized for development
7 and the development poses no conflict with
8 the resort-recreation uses of the coast. "Page
9 148". There is really no logical basis for
10 this policy except the statement that there
11 are significant environmental impacts of most
12 industrial development, a statement that certainly
13 is not borne out as a general proposition.
14 Furthermore, there is no secondary impact
15 analysis of this and many other policies contained
16 in the draft environmental impact statement.
17

18 MR. GARDNER: Excuse me. 10 minutes
19 has elapsed on this presentation. I wonder if
20 it would be possible for you to summarize the
21 remainder of your statement for us?

22 MR. TODINO: Yes, I think I can do
23 that.

24 MR. GARDNER: I don't want to cut off
25 any presentation you have, but in fairness to

1 the people who are here, I think we should try
2 to adhere to that time limit.

3 MR. TODINO: In conclusion, we feel
4 that not until a basis for each of the policies
5 as set forth in the draft environmental impact
6 statement is enunciated, until many of the
7 inconsistencies are explained, and a sufficient
8 environmental impact statement is prepared
9 analyzing the environmental and socio-economic
10 effects of all of the policies contained in
11 the draft environmental impact statement, can
12 the Secretary of Commerce approve the Coastal
13 Zone Management Program.

14 You have the rest of the statement.

15 MR. GARDNER: Fine. Your entire
16 statement will be included in the record. Thank
17 you very much, Mr. Todino.

18 MR. KINSEY: Thank you. I would
19 like to reiterate the point about the workshop
20 that we have scheduled for next Wednesday as
21 a follow-up to the workshop we had last
22 Wednesday to go over, in detail, the comments
23 with the professional planners and engineers
24 and attorneys with whom we work in carrying
25 out the coastal policies.

1 MR. GARDNER: Mr. Gross, did you wish
2 to make an additional statement?

3 MR. GROSS: Yes. I indicated at the
4 outset that I was going to defer to Mr. Todino.
5 I have more specific comments.

6 With respect to the specific statement
7 on Page 10 of this D.E.I.S., there is an indi-
8 cation that decisions on limited impacts affect-
9 ing only one municipality shall be made by
10 local citizens and officials. I don't know if
11 that means just that facilities less than 24
12 units, for instance, are considered local, but
13 there is no mechanism to that type of program
14 carried out that I know of.

15 In connection with Mr. Todino's remarks,
16 there is no indication why shopping facilities
17 should be within two miles of the site in order
18 for the site to be encouraged. There is a
19 supposed basis for the two-mile restriction
20 on schools. However, if you live in Ocean
21 County or Monmouth County, you know that just
22 about no school district follows that. You
23 can live within a quarter of a mile of the
24 school, and if there are no sidewalks, the
25 school district will insist that children be

1 bused. So, I think that the two miles is some-
 2 what unrealistic in terms of what is going on
 3 in the area.

4 There also seems to be no basis for
 5 the low potential given to certain distances
 6 from roads and sewers on Page 90 of the draft.

7 There also seems to be a marked
 8 shift in this draft. Previous statements in
 9 various documents indicated that CAFRA was
 10 interested in infill and extension of existing
 11 facilities and encouraging those. However, in
 12 this draft, there seems to be a fallback on
 13 encouraging what CAFRA considers to be infill.
 14 CAFRA considers infill to be development which
 15 is surrounded 50 percent by current development.
 16 There seems to be no basis for this. There
 17 seems to be no basis for the exclusion of
 18 extensions of development which may not tax the
 19 intra-structure any greater than infill taxes
 20 it. Yet, this change has been made and it
 21 has been slipped in.

22 That brings me to the topic that I
 23 wanted to discuss specifically, and that is
 24 lagoon development. Although it's not stated
 25 specifically, this D.E.I.S. would, in effect,

1 prohibit residential development, whether
 2 lagoons are bulkheaded or not. We are talking
 3 about existing lagoons. We are not talking about
 4 dredging any lagoons. We are talking about
 5 existing lagoons, some with bulkheads, some
 6 not. On Page 132, 7.2.1, there is an indica-
 7 tion that housing requiring lagoons will be
 8 prohibited. I don't know if that refers to
 9 existing lagoons or just new lagoons. In
 10 Item 6.5.3.3, housing is discouraged on lagoons
 11 because the shoreline is scarce. The first
 12 question I have is how scarce? Has the D.E.P.
 13 or the Office of Coastal Zone Management of
 14 New Jersey ever delineated how many miles of
 15 shoreline are actually available presently for
 16 development? That's number one. Number two,
 17 there are shoreline areas that have been created
 18 artificially by the digging of lagoons. Does
 19 inland lagoon development constitute shoreline?
 20 At the same time, storm water outfall cannot
 21 be placed into lagoons. This, in fact, would
 22 prohibit at least residential developments of
 23 lagoons because there is nowhere else to put
 24 storm water outfall.

25 There is a recommendation of hotels

1 and motels. We think that is poor planning and
 2 has no basis in good planning practices. Number
 3 one, the access will probably be the same. You
 4 are going to have the same roads. Number two,
 5 people who live in lagoon communities certainly
 6 don't want hotels and restaurants near their
 7 dwelling units. It's tough enough for a devel-
 8 oper to get local acquiescence in existing
 9 lagoon developments, but, certainly hotels and
 10 motels would meet with far greater opposition.
 11 Also, there is more paving involved in the
 12 construction of hotels and motels which are
 13 supposedly water access dependent. We would
 14 submit that lagoon development in this area of
 15 New Jersey is water access dependent because
 16 of the location because most of the people have
 17 boats. That's the reason they buy the lots.
 18 The policy ignores the overwhelming desirability
 19 of lagoon lots and the aspirations of the
 20 people who buy those lots and live on those
 21 lots. The people want them.

22 Now, that comes to the balancing ques-
 23 tion of what is the environmental harm of pro-
 24 perly bulkheaded lagoon lots. Well, as usual,
 25 there is really no basis for the discouragement

1 of lagoon lots. It seems to be another trend
 2 in planning, as secondary impacts are new trends
 3 in planning. I would like to note in passing
 4 that although secondary impacts are the current
 5 trend in planning in this document, we believe
 6 it is deficient because it does not address the
 7 secondary impacts of any of the policies set
 8 forth herein. When I say it is deficient, I
 9 mean that it does not meet the statutory re-
 10 quirements. What is the environmental harm
 11 of lagoon lots? Well, as a matter of fact,
 12 we had tests conducted in 1974 in several lagoon
 13 lots. These tests show that the water quality
 14 of the lagoons with storm water outfalls was
 15 far superior to existing lagoons with no
 16 storm water outfall. What we are saying is
 17 that lagoon development does not necessarily
 18 have to have an adverse environmental effect.
 19 However, this document, in effect, would outlaw
 20 those developments. There is a statement
 21 that vegetation should be utilized. Home
 22 owners do not buy a lagoon lot so they can
 23 have a nice view. It's so they can use their
 24 boat. That's why they are bulkheaded. If
 25 commercial uses are only allowed, you still

1 have to have these bulkheads in order to protect
2 against erosion underneath the paving that you
3 placed down. That's another specific point.

4 There is a discussion of permeable
5 paving. Maybe that's another new trend in
6 planning. However, there has never been a study
7 of permeable paving in the State of New Jersey.
8 We understand that maybe there is a study in
9 another state. As a matter of fact, local
10 municipalities are not generally in favor of
11 this because there are certain problems in
12 connection with permeable paving. Again,
13 there is no basis for this policy.

14 I guess our specific comment is that
15 there seems to be decisions that are made,
16 unfortunately, without any input from profes-
17 sional planners and professional engineers.
18 As Mr. Kinsey mentioned, it will have that
19 input. Whether or not they accept that input
20 and utilize that input, of course, is within
21 their discretion, but we would think that
22 not only in this stage, after the document
23 is published, but in the preparation of the
24 documents, that input should be sought from
25 professional planners and professional engineers.

1 MR. GARDNER: Thank you, Mr. Gross.

2 MR. KINSEY: Thank you, Mike.

3 (At this time, a short recess was
4 called.)

5 MR. GARDNER: Our next speaker is
6 Alan Avery of the Ocean County Planning Board
7 Staff in Toms River.

8 MR. AVERY: My name is Alan Avery
9 and I am a staff planner with the Ocean County
10 Planning Board. Part of my responsibilities
11 with the County involve Coastal Zone planning.
12 I am here to read a statement on behalf of
13 Steven Pollock, Acting Planning Director. Mr.
14 Pollock had a previous commitment which pre-
15 vented him from attending tonight's hearing.
16 This statement generally highlights concerns
17 regarding the Coastal Management Program for
18 the bay and ocean shore segment. It is antici-
19 pated that more detailed comments will be pre-
20 pared and submitted to the New Jersey Department
21 of Environmental Protection on behalf of the
22 Ocean County Board of Chosen Freeholders and
23 the Ocean County Planning Board. Under the
24 terms of the State-County Coastal Coordination
25 Project agreement, these comments will be

1 submitted previous to the July 5, 1978 deadline.

2 Ocean County has long supported the
3 goal of protecting and preserving the complex
4 and sensitive environmental areas associated
5 with the bay and ocean shore. The part of
6 Ocean County affected by the policies proposed
7 in the bay and ocean shore segment is one of
8 the rare natural beauty and bountiful resources.
9 However, the Coastal Region of the County
10 has been and, no doubt, will continue to be
11 the scene of powerful and often contradictory
12 pressures for development.

13 The bay and ocean shore segment of
14 the Coastal Zone Management Program addresses
15 many of the development and conservation issues
16 of concern to the County. For the first time,
17 the State has made a clear effort to develop
18 policies regarding some very troublesome issues
19 such as development of wetland areas and other
20 areas of environmental concern, oil and gas
21 pipelines, and related energy facilities
22 including the siting of nuclear generating
23 plants. In concept, a management system based
24 on the location, use, and resource policies
25 should allow for a clear definition of the

1 development potential of a specific parcel of
2 land. It should facilitate permit applications
3 and eliminate much of the administrative dis-
4 cretion in making permit decisions. At the
5 same time, a management system that provides
6 and sets guidelines for development proposals
7 based on environmental concerns should result
8 in better planned, more environmentally sound
9 development. Based upon preliminary review,
10 it appears that the State has accomplished a
11 great deal toward this end.

12 We also applaud the efforts made by
13 the New Jersey Department of Environmental
14 Protection to involve municipal and county
15 government in both the development of the
16 proposed policies and in their implementation.
17 This involvement has been achieved by the
18 opportunity to comment on the Coastal Zone
19 Management Program at public meetings and
20 public hearings, as well as at working meet-
21 ings such as those held by the State-County
22 Coastal Coordination Program. We firmly
23 support and will cooperate with the New
24 Jersey Department of Environmental Protection's
25 effort to involve and consider local and

1 County input in CAFRA, wetlands, and riparian
2 permit decisions.

3 While we generally support the
4 efforts of the Coastal Zone Management staff,
5 there are, however, certain issues that we feel
6 must be addressed prior to formal adoption of
7 the bay and ocean shore segment.

8 First, and probably most important
9 from the standpoint of land use planning and
10 coordination with County and local planning,
11 is the absence of a comprehensive land use
12 plan that clearly delineates the spatial
13 distribution of acceptable uses under the plan
14 and identifies areas that are suitable or
15 unsuitable for development. A composite map
16 showing the key locations and use restrictions
17 listed in the report is absolutely essential.
18 The absence of such a map severely limits the
19 ability of local and County Government to
20 specifically evaluate the impacts of the bay
21 and ocean shore segment on their respective
22 zoning or comprehensive development plans and
23 to identify areas where conflicts between
24 local and State concerns might arise. Until
25 such time as the spatial impacts of the

1 proposed program are identified, it is imposs-
2 ible to adequately evaluate the socio-economic
3 issues raised by the program.

4 Also, the Coastal Zone Management
5 Program will serve as a policy reference for
6 State review of plans and proposals of regional
7 impact. It is difficult to see how this program
8 with its emphasis on site specific considera-
9 tions, will adequately consider the regional
10 impacts of, for instance, 208 Areawide Water
11 Quality Plans and projects submitted for A-95
12 review.

13 A second area of concern is the
14 institutional arrangements between local, County,
15 and State programs. These relationships must
16 be better defined. The Coastal Program was
17 supposedly based on the principle that the pro-
18 gram would, and I quote, "Consider only coastal
19 resource and coastal land and water use decisions
20 of greater than local significance, and create
21 mechanisms to ensure that decisions on coastal
22 land and water uses are made at the lowest
23 practicable level of government, consistent
24 with these guiding principles." Local decisions
25 of municipal impact only should be made at the

1 local level. The Department of Environmental
 2 Protection should focus only on coordinating
 3 policies and decisions of clearly statewide
 4 concern. Nowhere is it apparent that the
 5 Coastal Program considers local concerns as
 6 reflected in local and County zoning and master
 7 plans. It is also difficult to relate decisions
 8 on neighborhood shopping or school sites or
 9 restrictions based on these factors to state-
 10 wide concern.

11 A third area of concern is the
 12 designation of growth areas. The Coastal
 13 Program emphasizes the concentration of devel-
 14 opment in Ocean County essentially to an area
 15 north of Lacey Township and east of the Garden
 16 State Parkway, excluding the barrier beaches.
 17 Restricting growth to this area conflicts with
 18 the proposed State Development Plan Guide
 19 prepared by the New Jersey Department of
 20 Community Affairs, the Ocean County Concept
 21 Plan prepared by the Ocean County Planning
 22 Board, and the Ocean County 208 Water Quality
 23 Plan. Each of the four plans was federally
 24 funded, each define growth areas, but with
 25 the exception of the two plans prepared by

1 Ocean County, none correspond. Furthermore,
 2 neither the criteria used to designate the
 3 growth areas in the Coastal Program nor the
 4 reasons for the differences between the two
 5 development plans prepared by State agencies
 6 is addressed in the draft.

7 Growth areas for Ocean County, as
 8 defined in the 208 Plan, were based on the
 9 following eight considerations:

- 10 (1) all environmental factors con-
 11 sidered by the Coastal Program,
- 12 (2) present development trends,
- 13 (3) location of approved but unbuilt
 14 subdivisions,
- 15 (4) existing and proposed availabil-
 16 ity of sewers,
- 17 (5) existing and proposed availabil-
 18 ity of water,
- 19 (6) existing land uses,
- 20 (7) existing municipal zoning,
- 21 (8) specific locational considera-
 22 tions such as transportation and market and
 23 labor areas.

24 Using these factors, it was possible
 25 to define growth areas and to determine that

1 sufficient acreage was available in these
2 areas to accommodate the expected population
3 increases in Ocean County without impacting
4 environmentally sensitive areas and in an
5 efficient, logical development pattern.

6 The Coastal Program limits growth
7 areas to 10 municipalities in Ocean County,
8 six of which are essentially developed. A
9 serious question arises as to whether there
10 is sufficient amounts of developable lands
11 in these growth areas to accommodate projected
12 population increases without impacting or
13 infringing upon environmentally sensitive
14 areas or radically altering the density and
15 characteristics of existing communities.

16 The rationale behind the limited
17 designation of growth areas is to encourage
18 the consolidation of residential and other
19 land use development in areas where services
20 such as electric, water, sewer, and other
21 infrastructures are in place, thereby reducing
22 the costs and environmental impacts resulting
23 from the extensions of services into undeveloped
24 areas. In Ocean County, this policy of con-
25 centration has the potential to create more

1 environmental problems than the orderly,
2 managed expansion of development into environ-
3 mentally suitable areas.

4 A good example of those potential
5 problems would be in the areas of groundwater.
6 100 percent of Ocean County's potable water
7 supply comes from groundwater. Concentration
8 of development may have potential long-term
9 serious impacts on groundwater. Policies
10 which will increase withdrawal rates in areas
11 where aquifers are already developed to some
12 extent and already experiencing localized pro-
13 blems need to be carefully evaluated.

14 Planned future growth in the north-
15 western sectors of the County, as well as
16 balanced growth in the eastern regions of the
17 County, could serve to equalize withdrawals
18 and help mitigate these problems. It appears
19 that this growth pattern would be restricted
20 under the Coastal Program.

21 Therefore, before formal approval is
22 given to the bay and ocean shore segment of
23 the Coastal Zone Management Program, we recommend
24 that the following actions be taken:

- 25 (1) A map be prepared by the New

1 Jersey Department of Environmental Protection
2 showing the spatial distribution of land uses
3 and land suitable or unsuitable for development
4 as defined by the Coastal Program.

5 (2) Additional time be provided
6 for local and County evaluation of this map.

7 (3) Additional consideration be
8 given to local and County plans, especially
9 in considering the designation of growth and
10 limited growth areas.

11 In closing, I would like to commend
12 the New Jersey Department of Environmental
13 Protection for soliciting public comments and
14 addressing many of the concerns of Ocean County.
15 Ocean County looks forward to working closely
16 with the New Jersey Department of Environmental
17 Protection to assure the protection of our
18 bay and ocean shore areas. The Planning Board
19 staff welcomes the opportunity to provide
20 additional input to the Coastal Program as it
21 continues to be refined. I would like to
22 thank you for the opportunity to present these
23 comments concerning the bay and ocean shore
24 segment at tonight's hearing.

25 MR. GARDNER: Thank you very much,

1 Mr. Avery.

2 MR. KINSEY: Thank you, Alan.

3 MR. GARDNER: The next speaker is
4 W.C. Campbell, representing the Environmental
5 Commission, Ocean County.

6 (At this time, there was no response.)

7 MR. GARDNER: Mr. Campbell is not
8 present. I will ask for him at the end of
9 the meeting.

10 The next speaker is Kathy Kievitt,
11 South Seaside Park, New Jersey.

12 MS. KIEVITT: I would like to commend
13 David Kinsey and the New Jersey Office of
14 Coastal Zone Management for preparing this
15 detailed document. I endorse what I perceive
16 to be the intent of coastal zone management;
17 that is, to protect valuable and vital natural
18 resources while regulating continued orderly
19 development, public use, and recreation.

20 It is essential to have a management
21 program administered at the State level, as
22 this program will be, although local input is
23 invaluable in forming policies which suit
24 each area's unique resources and problems.
25 However, home rule must not be allowed to

1 prevail because it is a grossly inadequate
2 means of enforcing CAFRA and protecting coastal
3 resources.

4 While I am in agreement with many
5 of the policies proposed in this draft environ-
6 mental impact statement, I am disturbed by
7 the ambiguous language found throughout the
8 environmental impact statement. For example,
9 the recurrent use of the phrase "no prudent
10 or feasible alternative", which is referred to
11 as a reason for siting a type of development
12 where it would otherwise be prohibited. Exam-
13 ples of this would be Sections 6.5.1.4 b and
14 c, and 6.5.2.2 b. This ambiguity permits sub-
15 jective evaluations and loopholes which will
16 vary from case to case, from year to year.
17 I believe it would be more beneficial to have
18 more specific guidelines and interpretations
19 of policies. Developers, as well as environ-
20 mentalists and other concerned citizens,
21 should be able to predict, with certainty,
22 the type and degree of development which is or
23 is not acceptable in a particular area. Such
24 advance knowledge can help to prevent devel-
25 opers from investing large sums of money in

1 land for purposes which are environmentally
2 unacceptable.

3 The Coastal Location Acceptability
4 Method or CLAM provides a sound basis for
5 management decisions, but the management
6 strategy should also include a detailed
7 overall plan for the whole Coastal Area. If
8 development proposals continue to be consider-
9 ed on a case by case basis, the pattern for
10 development will be set by the early developers.
11 Unwise early development can serve to preclude
12 future wise use of an area. If a specific
13 overall plan has first been formulated, all
14 development choices and uses can be coor-
15 dinated. When there is no overall plan, later
16 development is forced to adapt or conform to
17 limitations directly or indirectly imposed
18 by earlier development.

19 I strongly support the practice of
20 infill, for example, locating new housing and
21 commercial and industrial development within
22 areas which have already been developed,
23 rather than in undeveloped areas. I also
24 support the policy proposed for locating
25 Atlantic City casinos along the boardwalk

1 and/or where public transportation is available.

2 As a shore resident, business owner,
3 and environmentalist, I am deeply concerned
4 with the future use of our Coastal Area. I urge
5 the Office of Coastal Zone Management to con-
6 tinue to strengthen the environmental standards
7 used to safeguard the New Jersey coast and to
8 withstand inevitable attempts to eviscerate
9 this much needed management program on the part
10 of short-sighted developers and home rule
11 advocates.

12 I appreciate this opportunity to
13 present my opinion of the proposed plans for
14 managing our coastal resources.

15 MR. GARDNER: Thank you very much.

16 MR. KINSEY: Thank you.

17 MR. GARDNER: The next speaker is
18 Frank Krajacich.

19 (At this time, there was no response.)

20 MR. GARDNER: The next speaker is
21 Mrs. Leo B. Bicher, Jr., of Normandy Beach,
22 New Jersey.

23 MRS. BICHER: I didn't have a chance
24 to advise through this document. I testified
25 last year when they had the hearings in

1 Monmouth and Ocean County. One thing in the
2 film that was shown today is to consider the
3 potential factors and build where there are
4 sewers rather than have to build sewers in
5 order to have buildings built. I question the
6 feasibility of CAFRA and the Federal Government
7 promoting the duplicate sewer systems in small
8 areas such as the peninsula from Point Pleasant
9 Beach to Island Beach Park. It seems to me
10 that it is not in accordance with coastal regu-
11 lations to encourage high density building by
12 building duplicate sewer systems.

13 Also, you are polluting the air
14 with the pumping stations. You are disturbing
15 the residential areas with the noise. That's
16 not coastal protection. I just wonder what
17 kind of environment you are protecting by pro-
18 moting these kinds of things and granting
19 permits for duplicate sewer systems.

20 MR. KINSEY: Mrs. Bicher, I'm not
21 totally aware of what you mean by duplicate
22 systems.

23 MRS. BICHER: There is already a
24 16-inch sewer line on Highway 35 South. The
25 Ocean County Sewerage Authority is now putting

1 in a 24-inch sewer line on Highway 35 North.
 2 It's a small peninsula. Why do we need so
 3 many sewers? The 16-inch sewer line right now,
 4 the engineers tell me is only used to about
 5 a four-inch capacity at peak time. There is
 6 no land there to build many more homes. It's
 7 a well developed area now and I just wonder
 8 why the Ocean County Sewerage Authority has
 9 received permits from CAPRA and from the
 10 Federal Government to build a duplicate sewer
 11 system.

12 MR. KINSEY: I will have to go back
 13 to the office to examine that case to learn
 14 more about that case. It is important to
 15 note that there are large regional sewerage
 16 systems that have been built at the initiative
 17 of the State and the County with State and
 18 Federal funds and local funds to achieve a
 19 number of objectives, one of which is to clean
 20 up the bay waters which are really a vital
 21 part of the economy and the shore area.

22 MRS. BICHER: That's why the first
 23 sewerage system was put in, to tie in with the
 24 plan in Ortley Beach. I can't understand
 25 why a duplicate system has to be built

1 covering the same area and with no noticeable
 2 growth in buildings.

3 MR. KINSEY: Thank you for your
 4 question. I will try to come up with a good
 5 answer.

6 MRS. BICHER: I would appreciate it.

7 MR. GARNER: The next speaker is
 8 Steven Gabriel from the City of Ocean City,
 9 New Jersey.

10 MR. GABRIEL: I am Steven Gabriel.
 11 I work in the Mayor's Office in Ocean City.
 12 In reviewing the document, I have a couple of
 13 questions for you and then one comment.

14 Concerning sand dunes, structural
 15 development on the sand dunes is prohibited in
 16 this document. I'm just wondering how we, in
 17 the localities, can develop our dune ordinances
 18 so that the courts aren't compromising them
 19 or striking them down.

20 The second question that I have is
 21 something I brought up at an earlier public
 22 meeting. That was concerning the reconstruc-
 23 tion of non-conforming uses in the Coastal
 24 Zone. I'm asking now, again, whether any
 25 progress has been made on any kind of policy

23
24
25
Quest.
I guess even.

A: Excuse me. Could you
again, please?

GABRIEL: Out west, this is a
let's say you have a home or a
lling on a sand dune in the Coastal

2. What is the policy in the instance
that there is destruction of that due to a
flood?

MR. GARDNER: Thank you.

MR. GABRIEL: One comment I had, in
going over the document, it seems to me that
there is a potential for more public education
as it relates to the document. Not only are
we planning the Coastal Zone, but I think there
are some very good social issues being addressed
and encouraged. There is a barrier design
in these communities that these people should
be aware of. I think just the general need
for Coastal Zone management must be a topic
for educational work, and I think a possible
layman's guide to CLAM and the three policies
might also be something that we could develop
and get out to the people so that there is a
better general understanding of what is being

1 done.

2 Thank you.

3 MR. GARDNER: Thank you.

4 MR. KINSEY: The question of the
5 reconstruction of non-conforming uses is an
6 issue I believe you posed a couple of weeks
7 ago with local officials. We are looking
8 into it and trying to consider that. We are
9 going through this public hearing process
10 to see if we have other similar situations
11 or, perhaps, someone will propose an actual
12 language that can be considered for the revi-
13 sion of the rules. In terms of the prohibition
14 on dunes and how municipalities can draft
15 appropriate ordinances, we will be glad to
16 try to work with you and give whatever assis-
17 tance we can provide as far as dune protection.

18 On your point on public education,
19 that's one reason there is a Coastal Management
20 Program nationwide. In New Jersey, efforts
21 that began a number of years ago will continue
22 to bring the people's attention into relation-
23 ships and the need for proper management.

24 MR. GARDNER: Thank you, Mr. Gabriel.

25 That concludes the list of speakers

1 who have indicated that they would want to
 2 provide us with some testimony. At this point,
 3 I would like to open the meeting up to anyone
 4 who may wish to make a statement who did not
 5 sign up.

6 MS. GREGG: I have not a long state-
 7 ment, just a comment. My name is Alecia
 8 Gregg. I'm with the Ocean City Public Relations
 9 Department.

10 I have been involved with coastal
 11 zone management for a few years in the Pennsyl-
 12 vania area. I want to compliment the people
 13 involved in your program. I realize, as
 14 everybody else does, that there are certain
 15 deficiencies in any program, but having been
 16 involved with several other segments of coastal
 17 zone management, I can say that your program
 18 at least is readable and understandable to a
 19 much higher degree than some others that I
 20 have been involved with.

21 I also have one comment. I am a
 22 fairly new resident of the shore. I have only
 been here for several years, but I think the
 'on Steve had about the 24 units--obviously,
 -ybody has read about what is going

1 on down in Wildwood. There should be some
 2 sort of a program. I don't know whether it's
 3 under the scope of your plan or not, but
 4 there should be some sort of a program to
 5 prohibit this type of building. Some people
 6 will say it should be under local control and
 7 other people will say under State control, but
 8 it is my feeling that it should be a combina-
 9 tion of, perhaps, State guidelines for local
 10 control.

11 I had occasion, a couple of weeks
 12 ago, to travel along the dunes in Beach Haven
 13 and to see some of the single dwellings that
 14 were being built on the dunes. Being an
 15 oldtime resident of New England, the only thing
 16 I can say is that I'm sure that anybody who
 17 built that type of a house on the back side
 18 of a dune with part of it extending on the
 19 front side has never sat through a hurricane
 20 such as I understand the one you had here in
 21 1962. Growing up in New England, I have seen
 22 these all my life.

23 That's all I have to say. Thank you.

24 MR. GARDNER: Thank you. I appre-
 25 ciate that.

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Does anyone else wish to be heard tonight?

(At this time, there was no response.)

MR. GARDNER: If not, it's been a long evening. I appreciate your willingness to sit here and to listen to a wide variety of comments on the New Jersey program. On behalf of the Federal Office of Coastal Zone Management and on behalf of the New Jersey Office, we thank you for coming and offering your assistance and comments. Thank you very much.

David, do you have anything further?

MR. KINSEY: Let me also extend my thanks. I have one final request. On the table, there is a small questionnaire which we invite you to fill out to give us some feedback on this type of hearing and how you came to learn about it and what you thought of it. Hopefully, we can plan and carry out better and better meetings.

Thank you again for coming.

(The hearing was concluded at 10:00 P.M.)

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CERTIFICATION

I, CINDY CALU, a Certified Shorthand Reporter and Notary Public of the State of New Jersey do hereby certify that the foregoing is a true and accurate transcript of the testimony taken stenographically, and was transcribed by me to the best of my knowledge and ability.

Cindy Calu
CINDY CALU, C.S.R.

July 30, 1978
DATE

State of New Jersey
 Department of Environmental Protection
 Division of Marine Services
 Office of Coastal Zone Management

Transcript of Public Hearing
 COASTAL MANAGEMENT PROGRAM
 Bay and Ocean Shore Segment

June 13, 1978
 Courthouse
 Bridgeton, New Jersey

B E F O R E:

David N. Kinsey, Chief, New Jersey
 Office of Coastal Zone Management
 Richard Gardner, Director of Program
 Development and Research, United
 States Office of Coastal Zone
 Management

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MR. GARDNER: Good evening, ladies and gentlemen.

I would like to welcome you to this joint federal and state public hearing which has been called for the dual purpose of receiving testimony on the Draft Environmental Impact Statement and the proposed adoption of Chapter 3 for coastal resource and development policies as an administrative rule for the State of New Jersey as coastal program for the bay and ocean shore segment.

My name is Richard Gardner, and I am representing the Office of Coastal Zone Management, an arm of the National Oceanic and Atmospheric Administration in the United States Department of Commerce. On my right is David Kinsey, Chief of the Office of Coastal Zone Management for the State of New Jersey's Department of Environmental Protection.

As a means of introducing this hearing and this discussion with you, the objectives and the content of this program, we will initially have a brief slide presentation prepared by the state's Department of Environmental Protection.

(A slide presentation is given.)

MR. GARDNER: I would like to thank the Department of Environmental Protection for having brought that slide presentation along as a means to introduce this hearing tonight.

This hearing is in part is being held as part of the procedures as was shown in the slide presentation, further procedures of the national environmental policy of 1969, which calls for preparation of a draft and final environmental impact statement concerning proposed federal action which might sufficiently affect the human environment. As part of the process of considering environmental effects, one or more public hearings may be called in order to receive the public testimony, and this is one of three such public hearings on the draft environmental impact statement for the New Jersey Coastal Program for Bay and Shore Segment.

The major federal action being considered for federal approval of this segment for the State of New Jersey by the assistant administrator for Coastal Zone Management on behalf of the United States Secretary of Commerce, under the terms of Section 306 of the Coastal Zone Management Act of 1972, as amended. Federal

approval of the New Jersey program will allow substantial federal program administration grants to be awarded to the state, and in addition, would require the federal action consistent with the terms of the state's program.

It should be pointed out here the program being presented for federal approval covers only a portion of the state's shoreline along the Delaware Bay roughly south of the Delaware Memorial Bridge, along the Atlantic shore from Cape May to Sandy Hook, and along the south shore of Raritan Bay. While this segment includes approximately 80 per cent of the state's coastal area, it does not include areas along the Delaware and Hudson Rivers and Hackensack Meadows and other waterways which must be included in a complete state coastal management program.

Section 306H of the Coastal Zone Management Act permits federal approval of the program for a segment of the state's coastal area, with the proviso that programs for all segments are coordinated and integrated into a single unified program as soon as is reasonably practicable.

The federal office of Coastal Zone

Management has prepared a Draft Environmental Impact Statement which contains within it the New Jersey Coastal Zone Program for this segment. The document contains the description of the state's program and an analysis of the probable impacts of the New Jersey Program and a listing of the alternatives to the proposed action and identification of unavoidable environmental effects, a discussion of long term versus short term effects, and a listing of the irreversible or irretrievable commitment of resources resulting from program approval. In addition, it includes a number of appendices containing detailed information and legal documents referred to in the program.

Before this Draft Environmental Impact Statement was issued, the federal Office of Coastal Zone Management made a preliminary determination that this segment of the New Jersey Program could be approved.

A period of public review of the document began on May 5, 1978, when a notice of public availability was published in the Federal Register. The document was distributed to federal, state, county, and municipal governments,

and to national special interest groups during May. In addition, copies were sent to all New Jersey depository libraries in this segment of New Jersey. Additional copies can be obtained from the Office of Coastal Zone Management or from the New Jersey Department of Environmental Protection in Trenton. I guess we have some copies here on the table on the side.

Newspaper advertisements announcing the availability of the document and the date and location of these public hearings were placed in the Atlantic City Press, the Trenton Times, the Trentonian, the Newark Star-Ledger, the Vineland Times Journal, and the Toms River Daily Observer during the last week in May. Notice of this public hearing was also printed in the Federal Register on May 16, 1978.

The period for receiving public comments on this document closes on June 19, and I believe that's next Monday, 1978.

All comments received at this hearing and all written comments received by June 19 will be considered fully in the final determination on federal approval of the New Jersey Coastal Management Program for the Bay and Ocean Shore

Segment. Written comments can be sent to CAFRA and the Office of Coastal Zone Management, 3300 Whitehaven Street, Northwest, Washington, D.C. 20235. I will have that address available for anyone who wants it after the meeting.

Perhaps a word about the role of the federal government and the state government in coastal management is appropriate. The basic purpose for the Coastal Zone Management Act is to encourage and assist coastal states to develop and carry out coherent programs for the protection and wise management of the lands and waters of the state's coastal areas. The states often acting in concert with local units of government are the primary focus of this effort. Not only is it the state's prerogative to participate in the program or not, as it wishes, since this is a voluntary program, but state coastal management programs are built upon legal authorities containing state legislation. Implementation of these programs likewise is the responsibility of state and often local government.

The federal government offers two principal incentives for states to participate in

coastal management. The first is it makes funds available both to develop programs which meet certain minimum criteria established in federal law, and upon federal approval, to carry them out. Second, it requires that the actions of federal agencies must be consistent with the terms of the state's coastal zone management program as approved.

Federal approval is awarded on the basis of completion of a number of criteria contained in the Coastal Zone Management Act, which primarily addresses the process by which the state's program was developed, but which also addressed national interest concerns and assurances that state legal avenues are sufficient to carry out the program.

Briefly stated, it is the intent of the Coastal Zone Management Act that a unified set of enforceable policies be applied to the use of vital coastal resources, and that these policies apply to state, local, federal, and private actions.

Before we go on any further, I would like to introduce two staff members from the federal Office of Coastal Zone Management who

are here to assist you tonight. First is Richard O'Connor, who is the deputy regional manager in this Atlantic Region. He is working directly with the state in the development of this program. Richard.

And June Cradick, environmental specialist, who assisted in the preparation of the draft and environmental capacity. I think she's at the door.

At this time I would like to turn the meeting over to David Kinsey, who holds the principal responsibility for the development and administration of the coastal program, to explain his presentation part of this hearing.

Dave.

MR. KINSEY: First let me welcome my federal colleagues to the first of three public hearings to New Jersey, and let me also thank the freeholders of Cumberland County for their hospitality in making available the freeholders meeting room tonight, as well they have done on previous occasions on the part of the coastal planning process.

I would like to simply stress that Chapter 3 of the Coastal Program for the Bay

Segment, the coastal resources and development policies have been proposed by the Commissioner of the Department of Environmental Protection as formal agency rules under New Jersey's administrative procedures act. The public notice for the proposed adoption of the rules appeared in the New Jersey Register on May 4, 1978, with a comment. That extends through July 5, 1978. The comments made at this hearing, as well as written comments submitted to me by July 5, will be considered in the rulemaking process that must be completed prior to formal federal approval of the New Jersey Coastal Program for the Bay and Ocean Shore Segment.

As Mr. Gardner pointed out, copies of the Bay and Ocean Shore Segment documents are available on the literature table to my left in this room.

I would like to introduce Mr. John Weingart, Assistant Chief, New Jersey Office of Coastal Zone Management, who is here tonight, Stephanie Taylor and Katherine McKenna, who are interns in the Office of Coastal Management. They are also here this evening to help in any way.

With that, let's turn back to Mr. Gardner.

MR. GARDNER: I just would like to outline some of the brief groundrules we will use for this hearing. I think everybody has been asked to sign an attendance card indicating if they would like to make a statement. I believe I have those here. Speakers will be heard on a first come, first served basis. Statements should be limited to ten minutes, and the federal and state staff here may wish to ask questions of any speaker following presentation of his or her statement.

A transcript of this hearing is being made as an aid in preparing a summary of the hearing.

If you have a prepared statement, I would appreciate a copy for our records.

Speakers may make their presentations from their seats. I guess I would prefer actually you use the microphone here for recording purposes, and I have been asked to request there be no smoking during this hearing.

It's important to remember that this hearing is for the purpose of receiving your

comments. There will be generally no rebuttal to comments on behalf of the New Jersey Coastal Program or the Office of Coastal Zone Management, although we may wish to make some clarifying statements, if that's appropriate.

Are there any questions at this time regarding the conduct of this hearing?

If not, I think we are prepared to proceed with the receipt of comments at this time.

MR. KINSEY: One further comment. In terms of the responses that will be made generally by members of the Office of Coastal Zone Management in New Jersey's Department of Environmental Protection to the comments that might be made here tonight, or as well as written comments, as the state has done with the coastal management strategy document submitted last fall in preparing a document entitled Coastal Management Strategy, Public Comments and DEP Responses, there will be a similar section prepared as part of the final environmental impact statement that will list the various comments made as part of the public review process, and then list the comments of NOAA, National Oceanic and Atmospheric

Administration, and statements to make clear the responses that are made to them today, and go beyond the comments we may be able to offer in response tonight.

MR. GARDNER: Thank you, Dave.

With that we will launch into our testimony. The first speaker tonight is John Holland of I assume Cumberland County Planning Board in Bridgeton.

Mr. Holland.

MR. JOHN HOLLAND: Do I understand the remarks are only to be directed toward Chapter 3 of the report, or can they be generally on the report?

MR. GARDNER: Your comments on the entire report are welcome as far as the federal office is concerned. I think the state's concern is primarily with Chapter 3.

MR. HOLLAND: Do you want me to come to the microphone?

MR. GARDNER: If you come to the microphone, I would appreciate it.

MR. KINSEY: To carry that point, both the federal office and the state office are concerned with public comments, suggested revisions

of the entire document, but in particular I want to single out that Chapter 3 has been proposed as an administrative rule in the State of New Jersey, and that by tonight's hearing is part of the rulemaking process under New Jersey law.

MR. GARDNER: Mr. Holland.

MR. HOLLAND: As the coastal management program is developed and refined, a major concern of the Cumberland County Planning Board has to do with the impact that this program will have on people who own land, those who are seeking to provide their livelihood, and those who might be able to provide new job opportunities in our coastal area.

While the planning board recognizes the importance of protecting the natural environment of the coastal area, it also feels strongly the sometimes critical needs of people's living, working, and business environments must also be recognized, and that a balance must be struck between the two that will not unnecessarily stultify agriculture, business, or commercial recreational activities in the bay region.

To this end we will recommend that the coastal zone boundary now included in the program

be reduced to follow the ten foot contour, a line that would have direct and meaningful relationship to the tidal water areas which the program seeks to protect. We see no reason why the coastal zone boundary must follow cultural features such as roads and railroads, as was done by our legislature in establishing the CAFRA boundary. An upland ten foot selected elevation contour would be accurately mapped and interpreted in critical areas by municipal engineers, just as has been accomplished in the case of the HUD flood insurance rate maps. If this were done, it would reduce the overall area included in the coastal zone, providing more suitable rationale for boundary line location, and constitute a first step towards securing legislative cooperation in revising the CAFRA boundary line to map it. In reducing these boundary lines, the DEP would be complying with the intent of Congress as described in OCZM's Threshold Paper Number One, which states it is clear that the intent of Congress was that states delineate boundaries with a relatively conservative approach, including only those shore lands the uses of which have a direct and significant impact on coastal

waters. An ultimate reduction in the CAFRA boundary would relieve a substantial number of upland property owners from the costly, time-consuming, and discouraging red tape involved in the CAFRA permit process.

Another way in which the program could take into account the needs of people living in the area is through a more sensitive approach to regulation and administration. Just as a good judge seeks to make the punishment fit the crime, the Coastal Zone Management Program should find ways to simplify the program's impact on project applications having a relatively insignificant impact on natural resources. This might be done through the institution of a locally managed permit procedure for certain classes of minor developments in both wetlands and CAFRA portions of the zone. Replacement of storm damaged dockage and construction of minor new private or commercial boat docks, and the construction or repair of necessary agricultural grid and tide protection structures are examples of projects that should be considered.

The planning board feels this would be another means of avoiding unnecessary and ex-

pensive application preparation and costly and possible time delays.

Such a procedure might be tied in with the issuance of local building permits through the municipal construction official's office, including based on natural resource advice provided by the soil conservation district, which presently reviews many local development projects, and is thoroughly familiar with the management of natural resource criteria included in the program's land acceptability tables.

Another of the planning board's concerns has to do with the regional growth potential map shown on page 98. This map delineates growth areas and limited growth areas. The general view of the map discloses the predominant concentration of growth areas throughout the northern portions of the coastal zone and an almost complete absence of such areas in the southern portions, with the exception of the area adjacent to Atlantic City. The implication here is that a development application originating practically anywhere in our area will be viewed more critically than one emanating from the almost continuous growth

1 area comprising the northern portion of the
2 coastal zone. The basis for these delineations
3 probably has to do with the state of existing
4 development.

5 However, if we are truly concerned
6 about the quality of our coastal resources, it
7 seems to us at least as much and probably more
8 concern should be exercised over developments
9 occurring in the natherly more extensively
10 developed water side areas than in the southern
11 lower density coastal and bay side sections.

12 We feel this classification, along
13 with a similar approach in the state guide plan,
14 will not only work to complicate local develop-
15 ment proposals and other economic activities
16 through coastal regulatory process, but will
17 also be used to discourage grants and other aids
18 for new infrastructure which will be needed if
19 any more intensive development areas are to be
20 created in our region.

21 In conclusion, the planning board
22 urges the DEP, while it seems to protect and
23 enhance the coastal environment, maintain a con-
24 tinuing awareness that the land owners and wage
25 earners, as well as existing and prospective

1 business owners, are an important and critical
2 part of that environment, and as such have a
3 right to expect that their interests will be re-
4 spected. The program should be limited in its
5 approach. It should not be used as a tool to
6 prevent or promote regional development, the
7 selling of land, or the conduct of legitimate
8 commercial activities.

9 A map delineating our recommended
10 coastal boundary and a more detailed statement,
11 including comments on the coastal location
12 acceptability method, will be submitted prior to
13 July 5.

14 MR. GARDNER: Thank you very much.

15 Do you have a copy of that statement
16 you can leave?

17 MR. HOLLAND: I don't, but I will see
18 you get a copy.

19 MR. GARDNER: Thank you very much.

20 Our next speaker is Alexander T. Ogden
21 of Port Norris, New Jersey.

22 Mr. Ogden.

23 MR. ALEXANDER T. OGDEN: One of the
24 questions I would have is, is this to be some
25 consolidation of the efforts of the two depart-

ments? In other words, do we still have to file with the State Department of Environmental Protection and both with the federal government, or does this consolidate those two?

MR. GARDNER: The federal approval of the coastal program for the State of New Jersey does not imply any additional regulatory effort by the federal government at all, it's a state program which we have supported.

MR. OGDEN: Yes. Does it take away any of it?

MR. GARDNER: Pardon?

MR. OGDEN: I was just wondering if it takes away some of the red tape.

MR. GARDNER: It has potential for doing it. Whether that will happen---

MR. KINSEY: Perhaps I could help by using a specific hypothetical example. Three key coastal permits that are part of the coastal program, our so-called coast areas review act, law, that applies to large developments.

In the case of Cumberland County to date there have been in the past four and a half years only a small number of CAFRA permit applications. There's an application approved re-

cently on a housing complex in Mauricestown; there's an application approved for Pennsylvania Sand Glass Company's continued mining operations; there's an application that was approved for the Bridgeton treatment plant several hundred yards from where we are tonight.

MR. OGDEN: Yes, sir.

MR. KINSEY: There are one or two applications still pending that's under CAFRA.

Two other laws, that are Wetlands Act and the Waterfront Development Permit Program under the riparian statutes, are laws that get involved with so-called concurrent jurisdiction of the U.S. Army Corps of Engineers. So in that case, which is concurrent federal jurisdiction and the requirement for a federal permit, when one is proposing dredging or piling in navigable waterways, but this--what this program does is spell out detailed written policies for how the State of New Jersey will be making its decisions under the Waterfront Development Permit Program. The criteria for decisionmaking under the Wetlands Act have been spelled out already, and by continued working cooperation between the State of New Jersey Division of Marine Services and

the U.S. Army Corps of Engineers.

It's our hope to further simplify this system as, for example, we were able to do in the ice emergency a number of years--two years ago. So to that extent federal support, financial support, will help the effort to further simplify this process.

MR. OGDEN: Yes. The main thing, my main concern with for the past several years now is in the banking of the Maurice River. That currently is becoming all wetlands, or of course that's a new name for swamp, and it's destroying fish and destroying oysters at a tremendous rate. It's permitting salt water to come up into the fresh water area, and this wetland grows every year. In some areas it may only be five to ten inches, but in the past five years or so it's easy to see where it has taken over over a thousand acres of land. Some of it was forest, some of it--much of it was farmland.

And of course we always have the continuing problem of, as we mention, of the people in our area, of whether it's salt hay farm, which has been there for 200 years they've worked on it that way, and they pretty well know what

they're doing, is to then start to have to go around through people who attempt to do wonderful things and yet sometimes don't quite know what you're talking about, and then they might change the subject or send you to another department to try and explain yourself there.

I guess that pretty near covers what I have, I was thinking about.

MR. GARDNER: Fine. If you are to put that in writing, we would be delighted to have that as part of the record.

MR. OGDEN: Thank you very much.

MR. GARDNER: Thank you, Mr. Ogden.

Our next speaker is Edward O. Gibson of Port Norris, New Jersey.

MR. EDWARD O. GIBSON: I don't care to make a statement.

MR. GARDNER: Fine, thank you.

We move then to E.R. Jarmer of Cape May Court House, New Jersey.

Mr. Jarmer.

MR. ELWOOD R. JARMER: My name is Elwood R. Jarmer and I am Director of Planning for the Cape May County Planning Board.

One comment that Cape May County, at

least a larger portion of Cape May County constitutes the CAFRA area than any other county, just about 80 per cent, a little over 80 per cent of the Cape May County constitutes coastal zoning in New Jersey. Consequently we have great interest in the state's program.

This statement is read on behalf of the Cape May County Planning Board.

By way of introduction, I want to thank the federal and state officials for being able to present the statement. The policies of the coastal segment represent a significant commitment of human effort, time, and financial resources which evolved over the past four years. Even though it is not a final step, the document culminates a multiyear effort which was submitted to public scrutiny time after time, and we think it's been tempered by various constituencies.

The coastal program. We strongly endorse the four basic coastal policies. In short, these objectives are protection of the eco system; two, concentration rather than dispersal of development with strong emphasis on open space preservation; thirdly, the development and im-

plementation of explicit decisionmaking process to coastal location acceptability method, known as CLAM; finally, protection of the public health, safety, and welfare.

We particularly endorse those policies which recognize and protect the fragile natural resources of the coast, those which constitute an explicit and rational decisionmaking process which, in turn, will remove much of the uncertainty that surrounds the current ad hoc CAFRA decision-making process, and the energy policies which accommodate energy development consistent with the four foundation policies. Finally, we enthusiastically applaud the resort-recreational use policies and the priority of such uses in the Bay and Ocean Segment of the coast.

If the coastal program has a singular significant defect, it is that it fails to disclose the cumulative impacts of its own implementation. It remains unclear as to how many people or how many developments the coastal program would permit within the Bay and Ocean Segment. Likewise, CLAM fails to distinguish between the best possible use of the land at a given site and other uses it would permit. Given these un-

certainties, it is also impossible to comprehend where the people will be, what kinds of services and facilities they will require, and the impacts they will cause to air and water resources.

While the water and air resource policies call for conformance with all applicable state and federal standards, the coastal program does not yet contain a mechanism by which to adjudge the cumulative effects. While we recognize that our current concern for environmental problems and quality has sprung from our past failure to look ahead, solutions to these deficiencies must be found. We recognize the New Jersey DEP is aware of these problems and has begun to develop scopes of work and let contracts to solve them.

However, because CLAM is not yet fully tested, we urge that the case study appendix, Appendix N, be expanded in the final EIS with respect to both geographical location of the sites studied and the nature of developments analyzed. Case studies involving motel or recreational development proposals on barrier islands and adjacent to water areas, for example, would help to clarify the multitude of implications CLAM

holds for both developers and environmentalists.

The environmental impact statement.

Today we are called upon to--I want to speak to the coastal program itself, but also to the environmental impact of its implementation. As noted above, the deficiency in the segment to clearly specify its cumulative impacts reflects itself within the environmental impact statement. Where the impacts are as yet unknown, the impact cannot fully and meaningfully be assessed.

Secondly, the EIS does not appear to take a hard look at the impacts upon the implementation of the coastal program will have in non-CAFRA areas. Upon approval, it would seem that non-CAFRA areas adjacent to the CAFRA border would be subjected to intense development pressure, which in turn may generate impacts in adjacent CAFRA areas. Likewise, developments of 24 units or less will not come under the jurisdiction of the coastal program, but could, on a cumulative basis, have greater impact on the coastal zone.

Observations in Cape May County indicate that both of these exceptions could have a significant impact on the coastal zone. While these issues have been raised in the EIS, adequate

solutions are not proposed.

This concludes the prepared testimony. Attached to this is a list of technical issues which you may want to consider, and I would be happy to answer any questions.

MR. GARDNER: Thank you very much, Mr. Jarmer, we appreciate that. It's a well thought out statement.

MR. KINSEY: Let me simply add the suggestion that the case studies, additional case studies be prepared, demonstrated how the coastal location acceptability method is used, is an excellent one, and I trust we will be working closely with Cape May County Planning Board and other county planning agencies in developing cases that ought to be analyzed using this method and working toward the preparation of either of us of free standing handbook implementing how this method works, or an expanded appendix in the final environmental impact statement.

MR. GARDNER: The next speaker is Gary Carpenter of Mauricetown, New Jersey.

MR. GARY CARPENTER: Yes. Let me just say I am speaking on behalf of this evening of

not only Jesse Morie Company, Pennsylvania Glass Sand Corporation, Whitehead Brothers Company, George F. Pettinos Company and Unisil Corporation, all of which are industrial sand mining companies located within South Jersey. Many have operations within CAFRA boundaries or holdings within CAFRA boundaries.

The areas of concern we have are, one, very much concern to us is the Office of Coastal Management has not addressed itself in any great detail to the mining that gets on within the CAFRA boundaries---

MR. GARDNER: Excuse me, sir, you talking of the federal or state?

MR. CARPENTER: State office. And I think this is obvious when you look on page 148 of the document, I believe it is, due to the briefness in the document. We have tried on several occasions to have meetings and we have not been very successful. However, now we have one set up for the 26th of June, I believe it is. I hope there's some good that comes from this meeting.

The other area that we are concerned with is the negative approach this document takes

toward the mining industry as a whole, since it's a very basic and important industry to the overall economy, not only of South Jersey, but to many of our neighboring states.

My next comment is, has any consideration been given in this document to the impact that this document would have on mining and associated industries?

Thank you.

MR. GARDNER: Thank you very much, we appreciate it.

MR. KINSEY: Mr. Carpenter, I look forward to meeting you on the 26th. The meeting has been arranged and we have benefited from the helpful meetings with the mining industry on some previous occasions in the past years. So I look forward to the meeting.

MR. CARPENTER: Good.

MR. GARDNER: Thank you.

Our next speaker is L.R. Hudson of Bay Point, New Jersey.

Mr. Hudson.

MR. L.R. HUDSON: I came here this evening totally unprepared because I didn't know I would be allowed to speak, so I've just been

jotting down a few things.

I am a private owner down in Bay Point, New Jersey, in a small fishing community, and we have small timber piers and docks and summer homes which we entirely enjoy, and we boat and crab off of the pier, which means to me we are not doing any damage, the crabs are still there and the weeds are growing up around the docks and stuff, so the fish can still come in and eat, and we all think very much about controlling our environment, keeping it clean, and obeying the laws, and we contribute a goodly sum of money to the area each summer, because I counted up my fish would approximately cost me a hundred dollars a pound for some poor fisherman.

But the thing of it we can't understand about this is why we are all treated the same as commercial owners, such as marinas, and forced to do a lot of unneeded and surveying and engineering to legalize the pier that we had to prepare replies every year from ice and erosion damage, and when we asked somebody about our erosion, we lost about 60 feet of ground off the back of the side of my lot this year, and we can't get anybody to hear us about it. They all

keep referring us back to the environmental department. It's like trying to climb out of the pool and somebody stepping on your fingers and kicking you back in.

So why can't we get a separate set for private owners?

And big developers, when they come in an area, they destroy everything, and I do believe in controlling them.

But I think there's got to be some way that we can live with the birds and the fish, because I don't think it all belongs to them.

Thank you very much, sir, and by the way, this engineering cost is putting a--causing a lot of people hardships, they can't afford it, and the place has been there 50 or 60 years and nobody ever bothered us.

Now the houses used to be 300 or 400 feet from the bay anyhow, and the water is coming up under them. So that ground we lost, the state has come along and claiming that. It ought to be some kind of a way to explain it to us so we can understand it.

Thank you very much, sir.

MR. GARDNER: Thank you very much, Mr.

Hudson. I appreciate your comments, and in preparing them on short notice.

Our next speaker is Michael L. Redpath of Marine Trades Association of New Jersey, Island Heights, New Jersey.

Mr. Redpath.

MR. MICHAEL L. REDPATH: The Marine Trades Association of New Jersey, representing the state's recreational boating industry, is pleased to be a part of the ongoing coastal planning process. We welcome the opportunity to comment on the Draft Environmental Impact Statement, recognizing the Department of Environmental Protection is making an effort to consider coastal users as affected by the Coastal Management Program since the close of the comment period on Coastal Management Program Strategy. This document is of utmost importance to our industry, as it is to all coastal users from both a restraining and newer standpoint. The program obviously puts restraints on the growth and even maintenance of recreational boating in New Jersey and its supporting industries. Properly applied, the program can also further regulate boating by providing for the most effective use of and the

continuation of environmentally clean family recreation such as boating.

Because of the importance of the Draft Environmental Impact Statement to the coastal zone, our initial nature of criticism is of the sort purely available for study and comment. The document that has taken so long to prepare and is of such far reaching impact deserves a longer period for study and the preparation of incisive comment. For this reason the Marine Trades Association testimony is being prepared in two parts, this general verbal testimony and the written testimony to be submitted later, which includes a revised version of our verbal testimony and an indepth analysis of each section of the statement that deals with or affects recreational boating.

We of the association see ourselves as realistic environmentalists, favoring environmental protection, but also recognizing the need to balance that protection with economic realities. It is with that philosophy that we have reviewed the Draft Environmental Impact Statement.

On the whole, the Draft Environmental

Impact Statement is a well thought out document that reflects very well on the ability and professionalism of the staff that prepared it. Our major criticisms lie with the negative approach to management, a lack of working knowledge of the use of regulated and inconsistencies and lack of clarity in some areas. The program is entirely too negative. More attention must be given to attracting and encouraging uses desirable for the coastal zone as stated in the Marine Trades Association response to the coastal management strategy for New Jersey.

New Jersey has traditionally been oriented to solving problems through regulation. This evidently isn't the policy. Prohibiting and discouragement alone will not provide for the coastal zone envisioned by New Jersey Coastal Zone planners. Encouragement must become the positive approach. The state must actively assist in the development and maintenance of those private facilities that compliment the state's goal for the coastal zone through improved public access without serious environmental degradation.

We are pleased to see the Draft En-

vironmental Impact Statement is more positive than the strategy, but it still is not positive enough.

It is unfortunately obvious that the program was conceived by the administrators who are not sufficiently in touch with the situation as it exists in the real world environment. From a textbook standpoint the program is workable; from a real world standpoint, there are sufficient shortcomings to make it unworkable. Such things as incorrect definitions, that of navigational channel, for example, and unrealistic water depths in various policies causes the program to lose credibility as well as to make it unworkable. The association's written testimony will elaborate on those shortcomings.

Further evidence of the lack of real world knowledge is the failure to treat certain elements of the environment as transient, changeable entities, and also downplaying of economic impacts. Elements of the environment such as shellfish beds, grasses, and sand are capable of change and movements, and the policies must recognize this. It must also be recognized the economic impacts of the program are much

more probable and much more long term and much more endangered than indicated from a mechanical standpoint, and there is a widespread need for more concise definition. The inconsistencies exist both between individual policies and in basic philosophy. Is the program to be specifically as the intent appears to be or generally as the frequent lack of definition or details would indicate?

In addition to the specific suggestions to be offered in written testimony, the Marine Trades Association has several general positive suggestions for revising the Draft Environmental Impact Statement. Assistance in considering potential sites must be programmed. One of the restrains to desirable development in the coastal zone is the gamble in purchasing property, not knowing whether the necessary permits would be attainable. Some planning choices would be desirable, perhaps a general map of the coastal zone showing what uses would probably be acceptable in each area as well as what uses would probably not be acceptable. Greater participation by people with direct working knowledge and regulated uses must be included in

drafting and applying policies and regulations. This can be accomplished through the membership on the coastal area review board or through the use of consultants from regulated industries in all the decisions affecting those industries. The program cannot work if it is unable to recognize the day-to-day problems and realities of regulated uses.

The Department of Environmental Protection permit procedures must be simplified. We agree with the need to protect the environment, but the means employed to do that is actually scaring away perfectly acceptable, perhaps beneficial projects, because of the economic and psychological strain caused by the permit process. Unless some overwhelming financial gain is evident, it just isn't worth pursuing a DEP permit. The kinds of businesses encouraged by the Coastal Zone Management Program are essentially small, low economic yield businesses. But the permit process is geared to being tackled by a large, high yield business capable of employing a battery of lawyers and consultants.

The CAFRA wetlands and riparian permits

must be consolidated. Once consolidated they must then be streamlined without weakening their effectiveness. In order to gain a fresh perspective, an outside consultant should be brought in to guide the consolidation and streamline everything. Working from within the department it can never happen effectively, all proposals would be based on existing procedures. This must be accomplished with outside help.

It is imperative that officials of the Coastal Zone Management develop a better understanding of the interrelationship between the environment and the economy of the coastal zone. Coastal zone management funds must not be used for projects. The need for research into all aspects of the coastal zone is so great that spending coastal zone funds for projects rather than research is unconscionable.

The proposed studies of recreational boating in New Jersey must be pursued. The nature of the sport, nature of the industry, users, demand, carrying capacity, restraints, and prospects of and recommendations for the future must be identified. A study aimed at increasing the compatibility of boats and their

support facilities with the environment should be undertaken.

The state's dredging must be identified along with the agency for better responsibility for the dredging. Proposals for accomplishing that dredging must be drafted. As indicated in the Marine Trades Association response to the Coastal Zone Management Strategy, a concerted effort must be made to locate and develop spoils areas physically and economically accessible to both the public and private sector. Goals for site development based on dredging needs within specific geographic areas must be set. Investigation of alternative dredging methods and dredge spoils disposal and use must also be actively pursued. Whether within state government or research institutes, without the development of spoils areas, New Jersey's dredging needs will remain unfilled and the state's waterways will continue to deteriorate.

Unfortunately, some supposed environmentalists play at various provisions, giving little reflection to the serious economic impact of their reactions. Well-founded environmental considerations are an important part

of the permit process and must be encouraged. However, a stop must be put to the tax on projects launched by people using environmental considerations as an excuse for opposing projects that they just plain don't like. It would seem that for all the probable expense an applicant must go through, it would be only right that opponents of the application be required to substantiate their claims. A requirement that opponents be required to file an environmental impact statement supporting their contentions would assist both permit review and application in considering objections.

By incorporating the suggestions included in this testimony and in the association's written testimony, we will be able to work with the Coastal Zone Management people and we would like to live and work in the coastal zone for which the program is directed.

MR. GARDNER: Thank you.

MR. KINSEY: I have one question. You referred to a statement suggesting that we not fund projects. What exactly did you mean by projects?

MR. REDPATH: Within the Draft En-

vironmental Impact Statement that at one point mentions that some of the federal funds will be used to specifically fund beach access projects and others. It doesn't define what the projects are, but using the project in a context, it indicates it will be either construction or something like the beach level or something along those lines.

MR. KINSEY: That helps me to understand. The beach level is one type of a problem, and in the last summer there was no extra support that was being funded. This summer the State Department of Environmental Protection and the highway authority are funding.

I have one question back to you. I'm glad you brought up the issue of the recreation boating study, that the state proposed to do had to be deferred for the funding reasons, lack of federal funds, as the project came close to beginning. Secondly, your suggestion for pre-planning guidance is one we will all agree with, is one reason the division has a preapplication procedure. You members are well aware of it and the use helps cut down some of the delays.

Your suggestion for mapping of the

coastal zone is one that we agree wholeheartedly with. In fact, one of the major uses of the first year program implementation grant to be received with federal approval of the segment we hope to do environmental sensitivity mapping of the coastal zone segment, again to further the development becoming increasingly specific on how the coastal land and water use policies will be applied.

We look forward to your written testimony too.

MR. REDPATH: Thank you.

MR. GARDNER: I would certainly underscore that statement, and I hope your written comments will follow those up.

Thank you very much.

Our next speaker is Mr. Alfred C. Coleman, Jr. of Pennsville, who has indicated he wanted to ask a question.

Mr. Coleman.

MR. ALFRED C. COLEMAN, JR.: Alfred Coleman, Pennsville, New Jersey.

Mr. Chairman, I appreciate your recognizing the questions to be asked, since you granted possible cross-examination by the

federal agency as well as the state.

The Coastal Area Facilities Review Act enables the state to approve or disapprove energy facilities. Will this act be amended when the energy siting bill is signed into law, which seems to provide the commissioner of the DOE sole power over siting? Section 11 of the CAFRA Act states that nuclear facilities before issued a permit must have provision for permanent disposal of nuclear waste. Yet a permit was issued for Hope Creek 1 and 2. Does the act provide or does the environmental impact statement that we are addressing here this evening or redesign or increase capacity for spent fuel pools or revision or amendments to original design? Do you require an undated EIS for one of the most critical facilities for potential health hazard, the spent fuel pools? Do you use the S-3 Table of 10CFR51 to evaluate the EIS and all the permanent effects to the gaseous and liquid effluence on the environment?

And this evening I scanned the NJSA 13:19-5, which permits to construct facilities, dash 6 application for permit, and dash 7, contents of the environmental impact statements.

The grandfather clause protects those nuclear facilities prior to the enactment of the CAFRA Act and permits those facilities, two and three, for example, additional cooling powers, unproven effect on the environment and safety and health of citizens, and provides an open end permit to license without amendment, without updating EIS, or revision to the alleged acceptable levels for radiation provided therein.

For example, the S-3 Table of 10CFR51 under cross-examination recently specifically read on Rule 2:22, the gentleman stated, and I believe this was Dr. Walter Jordan, possibly underestimated the acceptable exposure by a factor of 100,000 times, not 100,000 times, a factor of a hundred thousand times. This type of regulation as far as CAFRA is acceptable and a nonworkable framework to protect either our coastal area or citizens in Salem County, also the Oyster Creek area, possibly any future location of the floating nuclear plants, and most recently, floating coal plants, with Salem County, for instance, becoming a permanent waste depository in the next 30 or 40 years.

The gentleman previously addressed those

expensive intervenors, and in some cases they used their own lawyer, in some cases the public advocate's office provides the necessary lawyers for those people. With interventions there are prehearings and the contentions must be proven and backed up, and at such time the nuclear regulatory commission either accepts the contentions or rejects. They offer discovery and they must be proven.

So we are providing all the EIS that's necessary, and a heck of a lot of it is at our expense, and we are not getting paid to do it, we are looking out for both the environment and the citizens.

Thank you.

MR. KINSEY: Mr. Coleman, perhaps I could attempt to answer your two questions briefly.

The first question was the statute I believe, the S-1146 or S-1147, so-called Dodd Bill introduced by Senator Dodd in the state senate, and which passed the state senate last Monday 36 to 0. The assembly has not yet taken up the bill, and perhaps the appropriate forum for this proposed shakeup would be the hearings

the assembly I believe will be holding on this proposed legislation.

To answer your question will CAFRA be amended, that's clearly a question the legislature can answer, it's not one that representatives of the State Department of Environmental Protection can answer. But I am not aware of any proposals today to amend it.

To your second question concerning the redesign of spent storage facilities on Artificial Island, I am not aware of any pending state proposals under DEP and riparian to change the key coastal programs today in the Artificial Island complex, and should one be submitted, it would be reviewed in terms of the policies in place today.

And particularly, I would like your comment on the proposed policy on siting of nuclear energy facilities in the coastal program, particularly page 145.

MR. COLEMAN: The question actually addressed you had issued a permit for Hope Creek 1 and 2.

MR. KINSEY: That's correct, the DEP issued a permit.

MR. COLEMAN: O.K. Which provides for the storage of 264 spent fuel assemblies.

If they were to come in and provide for 1170 assemblies to Salem with spending applicable, would it be necessary to do anything under the CAFRA Act?

MR. KINSEY: It would be reviewed at the time of the submission, but our procedures as part of the adopted CAFRA regulations for provision to issue permits as necessary.

MR. COLEMAN: Thank you.

MR. GARDNER: Thank you, Mr. Coleman. Will you be submitting written comments?

MR. COLEMAN: I can have them typed, yes.

MR. GARDNER: The last speaker who has indicated an interest in making a presentation is Alvin and Rosemarie Griffith of Cedarville, New Jersey.

MRS. GRIFFITH: You can strike out the Rosemarie.

MR. ALVIN GRIFFITH: Alvin Griffith, Lawrence Township Planning Board.

The scope of New Jersey's Office of Coastal Zone Management task is vast in

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attempting to formulate a program that will protect the coastal areas of our state. They were given the assignment to establish authority over the reckless growth and sprawl in our coastal areas, along with those of local governments and area agencies throughout the coastal regions of our state. This is not an insurmountable task, but it must involve dedicated people.

Therefore, my comments should not be construed as criticism of the professional performance of the state's OCZM staff or the dedication of OCZM administrative officials. Instead, they should be a reflection of the need for improvement and review of the program's impact, cast on the municipalities and criticism of the coastal areas.

Mr. Chairman, pages 2 and 3 of my remarks regard already expressed concerns in reference to the means for authority the state will use to exert control over land and water uses. I believe they are already on file with your office. For the sake of time, I will omit them. However, I do request they become part of the record. Pages 2 and 3 express my growing concern to the lack of coherence and integration

1 of the environmental quality of the riparian,
2 wetlands, and CAFRA rules and regulations.

3 It came as a surprise to see the
4 coastal program had not adequately addressed
5 these concerns. New Jersey OCZM in developing
6 a program is aware of the shortcomings of the
7 three laws through the testimony of many who
8 came forward at public meetings to express their
9 dissatisfaction with them and requesting that
10 New Jersey OCZM change the unfair aspects of
11 them. New Jersey OCZM has been in a front
12 running position to initiate action that would
13 create the necessary amendments needed to reduce
14 these discrepancies, but have failed to do so.

15 Inaction has resulted in a wide-
16 spread feeling that state and municipal consul-
17 tations during the development process has
18 taken place largely for form's sake, and that
19 inputs from local governments have not been
20 taken seriously. Local officials are extremely
21 sensitive to the importance of the coastal pro-
22 gram, and they also believe that their experience
23 and awareness, as well as their very real
24 interest in the coast, should entitle them to be
25 more than bystanders.

1 Much of the concern embodied in the
2 federal act of 1972 addressed preemption of local
3 governments and assured that they would not be-
4 come second class entities throughout the
5 development process. The provision of a
6 financial base is an essential condition to es-
7 tablish this role. Although local and county
8 governments should not establish a role vis-a-
9 vis New Jersey OCZM, local governments needed
10 professional assistance in order to offer in-
11 telligent input to the program. For this they
12 relied primarily on the county planning board.
13 The pass through funding program initiated in
14 1977 by New Jersey OCZM was totally inadequate
15 for counties to carry out functions of communi-
16 cation, consultation, and advocacy. The lack
17 of funding generally of the county has restricted
18 the necessary input needed to make local govern-
19 ments effective partners. Acting individually,
20 municipalities lack the ability to deal on a
21 professional or technical level with the pro-
22 fessional staff of OCZM.

23 In September 1977 Lawrence Township
24 Planning Board requested New Jersey OCZM to
25 pass through funds and establish an office at

1 county level to better serve and educate the
2 people of the coastal region. For this purpose
3 New Jersey OCZM responded with \$4335, a modest
4 sum, to say the least, to solicit public opinion
5 and feed it back to the state.

6 Action such as this has created a
7 climate of uncertainty which will ultimately lead
8 to poor performance in the operation of the New
9 Jersey OCZM proposed program. The public expects
10 more, and I'm sure Congress did too in 1972.

11 Although the program is of national
12 and state significance in the area of coastal
13 management, it is even more important to the
14 twelve coastal counties it affects. Therefore,
15 New Jersey OCZM and NOAA-OCZM must treat the
16 issues I have raised not only from a broad
17 national and regional perspective, but from a
18 local or municipal point of view as well. If
19 we cannot restore the balance and make the pro-
20 gram a genuine partnership between the munici-
21 palities and the state, we run the risk of having
22 the program fail.

23 It's my understanding that on approval
24 of the governor, NOAA-OCZM will recommend Coastal
25 Program to the United States Secretary of Commerce

1 for endorsement.

2 If such be the case, the Lawrence
3 Township Planning Board makes the following re-
4 quests of NOAA-OCZM:

5 Number one. On submitting Coastal Pro-
6 gram to the secretary, it be noted that certain
7 regulations set forth in riparian and wetland
8 laws and the coastal boundary line in Cumberland
9 County are unresolved conflicts between the
10 state and those local governments.

11 Number two, that NOAA-OCZM set a target
12 date for those conflicts to be resolved.

13 Without the notation, and on approval
14 of the secretary, the majority of the townships
15 in Cumberland County will be left with no other
16 alternative than to appeal the decision to the
17 National Coastal Resources Board.

18 For the benefit of NOAA-OCZM personnel
19 here tonight, there is a question as to the
20 existence of a National Coastal Resources Board.
21 Although the Congressional Record, April 25,
22 1972, indicates the creation of the board to
23 provide a forum for appeals by an aggrieved area
24 wide planning entity or unit of local government
25 from any decision or action of the secretary or

1 area wide planning entity, I have been informed
 2 by Mr. Jim Bowman, Executive Director of Coastal
 3 Zone Management Advisory Committee, that the
 4 board was never realized. I find no exclusion
 5 of the board mentioned in the amendments of 1976,
 6 so until such time I find the proper board for
 7 appeals, I use the National Coastal Resources
 8 Board to define my intent.

9 To conclude, it should be noted that
 10 the Lawrence Township Planning Board has been
 11 favorably impressed with the efforts of the New
 12 Jersey OCZM in formulating CLAM, and the decision-
 13 making process described in Coastal Program, and
 14 also with the dedication and capability of the
 15 professional staff. However, we have raised
 16 serious questions, in particular, the lack of
 17 effective communications or working relation-
 18 ships between local governments and New Jersey
 19 OCZM.

20 The tensions between local and state
 21 wide objectives in the planning and development
 22 of a coastal protection program is unavoidable.
 23 Any regional solution, however modest, guarantees
 24 such tensions. These tensions can be con-
 25 structive.

1 It is our hope that the recommendations
 2 we have made, modest though they may be, will
 3 facilitate the creation of a constructive at-
 4 mosphere in which New Jersey OCZM and local and
 5 county government in Cumberland County will in-
 6 deed work in concert to protect our coastal re-
 7 sources.

8 Thank you.

9 MR. GARDNER: Thank you very much, Mr.
 10 Griffith.

11 MR. KINSEY: Thank you, Mr. Griffith,
 12 for your time. We will be working closely with
 13 you.

14 MR. GARDNER: Mr. Griffith, I would
 15 like to make a remark about your concern with the
 16 National Coastal Resources Board. It's my under-
 17 standing that at the time the Coastal Zone
 18 Management Act was being considered in the senate
 19 and the house, the United States Senate and the
 20 House, that there was discussion of the establish-
 21 ment of a National Coastal Resources Board for
 22 a variety of functions. It would appear in the
 23 bills in one of the houses--I can't remember
 24 whether it was the senate or house bill--and
 25 there was also provision made in that bill and

in the other house bill for a National Coastal Zone Management Advisory Committee to serve some of the same functions.

It is my understanding that National Coastal Resources Board did not survive the conference and was never included in the enacted 1972 act, although the Coastal Zone Management Advisory Committee was seen as a substitute for that, and I think that's the reason for the confusion there.

MR. GRIFFITH: Thank you.

MR. GARDNER: That concludes the list of speakers that I have received at this point. I would like to, however, give the opportunity for anyone else who may feel moved to make a statement at this particular time, and I would throw the floor open to anyone who would care to make a statement.

I believe this person here.

MR. DANIEL O'CONNOR: My name is Daniel O'Connor. I am President of the "Save Our River Environment." I have a prepared statement. I just didn't get here in time to fill out your forms.

MR. GARDNER: Thank you.

MR. O'CONNOR: Our organization is Cumberland County's only environmental group, and has been actively involved in coastal management policy discussion and permit review since 1975. We find the Bay and Ocean Shore Segment Draft EIS to be a satisfactory coastal management program, though we do have a few criticisms of it, and we also believe that it is consistent with the policies and objectives of the Federal Coastal Zone Management Act of 1972.

Since there will be a new bay and ocean shore boundary as a result of this document, we recommend that maps be prepared quickly for public distribution delineating the new boundary. If the boundary were drawn on 1:24,000 scale topographic maps, these could be reduced to convenient 8 1/2 by 11 inch sheets. The point I am trying to make is we need to know precisely where that boundary is as quickly as possible.

There is a list on page 255 of the draft EIS which notes the wetlands maps, including wetlands areas considered to be within the new bay and ocean shore boundary. Some of the map numbers given are incorrect. Instead of--well, I won't read these, but there are two

maps that are incorrectly--the numbers are incorrectly printed there. Some maps containing wetlands areas which are not listed but should be included, and I won't give you those, but there are three maps altogether that should be included there.

The definition of shellfish beds on page 31 should include the blue mussel "mytilus edulis" as a shellfish species. This edible mussel is found in commercial quantities in shallow waters along the Atlantic Coast and Delaware Bay, and I have a document which describes that in some detail printed by the U.S. Department of Commerce, which I will give you. Expanded commercial mussel culture is a distinct possibility in view of increased consumer demand and greater scientific knowledge of the resource.

So-called prime forest areas should not be limited to white cedar stands. Other types of lowland swamp forests are of equal or greater value. For example, forests such as Bear Swamp in southeastern Cumberland County contain large numbers of trees such as sweet gum and black gum, the interiors of which hollow

out with increasing age, making extremely valuable wildlife habitat with extraordinary scenic qualities. The size and maturity of a stand should be factors in determining whether it is prime forest.

At several places in the draft EIS rare and endangered plants are discussed. The impression given, however, is that only those plants covered by the federal Endangered Species Act of 1973 will be protected. A distinguished group of botanists collaborated in preparing a list of over 200 rare and endangered New Jersey plants. It was published in 1975 in revised form by the New Jersey State Museum under the editorship of Drs. Fairbrothers and Hough of Rutgers University. This publication is the only authoritative source of information on New Jersey rare flora, and certainly should be used as an integral part of the Coastal Management Program even in the absence of state legislation mandating its use.

Rare plants are excellent indicators of biologically rich habitats, and it is not accidental that rare wildlife species are often found in association with rare plants. Both de-

1 serve protection.

2 Farmed sites less than 20 acres in
3 size cannot by the definition on page 65 be
4 "prime agricultural areas" regardless of soil
5 type. This is an inexcusable loophole. The
6 sole criteria for determining whether a particu-
7 lar site is prime farmland should be its
8 agricultural capability class.

9 The soil fertility definitions on page
10 86 are somewhat unclear. For example, if a soil
11 is in agricultural capability class 2 and wood-
12 land suitability class 2, is its fertility
13 regarded as high or is it moderate?

14 It was somewhat disconcerting to see
15 Bivalve and Shell Pile, two towns associated
16 with Cumberland County's oyster industry, singled
17 out for preservation under the Neighborhoods and
18 Special Communities resource policies section on
19 page 162. These towns were selected, we assume,
20 for their ethnic, cultural, and historic
21 qualities rather than aesthetic and architectural
22 ones. Shell Pile and Bivalve will always exist
23 as waterfront industrial areas--at least we
24 hope so--but they are very poor places for resi-
25 dential dwellings due primarily to danger from

1 tidal flooding. Families living in these
2 communities should be encouraged to relocate to
3 housing facilities located outside of the 100
4 year tidal flood boundary.

5 The geographic areas of particular
6 concern nominated in the Draft EIS reveal extra-
7 ordinary timidity on the part of the Office of
8 Coastal Zone Management, since each are already
9 owned by the state or are subject to strong
10 state legislation. The idea should be to protect
11 something that needs protection. We would pre-
12 fer to see designation of some privately owned
13 prime forest lands, prime agricultural lands,
14 or lands harboring endangered species which are
15 in immediate danger of destruction due to develop-
16 ment.

17 Those are my written comments, but if
18 you permit me the time, I would also like to
19 comment on some of the things that people have
20 already said up here, and what the position of
21 our group is on those.

22 John Holland of the county planning
23 board talked about a ten foot contour line as a
24 possible boundary, and of course we feel that
25 the present boundary is acceptable. We would

1 very adamantly oppose the ten feet contour line
2 as a possible boundary for Cumberland County.

3 We have in Cumberland County a tre-
4 mendous amount of undeveloped, highly productive
5 agricultural wetlands, forests. We want to see
6 this land in the coastal area receive the maximum
7 amount of protection, and I'm afraid that legis-
8 lation, even if it might have some adverse
9 economic effects, is the only way to do this.

10 Our county here sometimes appears to
11 us to think that jobs are provided only by
12 factories in industrial parks, but all of our
13 major industries, glass, agriculture, food pro-
14 cessing, depend on local natural resources, and
15 these resources need the kind of protection that
16 the bay and ocean shore program provides. We
17 welcome this protection.

18 The industrial future of Cumberland
19 County will rely primarily on development of the
20 natural resources of Delaware Bay and the agri-
21 cultural resources of Cumberland County, and we
22 hope that your program will do a great deal to
23 see those resources are not destroyed before
24 we've done the research we need to do in order
25 to find out how to develop them properly so that

1 people will have jobs.

2 The gentleman from Bay Point spoke
3 about the problems he's encountered with permits
4 for his small home there. He made many excellent
5 points. One point in particular I would like to
6 emphasize, that is, the cost of engineering work
7 and surveying and getting permits, the necessity
8 of having an architect or an engineer actually
9 stamp the document. This is not required by the
10 Army Corps of Engineers in its permit process as
11 far as I understand, and I don't think it should
12 be required by the DEP either.

13 In terms of relatively minor projects,
14 the Army Corps of Engineers allows handwritten
15 drawings of a site by the property owner, and I
16 think the DEP could permit this as well for small
17 projects. This would save land owners a tre-
18 mendous amount of money and engineering costs,
19 and I don't think it would really substantially
20 harm the environment in any way.

21 And my last point, there is a need for
22 reconsideration of the riparian and wetland per-
23 mit programs administered by the DEP. We are an
24 environmental group, we recognize there is a
25 need for this. We would very much like to see

DEP policies for riparian and wetlands permit programs more clearly formulated and also much more widely distributed to the public. There is a tremendous amount of confusion here in Cumberland County over such matters as what permits people must apply for, how much the permits cost, exactly what information must be included in the application for permits, and what sort of activities require permits, and I would think that a great deal of opposition to these kinds of--this kind of legislation, coastal management policies, and so forth, would be limited to people who have a better idea of what precisely they are required to do under the permit system.

Many people confuse the wetlands permits with CAFRA permits; they confuse the riparian permits with wetlands permits. They don't really have much of an idea of what it is they have to do under the law, and that sort of situation causes a lot of problems from environmentalists.

MR. KINSEY: Thank you, Mr. O'Connor. The last suggestion in terms of permit simplification and greater public education about the requirements is an excellent one, and that is

one of the tasks being carried out this year by the eleven coastal county planning agencies that are using some of the federal funds made available passing through the state to help serve as a clearing house to begin continued public education efforts. Cumberland County, Salem County, Cape May County are in part of that effort. Also there are efforts toward consolidation of administrative consolidation of CAFRA, wetlands, and riparian legislatively possibly, again an activity that will be able to advance even further, hopefully with the financial support of the federal approval.

MR. GARDNER: Thank you very much.

I believe the gentleman in the second row indicated he would like to speak. Would you identify yourself?

MR. THOMAS A. HENRY: Thomas Henry, Sea Isle City, New Jersey.

I would like to briefly address portions. One is I would like to ask that the section on high risk erosion areas be looked at in Section 6.4.1, especially in view of the criterion of less than 50 years being the criterion used to determine erosion of a barrier beach.

1 As you know, the barrier beaches
2 change much more quickly and much less time than
3 50 years. I live in Sea Isle City. Within the
4 last 25 years the erosion has gone from the
5 south end to the north end to the middle, back
6 to the north end again.

7 This is particularly perplexing if you
8 look at this in relation to Section 7.8, which
9 talks about beach protection measures, and one
10 section talks about groins. But groining that
11 does not create adverse conditions. I think our
12 island has demonstrated clearly if you put a
13 groin in, you can expect ten blocks to the south
14 to have severe erosion problems, and this is
15 recognized by the state, which has poured
16 thousands of dollars into creating a satisfactory
17 solution to that problem during the last two
18 years.

19 Number two, I would like to also ask
20 that you consider the automobile traffic, and
21 specifically, parking on barrier beaches is a
22 real problem. Anyone who was in Cape May County
23 several years ago when a hurricane approached
24 quickly, it was virtually impossible to evacuate
25 that county within a twelve-hour period of time,

1 and if you would try to get off the islands in
2 an automobile, it would take you three to four
3 hours to move two blocks. So that some consid-
4 eration should be given to the input of traffic.

5 Third, I would like to support the
6 motions already put forth tonight about shore
7 permit times. It was a joy two years ago to
8 walk into the DEP office in Cape May Court House
9 and within five minutes come out with a permit
10 to do extensive bulkhead and dock repairs. If
11 that could be done under emergency conditions,
12 it should be able to be done under normal con-
13 ditions.

14 And fourth, I would like to applaud
15 the efforts of the DEP in funding a project re-
16 cently to look at the overboard disposal of
17 dredge spoils. This would greatly alleviate the
18 problems in trying to find land disposal areas
19 and would help keep the inland waterways
20 navigable.

21 Thank you.

22 MR. GARDNER: Thank you very much.

23 MR. KINSEY: Mr. Henry, one question.
24 In reference to parking on beaches of barrier
25 islands, were you referring to parking on the

actual beach? You weren't referring to parking on the actual beach itself?

MR. HENRY: No. On my island it's only three blocks wide.

MR. KINSEY: Thank you.

MR. GARDNER: Thank you, Mr. Henry.

Is there anyone else who wishes to be heard at this time?

Yes, ma'am.

MRS. MARY A. DOWHY: My name is Mary Dowhy. I am from Camden, New Jersey, and I have property in Bay Point, New Jersey.

I don't know whether any of you on the board are familiar with me, but I've been writing to the DEP for the past two years in an effort to legalize my pier. It's only a small, three foot wide pier that goes out onto the bay so I can go out there and fish. I can't go out in a boat because I can't stand the sun that long. After all the effort that we've put out in the last two years, it doesn't seem right that I should go back home and not have had my say. So I hope you will bear with me please.

We've tried to cut the red tape by appealing to those who should know more about

1 the riparian rights than we do, but they don't
2 seem to know either. We are always referred back
3 to the DEP in Trenton. We've gone to the
4 governor, we've gone to the president, we've
5 gone to our senators, and we've gone to the
6 office of the advocate, and we have always been
7 told to go back to the office of the DEP to get
8 clarification, which today is still not clear.

9 We are not business opportunists, we
10 are not building a multi-million dollar complex
11 or a \$500,000 business, or even a \$250,000 unit.
12 We are private citizens trying to enjoy the bay
13 for relaxation and satisfying relief from our
14 weekly chores in the city. We have limited
15 means to try and keep what we thought we owned
16 and had purchased with hard earned money. We
17 now find that we own less and must pay more.

18 When we applied for a permit to add
19 to our house in the city, we go to City Hall,
20 we tell them what we're going to do, they give
21 us a permit, we pay for it naturally, but it's
22 a small fee, and we go ahead and construct it.
23 But of course later they will come out and in-
24 spect it, approve it, and perhaps our taxes will
25 go up a little. We are not asked to submit a

copy of our deed, an owner's certificate certifying that we have notified all the local and county offices. We do not have to have 15 copies of certified surveyors, they certify the survey of our property. An impact statement is not necessary, and all the other papers, and in duplicate the DEP has asked us for.

The original cost to a private individual when we first started to make application, before we even applied for the permit, just to have the surveys made, to have the bench line brought out to Bay Point, and the other necessary things would have been \$900. We wrote to the state, we wrote to the Courier Post. The Courier Post got to the state, the state came back, the State Department of Environmental Protection, and told us that since we were not dredging, it would not be necessary to bring the bench line out, we did not have to have depth and soundings, which reduced the cost a little bit. But we still feel that the cost of just getting ready to apply for the permit is prohibitive, it's far above what a common private citizen should have to pay.

So I would like to go along with Mr.

Holland from Cumberland County, Mr. Griffith from Lawrence Township of both planning boards in asking you that you try to simplify the application for permits, the hundred dollar fee we have to pay, besides all this, plus the \$25 for permit, and I don't know what else, I am waiting for the rest, I don't know what it's going to amount to, before we're finished. But as a private citizen I'm asking that you consider the small, private home owner. What about those people who bought property and now that they've lost their land to erosion, they're being told that they have to move their houses? This doesn't seem right to me.

So we are, as I said, I'm going along with the rest of the people and asking you to try and have the Department of Environmental Protection simplify the rules and regulations for the private home owner.

Thank you.

MR. KINSEY: Thank you, Mrs. Dowhy. We will continue our efforts to try to simplify all of the permit procedures as well as in the case of riparian lands, the real estate transaction procedures that are required for the

1 private property owner, or all owners, but I
2 think it's proper for you all to bear in mind
3 the riparian land question, there are two aspects
4 involved in the discussion. It's not just a
5 permit someone is seeking ownership or renting
6 the tidal lands from the State of New Jersey,
7 and under the Constitution of New Jersey and
8 state laws the Department of Environmental Pro-
9 tection has been given responsibility of managing
10 those lands in the public trust, and that's why
11 our procedures for a license or a lease, or in
12 unusual circumstances an outright purchase of a
13 riparian grant. One needs both the license or
14 lease as well as the permit for the small dock
15 as well as for large bulkheads.

16 We will continue our efforts to try
17 to make the whole process simpler.

18 MR. GARDNER: Thank you, Mrs. Dowhy.

19 That gentleman.

20 MR. HUDSON: I would like to just say
21 I got a shock a little while ago because I
22 finally got to talk to somebody that might
23 listen. I didn't try to get a riparian lease,
24 but it isn't worth anything to me because it
25 states it can be revoked without cause or any-

1 thing. If I rented a property and got a lease
2 like that, I would throw it in the guy's face,
3 because it's no good to me, throw me out on
4 sudden notice overnight, you know, and after
5 paying all this money, getting a lease like
6 that, I don't see it's doing any more good.

7 MR. KINSEY: Mr. Hudson, if you have
8 questions about the actual provisions of the
9 lease, perhaps we can discuss it afterwards, I
10 would like to take up with you and any others
11 in the audience of riparian rights management
12 in the division, because the terms of leases
13 or appropriate instruments are fashioned in a
14 way that hopefully are convenient for both
15 parties, both the state as well as the property
16 owner.

17 MR. HUDSON: And then after getting
18 that lease, I am sent to the army engineers now
19 to get another permit, and I'm still waiting on
20 that. So if the army engineers has all the con-
21 trol, why don't I get referred to them to start
22 with?

23 MR. KINSEY: Because it is the practice
24 of the army corps of engineers in New Jersey to
25 wait first for the state decision, because,

1 after all, this is the State of New Jersey that's
 2 involved in the riparian process. So the state
 3 makes the decision first and then the army corps
 4 of engineers, as has been noted earlier, the
 5 state does arrange, has been able to arrange
 6 special procedures, for example, in the ice
 7 emergency both the corps and the state were
 8 able to work things out quite quickly. But in
 9 the course of that ice emergency, we, the de-
 10 partment, uncovered a number of, let's say,
 11 illegal piers and docks, and there's been an
 12 effort over the past two years to legalize
 13 those structures, where we are the administrator
 14 trying to carry out the laws.

15 MR. HUDSON: Take about 50 years to
 16 do it.

17 MR. KINSEY: Thank you, Mr. Hudson.

18 MR. GARDNER: Is there anyone else
 19 who wishes to make a statement?

20 Yes, sir.

21 MR. FRED GENTILE: I am Fred Gentile,
 22 Fairfield Township.

23 I explained the situation the other
 24 day to people and they laughed at me. If you
 25 own land along the bay and erosion carries it

1 away and then by an act of God the land is put
 2 back, is it true that we have to buy that land
 3 back?

4 I got a lot 150 foot, I've got 60
 5 foot of dry ground to build on. If the good
 6 Lord gives me another 60 or 90 feet back, I've
 7 got to buy it back from the state, is that right?
 8 Do you follow me?

9 MR. KINSEY: I hear your question loud
 10 and clear. I simply do not know the answer under
 11 New Jersey law; I am not an attorney, I don't
 12 know the answer under New Jersey riparian laws.
 13 I will be glad to ask the attorney general's
 14 office to answer your question if you give me
 15 specifics of your case.

16 MR. GENTILE: I'm not the only one,
 17 there's a whole lot of people, everybody in
 18 Sea Breeze Beach is in the same predicament right
 19 now.

20 MR. GARDNER: Thank you very much, Mr.
 21 Gentile.

22 Is there anyone else who wishes to
 23 make a statement at this time?

24 If not, I think we've come to the con-
 25 clusion of our hearing on the Draft Environmental

Impact Statement for the Bay and Ocean Shore Segment of the New Jersey Coastal Management Program as well as hearing on the administrative regulations of the Coastal Resources Policies, Chapter 3. I would like to thank all of you who have come out tonight, been here and listened and participated with us. I personally have found it very stimulating, very interesting, and I know David has been to meetings all over the state, he has enjoyed his perspective as well.

Dave?

MR. KINSEY: Yes. Let me just reiterate thanks, and also say that individuals with particular questions on individual matters, I will be glad to try to answer them after the meeting, or other members of the State Department of Environmental Protection here will do our best to just answer any questions.

MR. GARDNER: Thank you very much. Thank you all for coming.

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I, STEPHEN G. PAULL, a Certified Short-hand Reporter of the State of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of testimony in the above entitled cause.

Stephen G. Paull

DATED: June 26, 1978