Your coast, your future

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DEPARTMENT OF STATE

George E. Pataki
Governor
Alexander F. Treadwell
Secretary of State

Division of
Coastal Resources
41 State Street
Albany, NY 12231-0001

April 3, 2001

Mr. Samuel J. Collins
Director
Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Collins:

Pursuant to federal regulation at 15 CFR Parts 930.53, 930.95, and 923.84, enclosed please find proposed routine program changes to the New York State Coastal Management Program. A routine program change is a further detailing of a State's approved management program that is the result of implementing provisions approved as part of a State's approved management program. The attached public notice describes the nature of these program changes and to whom your comments on whether or not the proposed changes constitute a routine program change should be sent. Please take particular note that the lists of federal agencies' activities affecting land and water uses and natural resources in the coastal zone of New York State has been updated.

If anyone in your agency has any questions please call Charles McCaffrey at (518) 473-3368.

Sincerely,

George R. Stafford
Director

Enclosure
c: C.McCaffrey

YG01

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ADD: Samuel Collins
to E RIDS

New York State Coastal Management Program Routine Program Change

Table of Contents

I. Introduction

The following changes to the New York State Coastal Management Program are considered by the Department of State to be Routine Program Changes. Changes are made to 7 of the State's 44 coastal policies, additional or revised authorities that implement most of the 44 policies are listed, and the sections on Special Management Areas and federal consistency are revised. A copy of revised regulations implementing the State Environmental Quality Review Act (SEQR) is also submitted; the changes to these implementing regulations do not result in any change to the Coastal Management Program.

The changes to the policies and the means for implementing the policies are primarily the result of the following list of legislative acts that have been enacted over the last few years.

- Chapter 791 of the Laws of 1992
- Long Island South Shore Estuary Reserve - Article 46 of the Executive Law
- Environmental Protection Act - Article 54 of the Environmental Conservation Law
- Clean Water/Clean Air Bond Act of 1996 -Article 56 of the Environmental Conservation Law
- Siting of Major Electric Generating Facilities - Article X of the Public Service Law
- New York State Scenic Byways Program - Article XII-C of the Highway Law
- Sections 33-c and 33-e of the Navigation Law
- Long Island Sound Coastal Advisory Commission, Article 42 of the Executive Law

A summary of the relevant provisions of each of the laws is included along with their full text at the end of this submission.

II. The Text of the Program Changes.

(Page numbers are those found in the State of New York Coastal Management Program and Final Environmental Impact Statement, dated August 1982).

Policy #1 Changes to Policies and their Means for Implementation

Under State Means for Implementing the Policy (B), page II-6-8, add the following:

5. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

8. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy #2 Changes

Under Explanation of Policy (A), page II-6-9, add a new paragraph after the 2nd paragraph:

Water dependent activities shall not be considered a private nuisance, provided such activities were commenced prior to the surrounding activities and have not been determined to be the cause of conditions dangerous to life or health and any disturbance to enjoyment of land and water has not materially increased.

Under Explanation of Policy (A), page II-6-9, insert at the beginning of the 3rd paragraph:

A water dependent use is an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

Under Explanation of Policy (A), page II-6-10, replace the 2nd paragraph from the bottom with the following:

In addition to water dependent uses, those uses which are enhanced by a waterfront location should be encouraged to locate along the shore, though not at the expense of water dependent uses. A water-enhanced use is defined as a use or activity which does not require a location adjacent to or over coastal waters, but whose location on land adjacent to the shore adds to the public use and enjoyment of the water's edge. Water-enhanced uses are primarily recreational, cultural, retail, or entertainment uses. A restaurant which uses good site design to take advantage of a waterfront view is an example of a water-enhanced use.

Under State Means for Implementing the Policy (B), page II-6-15, add the following:

5. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

8. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 3 changes

Under Explanation of Policy (A) on page II-6-18, add a 10th guideline:

In applying the above guidelines the information in harbor management plans being developed by local governments pursuant to Article 42 of the Executive Law and local laws that would implement them shall be considered.

Under State Means for Implementing the Policy (B), page II-6-20, add the following:

6. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

7. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

8. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

Policy # 4 changes

Under Explanation of Policy (A) on page II-6-22, add a 7th guideline:

In applying the above guidelines the information in harbor management plans being developed by local governments pursuant to Article 42 of the Executive Law and local laws that would implement them shall be considered..

Under State Means for Implementing the Policy (B), page II-6-23, add the following:

4. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

5. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

6. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 5 changes

Under State Means for Implementing the Policy (B), page II-6- 29, add the following:

4. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

5. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

6. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 7 changes

Under State Means for Implementing the Policy (B), page II-6-41, add the following:

11. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

12. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

13. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

14. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

15. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 8 changes

Under State Means for Implementing the Policy (B), page II-6-46, add the following:

12. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

13. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

14. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

15. Article X Siting of Major Electric Generating Facilities (Article X of the Public Service Law)

Policy # 9 changes

Under State Means for Implementing the Policy (B), page II-6-50, add the following:

9. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

10. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

11. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

12. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

13. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 10 changes

Under State Means for Implementing the Policy (B), page II-6-53, add the following:

3. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

4. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

5. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 11 Changes

Under Explanation of Policy on page II-6-55, first paragraph, 6th line from bottom: replace ".....Section 505.3(u) of the regulations for ECL, Article 34." with "..... 6NYCRR Part 505.2(x)".

Under State Means for Implementing the Policy (B), page II-6-57, add the following:

6. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

7. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

8. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 12 changes

Under State Means for Implementing the Policy (B), page II-6-61, add the following:

6. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

7. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

8. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 13 changes

Under State Means for Implementing the Policy (B), page II-6-64, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 14 changes

Under State Means for Implementing the Policy (B), page II-6-67, add the following:

6. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

7. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

8. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 15 changes

Under State Means for Implementing the Policy (B), page II-6-71, add the following:

8. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

9. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

10. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

11. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 16 changes

Under State Means for Implementing the Policy (B), page II-6-74, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 17 changes

Under State Means for Implementing the Policy (B), page II-6-77, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

6. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 18 changes

Under State Means for Implementing the Policy (B), page II-6-87, add the following:

34. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

35. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

36. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

37. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

38. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 19 changes

Under State Means for Implementing the Policy (B), Page II-6-97, revise the lead paragraph of #6 to read:

Siting of Energy Facilities, Public Service Law (Article VII and X) and Commission Opinion 72-3, case #26108

Under State Means for Implementing the Policy (B), page II-6-98, add the following:

10. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

11. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

12. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

13. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

14. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 20 changes

Under Explanation of Policy (A) on page II-6-99, place new paragraph after the third paragraph:

The regulation of projects and structures, proposed to be constructed in or over lands underwater, is necessary to responsibly manage such lands, to protect vital assets held in the name of the people of the State, to guarantee common law and sovereign rights, and to ensure that waterfront owners' reasonable exercise of riparian rights and access to navigable waters shall be consistent with the public interest in reasonable use and responsible management of waterways and such public lands for the purposes of navigation, commerce, fishing, bathing, recreation, environmental and aesthetic protection, and access to the navigable waters and lands underwater of the State.

A 7th guideline for use in determining consistency is added to page II-6-102:

7. In making any grant, lease, permit, or other conveyance of land now or formerly underwater, there shall be reserved such interests or attached such conditions to preserve the public interest in the use of state-owned lands underwater and waterways for navigation, commerce, fishing, bathing, recreation, environmental protection, and access to the navigable waters of the state. In particular, the granting of publicly owned underwater or formerly underwater lands to private entities will be limited to exceptional circumstances only.

Under State Means for Implementing the Policy (B), page II-6-105, revise #7 to read:

7. Siting of Major Electric Generating Facilities (Article X of the Public Service Law)

Under State Means for Implementing the Policy (B), page II-6-106, add the following:

12. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

13. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 21 changes

Under State Means for Implementing the Policy (B), page II-6-113, add the following:

12. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

13. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

14. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

15. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

16. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 22 changes

Under State Means for Implementing the Policy (B), page II-6-118, revise #4 with the following:

4. Siting of Major Electric Generating Facilities (Article X of the Public Service Law)

Under State Means for Implementing the Policy (B), page II-6-119, add the following:

8. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

9. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

10. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

11. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

12. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 23 changes

Under State Means for Implementing the Policy (B), page II-6-126, add the following:

5. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

6. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

9. New York State Scenic Byways Program - Article XII-C of the Highway Law

Policy # 24 changes

Under State Means for Implementing the Policy (B), page II-6-131, revise the first paragraph of #5 to read:

Utility Transmission Facility Siting Act, Public Service Law, (Article VII and Article X), revise the last line of #5. To read "...into Article VII and Article X deliberations."

Under State Means for Implementing the Policy (B), page II-6-131, add the following:

9. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

10. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

11. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

12. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

13. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

14. New York State Scenic Byways Program - Article XII-C of the Highway Law

Policy # 25 changes

Under State Means for Implementing the Policy (B), page II-6-134, add the following:

6. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

7. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

8. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

9. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

10. New York State Scenic Byways Program - Article XII-C of the Highway Law

Policy # 26 changes

Under State Means for Implementing the Policy (B), page II-6-144, add the following:

5. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

6. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 27 changes

Under Explanation of Policy (A), page II-6-145,In the second sentence of the second paragraph replace "Article 5" with "Article 6".

Replace the fourth sentence of the second paragraph with the following: With respect to transmission lines and the siting of major electric generating facilities, Articles VII and X of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for providing additional electric capacity.

Under Explanation of Policy (A), page II-6-145, replace the third paragraph with the following:

The Department of State will present testimony for the record during relevant certification proceedings under Articles VII and X of the Public Service Law when appropriate; and use the State SEQR and DOS regulations to ensure that decisions regarding other proposed energy facilities (not subject to Articles VII and X of the Public Service Law) that would affect the coastal area are consistent with coastal policies.

Under State Means for Implementing the Policy (B), page II-6-146, replace item #1 Energy Law (Article 5 with Energy Law (Article 6). Replace item # 2 with:
Siting of Major Electric Generating Facilities (Public Service Law [Article X]) -

Before preparation of a site or the construction of major electric generation facility can commence, a Certificate of Environmental Compatibility and Public Need must be issued by the New York State Board on Electric Generation Siting and the Environment. This process is described in detail in Section 7. In granting this certificate, the Board must determine that the facility:

- minimizes adverse environmental impacts, considering the state of available technology; the nature and economics of reasonable alternatives; and the interest of the state with respect to aesthetics, preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations;
- is compatible with public health and safety;
- will not be in contravention of water quality standards or be inconsistent with applicable regulations of the Department of Environmental Conservation, or in case no classification has been made of the receiving waters associated with the facility, will not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the state, and public health and public enjoyment of the receiving waters;
- will not emit any pollutants to the air that will be in contravention of applicable air emission control requirements or air quality standards;
- will control the runoff and leachate from any solid waste disposal facility;
- will control the disposal of any hazardous waste;
- serves the public interest, convenience and necessity.

The regulations which implement Article X assure that the Board's decision will be compatible with the policies articulated in this document, both those relating to environmental protection and to economic development.

To further ensure compatibility, the Department of State will review applications and may present testimony during proceedings involving facilities proposed to be sited in the coastal areas. When reviewing applications, the

Department will examine the alternate locations proposed by the applicant as well as the rationale for the preferred site, particularly with respect to potential land uses on or near the proposed site, and the justification for the amount of shorefront land to be used. Proposed uses which are likely to be regarded by the Department as requiring a shorefront location include:

- Uses involved in water/land transfer of goods (docks, pipelines, and short term storage facilities);
- Uses requiring large quantities of water (hydroelectric power plants, pumped storage power plants);
- Uses that rely heavily on waterborne transportation of raw materials or products which are difficult to transport on land.

Article X also provides that the Department of Environmental Conservation may issue permits pursuant to federally delegated authority under the federal Clean Water Act, the federal Clean Air Act, and the federal Resource Conservation and Recovery Act. Any permits issued under these authorities shall be provided to the Board of Electric Generation and Siting prior to the issuance of a certificate.

Under State Means for Implementing the Policy (B), page II-6-151, add the following:

13. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

Policy # 29 changes

Under State Means of Implementing the Policy (B), page II-6-157, add the following:

10. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

11. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

12. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

13. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 30 changes

Under State Means of Implementing the Policy (B), page II-6-159, add the following:

5. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

6. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 31 changes

Under State Means of Implementing the Policy (B), page II-6-161, add the following:

3. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

Policy # 32 changes

Under State Means of Implementing the Policy (B), page II-6-163, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 33 changes

Under State Means of Implementing the Policy (B), page II-6-165, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 34 changes

Replace Explanation of Policy (A), page II-6-167, with the following:

All untreated sanitary waste from vessels is prohibited from being discharged into the State's coastal waters. Where coastal resources or activities require greater protection than afforded by this requirement the State may designate vessel waste no discharge zones. Within these no discharge zones the discharge of all vessel waste whether treated or not is prohibited. A determination from EPA that an adequate number of vessel waste pump out stations exists is necessary before the State can designate a no discharge zone. The State prepared a Clean Vessel Act Plan which identifies the coastal waters for which no discharge zones are needed and the number of vessel waste pump outs required to obtain the determination from EPA. The discharge of other wastes from vessels is limited by State law.

Under State means of Implementing the Policy (B), page II-6-167, add the following:

Replace item 1. with the following:

1. Sections 33-c and 33-e of the Navigation Law

2. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

3. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

4. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

5. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

6. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 35 changes

Replace the policy statement (page II-6-169) with this revised statement: "Dredging and filling in coastal waters and disposal of dredged material will be undertaken in a manner that meets existing State permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands".

Replace the Explanation of Policy with this revised wording:

Dredging, filling, and dredge material disposal are activities that are needed for waterfront revitalization and development, such as maintaining navigation channels at sufficient depths, pollutant removal, and other coastal management needs. Such projects, however, may adversely affect water quality, fish and wildlife habitats, wetlands, and other important coastal resources. Often these adverse effects can be minimized through careful design and timing of the dredging or filling activities, proper siting of dredged material disposal sites, and the beneficial use of dredged material. Such projects shall only be permitted if they satisfactorily demonstrate that these anticipated adverse effects have been reduced to levels which satisfy State permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15, 24, 25, and 34), and are consistent with policies pertaining to the protection and use of coastal resources (State Coastal Management policies 7, 15,19, 20, 24, 26, and 44).

Under State Means for Implementing the Policy (B), page II-6-170, add the following:

6. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

9. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 36 changes

Under State Means for Implementing the Policy (B), page II-6-171, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 37 changes

Under State Means for Implementing the Policy (B), page II-6-173, add the following:

8. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

9. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

10. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

11. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

12. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas

Policy # 38 changes

Under State Means for Implementing the Policy (B), page II-6-175, add the following:

10. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

11. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

12. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

13. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

14. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 39 changes

Under State Means for Implementing the Policy (B), page II-6-178, add the following:

8. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

9. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

10. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

11. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 40 changes

Under State Means for Implementing the Policy(B), page II-6-179, #1. Change Article VIII to Article X.

Under State Means for Implementing the Policy (B), page II-6-179, add the following:

3. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

4. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

5. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

6. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

7. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 41 changes

Under State Means for Implementing the Policy (B), page II-6-181, add the following:

2. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

Policy # 42 changes

Under State Means for Implementing the Policy (B), page II-6-183, add the following:

5. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 43 changes

Under State Means for Implementing the Policy (B), page II-6-185, add the following:

3. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

4. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

5. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Policy # 44 changes

Under State Means for Implementing the Policy (B), page II-6-190, add the following:

4. Environmental Protection Act (Article 54 of the Environmental Conservation Law)

5. Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

6. Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

7. Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

8. Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

Revisions to Section 8 - Special Management Areas

The Department of State is making a routine program change to the New York State Coastal Management Program that will better define as well as broaden the definition of special management areas, compatible with the Coastal Zone Management Act of 1972 and its regulations. The proposed revised definition for special management areas includes those areas that possess distinctive and cohesive natural, recreational, industrial, commercial, ecological, scenic or historic resources; areas or regions with urban characteristics where shoreline and surface water uses are competitive, in conflict, or where concentrated uses are appropriate; and areas or regions that are subject to issues which require attention beyond that which can be addressed by the statewide Coastal Management Program.

Insert the following following d. on page II-8-9

Beyond the LWRP special management areas described above, special management areas may be identified where intermunicipal issues require a concerted and cooperative effort of the affected local governments and the State. Also certain issues affecting discreet areas within a coastal municipality may require focused and detailed management. Therefore, several other types of special management areas may be identified; these are described below.

Centers of Maritime Activity

Maritime centers are a discrete portion or area of a harbor or bay that is developed with, and contains concentrations of, water-dependent commercial and industrial uses or essential support facilities. The harbor or bay area is a center for waterborne commerce, recreation, or other water-dependent business activity, and may be an important component of the regional transportation system.

These areas generally exhibit the following characteristics:

- Concentrations of water-dependent commercial or industrial uses.
- Sheltered locations and suitable hydrologic conditions, such as sufficient water depth and good flushing.
- Adequate existing navigation channels, anchorage and turning basins, piers and docks, and land-based infrastructure, e.g., highway or rail connections, essential for the operation of water-dependent commercial and industrial uses; if needed, new infrastructure could be provided.
- Physical conditions meet the unique siting and operational requirements of most water-dependent commercial and industrial uses to ensure the efficient and effective operation of water-dependent uses.
- The center is in close proximity to central business districts where commercial uses can be located that complement or support water-dependent uses, but which are inappropriate for a waterfront location.
- Lack of conflict with high value natural resources, such as beaches, dunes, or bluffs; wetlands; shellfish beds, bird habitat or other fish and wildlife habitat; or exceptional surface water quality.

The priority uses to be encouraged in these areas include water-dependent commercial, industrial, and recreational uses and compatible water-enhanced uses. Lowest priority uses are those that are incompatible with water-dependent uses and the functioning of the maritime center.

Waterfront Redevelopment Areas

:

A waterfront redevelopment area is part of, or near, a business district and contains blighted or underutilized properties which are adequate in size to accommodate significant redevelopment. These areas may contain brownfields which are abandoned, vacant, or unused sites where redevelopment and productive reuse has been

delayed indefinitely by real or perceived contamination. In their geographic scope, waterfront redevelopment areas are generally a discrete area of a community, not the entire community.

The characteristics of waterfront redevelopment areas include: (l) urban waterfront areas; (2) locations where redevelopment serves as a catalyst for the reclamation of a blighted or underutilized area or improves a deteriorated condition; (3) areas where infrastructure and transportation facilities exist; and (4) locations where redevelopment can advance regional objectives by improving public access, retaining and expanding water-dependent uses, or facilitating new economic activities appropriate to the region.

Within waterfront redevelopment areas, redevelopment actions should result in a majority of the following: a restored and revitalized waterfront or adjacent inland area; a strengthened local and regional economy through the development of commercial, industrial, and residential uses; improved waterfront recreation opportunities, public access, or dockage; improved views to the waterfront; restored and preserved historic sites; improved environmental quality; enhanced community character and sense of place; and enhanced visiting pleasure.

The following circumstances are indicative of what is required for successful and appropriate development:

- COMMUNITY INITIATIVE AND COMMITMENT
  The community demonstrates initiative and commitment to undertake and follow through on major redevelopment projects to improve the area. The local government demonstrates an interest in, and commitment to, significantly improving the community's waterfront or business district through an expression of one or more of the following: citizen support and consensus; plans which demonstrate sound economic development and land/water use objectives; or preparation of preliminary waterfront inventories and design plans.

- LOCAL PLANNING
  The community has an approved Local Waterfront Revitalization Program or is actively preparing a Local Waterfront Revitalization Program. A Local Waterfront Revitalization Program can provide the local comprehensive land use planning context for redevelopment.

- ADEQUATE LAND AND WATER USE CONTROLS
  The community has, or will have in place, adequate land and water use controls to manage the use, density, and location of development. These controls are necessary to ensure that the size, scale, and intensity of uses generated by redevelopment are appropriate and compatible with the landside and waterside character of the community.

- LAND AND WATER USE OPTIMIZATION
  New development will generally improve the environmental quality of the area. New development will make optimal use of the area's land and water resources which include the built and natural environments, land and water uses, community character, and infrastructure, with particular attention to providing water-dependent and water-enhanced uses.

- .INFRASTRUCTURE
  Infrastructure and transportation systems exist which are adequate to service the proposed redevelopment. If the existing systems are inadequate, they can be repaired or upgraded to satisfactorily service the intended redevelopment.

- ECONOMIC GROWTH
  Opportunities exist to stabilize or improve the local and regional economy through redevelopment projects. The area can accommodate a significant increment in growth and development.

- OPPORTUNITIES TO RESTORE AND REDEVELOP
  Sufficient development demand exists which can be channeled to areas for redevelopment. These development pressures can be used as opportunities to restore and redevelop significant blighted or underutilized areas, buildings, land, waterfronts, or neighborhoods, and to remediate environmental problems through appropriate redevelopment.

- PUBLIC ACCESS
  Public access can be improved by enhancing existing public access or by establishing new public access. Opportunities exist to establish: public open spaces on the waterfront which allow a wide range of recreational uses, waterfront recreation facilities and features to attract people to the waterfront, or an access circulation system that links waterfront areas and the business district to the waterfront.

- COMMUNITY NEEDS
  The area to be redeveloped will serve community needs as an activity center for a range of cultural, living, employment, recreational, and educational opportunities. The redeveloped waterfront can be established or improved as a place for people to gather, socialize, recreate, or work. Redevelopment will result in the addition of new public or semi-public facilities or improvements to existing facilities.

- REGIONAL SIGNIFICANCE
  The area can accommodate a significant level of new development and is, or has the potential to be, a waterfront area of regional or statewide significance. Redevelopment in the area will make major contributions to the region for retention or expansion of water-dependent uses or expansion of economic activities appropriate to the region.

- ENVIRONMENTAL IMPROVEMENT
  Redevelopment will result in environmental improvement by remediating brownfields, improving stormwater management, and improving visual quality.

The priority uses for waterfront redevelopment areas are those that are identified in a redevelopment plan, and will improve the area economically, visually, and environmentally. Lowest priority uses are those that are not identified in the plan as permitted or desirable.

Regionally Important Natural Areas

Certain areas of the state's coast are characterized by an array of smaller, natural ecological communities that together form a significant landscape of environmental, social, and economic value to the people of New York.

These regionally important areas may warrant special management attention if they exhibit the following characteristics:

- The area contains significant natural resources.
  The natural resources of the area are significant to the coastal region if they contain assemblages or outstanding examples of natural ecological communities; fish or wildlife habitat; endangered, threatened, or rare plants or plant communities; or significant coastal geologic features. Significance is further determined by the cultural value or the historic or present-day human use made of the natural resources. Although development may exist in an area that is a regionally important natural area, it would have a preponderance of significant natural resources.

- The resources are at risk.
  Risk is determined by the degree to which the area's natural and related cultural resources have been subject to, or are likely to be subject to, primary, secondary, and cumulative negative impacts associated with existing and new development or people's activities that place ecosystem viability and, consequently, people's quality of life, at risk.

- Additional management measures are needed to preserve or improve the significant resources, or sustain their use.

Finally, an area with significant resources that are found to be at risk must require additional management measures beyond those currently available to maintain or improve those resources and the viability of the ecological complex within which they function.

Priority uses for regionally important natural areas are those that are compatible with sustaining and improving ecosystem viability and natural resources. Lowest priority uses are those that would have a significant adverse impact on ecosystem viability and natural resources.

Small Watersheds

Small watersheds may also warrant special management attention to improve water quality through a comprehensive program to reduce non-point pollution. These programs would include a significant embayment or reach of a river reduced by non-point pollution and where the municipalities that comprise the watershed wish to work cooperatively to reduce non-point pollution.

Priority uses are those that will not impact or have minimal impact on the upland drainage basin including sub-basins, tributaries, and wetlands of the small watershed. Lowest priority uses are those that would have a significant adverse impact on the upland drainage basin including sub-basins, tributaries, and wetlands of the small watershed.

Insert on page III-8-12 following the third paragraph.

Significant Coastal Fish and Wildlife Habitats

Significant Coastal Fish and Wildlife Habitats are discrete areas that are most valued for their wildlife habitat value as they support important fish and wildlife populations and merit special protection (see Policy 7).

The following criteria are used to identify Significant Coastal Fish and Wildlife Habitats. The significance of a habitat increases to the extent the habitat could not be replaced if destroyed. One or more of the following criteria must be met:

- The habitat is essential to the survival of a large portion of a particular fish or wildlife population.
- The habitat supports populations of species which are endangered, threatened or of special concern.
- The habitat supports populations having significant commercial, recreational, or educational value.
- The habitat exemplifies a habitat type which is not commonly found in the state or in a coastal region.

Priority uses are those that will not impact or have minimal impact on habitat values and natural resources. Lowest priority uses are those that would have a significant adverse impact on habitat values and natural resources.

Scenic Areas of Statewide Significance (SASS)

A Scenic Area of Statewide Significance is defined as:

An area that encompasses unique, highly scenic landscapes that are comprised of geological features, water bodies, vegetation, historical and cultural features, and views and which are accessible to the public and recognized for their scenic quality.

The following criteria are used to identify Scenic Areas of Statewide Significance. One or more of the following criteria must be met:

- The area exhibits, alone or in combination, the following characteristics:
  (i) unusual variety of major components;
  (ii) unusual unity of major components
  (iii) striking contrasts between lines, forms, textures, and colors or
  (iv) an area generally free of discordant features which due to siting form, scale, or materials, visually interrupt the overall scenic quality of the resource

- The area is unique in the region or the State's coastal area.

- The area is visually and physically accessible to the general public.

- The area is widely recognized by the general public for its visual quality.

Priority uses are those that are, or can be designed and sited to be, compatible with protecting the integrity of the scenic area. Lowest priority uses are those that are incompatible with protecting the integrity of the scenic area.

Criteria for the Preparation of Special Management Area Plans for Developed Areas

The following criteria have been established to assist in determining when a special area such as maritime centers, and waterfront redevelopment areas requires the development of a special management area plan. Special management plans will only be developed and approved after consultation with potentially affected local, state, and federal agencies.

- **Resource Availability** — Adequate program staff and funding must be available to undertake the preparation of the plan.

- **Local Commitment** — Local leadership must be committed to undertake and implement the plan and there is strong public support for the planning project. Commitment can be demonstrated through local resolution, cooperative municipal arrangements, and the provision of local resources to help with preparation and implementation of the plan.

- **Partnerships** — The community has demonstrated a positive record of establishing public/private partnerships to carry out and implement planning and redevelopment projects.

- **Issues and Opportunities** — An assessment of the planning area indicates that certain economic or land use issues and opportunities exist that warrant the preparation of a special management area plan to ensure the issue is adequately addressed or to take full advantage of the opportunity.

Criteria for the Preparation of Special Management Area Plans for Natural Resources

The following criteria have been established to assist in determining when a regionally important natural area, significant coastal fish and wildlife habitats, or small watersheds requires the development of a special management area plan. Special management area plans will only be developed and approved after consultation with potentially affected local, state, and federal agencies.

- **Resource Availability** — Adequate program staff and funding must be available to undertake the preparation of a natural resource management plan.

- **Local Commitment** — There must be local commitment to cooperate in preparation and implementation of a natural resource management plan. Commitment can be demonstrated through local resolution, cooperative municipal

arrangements, and the provision of local resources to help with preparation and implementation of the plan.

- **Resources at Risk** — Habitat function and viability or water quality is at risk from immediate or imminent development or poor land use practices. Habitat function and viability is in a condition of ongoing or chronic degradation due to human influenced factors, such as continued or increased stormwater loadings, continued or increased rate of buffer encroachment or loss, and continued or increased decline of key indicator species including species or guilds of species important to the economy of an area or district.

- **Technical Feasibility** — Adverse impacts, degradation, and other impediments to a habitat's ability to function and remain viable must be well documented and successful methodologies must exist to address or correct the problem(s).

Criteria for the Preparation of Special Management Area Plans for Scenic Areas

The following criteria have been established to assist in determining when a scenic areas of statewide significance requires the development of a special management area plan. Special management area plans will only be developed and approved after consultation with potentially affected local, state, and federal agencies and their policies.

- **Resource Availability** — Adequate program staff and funding must be available to undertake the preparation of the plan.

- **Local Commitment** — Local leadership must be committed to undertake and implement the plan and there is strong public support for the planning project. Commitment can be demonstrated through local resolution, cooperative municipal arrangements, and the provision of local resources to help with preparation and implementation of the plan.

- **Resources at Risk** — Scenic resources are at risk from immediate or imminent development or poor land use practices that are likely to cause a significant adverse impact that, once undertaken, cannot be mitigated or reversed.

Federal Consistency Procedures

The section on federal consistency beginning on the bottom of page II-9-11 and ending on page II-9-25 is replaced with the following:

Federal agencies are responsible for many activities which can affect the policies and overall intent of New York State's Coastal Management Program (CMP). In recognition of their potential effect, Congress in passing the Coastal Zone Management Act of 1972, as amended, required that the activities of federal agencies occurring within or outside the State's coastal zone and which affect land and water uses and natural resources in that zone must be consistent with New York's federally approved coastal management program. The federal activities that must comply with this requirement are:

- Federal agency activities (i.e. performed by or on behalf of a federal agency);
- Activities requiring federal licenses, permits and other regulatory approvals;
- Federal financial assistance to state and local governments; and,
- Outer Continental Shelf exploration, development and production activities.

New York State must ensure that the above federal activities are consistent with its CMP. To that end, the Department of State (DOS) has been designated as the State's agency responsible for reviewing federal activities as to their consistency with the CMP. The bases for the consistency reviews conducted by DOS are: the enforceable

policies in Part II, Section 6 of the CMP document; the guidelines found in the explanations of those policies; and the management programs for Special Management Areas, such as local waterfront revitalization programs, which have been approved and incorporated into the State's CMP. If an activity, other than one performed by or on behalf of a federal agency*, is found by DOS to be inconsistent with New York's CMP, the federal agency cannot proceed to authorize or financially assist that activity. DOS' consistency decision may be appealed to the U.S. Secretary of Commerce. If DOS' decision is appealed, the federal agency may only approve the activity after the Secretary determines that the activity is consistent with the objectives and purposes of the Coastal Zone Management Act or necessary in the interest of national security.

DOS will carry out its federal consistency review responsibilities in full compliance with the requirements of the Coastal Zone Management Act and 15 CFR Part 930. The Department will also strive to expeditiously review all federal activities that affect uses and resources in the State's coastal zone. To help DOS meet that objective, the following procedures supplement those contained in 15 CFR Part 930 and will apply to the federal activities reviewed by the Department.

General Procedures

1. *Early Consultation.* Federal agencies and applicants should consult with DOS early in the planning stages of a proposed activity. This consultation should be considered as a necessary first step for all major, unique or potentially controversial activities. The purpose of this early consultation is to provide DOS the opportunity to advise federal agencies and applicants of: (a) general and, where possible, specific coastal management concerns raised by the proposed activities; (b) the coastal policies and other components of the State's CMP that are relevant to the proposed activities; (c) how to assess the consistency of the activities with the applicable policies; and, (d) the types of information and data that are essential for review purposes. This step will allow federal agencies and applicants the time to adequately address DOS' CMP concerns and/or obtain necessary information, before the proposed activities are reviewed for consistency with the CMP. All federal agencies and applicants should consult with DOS to: determine if their activities would be subject to consistency review requirements; obtain information on the review process; and receive general guidance on how to proceed with their planned activities.

2. *Information Needs.* Federal agencies and applicants should, at a minimum, submit to DOS all documents normally required for compliance with federal regulations or approval. Generally, this documentation includes environmental assessments, environmental impact statements, permit and license applications, financial assistance applications and supporting information. The documentation required by 15 CFR Part 930 (ie., consistency determinations and consistency certifications) must also be submitted.

DOS may request a federal agency or applicant to submit additional information for consistency review purposes. When this information is necessary, DOS will promptly notify the agency or applicant of this need, specify the type of information required, and state the reason(s) for the additional information.

3. *Coordinated Review.* When an activity is subject to both federal and state consistency review requirements, DOS and the other involved state agency will strive to concurrently conduct their respective reviews. This objective is possible only if the federal agency or applicant submits the required documentation to both state agencies at the same time.

DOS will coordinate its review of federal activities for consistency with New York's CMP with other state agencies and local governments with approved Local Waterfront Revitalization Programs.

4. *Public Notice.* DOS is required by 15 CFR Part 930 to issue public notice for federal agency activities and federal permits, licenses and other regulatory approvals that are subject to consistency review. To comply with that requirement, DOS will issue such notice in the State Register and may, at its discretion, also publish notice in newspapers having general circulation in the geographic areas of the proposed activities. All public notices issued

*These activities must also be consistent but the procedures differ.

by DOS will be placed on the Department's website. DOS may, at its discretion, issue public notice for proposed federal financial assistance activities. The public review comment period will normally be 30 days, but no less than 15 days.

5. *Interagency Agreements*. DOS may enter into formal and informal agreements with federal agencies to further define the types of activities that would require consistency review, the timing of that review, joint public notification of proposed activities and other procedures that would expedite the review process and reduce regulatory burdens upon federal agencies and applicants.

Procedures for Federal Agency Activities

Federal agency activities that occur within or outside of New York's coastal zone and affect land and water uses and natural resources in the zone must be consistent to the maximum extent practicable with the enforceable policies of the State's CMP. The federal agency activities subject to this requirement are listed in Part I of Table 1. This listing includes activities that occur outside of the State's coastal zone and may have reasonably foreseeable coastal effects. The federal agency proposing the activity must submit a consistency determination and supporting documentation to DOS. Pursuant to 15 CFR Part 930, Subpart C (or Subpart I for activities having interstate coastal effects), this submission must include the following data and information:

1. Consistency determination that (a) provides a detailed description and analysis of the proposed activity, its associated facilities and coastal effects, and (b) clearly demonstrates the proposed activity's consistency with the enforceable policies of the State's CMP. If the activity will occur in or affect a municipality with an approved Local Waterfront Revitalization Program, consistency with the coastal policies and purposes of that program must be demonstrated. The analysis must show how the activity has been designed to comply with the applicable coastal policies and state the reasons which support the federal agency's determination of consistency.

2. Activity documentation which includes a written description of the proposed activity, statement of when and where the activity would occur, statement on the purpose and need for the activity, map(s) showing the geographic location of the activity, and site map(s) and diagram(s) drawn to scale showing all components of the activity and their location on the site(s).

3. Required NEPA documentation (Environmental Assessment or Environmental Impact Statement, Finding of No Significant Impact, draft Record of Decision).

4. Description and written analysis of the alternatives to the proposed activity considered by the federal agency.

5. Other activity related documentation that supports the agency's determination, such as sediment testing results, feasibility studies, and management plans.

6. Identification of approvals and funding needed from federal and state agencies and copies of the documentation submitted to those agencies (eg. 401 Water Quality Certification application to DEC, correspondence with State Historic Preservation Officer on the activity's potential impact on historic resources, permit applications for the dredging and disposal of dredged material).

All of the above documentation shall be considered necessary for commencing DOS' review of a federal agency's consistency determination.

A federal agency should consult with DOS at an early stage in the planning of a proposed activity. This consultation should occur at the time the agency begins to identify alternatives for the proposed activity. DOS involvement at this juncture in the federal agency's planning process will ensure that all applicable coastal policies are factored into the identification and analysis of alternatives, and thereby increase the likelihood that the selected or preferred alternative will be found consistent with New York's CMP.

DOS will issue public notice on all federal agency activities that are subject to consistency review. This notice will be given in the State Register and may also be published in a newspaper having general circulation in the area(s) where a proposed activity will occur. The public review period will normally be for 30 but not less than 15 days. DOS will either concur, concur with conditions or object after public review and within the 60 day or extended time period allowable under 15 CFR Part 930, Subpart C.

If a federal agency determines that a proposed activity will not affect any coastal use or resource in the State's coastal zone, the agency must submit a negative determination to DOS. This determination must describe the activity, its location and the basis for this finding, which is to include an evaluation of the activity and the enforceable policies of the CMP. DOS will object to a negative determination, within the 60 day or extended time period allowable under 15 CFR Part 930, Subpart C, if the coastal effects of the proposed activity are reasonably foreseeable.

DOS will also monitor federal agency activities that are not listed in Part I of Table 1. DOS will notify a federal agency and request the submission of a consistency determination, if the agency's proposed activity will have reasonably foreseeable effects on the State's coastal zone.

Federal agencies, which are proposing activities which meet the Criteria for General Concurrence listed on page II-9-26 may request concurrence from DOS that certain activities, other than development projects as defined in 930.31b, should not be subject to further DOS review because the activities do minimis.

Procedures for Activities Requiring Federal Permits, Licenses and Other Regulatory Approvals

Activities in or outside of New York's coastal zone, which require federal permits, licenses and other regulatory authorizations and affect land and water uses and natural resources in the coastal zone, are subject to review by DOS for their consistency with the State's CMP. This requirement also applies to renewals and major amendments to such regulatory approvals.

A federal agency may not issue a permit, license or other authorization for an activity occurring in or outside and affecting the coastal zone unless: (a) DOS concurs or concurs with conditions with the applicant's consistency certification; (b) DOS' concurrence is conclusively presumed; or (c) the U.S. Secretary of Commerce overrides DOS' objection to the applicant's consistency certification.

An applicant seeking a federal permit, license or other authorization is responsible for submitting all of the documentation needed by DOS for its review of the proposed activity. This documentation is to be submitted at the time that an application for a permit, license, etc. is filed with the federal agency. DOS will commence its consistency review of a proposed activity upon receipt of all necessary data and information, which consists of the following items:

1. Copy of the federal permit, license, etc. application.

2. Copy of the completed Federal Consistency Assessment Form, which includes a signed consistency certification and written analysis of the proposed activity's consistency with the policies of the State's CMP.

3. Copy of all supporting documentation submitted with the federal application, including a detailed description of the proposed activity, its associated facilities and coastal effects, map(s) showing the geographic location of the proposed activity, site map(s) and diagram(s) drawn to scale showing all components of the activity and their location on the site, recent color photographs of the site, written statement on the purpose and need for the activity, identification of the owners of the abutting upland properties and underwater lands, and written analysis of alternatives to the proposed activity considered by the applicant.

4. Copy of the final Environmental Impact Statement, if required by the federal agency or by a state agency having jurisdiction over the proposed activity.

5. Copies of permit, license, etc. applications and related correspondence submitted to involved state agencies (eg. DEC, OGS , SHPO, NYPA, PSC).

The specific federal regulatory activities subject to consistency review by DOS, including those that may occur outside of the State's coastal zone and have reasonably foreseeable coastal effects, are listed in Part II of Table 1.DOS will review these activities for their consistency with New York's CMP in accordance with the procedural requirements of 15 CFR Part 930, Subpart D(or Subpart I for federal regulatory activities having interstate coastal effects). DOS will also monitor activities requiring federal regulatory approval that are not listed in Part II of Table 1 to determine if the activities may affect land and water uses and natural resources in the State's coastal zone. If DOS determines that an unlisted activity will affect coastal uses or resources, then DOS will advise the applicant , federal agency and OCRM that a consistency review of the activity will be required. As part of this notification, DOS will request OCRM's approval to review the unlisted activity.

DOS will issue public notice on those activities requiring federal regulatory approvals that are subject to consistency review. This notice will be given in the State Register. Notice may also be published in a newspaper having general circulation in the area(s) where a proposed activity will occur. The public review period will normally be 30 but no less than 15 days. If DOS decides to hold a public hearing on a proposed activity, notice will be given and indicate the purpose, date, time and place of the hearing. When acceptable to the federal agency and DOS, a joint public notice procedure may be established to meet both agencies' public review obligations.

Following public review and within the six month time period allowable under 15 CFR Part 930, Subpart D, DOS will either concur, concur with conditions or object to an applicant's consistency certification. If the conditions in a DOS conditional concurrence are not acceptable to the applicant or the involved federal agency, then the Department's decision must be treated as an objection to the applicant's consistency certification.

A variance to the procedures in 15 CFR Part 930, Subpart D will apply to major energy facilities which are subject to Articles VII (siting of electric and fuel gas transmission lines) and X (siting of electric generation stations) of the Public Service Law. These energy facilities undergo an extensive review by the State's Siting Board. DOS will, when appropriate, participate in that review process and advise the Siting Board of its coastal policy concerns that are applicable to a proposed energy facility. DOS will commence its consistency review of the related federal activity, when the Siting Board has concluded its public hearings on the proposed project and all the project documentation has been submitted to the Board for its consideration. This variance to the procedures in 15 CFR Part 930, Subpart D will allow DOS to coordinate its consistency review of major energy facilities with the Siting Board and other state agencies involved in the Articles VII and X processes.

Another variance to the procedures in 15 CFR Part 930, Subpart D is applicable to certain activities authorized by the U.S. Army Corps of Engineers. Through this variance, DOS will minimize the type and number of minor activities that will require review for consistency with the CMP. The Corps of Engineers may authorize activities by nationwide and general (regional and statewide) permits or by Letters of Permission. Whenever the U.S. Army Corps of Engineers proposes to issue or revise a nationwide or general permit, the DOS will review the proposed permit. For nationwide or general permits to which DOS objects to the consistency determination or concurs with conditions, activities which would otherwise have been eligible for one of these permits will be reviewed as follows. DOS will advise the applicant and the Corps of Engineers within 30 days of receipt of notification fro the Corps that the activity may otherwise be authorized by a nationwide or general permit whether a consistency review is necessary. If a consistency review is necessary, the activity will be reviewed by DOS for consistency with the New York's Coastal Management Program. Activities that may be authorized by Letter of Permission will be subject to consistency review by DOS regardless of their location in the State's coastal zone. If a proposed activity may be authorized by a Letter of Permission and is determined by DOS that it does not significantly affect coastal uses or resources, DOS' concurrence with the applicant's consistency certification will not be necessary. DOS will advise the applicant and the federal agency of its determination within 30 days of the receipt of notification from the Corps of Engineers that the activity may be authorized by a nationwide or general permit or Letter of Permission. Under this variance, the applicant is still responsible for submitting all of the above identified necessary data and information to DOS at the time it is filed with the federal agency.

In addition to the above variances to procedures in 15 CFR Part 930 Subpart D, DOS is providing a general concurrence to minor activities whose characteristics are such that they would not affect the achievement of the coastal policies or special management area plans either individually or when cumulative effects are considered. This general concurrence will apply to activities which meet the following criteria.

Criteria for General Concurrence

Activities will not require further DOS review and separate concurrences with consistency certifications if all of the following relevant criteria are met:

- The activity involves a use that is the same as, or similar to, adjacent or nearby uses;
- The activity is compatible with community character in design, size ,and materials;
- If the activity would be in an area covered by an approved LWRP, the community advises that it is consistent with the community's land and water use controls for the area;
- The activity is identified in an approved LWRP as one that should be undertaken to advance the policies and purposes of the approved LWRP and the community so advises;
- The activity involves reconstruction, replacement, maintenance or repair of lawful structures, in-kind and in-place, and where applicable a community advises that it complies with an approved LWRP and DOS determines it complies with any applicable Special Management Area Plan;
- Other than for the exercise of riparian or littoral rights (see below), the activity is entirely on property owned or otherwise authorized by the owner for use by the proponent of the activity;
- The activity involves the exercise of riparian or littoral rights that

  is typical of lawful riparian or littoral access traditionally exercised in the area;

  complies with any applicable local standards; and

  avoids any unnecessary interference with navigation and other public uses of the water;
- The activity would not significantly impair the rights and interests of the public regarding the use of public lands or waters;
- The activity does not disrupt existing lawful water-dependent uses;
- Other than for the exercise of riparian or littoral rights or the reconstruction, replacement, maintenance or repair of lawful structures (see above), the activity would not be undertaken in a vegetated wetland or natural protective feature;
- The activity would not generate or discharge non-point source pollution to coastal waters, or would provide a means of adequately treating non-point sources of pollution using accepted best management practices.

In order to monitor adherence to the criteria required for this general concurrence, applicants must submit all required necessary data and information listed above to DOS. If DOS determines that the activity meets the criteria for general concurrence, the applicant and federal agency will be notified within 30 days of receipt of the requisite data and information that the activity does not require a consistency review by DOS. If DOS determines that the activity does not meet the criteria, then the activity will be reviewed for consistency with New York's Coastal Management Program.

Procedures for Federal Financial Assistance to State and Local Governments

Applications for federal financial assistance (eg. grants, loans, subsidies, guarantees, insurance, etc.) submitted by New York State agencies, local governments and related public entities (eg. special purpose districts, authorities, etc.) to federal agencies for activities that occur within or outside the State's coastal zone and affect land and water uses and natural resources in the zone will be reviewed by DOS for consistency with the CMP. These activities include, but are not limited to, the planning, design and construction of new structures and facilities, alteration or demolition of existing structures and facilities, and the development of land and water use and resource management plans. The specific federal financial assistance activities subject to consistency review by DOS are listed in Part III of Table 1.

In accordance with the provisions of 15 CFR Part 930, Subpart F(or Subpart I in the case of a financial assistance activity having interstate coastal effects), an applicant for a listed federal financial activity should submit to DOS, at the time of filing an application with a federal agency, the following documentation to commence consistency review of the proposed activity:

1. Copy of the federal financial assistance application.

2. Detailed written description of the proposed activity.

3. Written evaluation on the relationship of the proposed activity and its reasonably foreseeable coastal effects to the applicable CMP policies.

4. Copy of all supporting documentation submitted with the federal application, including map(s) showing the geographic location of the proposed activity, and site map(s) and diagram(s) drawn to scale showing all components of the proposed activity and their location on the site.

5. Copy of the final EIS, if required by the federal agency or by the state or local agency having jurisdiction over the proposed activity.

6. Copies of state permit applications, if required, and related correspondence submitted to the involved state agencies.

New York State does not have a state clearinghouse established pursuant to Executive Order 12372. Therefore, DOS will monitor federal financial assistance activities not listed in Table 1 that occur within and all activities occurring outside of the State's coastal zone through notices published in the Federal Register, individual public notices issued by the federal agencies, and NEPA documents. If an unlisted activity or one occurring outside of the State's coastal zone is determined by DOS to have reasonably foreseeable effects upon the coastal zone, DOS will, within 15 days of the receipt of notification, inform the applicant, the involved federal agency and OCRM that the proposed activity will be reviewed for consistency with the State's CMP.

DOS will, after the receipt of all of the above listed information, review minor federal financial assistance activities in 45 days or less. Major activities which involve NEPA or SEQRA documentation will be reviewed within 90 days of the receipt of all required documentation. This review period may be extended up to 45 days to provide additional time to evaluate a complex activity or to permit DOS the opportunity seek public comment on a proposed activity. DOS is not required by 15 CFR Part 930, Subparts For I to issue public notice for federal financial assistance activities that are reviewed by the Department for consistency with the CMP. DOS may, however, determine that public review of a federal financial assistance activity is warranted. If so determined, notice will be given in the State Register and may be published in a newspaper having general circulation in the area(s) where a proposed activity will occur. The public review period will normally be 30 but no less than 15 days.

During its review, DOS may consult with an applicant on conditions that would allow the Department to concur with the proposed activity. Upon completion of its consistency review, DOS will either concur , concur with conditions or object to the proposed activity. If the conditions in a DOS conditional concurrence are not acceptable to the

applicant or the federal agency, then the Department's decision must be treated as an objection to the proposed activity.

Applicants for federal financial assistance which DOS determines meet the Criteria for General Concurrence listed above will be notified within 30 days that DOS does not object to the proposed activity.

Procedures for Outer Continental Shelf Exploration, Development and Production Activities

Activities, which are described in Outer Continental Shelf (OCS) plans as requiring federal permits and licenses and affect land and water uses and natural resources in New York's coastal zone, are subject to review by DOS for consistency with the State's CMP. This requirement also applies to the activities described in amended OCS plans.

An involved federal agency may not issue the requested permit or license for an activity affecting the coastal zone unless: (a) DOS concurs or concurs with conditions with the person's consistency certification; (b) DOS' concurrence is conclusively presumed; or (c) the U.S. Secretary of Commerce overrides DOS' objection to a person's consistency certification.

A person (eg. individual, corporation, partnership, government agency) seeking U.S. Department of Interior approval of a proposed OCS plan is responsible for submitting all of the documentation needed by DOS for its review of the federal permit and license activities described in the plan. This documentation is to be provided to DOS by the U.S. Department of Interior. DOS will commence its consistency review of the proposed federal permit and license activities upon receipt of all necessary data and information, which consists of the following items:

1. Copy of the proposed OCS plan, which identifies and describes the activities requiring federal permits and licenses and the reasonably foreseeable effects that those activities will have on land and water uses and natural resources of the State's coastal zone. The description of the proposed activities must include an evaluation of the activities' coastal effects and demonstrate how those effects would be consistent with the enforceable policies of the CMP, map(s) showing the geographic location of the proposed activities, site map(s) and diagram(s) drawn to scale showing all components of the proposed activities and their location on the site, and map(s) showing the location of commercial shipping lanes, existing oil and gas exploration, development and production activities and potential land bases for the proposed oil and gas activity.

2. Copy of required NEPA documentation (EA or final EIS).

3. Copy of the person's consistency certification.

DOS will commence its consistency review of the federal permit and license activities described in the OCS plan upon receipt of the above listed necessary data and information. During the course of its review, DOS may request the submission of additional information on the proposed permit and license activities. The Department will also coordinate its review with the Department of Environmental Conversation.

DOS will issue public notice on the federal permit and license activities described in the OCS plan that are subject to consistency review. This notice will be given in the State Register. Notice may also be published in a newspaper having general circulation in the coastal region(s) which may be affected by the proposed activities. The public review period will be at least 30 days. If DOS decides to hold a public hearing on the proposed activities, notice will be given and indicate the purpose, date, time and place of the hearing.

DOS will review federal permit and license activities described in the OCS plan as expeditiously as possible and strive to issue its concurrence, conditional concurrence or objection to a person's consistency certification within three months of commencing its review. If DOS cannot complete its consistency review in the three month period, the Department will notify the person, U.S. Department of Interior and OCRM of the reason(s) for the delay. This notification will be given prior to the end of the three month period. DOS must conclude its review of the proposed activities within six months from the receipt of all necessary data and information or its concurrence may be presumed.

TABLE 1

FEDERAL ACTIVITIES AFFECTING LAND AND WATER USES AND NATURAL RESOURCES IN THE COASTAL ZONE OF NEW YORK STATE

I. Federal Agency Activities

U.S. Department of Commerce, National Oceanic & Atmospheric Administration:
--Designation of marine sanctuary.

--Designation of estuarine research reserve.

U.S. Department of Commerce, National Marine Fisheries Service:
-- Fisheries management plans and their implementing regulations, including plans that establish management measures for species harvested in waters outside of the State's coastal zone in Long Island Sound, Block Island Sound and Atlantic Ocean.

--Designation of Essential Fish Habitat.

Department of Defense, Army Corps of Engineers:
--New or maintenance dredging of federal navigational channels, fairways and mooring areas, including channels outside of the State's coastal zone in the Byram River, Hudson River, Arthur Kill, Kill van Kull, Raritan Bay and within three miles seaward of the State's boundary in the Atlantic Ocean.

--Dredging or excavation of materials from offshore borrow areas, including areas outside of the State's coastal zone in Long Island Sound, Raritan Bay and within three miles seaward of the State's boundary in the Atlantic Ocean and Lake Erie.

--Disposal of dredged material at designated open water sites, including disposal at sites outside of the State's coastal zone in Long Island Sound, New York Harbor, and within three miles seaward of the State's boundary in Lake Erie and the Atlantic Ocean.

--Disposal of dredged and fill material at locations in the State's coastal zone.

--Designation of open water sites for the disposal of dredged material pursuant to the Clean Water Act or the Marine Protection, Research and Sanctuaries Act, including sites outside of the State's coastal zone in Long Island Sound, New York Harbor, Raritan Bay and within three miles seaward of the State's boundary in Lake Erie and the Atlantic Ocean.

--Dredged material management plans.

--Designation or modification of existing federal navigational channels, fairways and mooring areas, including channels outside of the State's coastal zone in the Byram River, Hudson River, Arthur Kill, Kill van Kull, Raritan Bay and within three miles seaward of the State's boundary in the Atlantic Ocean.

--Construction of new or reconstruction of existing storm and flood damage protection works, such as breakwaters, sea walls, groins, jetties, nourishment of beaches and dunes, dams, levees and other shoreline stabilization and flood control measures.

--New or changes to existing nationwide or regional general permits.

--Ice management practices.

Department of Defense, Air Force, Army and Navy:
--Acquisition of land or land under water, design or construction of new or modified defense installations, including associated housing, transportation or other on-site or off- site facilities and services.

--Acquisition or leasing of land, land under water or structure, and the construction of new or reconstruction of existing structure or facility, at non-defense installations.

--Closure or disposition of land, land under water or structure at defense and non-defense installations, including associated housing, transportation or other on-site or off-site facilities and services.

--Dredging of access channels, berthing and mooring areas, and the disposal of dredged material including disposal activities outside of the State's coastal zone in Long Island Sound, Block Island Sound, New York Harbor, Raritan Bay and within three miles seaward of the State's boundary in the Atlantic Ocean and Lake Erie.

--Establishment of impact, compatibility and restricted use zones.

Department of Energy;
--Prohibition orders.

General Services Administration:
--Acquisition or leasing of land or buildings, and the construction of buildings or facilities, for federal government purposes.

--Disposition of federal surplus land, structure or facility.

Department of Housing and Urban Development:
-- Guaranteed/insured loans to private profit, limited profit and non-profit organizations for residential or non-residential development.

Department of Interior, Fire Island National Seashore:
--Management plans and their implementing regulations.

--Acquisition or disposition of land or structure.

--Approval of local ordinances that regulate land use and development in the Seashore.

Department of Interior, Fish and Wildlife Service:
--Acquisition or disposition of land associated with wildlife refuges or other wildlife areas.

--Management plans for wildlife refuges or other wildlife areas.

Department of Interior, Gateway National Seashore:
--Management plans and their implementing regulations.

--Acquisition or disposition of land or structure.

Department of Interior, Minerals Management Service:
--OCS oil and gas lease sales.

Department of Interior: National Park Service:
--Acquisition or disposition of land or structure.

--Management plans for park lands.

Department of Justice, Bureau of Prisons:
--Acquisition, leasing or disposition of land or structures.

--Construction or reconstruction of buildings and facilities.

Department of Justice, U.S. Marshals Service:
--Disposition of land or structures.

Department of Transportation, Amtrak:
--Acquisition of land or structure, and construction of new or reconstruction of existing railroad facilities.

--Expansion, reduction or abandonment of rail service.

--Disposition of land or structures.

Department of Transportation, Coast Guard:
--Acquisition or leasing of land, land under water or structure, and construction of new or reconstruction of existing facilities.

--Closure or disposition of existing facilities.

--Dredging of access channels, mooring and berthing areas at existing or proposed facilities, and disposal of dredged material including disposal at locations outside the State's coastal zone in Long Island Sound, Block Island Sound, New York Harbor, Hudson River and within three miles seaward of the State's boundary in Lake Erie and Atlantic Ocean.

--Designation, modification or abandonment of anchorage, lightering or mooring areas or shipping lanes.

--Placement or removal of navigational devices that are not part of routine operations under the Aids to Navigation Program.

--Ice management practices and activities.

--Oil and hazardous material pollution response planning and response activities.

Department of Transportation, Federal Aviation Administration:
--Acquisition or leasing of land or structure and construction of new or reconstruction of existing navigational aids or other aviation facilities.

Department of Transportation, Maritime Administration:
--Acquisition or disposition of land and buildings at the U.S. Merchant Marine Academy (Kings Point).
--Construction of new or reconstruction of existing structures at the U.S. Merchant Marine Academy.

Department of Transportation, St. Lawrence Seaway Development Corporation:
--Acquisition or leasing of land, land under water or structure, and construction of new or reconstructionof existing facilities for Seaway operations.

--Disposition of land, land under water or structure.

--Extension of navigation season.

Environmental Protection Agency:
--Designation of open water sites for disposal of dredged material pursuant to Marine Protection, Research and Sanctuaries Act, including sites outside the State's coastal zone in Long Island Sound, Block Island Sound, New York Harbor and within three miles seaward of the State's boundary in the Atlantic Ocean.

--Approval of management program, including major amendments to such program, for designated national estuary.

--Activities conducted under the Resource Conservation and Recovery Act of 1976.

--Activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

II. Federal Licenses, Permits and Other Regulatory Approvals

Department of Defense, Army Corps of Engineers:
--Construction of structures (eg. bulkheads, revetments, groins, jetties, piers, docks, islands, etc.) or conduct of activities (eg. dredging, mining, excavation, mooring of vessels, etc.) in navigable waters, or obstruction or alteration of navigable waters pursuant to Sections 9 and 10 of the River and Harbors Act of 1899 (33 U.S.C. 401, et. seq.), including structures and activities outside the State's coastal zone in the Byram River, Arthur Kill, Kill van Kull, Hudson River, Raritan Bay, New York Harbor, Long Island Sound, and within three miles seaward of the State's boundary in the Atlantic Ocean.

--Discharge of dredged and fill materials and other activities in the waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), including disposal activities outside the State's coastal zone in Long Island Sound, New York Harbor, Hudson River and Raritan Bay.

--Activities subject to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 et. seq.), including activities outside the State's coastal zone in Long Island Sound, Block Island Sound and within three miles seaward of the State's boundary in the Atlantic Ocean.

--Occupation of seawall, jetty, dike, levee, wharf, pier or other structure constructed by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

--Construction of artificial islands and fixed structures in the Atlantic Ocean on the Outer Continental Shelf pursuant to Section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334).

Department of Energy, Federal Energy Regulatory Commission:
--Siting, construction and operation non-nuclear electric power generation facilities and transmission lines pursuant to Section 4 of the Federal Power Act (16 U.S.C. 796, 797).

--Siting, construction and operation of pipelines and other facilities for the transportation and storage of natural gas pursuant to Section 7 of the Natural Gas Act (15 U.S.C. 717).

--Abandonment of natural gas pipeline facilities pursuant to Section 7 of the Natural Gas Act (15 U.S.C. 717).

Department of Interior, Fire Island National Seashore:
--Special use permits pursuant to the Fire Island National Seashore Act (16 U.S.C. 459).

Department of Interior, Minerals Management Service:
--Plans for the exploration, development and production of oil and gas on areas leased under the OCS Lands Act (43 U.S.C. 1331 et. seq.).

--Offshore drilling, mining or development in the Atlantic Ocean.

--Pipeline right of ways or easements for oil or gas transmission on the Outer Continental Shelf pursuant to the OCS Lands Act.

Department of Transportation, Coast Guard:
--Construction or modifications of bridges, causeways, pipelines or other structures across navigable waters (49 U.S.C. 1455).

--Construction and operation of deepwater ports pursuant to the Deepwater Port Act of 1974.

--Installation of private aids to navigation (14 U.S.C. 83).

--Authorization of special anchorage or mooring areas.

Department of Transportation, Federal Aviation Administration:
--Siting, construction and operation of new airports and heliports.

--Expansion or other modifications to facilities (runways, buildings, etc.) at existing airports and heliports.

--Abandonment of existing airports and heliports.

Environmental Protection Agency:
--Discharge of materials, other than dredged material, at designated open water disposal sites, including locations outside of the State's coastal zone in Long Island Sound, Block Island Sound, Raritan Bay, New York Harbor and within three miles seaward of the State's boundary in the Atlantic Ocean pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

--Activities (eg. disposal of hazardous wastes) subject to regulation under the Resources Recovery and Conservation Act of 1976.

--Activities subject to regulation under the Comprehensive Environmental Response, Compensation and Recovery Act of 1980.

--Activities subject to the prevention of significant deterioration, new source construction and operation, and hazardous air pollutants requirements of the Clean Air Act (42 U.S.C. 1857).

--Discharges in the contiguous zone and ocean waters, sludge runoff and aquaculture activities subject to regulation under the Federal Water Pollution Control Act, including discharges and aquaculture operations outside of the State's coastal zone in Long Island Sound, Raritan Bay, New York Harbor, Hudson River and within three miles seaward of the State's boundary in the Atlantic Ocean and Lake Erie.

Nuclear Regulatory Commission:
--Siting, construction, operation and decommissioning of nuclear fueled power plants and other nuclear facilities pursuant to the Atomic Energy Act of 1954 and Energy Reorganization Act of 1974.

Surface Transportation Board:
--Establishment or abandonment of railway, commercial ferry, or common carrier services and facilities (49 U.S.C. 10901 et. seq.).

--Construction of coal slurry pipelines (49 U.S.C. 10901 et. seq.).

Please see page II-9-? Above for minor activities which may require one of the above permits and which may be eligible for general concurrence.

III. Federal Assistance to State and Local Governments

(NOTE: Numbers refer to the 1998 Catalog of Federal Domestic Assistance listings)

Department of Agriculture:
--10.410 Low to moderate income housing loans.
--10.411 Rural housing site loans.
--10.415 Rural rental housing loans.
--10.433 Rural housing preservation grants.
--10.760.Water and waste disposal systems for rural communities.
--10.762 Solid waste management grants.
--10.763 Emergency community water assistance grants.
--10.764 Resource conservation and development loans.
--10.765 Watershed protection and flood prevention loans.
--10.766 Community facilities loans.
--10.768 Business and industrial loans.
--10.769 Rural development grants.
--10.770 Water and waste disposal systems loans and grants.
--10.854 Rural economic development loans and grants.
--10.901 Resource conservation and development.
--10.902 Soil and water conservation.
--10.904 Watershed protection and flood prevention.
--10.906 Watershed surveys and investigations.

Department of Commerce:
--11.300 Economic development - grants and loans for public works and development facilities.
--11.304 Economic development - public works impact program.
--11.305 Economic development - State and local economic development planning.
--11.307 Special economic development and adjustment assistance, sudden and severe economic dislocation and long term deterioration.
--11.405 Anadromous fish conservation act program.
--11.407 Interjurisdictional Fisheries Act of 1986.
--11.420 Coastal Zone Management Estuarine Research Reserves.
--11.426 Financial Assistance for Ocean Resources Conservation and Assessment Program.
--11.427 Fisheries Development and Utilization Research and Development Grants.
--11.433 Marine Fisheries Initiative.
--11.474 Atlantic Coastal Fisheries Cooperative Management Act.
--11.550 Public Telecommunications Facilities - Planning and Construction.

Department of Defense:
--12.101 Beach Erosion Control Projects.
--12.102 Emergency Rehabilitation of Flood Control Works or Federally Authorized Coastal Protection Works.
--12.104 Flood Plain Management Services.
--12.105 Protection of Essential Highways, Highway Bridge Approaches and Public Works.
--12.106 Flood Control Projects.
--12.107 Navigation Projects.
--12.108 Snagging and Clearing for Flood Control.
--12.109 Protection, clearing and Straightening Channels.
--12.110 Planning Assistance to States.
--12.111 Emergency Advance Measures for Flood Prevention.
--12.600 Community Economic Adjustment.
--12.607 Community Economic Adjustment Planning Assistance.
--12.610 Joint Land Use Studies.

--12.612 Community Base Reuse Plans.
--12.613 Growth Management Planning Assistance.

Department of Housing and Urban Development:
--14.218 Community Development Block Grants/Entitlement Grants.
--14.219 Community Development Block Grants/Small City Grants.
--14.246 Community Development Block Grants/Economic Development Initiative.

Department of the Interior:
--15.605 Sport Fish Restoration.
--15.611 Wildlife Restoration.
--15.614 Coastal Wetlands Planning, Protection and Restoration Act.
--15.615 Cooperative Endangered Species Conservation Fund.
--15.616 Clean Vessel Act.
--15.904 Historic Preservation Fund Grants-in-Aid.
--15.916 Outdoor Recreation - Acquisition, Development and Planning.
--15.925 National Maritime Heritage Grants.

Department of Transportation:
--20.005 Boating Safety Financial Assistance.
--20.007 Bridge Alteration.
--20.106 Airport Improvement Program.
--20.205 Highway Planning and Construction.
--20.219 National Recreational Trails Funding Program.
--20.308 Local Rail Freight Assistance.
--20.312 High Speed Ground Transportation - Next Generation High Speed Rail Program.
--20.500 Federal Transit Capital Improvement Grants.
--20.507 Federal Transit Capital and Operating Assistance Formula Grants.
--20.509 Public Transportation for Nonurbanized Areas.
Small Business Administration:
--59.013 Local Development Company Loans.

Department of Veteran Affairs:
--64.005 Grants to States for Construction of State Home Facilities.

Environmental Protection Agency:
--66.454 Water Quality Management Planning.
--66.456 National Estuary Program.
--66.458 Capitalization Grants for State Revolving Funds.
--66.460 Nonpoint Source Implementation Grants.
--66.461 Wetlands Protection - Development Grants.
--66.463 National Pollutant Discharge Elimination System Related State Program Grants.
--66.469 Great Lakes Program.
--66.802 Superfund State Site - Specific cooperative Agreements.
--66.811 Brownfield Pilots Cooperative Agreements.

Federal Emergency Management Agency:
--83.505 State Disaster Preparedness Grants.
--83.536 Flood Mitigation Assistance.
--83.537 Community Disaster Loans.
--83,548 Hazard Mitigation Grant.

III. Routine Program Change Analysis

Introduction

The following analysis describes why the proposed program changes are not amendments as defined by section 923.80(d). The analysis is organized by the five coastal management areas, a substantial change to which would constitute a program amendment. For each of these coastal management areas the proposed changes that relate to that management area are presented in the following order: changes in policy; changes in authorities; and changes in procedures.

1, Uses Subject to Management

A. Coastal Policy Changes

The following program changes to policies are not changes in uses subject to management. They are minor changes in the management of uses already subject to the program, and minor changes to the laws governing the siting of major energy facilities.

Policy # 2

- The new paragraph after the 2nd paragraph, page II-6-9 was added to reflect the addition to the Executive Law of a stipulation that water dependent activities not be considered to be private nuisances The purpose of adding this legislation was to protect water dependent activities from the pressures associated with the subsequent development of nearby non-water dependent activities. This addition results in a minor change in the management of uses subject to the coastal management program. It advances the existing policy of facilitating water dependent uses.

- The addition to the 3rd paragraph, page II-6-9 incorporates a definition of water dependent uses as that term is defined in the amendment to Section 911 of the Executive Law (Chapter 791 of the Laws of 1992). The term "water dependent" wasn't defined in the CMP, rather, examples of uses and facilities determined to be water dependent were enumerated. The addition of this definition results in a minor change to the management of uses subject to the program in that it clarifies the meaning of the term, water dependent uses, consistent with the program's interpretation of the term over the last 20 years.

- The replacement of the 2nd paragraph from the bottom of page II-6-10 contains a revised definition of "water-enhanced uses" which clarifies the original CMP definition, stressing the public benefits of such uses and providing general categories of these uses.

  This revised definition of "water-enhanced uses" represents a minor change to the CMP's management of uses subject to the program because it merely clarifies this category of uses.

  The revised definition more accurately states the intent of the CMP as reflected in the examples given and the manner in which the program has interpreted the term over the past 20 years based on the examples.

Policy # 3

The additional guideline, II-6-22, does not change the uses subject to management or their management but merely requires consideration of local or harbor specific information or standards in applying the existing guidelines. State supported port planning generates useful information that should guide decision making.

Policy # 4

The additional guideline, page II-6-18, does not change the uses subject to management or their management but merely requires consideration of local or harbor specific information or standards in applying the existing guidelines. As a result of the Coastal Management Program and additional local government authority local governments have taken a more active role in the management of their harbors. This is generating useful information that should guide decision making.

Policy # 20

- The paragraph added following the third paragraph under Explanation of Policy, page II-6-99:

  reflects changes resulting from Chapter 791 of the Laws of 1992 in regard to the construction or reconstruction of structures in, on, or above lands underwater. This change which lists criteria to be used in managing such structures is not a change to the management of uses subject to the program because it merely reflects the language used in the the State's codification of the Public Trust Doctrine which doctrine has been the basis for regulation of these structures.

- Add a 7th guideline under Explanation of Policy, page II-6-102: This guideline follows the legislation set out in Subdivision 7 of Section 75 of the Public Lands Law within which it is specified that State-owned underwater lands may be conveyed, but only in a manner that is consistent with the preservation of such public interests as navigation, commerce, fishing, and access to navigable waters. This change is not substantial in that it also reflects the implications of the Public Trust Doctrine.

Policy # 27

- Replace the 4th sentence of the second paragraph under Explanation of Policy, page II-6-145: This revised sentence updates the policy explanation by replacing Article VIII with Article X. The new article expands and improves on the previous statute in several ways. It broadens the definition of electric generating facility by including any electric generating facility (rather than steam electric only) with a generation capacity of at least 80,000 kilowatts including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under Article VII of the Public Service Law.

  Section 163 of Article X institutes a new pre-application procedure whereby potential applicants for a certificate of environmental compatibility and need submit a preliminary scoping document; this preliminary step expands and improves the review of a proposal by various parties and provides advance information about the potential environmental impacts of a major electric generating facility and any measures proposed to minimize environmental impacts.

  Section 165 of the article mandates that a final decision of the board of electric generation siting and the environment be rendered within 12 months from the date of a determination by the board chairman that an application complies with the requirements of a complete application. This change helps the permitting process to run more smoothly and efficiently; the expired Article VIII process did not include a definite time frame for a decision to be made.

  These revisions result in a minor change to energy facility siting procedures in that they improve and streamline reviews and evaluations of proposed electric generating facilities in the coastal area

  Replace the third paragraph under Explanation of Policy, page II-6-145: Section 166 of this article removes the Secretary of State from the list of parties to a certification hearing, where the Secretary was included on the parties list in Article VIII (now expired). However, the Department of State maintains full review powers when an application for a certificate of environmental compatibility and public need involves a federal approval and concerns the siting of a major electric generating facility in, or which may significantly affect, the coastal area. This revision to the coastal program is a minor change to uses subject to management; the

Department of State retains full review power to review the siting of major electric generating facilities in or which significantly affect the coastal area through the federal consistency process. DOS can also request to be a party to a proceeding under Article X. The change in references to the Energy Master Plan is not a substantial change to the program because this provision of the Energy Law was terminated in accordance with the original terms of that legislation. It was replaced by a new Article 6 with similar provisions.

Policy # 34

- The revision of the Explanation of Policy , page II-6-167 is not a substantial change to the management of uses subject to the program. The revision is made to more accurately reflect provisions of the Clean Water Act.

Policy # 35

- Replace the policy statement with a revised statement, page II-6-169: The original Policy # 35, which covers dredging and dredge spoil disposal, did not include the filling of coastal waters with materials other than dredge spoil. This policy is a minor change in the management of uses subject to the management program because it incorporates an activity that the State has been regulating since before its coastal management program was approved, which regulations are identified as authorities for enforcing this policy, viz., ECL Articles 15, 24, and 25; and because it merely makes explicit, in the context of this policy, the effect of the application of the other 43 policies on the activity of filling on coastal waters. The replacement of the term "spoil" with "material" is not a change but merely the use of the more current term of art.

- Replace the Explanation of Policy, page II-6- 169: The revised explanation incorporates the addition of filling coastal waters with materials other than dredge spoil, which is a detailing of what is already regulated by a number of existing statutes within the Environmental Conservation Law. The policy explanation also expands the statement "proper siting of dredge spoil disposal sites" to include the "beneficial use of dredged material."

B. New or Revised Authorities

The following new or revised authorities have not resulted in changes to the uses subject to the management program but in minor changes to the management of uses already subject to management, or to minor changes in authorities for regulating the siting of energy facilities.

Amendment to the Executive Law to include a new Section, 922, Comprehensive Harbor Management Plans (Chapter 791 of the Laws of 1992)

Section 922 of the NYS Executive Law authorizes local governments to development comprehensive harbor management plans. It does not represent a change to the uses subject to the management program It is a minor change to the management of those uses because it delegates to local government the State's authority to regulate certain activities in water whenever the local government incorporates a harbor management plan in its Local Waterfront Revitalization Program.

Specifically subdivision 922.1 allows local governments to adopt, amend and enforce local laws or ordinances to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures in, on, or above surface waters and underwater lands within a municipality or bounding the municipality to a distance of 1500 feet from the shore . Before this legislation became law, there had been no clear State enabling legislation which authorized all municipalities to regulate all uses and activities occurring in harbor and nearshore areas. The lack of clear legislation hampered the ability of the State and local governments to comprehensively manage activities in harbor and nearshore areas, and to resolve conflicts and issues in these important areas. The changes resulting from this amendment are not substantial in regard to uses subject to the NYSCMP. The amendment will allow more coordinated management of harbor uses by including their regulation in Local Waterfront Revitalization Programs.

Subdivision 922.4 specifies that Section 922 shall not diminish the authority of any municipality pertaining to the regulation of harbors, surface waters and underwater lands granted by other laws, charters, or other instruments. Prior to the enactment of this section some local governments had all the authority granted by this Section and all local governments had some of the authority granted. To protect existing water dependent businesses this subdivision provides that local harbor management plans may not displace conforming water-dependent businesses existing prior to the effective date of this section.

Subdivision 922.5 provides that conveyance of interests pursuant to subdivision seven of Section 75 of the Public Lands Law regarding lands underwater and permits issued pursuant to subdivision one of Section 15-0503 of the Environmental Conservation Law must be consistent to the extent practicable with approved comprehensive harbor management plans. This provision is not a substantial change since this specific requirement of consistency would be included in the general requirement that State actions be consistent with approved LWRPs.

Amendment to Section 8 of the Public Lands Law (Chapter 791 of the Laws of 1992)

This amendment provides for the bringing of trespass charges by the State's attorney general against trespassers over State-owned underwater lands following reports of this activity by the Commissioner of the Office of General Services. Such prosecution will better protect the public's right to use public lands. This represents the further detailing of the State's ability to protect these rights and is not a substantial change to uses subject to management.

Amendment to Section 75 of the Public Lands Law (Chapter 791 of the Laws of 1992)

Several revisions and additions to Section 75 have been made that have an effect on uses subject to management in the coastal area, but these amendments serve to further refine the NYS Coastal Management Program and are not of a substantial nature. For instance, the amendment provides a new, clearer definition of water-dependent uses(see above) Additionally, the amendments provide for the transfer of jurisdiction over State-owned underwater lands from the Commissioner of the Office of General Services to other State agencies, allows for the protection of the public's interests in State-owned underwater lands when these lands are conveyed by grant, lease, etc., allows the Commissioner of the Office of General Services to collect fees when State-owned lands underwater are conveyed, and provides for the attachment of necessary rules with respect to grants, leases, and other conveyances of State-owned underwater lands. These amendments limit grants of public trust lands and specify the public's interest that is to be protected in any conveyance of underwater or formerly underwater land. They have the general effect of codifying the Public Trust Doctrine.

Interagency Memorandum of Understanding (implementing Chapter 791 of the Laws of 1992)

In order to facilitate the implementation of this amendment and its requirements, a memorandum of understanding (MOU) providing for a consultation process among various State agencies in regard to the administration of State-owned underwater lands has been established. This MOU has resulted in the development of procedures with respect to leases and other conveyances for use of State-owned underwater lands to protect the public interest. This agreement is related to uses subject to management within the coastal zone, but is primarily procedural and is not a substantial change to the management of those uses.

Amendment to Section 15-0503 of the Environmental Conservation Law (Chapter 791 of the Laws of 1992)

This amendment represents a change in the management of uses subject to the management program, but is not a substantial change. It provides that the Department of Environmental Conservation will require the issuance of a permit for the construction of structures in, on, or above waters of the State except for cases where a lease or other conveyance of an interest authorizing use of State-owned underwater lands has been issued by the State. In that instance essentially the same standards apply to the issuance of the lease or other conveyance as would apply to the issuance of the permit. This amendment is also not a substantial change to the management of uses subject to the program because these structures in the coastal zone are regulated by other provisions of the ECL identified in the CMP as implementing the program, particularly Articles 15, 24 and 25 of the ECL..

Section 915-b of the Executive Law (Chapter 791 of the Laws of 1992)

This amendment further refines the CMP in that it specifies that water dependent use activities shall not be considered a private nuisance with the condition that such activities were well-established prior to surrounding activities and that they are neither hazardous nor has disturbance to the enjoyment of surrounding lands been increased. This is a change in the management of uses subject to management, but it is not a substantial change because it further details the existing legislative policy of facilitating water dependent uses.

Article 54 of the Environmental Conservation Law (Environmental Protection Act)

Through the enactment of Article 54 of the Environmental Conservation Law, the State Legislature established a permanent fund to protect the environment and public health, safety and welfare via the provision of assistance to state agencies, public benefit corporations, public authorities, municipalities and not-for-profit corporations. This financial assistance in the form of grants would help to fund projects such as landfill closure, recycling, parks and protected areas, coastal rehabilitation projects, open space conservation projects, and local waterfront revitalization plans. The funding of such projects within the coastal zone is not a substantial change to the management of uses subject to the management program. It does significantly increase the State's ability to advance plans and projects that implement the State's Coastal Management Program.

Enactment of Article 56 of the Environmental Conservation Law (Implementation of the Clean Water/Clean Air Bond Act of 1996

Article 56 of the ECL established a means to implement the Clean Water/Clean Air Bond Act of 1996, which provides funds for clean water, solid waste, clean drinking water, brownfields, air quality, and aquatic habitat restoration projects. Through the Bond Act, several State agencies, including the Department of State, have been authorized to fund water quality improvement projects that implement management programs, plans, or projects for certain water bodies in New York State, including coastal zone waters. The funding of such projects within the coastal zone is not a substantial change to the management of uses subject to the management program. It does significantly increase the State's ability to advance projects that implement the State's Coastal Management Program. There is a specification in the Act that eligible water quality improvement projects include those that involve waters identified in plans in accordance with Section 1455b of the federal Coastal Zone Management Act.

Sections 33-c and 33-e of the Navigation Law (Regulating Disposal)

These changes to the State Navigation Law bring State law into greater conformity with the Clean Water Act provisions regarding vessel waste no discharge zones. They establish the process by which the State will designate vessel waste no discharge zones following EPA's assent. They also provide for enforcement of no discharge zones and authorize local governments to establish and enforce a no discharge zone whenever one has been established by the State. While these amendments are a significant advance in enabling the State and local governments to avail themselves of the benefits of improved water quality that can result from a vessel waste no discharge zone, this additional authority is not a substantial change in uses subject to the management program or in their management because it merely establishes the procedures for vessel waste no discharge zones as provided for in the Clean water Act, the provisions of which must be included in the State's Coastal Management Program pursuant to CZMA section 307(f).

Article XII-C of the Highway Law (New York State Scenic Byways Program)

Added to the NYS Highway Law in 1992, this Article allows the creation of a comprehensive scenic byways program to guide and coordinate State agency, local government, and not-for-profit organization activities to better serve the public interest. An important emphasis of the program is to create a system of scenic byways within the State (especially within the coastal zone), and to recommend actions by the State legislature necessary to implement a coordinated program that will serve the goals of preserving and protecting the State's scenic, historic, recreational, cultural and archeological resources. The scenic byways so designated are essentially special management areas of particular concern within the coastal zone. This is a change, although not a substantial one, in that it charges the

Scenic Byways Advisory Board (established through this Article) with the task of recommending standards such as those for operation and management of designated scenic byways to protect and enhance landscape and view corridors; for scenic byway-related signs; and for highway safety along scenic byways. This represents a detailing of existing state standards for highways in New York State.

2. Special Management Areas

The Special Management Areas Section (Part II section 8) of the Coastal Management Program is revised by adding four new special management areas. This, however, is not a substantial change to the program. Central to New York's program has been the development of Local Waterfront Revitalization Programs. These were identified as one of three special management areas in the original NYSCMP. The four special management areas to be added are a variation of LWRPs. LWRPs .are comprehensive coastal management programs for the entire coastal area of a particular political subdivision of the State. The issues addressed in LWRPs are often intermunicipal in nature or are of a greater priority within a particular geographic area of a municipality. These additional special management areas allow the cooperative and concerted effort of local governments and the State evidenced in the LWRP to be applied to intermunicpal issues and discreet areas within a municipality that may require focused and detailed management.

Other than small watershed plans, the additional special management areas meet the criteria presented in the 1979 Draft NYS CMP Appendix F pp. 1-6 and referenced in the NYS CMP on page II- 8-1. Specifically, "Areas where development and facilities are dependent on the revitalization of, or access to, coastal waters" is the basis for centers for maritime activity special management areas. "Areas of urban concentration where shoreline utilization and water uses are highly competitive ... such areas are characterized among other factors by: ... structural obsolescence ... governmental concern as evidenced by plans, proposal, etc. prepared over the years" is the basis for the waterfront redevelopment areas special management area. "Areas of high natural productivity or essential species habitat for living resources, including fish, wildlife and the various trophic levels in the food web critical to their well being" is the basis for regionally important natural areas special management area. Other criteria on pages F1-6 are also relevant and fill out the principal criteria referenced above. Although these criteria area not restated in the NYS CMP, in the aggregate they were the basis for the LWRP special management area. This revision as described above partially disaggregates that special management area identified in the NYS CMP. The small watershed special management area furthers an important management measure of the Coastal Non-point Pollution Control Program.

In addition to identifying the types of special management areas, viz., Centers of Maritime Activity, Waterfront Redevelopment Areas, Regionally Important Natural Areas, and Small Watersheds, to be added, criteria are included to help determine when and where a special management area should be identified and a plan prepared. Plans prepared for these areas would, subsequent to their completion, be submitted as routine program changes or amendments to the NYCMP, either as part of a LWRP, as part of a regional coastal program, or as a stand alone Special Management Area Plan or Special Area Management Plan.

Scenic Areas of Statewide Significance and Significant Coastal Fish and Wildlife Habitats, already provided for in the NYCMP, are now included under the rubric of special management areas. This is not a substantial change to the program.

3. Boundaries

There are no boundary changes to the NYS Coastal Management Program include in this Routine Program Change.

4. Authorities and Organizations

Most of the program changes included in this submission relate to enforceable policies or the state's organization or authorities to implement the CMP.

Minor changes to policy statements or guidelines are made to policies 2, 3, 4, 20, 27, 34 and 35. The reasons why each of these changes are not substantial are described in this analysis under 1.A. above Uses Subject to Management.

Changes in authorities are the result of several legislative enactments subsequent to program approval and regulations implementing them. The following legislative acts are submitted as new authorities.

1. Chapter 791 of the Laws of 1992* (codification of the Public Trust Doctrine, harbor management plans, and dock regulation)

2. Article 54 of the ECL
(Environmental Protection Fund)

3. Article 56 of the ECL
(Clean Water/Clean Air Bond Act)

4. Article X of the PSL
(Energy Facility Siting)

5. New York State Scenic Byways Program - Article III -C of the Highway Law

6. Sections 33c and 33e of the Navigation Law
(vessel waste no discharge zones)

7. Article 46 of the Executive Law
(Long Island South Shore Estuary Reserve)

8. Section 923 of the Executive Law
(Long Island Sound Coastal Advisory Commission)

The reasons why the new authorities numbered 1-5 are not substantial changes to the NYS CMP are presented in 1.B above, Uses Subject to Management, New or Revised Authorities. The reasons why new authorities 6 and 7 are not substantial are presented in 5., below, Coordination, Public Involvement and National Interest.

In addition to the above changes, the regulations implementing the SEQRA, a key means of implementing New York's program, have been revised. The revised regulations are included with this submission. The changes are not substantial. One change inserts the word 'adverse' before environmental impacts to describe what must be assessed in an EIS. This change avoids the need to complete an EIS for projects whose only significant effects are positive for the environment. Another change modifies the list of Type II actions, these are the minor or ministerial actions which by their nature are not likely to have a significant effect on the environment. Any of these actions which are within the coastal area are still subject to regulatory review under various environmental regulations, such as, the wetland and erosion hazard regulations. Other amendments to the State Environmental Review Act regulations include additional guidance on scoping the environmental impacts of projects, changes in critical environmental area designation and review requirements, changes to the existing environmental impact statement format, and amendments related to the contents of findings statements.

The change to Policy 11 explanation of policy is merely correcting a wrong reference.

There are no changes to the state's organization to implement the NYSCMP submitted as part of this program change.

5. Coordination, Public Involvement, and the National Interest

Of the program changes included in this submission, three are related to this program approval area.

The creation of the Long Island South Shore Estuary Council and the Long Island Sound Coastal Advisory Commission establish regional coastal bodies to assist and advise the Division of Coastal Resources in implementing the NYS CMP in their respective regions. These bodies also provide a mechanism for coordination among the members of the Council or the Commission (see list of members in the legislation). When the regional plans that these bodies adopt or advise on are completed and enforceable those plans will be submitted as separate program changes. These two program changes are not substantial because they add to the array of consultation and coordination between the lead coastal agency and other state agencies, local governments, regional agencies, and not for profit organizations that is provided for in the NYSCMP. Both bodies provide the opportunity for greater public involvement through numerous public meetings.

The NYS CMP federal consistency procedures are completely revised. Although program changes to the federal consistency section is a complete substitution, there are essentially only three changes being made. These are: 1) an update of the list of "Federal Activities and Development Projects Likely to Directly (sic) Affect New York State's Coastal Area;" 2) a further detailing and clarification of the information required for the Department of State to assess the consistency of an activity; and 3) provision of a means to expedite the review of minor projects whose characteristics are such that they could not adversely affect the achievement of the coastal policies or would advance the policies. These changes are not substantial.

The third change is not substantial since over the past eighteen years, the activities or projects that have the characteristics or meet the criteria set forth in the revised federal consistency procedures have been routinely found consistent with the CMP. This change would reduce the time spent by applicants for federal permits, federal agencies, and the DOS without any adverse effects on the ability to carry out the NYS CMP policies. Under this change, proponents of activities which are determined to meet the established criteria would be notified within 10 days that their activity is an activity that has been determined to be consistent with the NYS CMP and no further review by the DOS is necessary.

IV. State Authority Summaries

Chapter 791

- Construction of Projects Over State-owned Land Under Water (Chapter 791 of the Laws of 1992)

This act amends the Public Lands Law, the Environmental Conservation Law, and the Executive Law, in relation to requiring a lease, easement or other interest, or permit, for the erection of certain structures or placement of fill on lands underwater and to authorize establishment of comprehensive harbor management plans. The NYS Legislature found that regulation of projects and structures which are proposed to be constructed in or over State-owned lands underwater is necessary to responsibly manage the State's interest in these lands to protect vital public assets, to guarantee common law and sovereign rights, to ensure reasonable exercise of riparian rights, and to allow for reasonable use of waterways for various public activities.

The Act defines water dependent activities to mean those activities which can only be conducted on, in, over, or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

Section 75 of the Public Lands Law authorizes grants, leases, easements, and other conveyances for the use of state-owned underwater lands and the ceding of the jurisdiction of these lands in a manner consistent with the public interest in the use of State-owned underwater lands for navigation, public access, and other uses, with due regard for the need of affected owners of private property to safeguard their property. Additionally, transfers of jurisdiction over State-owned lands underwater to the NYS Department of Environmental Conservation (DEC) for the purpose of protecting environmentally sensitive lands underwater are authorized via this amendment to the Public Lands Law. This transfer may take place even if the State agency is not the proprietor of the adjacent upland. The NYS Office of General Services (OGS) and DEC are also given the power to promulgate any needed rules and to charge fees with respect to grants, leases, easements and lesser interests for the use of State-owned lands underwater. The OGS has since adopted regulations regarding conveyances of these publicly-owned lands.

A memorandum of understanding providing for a consultation process regarding the administration of state-owned underwater lands (including formerly underwater lands) has been established involving the Secretary of State and commissioners of the Office of General Services (OGS), Department of Environmental Conservation (DEC), and Office of Parks, Recreation & Historic Preservation as well as other interested state agencies. Using this consultation process, the State has established rules with respect to grants, leases, easements, and lesser interests for the use of state-owned land underwater that are reasonable and necessary to protect the interests of the people in such lands underwater. Specifically, the OGS regulates docks and other structures placed on or in State-owned underwater lands; and DEC regulates docks and other structures placed in waters above underwater lands not owned by the State.

Section 15-0503 of the Environmental Conservation Law includes a water body protection amendment to the Environmental Conservation Law whereby the construction, reconstruction, or expansion of docks, platforms, breakwaters and other such structures in, on, or above waters will require the issuance of a permit except where a lease or conveyance of an interest authorizing the use and occupancy of state-owned lands underwater has been obtained from the State. The dock, pier, wharf or other structure subject to regulations (adopted by the Department of Environmental Conservation) would provide dockage for five or fewer boats and encompass within its outer perimeter an area less than four thousand square feet. In addition, the regulations apply to mooring facilities that provide mooring for fewer than ten boats.

A new Section 915-b was added to the Executive Law that specifies that water dependent use activities shall not be considered a private nuisance, provided such activities were commenced prior to the surrounding activities and have not been determined to be the cause of conditions dangerous to human life or health, and any disturbance to enjoyment of land has not been increased materially.

In addition, the Executive Law was amended to include a new Section 922 that authorizes the development of comprehensive harbor management plans, which provide local governments with the authority to comprehensively manage activities in harbor and nearshore areas. Section 922 of Chapter 791 allows local legislative bodies to adopt, amend and enforce local laws or ordinances to regulate wharves, docks, moorings, piers, breakwaters or other structures in, on, or above surface waters and underwater lands to a distance of 1500 feet from the shore within or bounding a municipality in order to implement comprehensive harbor management plans. This section specifies that the Secretary of State must approve any local law or ordinance locally adopted that establishes a harbor management plan developed under this section of the Executive Law. Examples of issues of regional or local importance that should be addressed by the plans include limits on public access to the harbor or public use of the harbor area, adverse impacts on scenic quality and visual access to the harbor, interference with navigation channels by structures such as docks, floats, or anchored or moored vessels, and the need to protect important water-dependent uses in appropriate areas within the harbor. Regulations have been promulgated that specify the participation of the public and federal, State, and local governments and agencies in the development of harbor management plans. These harbor management plans serve to direct the restoration, revitalization, and redevelopment of both deteriorated and underutilized waterfronts for various compatible uses.

SSER

- Long Island South Shore Estuary Reserve (Article 46 of the Executive Law)

In 1993, in response to concerns about the condition and future of the South Shore estuary, the New York State Legislature adopted the Long Island South Shore Estuary Reserve Act. The Act declared the estuary to be a resource of unparalleled biological, economic, and social value which must be protected and managed. It defined the Reserve to include the South Shore bays and adjacent drainage areas. The Act provides a means for public and private interests to: work collectively and to pool resources and expertise to integrate and coordinate existing programs and studies, make recommendations to mitigate pollution sources in order to maintain or enhance water quality, maximize natural productivity and improve management of shellfish harvest areas to insure economic viability and minimize health risk, make recommendations on policies designed to balance the preservation of natural resources while providing adequate access and use of resources for the public as well as stability for water dependent businesses and tourism, make recommendations on methods to protect the value of existing public and private investment that has already been made in the region, and provide direction for state and local governments to protect, preserve and

manage the unique natural resources of the South Shore estuary. To oversee preparation of a Comprehensive Management Plan for the Reserve, the Act created the South Shore Estuary Reserve Council. The Council is comprised of representatives from the South Shore towns and villages, Nassau and Suffolk counties, and other entities, including recreation, estuary-based business, environment, and academic interests. The Act designated the New York State Secretary of State as Chair of the Council and gave the Department of State responsibility for providing administrative and technical support to the Council. The Act also created several committees to assist the Council, including a Technical Advisory Committee and a Citizens Advisory Committee.

EPF

- Environmental Protection Act (Article 54 of the Environmental Conservation Law)

The Environmental Protection Act of 1993 provides a permanent funding structure for open space land conservation projects; non-hazardous municipal landfill closure projects; municipal waste reduction or recycling projects; park, recreation, and historic preservation projects; local waterfront revitalization plans; coastal rehabilitation projects, Long Island central pine barrens area planning; and south shore estuary reserve planning Title 11 of Article 54 authorizes the Secretary of State to provide, on a competitive basis, State assistance payments to municipalities within the designated coastal area toward the cost of any local waterfront revitalization program. Eligible costs for local waterfront revitalization program activities include planning, various studies, preparation of relevant local laws, and construction projects.

CW/CA BA

- Implementation of the Clean Water/Clean Air Bond Act of 1996 (Article 56 of the Environmental Conservation Law)

The Clean Water/Clean Air Bond Act of 1996 provides monies for the preservation, enhancement, restoration, and improvement of the State's environment, including funds for clean water, solid waste, clean drinking water, brownfields, and air quality projects. The Bond Act proposal was approved by the voters of New York State in November of 1996. Under Title 3 of the Act, funds were allocated to state agencies (in some instances), municipalities, and soil and water conservation districts for water quality improvement projects that implement management programs, plans, or projects for particular water bodies in New York State. In particular, the Department of State was given the ability to administer water quality improvement projects that involved non-agricultural non-point source abatement and control programs and aquatic habitat restoration. The Act (Section 56-0303) specifies that eligible water quality improvement projects include those that involve waters identified in plans in accordance with Section 1455b of the federal Coastal Zone Management Act.

The commissioners of the state Office of Parks, Recreation & Historic Preservation (OPRHP) and the Department of Environmental Conservation (DEC) were authorized to undertake projects which develop, expand, or enhance water quality protection of or public access to coastlines, watersheds, lakes, and rivers. Projects which are not identified in the State land acquisition plan (Open Space Plan) cannot be proposed for acquisition by the State under this section if any town, village or city where the project is located notifies the State of its objection to such acquisition. Projects funded by either OPRHP or DEC shall develop, expand or enhance water quality protection or public access to water bodies, including but not limited to coastlines, aquifers, watersheds, lakes, rivers and streams.

Article X

- Siting of Major Electric Generating Facilities (Article X of the Public Service Law)

This statute, enacted in 1992, replaced Article VIII of the Public Service Law. The new statute is an important means of implementing Policy 27 regarding the siting and construction of major energy facilities in the coastal area. Additionally, the process established under Article X fully addresses other coastal management policies that include this statute as a means of implementation.

The New York State Board of Electric Generation and Siting will issue a certificate of environmental compatibility and public need when it has determined: 1) that the electrical generating facility will satisfy additional electrical capacity needs or other electric system needs; 2) the nature of the probable environmental impacts; 3) that the facility minimizes adverse environmental impacts and protects public safety; 4) that the facility is designed to operate in compliance with all applicable state and local laws and regulations and: 5) that the construction and operation of the facility is in the public interest. Article X also provides that the Department of Environmental Conservation may issue permits pursuant to federally delegated authority under the federal Clean Water Act, the federal Clean Air Act, and the federal Resource Conservation and Recovery Act. Any permits issued under these authorities shall be provided to the Board of Electric Generation and Siting prior to the issuance of a certificate.

Regulating Vessel Waste Disposal

- Sections 33-c and 33-e of the Navigation Law

Section 33-c was amended and Section 33-e was added to the Navigation Law in 1995 as a means of curbing the incremental decline in water quality, natural resource values and public enjoyment of coastal waters in New York State through the designation of vessel waste no-discharge zones. These additions follow requirements of the federal Clean Water Act, which prohibits the discharge of treated vessel wastes within no-discharge zones. The Clean Water Act further states that a state may not designate a no-discharge zone without EPA approval, and that this approval will occur when a state certifies there is a need for greater resource protection and there are sufficient pumpout facilities within a no-discharge zone.

Specifically, Section 33-c mandates that each marine toilet on watercraft used or operated upon the waters of the State shall be equipped with a pollution control device. It further states that any municipality within which a vessel waste no-discharge zone has been designated or adjacent to such a zone may adopt and enforce local laws prohibiting the discharge of vessel wastes in waters within such municipality, or in waters adjacent to such municipality to distance of 1500 feet from shore.

Section 33-e provides for the designation of vessel waste no-discharge zones in waters of the State for which adequate availability of marine sanitation device pump-out or dump station facilities has been demonstrated. This section also states that the discharging of materials for marine sanitation devices within designated no-discharge zones is prohibited and that these devices must be rendered unuseable while vessels are operated within a no-discharge zone. Furthermore, this section provides for the boarding and inspecting of vessels operating in a no-discharge zone by any lawfully designated agent to determine whether or not the vessel is operating in compliance with this statute.

Long Island Sound Coastal Advisory Commission

- Section 923 of Article 42 of the Executive Law (Waterfront Revitalization of Coastal Areas and Inland Waterways)

This section was added to Article 42 in 1995, establishing a coastal advisory commission to implement the Long Island Sound Coastal Management Program. The Program was developed to enrich the Long Island Sound coastal area by enhancing community character, reclaiming the quality of natural resources, reinvigorating the working waterfront and connecting people to the sound. The program document recommended the creation of a Long Island Sound coastal advisory commission to facilitate cooperation and coordination among all levels of government and citizenry. The Commission is comprised of 17 members appointed from the Long Island Sound area. The legislation directs that every state agency and public corporation having jurisdiction over land or water on or in the Sound, or over programs relating to the purposes and goals of this article shall offer full cooperation and assistance to the commission in carrying out its duties.

Scenic Byways (New York State Scenic Byways Program - Article XII-C of the Highway Law

This article, which was a 1992 addition to the State's Highway Law, was established within the NYS Department of Transportation to create a comprehensive scenic byways program to guide and coordinate the activities of State agencies, local governments and not-for-profit organizations in order to better serve the public interest. The purpose

of the program is to "....encourage and coordinate state actions and the activities of others which relate to the development, protection, promotion and management of scenic byways". Section 349-cc. of this article specifies that an advisory board of state agencies with responsibilities related to the designation and management of scenic byways and not-for-profit organizations related to the promotion and development of scenic byways would be formed to advise and assist the Department of Transportation in the operation of the scenic byways program. An emphasis of the program is to create a system of scenic byways in the State, particularly along major water bodies, and to recommend actions by the State legislature that may be necessary to implement a coordinated program that will serve the goals of preserving and protecting the State's scenic, historic, recreational, cultural and archeological resources. Recommendations would serve to enhance recreational and economic development through tourism and education in the history and culture of New York State.

V. The Public Notice

The following Public Notice water published on April 3, 2001 in New York State Register. It was also posted on the New York State Department of State web site on that date.

PUBLIC NOTICE

New York State Department of State

Routine Program Change Notice

Pursuant to 15 CFR 923.84(b), the New York State Department of State (DOS) has submitted to the federal Office of Ocean and Coastal Resource Management (OCRM) a routine program change. The DOS considers this change to be routine [according to 15 CFR 923.84] and requests OCRM's concurrence in this determination. The change to the New York State Coastal Management Program covered by this request are the rewording of a coastal policy, the incorporation of updated explanations for several of the State's coastal policies, an expansion based on recent state legislation of the listing of authorities by which the Coastal Management Program is implemented, additional categories of special management areas, and changes to federal consistency procedures.

The State coastal policies, together with explanations and an accounting of the means to implement the policies, were originally established in 1982 and are set forth in the New York State Coastal Management Program and Final Environmental Impact Statement. One revised coastal policy statement,7 revised policy explanations, and an updated listing of the authorities that implement 43 of the State's 44 coastal policies are necessary to accurately reflect the recent changes to New York's authorities to implement the Coastal Management Program.

A. Laws and/or regulations adopted or amended which provide additional authorities to implement the Coastal Management Program and are the basis for changes to New York's costal policies 2, 3, 4, 20, 27 34.
1. **Chapter 791 of the Laws of 1992, involving amendments to the Public Lands Law, Environmental Conservation Law, and Executive Law** (Construction of Projects Over State-owned Land Under Water). Additionally, existing regulations were amended to implement the laws and an interagency MOU established between the agencies involved in carrying out Chapter 791.

2. **Article 46 of the Executive Law** (Long Island South Shore Estuary Reserve).

3. **Article 54 of the Environmental Conservation Law** (Environmental Protection Act).

4. **Article 56 of the Environmental Conservation Law** (Clean Water/Clean Air Bond Act of 1996).

5. **Navigation Law** sections 33-c and 33-e (Vessel Waste No Discharge).

6. **Article XII-C of the Highway Law** (Scenic Byways Program).

7. **Article 42, Section 923 of the Executive Law** (Long Island Sound Coastal Advisory Commission).

8. **Article X of Public Services Law**, Siting of Major Electric Generating Facilities.

B. Other authorities which provide additional means to implement the Coastal Management Program.

1. Special Management Area revision . Four new categories of special management areas are added. These are centers of maritime activity, waterfront redevelopment areas regionally important natural areas, and small watersheds.

2. Federal Consistency Procedures. Three changes are made to federal consistency procedures. These are an updated list of Federal Activities and Development Projects likely to affect New York's Coastal Area; a further detailing of the information required for DOS to assess the consistency of an action; and provisions to expedite the review of minor activities.

Federal regulations mandate that New York State provide public notice of its routine program change of the State's Coastal Management Program to the general public, local governments, other state agencies, and regional offices of relevant federal agencies.

The Department of State has requested concurrence of the Office of Ocean and Coastal Resource Management in the National Oceanic and Atmospheric Administration in the determination that these actions constitute a routine program change. Copies of the routine program change document are available for review in Albany at the NYS Department of State Coastal Management Program offices at 41 State Street, Albany, NY 12231.

Any comments on whether or not the action constitutes a routine program change should be submitted by April 24, 2001 to:

Helen Farr, Coastal Management Specialist
Office of Ocean and Coastal Resource Management
Coastal Programs Division, 11th floor
1305 East-West Highway
Silver Spring, MD 20910.

Further information on this action may be obtained by contacting:

Charles McCaffrey
Division of Coastal Resources
New York State Department of State
41 State Street
Albany, NY 12231
Phone (518) 473-3368

VI. Text of Additional or Revised State Authorities

The full text of the new or revised statutes, new or revised regulations, and an Memorandum of Understanding referred to in the proposed program changes follows in the following order:

1. Chapter 791 of the Laws of 1992
2. Long Island South Shore Estuary Reserve Act
3. Environmental Protection Act
4. Clean Water/Clean Air Bond Act
5. Electric Generating Facilities
6. Scenic Byways Program
7. Navigable Waters
8. Inland Waterways
9. 19 NYCRR Part 603, Harbor Management
10. 6 NYCRR Part 617, SEQR
11. 9NYCRR Parts 270 & 271, Lands Underwater
12. Memorandum of Understanding on Underwater Lands

Chapter 791 of the Laws of 1992
Construction of Projects Over State-owned Land Under Water

Approved Aug. 7, 1992, effective as provided in section 2

AN ACT to amend the vehicle and traffic law, in relation to making technical corrections to a proposed 1992 chapter permitting certain inter-municipal transportation of persons for-hire

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Subdivision 3 of section 498 of the vehicle and traffic law, as added by a chapter of the laws of 1992 amending the vehicle and traffic law, relating to the display of number plates by certain for-hire vehicles and the permitting of certain inter-municipal transportation of persons for-hire, as proposed in legislative bill number S. 8674–B, A. 12018–B,[1] is amended to read as follows:

3. Inspection. All motor vehicles that receive a permit from such city pursuant to the provisions of this section shall be inspected at official inspection stations licensed by the commissioner pursuant to section three hundred three of this chapter ~~at least~~ once every ~~four months~~ year in accordance with the provisions of article five of this chapter[2] and the regulations of the commissioner. ~~The fees payable to the official inspection station for the inspection and the issuance of a certificate of inspection shall be the fees and charges collected pursuant to section three hundred five of this chapter.~~ Such city may conduct on-street inspections of such motor vehicles. An owner shall be ordered by such city to repair or replace the motor vehicle for which such permit was issued where it appears that it no longer meets the reasonable standards for safe operation prescribed by regulations of an agency designated by such city. Upon failure of such owner to have his or her motor vehicle inspected or to comply with any such order of such city within ten days after service thereof, the permit shall be suspended. Upon failure of such owner to comply with any such order of such city within one hundred twenty days after service thereof, the permit may, at the discretion of such city, be deemed to have been abandoned by such owner.

[1] 1992 McKinney Session Laws, Ch. 789.
[2] Veh. & Traf. Law § 301 et seq.

§ 2. This act shall take effect on the same date as a chapter of the laws of 1992 amending the vehicle and traffic law, relating to the display of number plates by certain for-hire vehicles and the permitting of certain inter-municipal transportation of persons for-hire, as proposed in legislative bill number S. 8674–B, A. 12018–B,[1] takes effect.

[1] 1992 McKinney Session Laws, Ch. 789.

CONSTRUCTION OF PROJECTS OVER STATE–OWNED LAND UNDER WATER

CHAPTER 791

S. 8947-A

Memoranda relating to this chapter, see Legislative and Executive Memoranda, post

Approved Aug. 7, 1992, effective as provided in section 15

AN ACT to amend the public lands law, the environmental conservation law and the executive law, in relation to requiring a lease, easement or other interest, or permit, for the erection of certain structures or placing fill on lands underwater and to authorize establishment of comprehensive harbor management plans

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Legislative findings. The j
tures, proposed to be constructed in
responsibly manage the state's pro
held in the name of the people of
rights, and to ensure that waterfro
access to navigable waters, shall be
and responsible management of w
navigation, commerce, fishing, bathi
and access to the navigable waters

§ 2. Section 8 of the public lands
is amended to read as follows:

§ 8. Trespasses upon state lands

Where, in the judgment of the cor
has been provided to her or him t
occurred then the commissioner may
owned lands. The commissioner of
~~all trespasses~~ attorney general inst
lands and lands underwater belong
superintendence of the commissione
ing such report and whenever direct
cute appropriate actions or proceedin
~~persons~~ person or entity committin
~~imposed by law~~ trespass.

§ 3. The opening paragraph and s
opening paragraph as amended by c
amended by chapter 338 of the laws

This section authorizes grants, lea
mits, for the use of state-owned land
jurisdiction thereof consistent with t
underwater for purposes of naviga
environmental protection; and acces
regard for the need of affected owne

7. (a) The commissioner of genera
lease for terms up to forty years,
underwater specified in this section,
purpose of beneficial enjoyment there
for public park, beach, street, highwa
purposes, so much of said land under
that purpose. No such grant or le
proprietor of the adjacent land, ~~and~~
person shall be void, except that, su
commissioner of general services may
water to a state agency for the pur
underwater even if the state agency is
grant or lease shall be made of any la
interfere with the rights of that city o
successor the New York Central and
grant, lease, permit or other conveyan
administrative findings, and to the e
such conditions to preserve the public
waterways for navigation, commerce,
tion and access to the navigable wat
affected owners of private property to
by official rules establish criteria and
leasing or selling of such lands unde

ded in section 2

) making technical corrections to a il transportation of persons for-hire

. Senate and Assembly, do enact

raffic law, as added by a chapter law, relating to the display of mitting of certain inter-municipal slative bill number S. 8674-B, A.

nit from such city pursuant to the nspection stations licensed by the of this chapter ~~at least~~ once every rticle five of this chapter [2] and the ~~the official inspection station for tion shall be the fees and charges hapter.~~ Such city may conduct on- shall be ordered by such city to rmit was issued where it appears for safe operation prescribed by n failure of such owner to have his such order of such city within ten ed. Upon failure of such owner to undred twenty days after service be deemed to have been abandoned

as a chapter of the laws of 1992 isplay of number plates by certain unicipal transportation of persons 674-B, A. 12018-B,[1] takes effect.

S OVER STATE- WATER

e and Executive Memoranda, post

ovided in section 15

tal conservation law and the executive r interest, or permit, for the erection of ter and to authorize establishment of

in Senate and Assembly, do enact

eletions by ~~strikeout~~

§ 1. Legislative findings. The legislature finds that regulation of projects and structures, proposed to be constructed in or over state-owned lands underwater, is necessary to responsibly manage the state's proprietary interests in such lands, to protect vital assets held in the name of the people of the state, to guarantee common law and sovereign rights, and to ensure that waterfront owners' reasonable exercise of riparian rights and access to navigable waters, shall be consistent with the public interest in reasonable use and responsible management of waterways and such public lands for the purposes of navigation, commerce, fishing, bathing, recreation, environmental and aesthetic protection and access to the navigable waters and lands underwater of the state.

§ 2. Section 8 of the public lands law, as amended by chapter 643 of the laws of 1962, is amended to read as follows:

§ 8. Trespasses upon state lands

Where, in the judgment of the commissioner of general services, sufficient information has been provided to her or him that a possible trespass upon state-owned lands has occurred then the commissioner may investigate such allegations of trespass upon state-owned lands. The commissioner of general services may report to the ~~attorney-general all trespasses~~ attorney general instances of trespass committed upon Indian lands, or lands and lands underwater belonging to the state, and under the general care and superintendence of the commissioner. The ~~attorney-general~~ attorney general, on receiving such report and whenever directed by the commissioner, shall commence and prosecute appropriate actions or proceedings in the name of the people of the state, against the ~~persons~~ person or entity committing such ~~trespasses, for damages and the penalties imposed by law~~ trespass.

§ 3. The opening paragraph and subdivision 7 of section 75 of the public lands law, the opening paragraph as amended by chapter 543 of the laws of 1937 and subdivision 7 as amended by chapter 338 of the laws of 1988, are amended to read as follows:

This section authorizes grants, leases, easements, and lesser interests, including permits, for the use of state-owned land underwater and ~~of~~ the ~~use, occupation and~~ cession of jurisdiction thereof consistent with the public interest in the use of state-owned lands underwater for purposes of navigation, commerce, fishing, bathing, and recreation; environmental protection; and access to the navigable waters of the state; with due regard for the need of affected owners of private property to safeguard their property.

7. (a) The commissioner of general services may grant in perpetuity or otherwise, or lease for terms up to forty years, to the owners of the land adjacent to the land underwater specified in this section, to promote the commerce of this state or for the purpose of beneficial enjoyment thereof by such owners, or for agricultural purposes, or for public park, beach, street, highway, parkway, playground, recreation or conservation purposes, so much of said land underwater as ~~he~~ the commissioner deems necessary for that purpose. No such grant or lease shall be made to any person other than the proprietor of the adjacent land~~, and any~~. Any such grant or lease made to any other person shall be void, except that, subject to the other provisions of this section, the commissioner of general services may transfer jurisdiction over state-owned lands underwater to a state agency for the purpose of protecting environmentally sensitive lands underwater even if the state agency is not the proprietor of the adjacent upland. No such grant or lease shall be made of any lands belonging to the city of New York, or so as to interfere with the rights of that city or of the Hudson River Railroad Company, or of its successor the New York Central and Hudson River Railroad Company. In making any grant, lease, permit or other conveyance, the commissioner of general services shall, upon administrative findings, and to the extent practicable, reserve such interests or attach such conditions to preserve the public interest in use of state-owned lands underwater and waterways for navigation, commerce, fishing, bathing, recreation, environmental protection and access to the navigable waters of the state, with due regard for the need of affected owners of private property to safeguard their property. The commissioner shall by official rules establish criteria and guidelines for determinations with respect to the leasing or selling of such lands underwater to the owner of the adjacent ~~land~~ upland.

Where the boundary line between land underwater and the adjacent land lies within a public road or street, and the name of the owner or owners of such adjacent land or the place of residence cannot be ascertained to the satisfaction of the commissioner, grants or leases may be made by the commissioner in his or her discretion to the owner or owners of the land adjoining the road or street inshore of such land underwater in the manner herein provided, but a grant or lease so made shall not be regarded as depriving any other person of the exercise of his or her riparian rights.

Where the title to such public road or street is in a county, city, town or village, grants or leases may be made by the commissioner in the manner herein provided to the owner of the land adjoining the road or street inshore of such land underwater, but no such grant shall be made unless the consent thereto of such county, city, town or village shall first be filed with the commissioner, or unless, having been duly personally served with a notice of application of such grant, the county, city, town or village fails to file a ~~remonstrance~~ an objection with the commissioner or, having filed such ~~remonstrance~~ objection, fails to present to the commissioner sufficient proof or other reasons satisfactory to the commissioner why the grant should not be made.

(b) No wharf, dock, pier, jetty, platform, breakwater, mooring or other structure shall be constructed, erected, anchored, suspended, placed or substantially replaced, altered, modified, enlarged, or expanded in, on or above state-owned lands underwater, nor shall any fill be placed on such lands underwater, unless a lease, easement, permit, or other interest is obtained from the commissioner, which authorizes the use and occupancy of those state-owned lands underwater to be affected by such act or acts, provided however, that there shall be excepted in the uniform regulations issued pursuant to paragraph (f) of this subdivision any existing structure for non-commercial use constructed prior to June seventeenth, nineteen hundred ninety-two, by or on behalf of the owner of adjacent upland who owned prior to June seventeenth, nineteen hundred ninety-two, which has a surface area, as measured at the outermost perimeter, including surface waters between or encompassed within the structure of less than five thousand square feet in area, and with respect to docking facilities, has a capacity of no more than seven boats thirty feet in length. For the purposes of this subdivision, the term "structure" shall not include discharge or intake pipes, pipelines, cables, or conduits. Thereafter there shall be so excepted any structure constructed by or on behalf of the owner of adjacent uplands that:

(i) has a surface area, as measured at the outermost perimeter, including surface waters directly between or encompassed within the structure, of less than four thousand square feet in area and not exceeding fifteen feet in height, as measured at the uppermost point, above the mean high water line and, with respect to docking facilities, has a capacity of five or fewer boats thirty feet in length and, with respect to mooring facilities, has a capacity of fewer than ten boats thirty feet in length; provided that the commissioner may by rule promulgated pursuant to paragraph (f) of this subdivision determine, based on a different surface area or other criteria of size and use, that other types of structure in particular circumstances do not represent significant encroachments on state-owned lands underwater, and

(ii) is water dependent, which shall mean, for purposes of this section, an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

(c) The requirements of obtaining a lease, easement, permit or other interest from the commissioner pursuant to the rules set forth in paragraph (f) of this subdivision shall not apply to the person or entity who was the upland owner on June seventeenth, nineteen hundred ninety-two, of lands adjacent to filled state-owned lands underwater or formerly underwater, in respect of those filled lands, including accompanying seawalls; provided however, that any right, title and interest of the state in and to any such state-owned lands shall in no respect be diminished or impaired by the provisions of this section, nor by any exemption in the uniform regulations authorized by paragraph (f) of this subdivision.

Upon any transfer of such lands, or at the request of the owner of the adjacent upland, the commissioner may convey such lesser interest as may be minimally required to allow

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be qualified as prescribed in
standard appraisal methodolog

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a conveyance of marketable title by that owner of the adjacent land. Consideration charged in such instances shall reflect the interest so conveyed.

(d)(i) The commissioner of environmental conservation and the secretary of state shall review any proposed lease, easement, permit or other interest, except for facilities in existence on June seventeenth, nineteen hundred ninety-two, and which are not the subject of an action by the attorney general for unlawful occupation of state lands under water on the effective date of this paragraph. The commissioner of environmental conservation shall recommend conditions to protect the environment and natural resources. The commissioner of general services shall incorporate those conditions in any lease, easement, permit or other interest, giving due regard as well to the recommendations of the secretary of state with respect to coastal issues, or shall deny the proposal if the commissioner of environmental conservation, upon administrative findings, determines that the environment or natural resources cannot be adequately protected. Such lease, easement, permit, or other conveyance of an interest shall state the purpose for which it is made, and shall also be subject to all applicable federal, state and local laws, rules, regulations and codes.

(ii) The owner, occupier or any other person or entity (except those against whom there has been commenced on the effective date of this paragraph an action by the attorney general, for unlawful occupation of state lands under water) with a legal or beneficial interest in any structure not excepted by paragraph (b) of this subdivision and occupying state lands underwater on the effective date of the rules authorized by paragraph (f) of this subdivision, as adopted pursuant to subdivision five of section two hundred two of the state administrative procedure act, shall make application for such lease, easement, permit or other interest within one year from that effective date.

Except where timely application for such an interest has been made within one year pursuant to this subdivision, the commissioner is authorized to require the term of such lease, easement, permit, or other interest to be retroactive to the effective date of the rules so adopted. Any instrument conveying an interest in real property which is made retroactive shall include provision for payment of consideration for the portion of the term which extends retroactively including, where appropriate, interest on such consideration at the same rate then currently in effect and applied to judgments rendered in the court of claims.

(iii) The commissioner shall make reasonable efforts to provide notice to persons affected by the requirements of this section.

(e)(i) The commissioner may impose a fee in connection with the issuance of any such lease, easement, permit, or other interest, which fee shall be established by rule pursuant to paragraph (f) of this subdivision, and which shall take into account other factors affecting value including but not limited to classes of structure, types of use (including whether the use is for public or private purposes), location and region, size, usefulness of the parcel standing alone and such other criteria as the commissioner may determine, but which shall exclude the value of improvements thereon constructed and maintained by the adjoining upland owner. The rules and regulations required by paragraph (f) of this subdivision shall prescribe that in the event an applicant for a lease, easement or other interest in real property shall dispute and request a reduction of the commissioner's determination of the value of the interest to be conveyed, the commissioner shall, upon the applicant's submission of an appraisal of the value of such property interest conducted in accord with standard and accepted appraisal methodology by an independent appraiser qualified as prescribed in this paragraph and which appraisal varies in its conclusion as to value by ten percent or more of the value previously established by the commissioner, and upon the applicant's agreement to be bound thereby, contract with a second independent appraiser, qualified as prescribed in this paragraph, to render an appraisal of the value of the interest proposed to be conveyed, the results of which appraisal shall be binding upon both the applicant and the commissioner of general services. Such appraiser shall be selected by the commissioner of general services from among a group of at least three appraisers identified by the applicant all of whom must be qualified as prescribed in this paragraph and each of whom must agree to employ standard appraisal methodology. For the purposes of this provision a qualified appraiser

shall be certified by the secretary of state to transact business as a real estate general appraiser and shall conduct a regular business of the appraisal of real property interests. In the event that the appraisal contracted for in such manner shall conclude that the value of the property interest in question is equal to the value previously determined by the commissioner plus or minus ten percent, the entire cost of such appraisal shall be borne by the applicant, otherwise, the entire cost thereof shall be borne by the commissioner of general services.

(ii) For leases, easements and conveyances of such interests for commercial use of structures on state-owned underwater lands, the annual fee imposed shall not exceed two percent of the user's net annual income for structures not in existence on the effective date of this paragraph. Nor, in connection with a structure in existence and in commercial use on the effective date of this paragraph, shall the fee charged in connection with such a conveyance made after the effective date of this subparagraph exceed annually the following schedule for five years following the effective date of the interest conveyed pursuant to subdivision (b) of this section provided timely application pursuant to that subdivision has been made: .2 (two-tenths) of one percent; second year: .4 (four-tenths) of one percent; third-year: .6 (six-tenths) of one percent; fourth year: .8 (eight-tenths) of one percent; fifth year, and thereafter: one percent; provided that all such percentages in this paragraph shall be that percentage of the net income derived from the structure or structures on state-owned lands, excluding transactions involving sales or repair of boats, and sale of gasoline; and the dollar valuation of the interest conveyed shall not be increased from year to year during that five year period. The fee charged shall be discounted ten percent for annual permits.

(iii) For leases, easements and conveyances of such interests for residential use of non-exempt structures in existence and residential use on the effective date of this paragraph, the annual fee shall not exceed the lesser of twenty dollars per slip or one hundred dollars.

(iv) Nothing in this paragraph shall preclude the commissioner of general services from agreeing, upon the request of and negotiation with the owner or user of adjacent upland, to such other conveyances or agreements consistent with this section providing for different periodic payments, or a more flexible payment structure, than the fee caps and fees, respectively, set forth for commercial and residential facilities herein. Moreover, notwithstanding the fee caps set in this section, the commissioner may exceed those caps if required to cover the yearly pro rata share, over the term of the conveyance or interest, of the administrative costs in connection with that conveyance or interest.

(f) The commissioner, in consultation with the commissioner of environmental conservation, the secretary of state, the office of parks, recreation and historic preservation and other interested state agencies administering state-owned lands underwater, shall promulgate pursuant to article two of the state administrative procedure act [1] such rules with respect to grants, leases, easements and lesser interests for the use of state-owned land underwater, and the cession of jurisdiction thereof, as in his or her judgment are reasonable and necessary to protect the interests of the people in such lands underwater. Such regulations shall include without being limited to: the fees to be charged, consistent with the provisions of this section, including mitigation of such fees in the event of economic hardship on existing commercial enterprises; fee limitations to administrative expenses for municipal uses which are public, non-commercial and offer services free or for nominal fees, and for uses undertaken and operated for public and non-commercial purposes by not-for-profit corporations characterized as "Type B" corporations pursuant to paragraph (b) of section two hundred one of the not-for-profit corporation law, and for uses undertaken and operated for public purposes by a corporation formed pursuant to the religious corporation law or by a corporation formed pursuant to [2] special act of this state and which has as its principal purpose a religious purpose; such further exemptions for projects as the commissioner determines do not represent significant encroachments; limitations on grants, including conversion grants, with respect to underwater lands consistent with the public purposes of this subdivision and limiting such grants to exceptional circumstances; and factors to be examined in considering an application for a lease, easement or other interest. Those factors shall include without limitation the following: (i) the environmental impact of the project; (ii) the values for natural resource

management, recreational us
(iii) the size, character and ef
potential for interference with
riparian owners; (v) the effect
in the lands; (vi) the water-de
impact on existing commercia
fees or fee structures shall

(g)(i) From one year after t
this subdivision and adopted
the state administrative proce
provisions of this subdivisio
subdivision; or who violates o
order of the commissioner pro
continuing such violation, and
than five hundred dollars for
more than one hundred doll
provided, however, that such
written notice and an opportu
person or entity having a lega
fill which notice shall be trans
shall set forth the provisions
area of fill, the amount of the
this section within thirty day
which the person shall be subj
accrue on a daily basis.

(ii) If the commissioner of er
failure to comply with conditio
shall investigate such suspecte
or at the request of the commis
enforcement action as describe
action to enjoin such violation

[1] State Adm. Pro. Act § 201 et sec
[2] So in original. "a" inadvertently

§ 4. Subdivision 1 of sectio
the laws of 1974, is amended t

1. Except as to lands under
head of any state agency havi
determine that such lands are
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filing of a declaration of aban
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provided, however, that no stat
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register and the environmental
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§ 5. The section heading ar
conservation law, the section he
subdivision 1 as amended by c
follows:

Protection of ~~streams; dams~~ s

1. Except as provided in sul

a. No dam or impoundment
or permanent, in or across a nat

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the people in such lands underwater.
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commercial and offer services free or
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ect; (ii) the values for natural resource

management, recreational uses, and commercial uses of the pertinent underwater land; (iii) the size, character and effects of the project in relation to neighboring uses; (iv) the potential for interference with navigation, public uses of the waterway and rights of other riparian owners; (v) the effect of the project on the natural resource interests of the state in the lands; (vi) the water-dependent nature of the use; (vii) and any adverse economic impact on existing commercial enterprises. The final promulgation of rules establishing fees or fee structures shall be subject to the approval of the director of the budget.

(g)(i) From one year after the effective date of the rules authorized by paragraph (f) of this subdivision and adopted pursuant to subdivision five of section two hundred two of the state administrative procedure act, and thereafter, any person who violates any of the provisions of this subdivision; or who fails to perform any duty imposed by this subdivision; or who violates or fails to comply with any rule, regulation, determination or order of the commissioner promulgated pursuant to this subdivision may be enjoined from continuing such violation, and in any event shall be liable for a civil penalty of not more than five hundred dollars for each such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues; provided, however, that such penalties shall be imposed by the commissioner only after written notice and an opportunity to be heard are given to the owner, occupier or other person or entity having a legal or beneficial interest in a prohibited structure or area of fill which notice shall be transmitted by certified mail, return receipt requested and which shall set forth the provisions of this section, a description of the prohibited structure or area of fill, the amount of the penalty, that the person must comply with the provisions of this section within thirty days, and the specific date thirty days thereafter following which the person shall be subject to such penalty and after which further penalties shall accrue on a daily basis.

(ii) If the commissioner of environmental conservation notifies the commissioner of any failure to comply with conditions of a lease, easement or other interest, the commissioner shall investigate such suspected violation. The commissioner, on his or her own initiative or at the request of the commissioner of environmental conservation, shall thereafter take enforcement action as described herein or request the attorney general to institute an action to enjoin such violation and to recover any damages therefor.

[1] State Adm. Pro. Act § 201 et seq.
[2] So in original. "a" inadvertently omitted.

§ 4. Subdivision 1 of section 30–a of the public lands law, as added by chapter 957 of the laws of 1974, is amended to read as follows:

1. Except as to lands under water, salt springs lands and abandoned canal lands, the head of any state agency having custody or jurisdiction over any state-owned lands may determine that such lands are no longer necessary or useful to the purposes of such agency, and he or she is hereby authorized to declare the same abandoned. Upon the filing of a declaration of abandonment of such lands with an approval thereof by the commissioner of general services such lands shall become unappropriated state lands provided, however, that no state lands, the sale or transfer of which is prohibited by the constitution, shall be thus affected. Within thirty days of approving the abandonment, the commissioner of general services shall publish a notice of the approval in the state register and the environmental notice bulletin, and send such a notice to the chief elected official of each county and municipality where the affected lands are located.

§ 5. The section heading and subdivision 1 of section 15–0503 of the environmental conservation law, the section heading as amended by chapter 233 of the laws of 1979 and subdivision 1 as amended by chapter 442 of the laws of 1983, are amended to read as follows:

Protection of ~~streams; dams and docks~~ water bodies; permit

1. Except as provided in subdivision 4 of this section ~~, no~~

a. No dam or impoundment structure, including any artificial obstruction, temporary or permanent, in or across a natural stream or water course, shall be erected, constructed,

reconstructed or repaired by any person or local public corporation without a permit issued pursuant to subdivision 3 of this section.

b. Except where a lease or other appropriate conveyance of an interest authorizing the use and occupancy of state-owned lands underwater has been obtained from the commissioner of general services pursuant to subdivision seven of section seventy-five of the public lands law, no dock, wharf, platform, breakwater, mooring, or other structure in, on or above waters shall be erected, placed, constructed, reconstructed, or expanded after the effective date of this paragraph by any person or local public corporation without a permit issued pursuant to subdivision 3 of this section. The term "reconstructed" as used in this section shall mean the substantial rebuilding of structures or facilities and shall not apply to ordinary maintenance or repair of existing functional structures or facilities, such as repainting, redriving pilings or replacing broken boards in docks.

c. A city, town, village or county may submit to the commissioner a local law or ordinance regulating docks or other structures as described in paragraph b of this subdivision. The commissioner shall review such law or ordinance to determine whether it provides environmental protection comparable to, or greater than, the provisions of such paragraph and any regulations promulgated thereunder. If the commissioner determines that the local law or ordinance submitted meets such requirements, the commissioner may delegate, upon such terms and conditions as he or she deems appropriate, to the local government the authority to administer the permit program and to charge a fee for permit processing. Any delegation may be revoked by the commissioner if he or she finds that the local government has failed to carry out the program in accordance with the terms of the delegation.

§ 6. Subdivision 4 of section 15–0503 of the environmental conservation law is amended by adding three new paragraphs c, d and e to read as follows:

c. A dock, pier, wharf or other structure used solely as a landing place on water providing dockage for five or fewer boats and encompassing within its outer perimeter an area less than four thousand square feet;

d. A mooring facility providing mooring for fewer than ten boats;

e. Seasonal replacement or reinstallation of structures installed prior to the effective date of this paragraph.

§ 7. Subparagraph (iv) of paragraph (a) of subdivision 5 of section 70–0117 of the environmental conservation law, as added by chapter 723 of the laws of 1977, is amended to read as follows:

(iv) Docks, piers, wharves or other structures in waters not to exceed one hundred twenty-five dollars, except docks, piers or other structures required to be permitted under article twenty-four or twenty-five of this chapter [1] or where a local government administers the program pursuant to a delegation from the commissioner under paragraph c of subdivision one of section 15–0503 of this chapter.

[1] Envir. Conser. Law §§ 24–0101 et seq.; 25–0101 et seq.

§ 8. Section 911 of the executive law is amended by adding a new subdivision 10 to read as follows:

10. "Comprehensive harbor management plan" shall mean a plan to address the problems of conflict, congestion and competition for space in the use of harbors, surface waters and underwater lands of the state within a city, town or village or abounding a city, town or village to a distance of fifteen hundred feet from shore. A harbor management plan must consider regional needs and, where applicable, must consider the competing needs of commercial shipping and recreational boating, commercial and recreational fishing and shellfishing, aquaculture and waste management, mineral extraction, dredging, public access, recreation, habitat and other natural resource protection, water quality, open space, aesthetic values and common law riparian or littoral rights, and the public interest in such lands underwater.

§ 9. Subdivision 5 of section 915 of the executive law is amended by adding a new paragraph i to read as follows:

i. The establishment of a
its implementation.

§ 10. Section 911 of the
read as follows:

11. "Water dependent us
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§ 11. The executive law i

§ 915–b. Water dependent

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§ 12. The executive law i

§ 922. Comprehensive harb

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nor shall the secretary appro
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i. The establishment of a comprehensive harbor management plan and the means for its implementation.

§ 10. Section 911 of the executive law is amended by adding a new subdivision 11 to read as follows:

11. "Water dependent use" means an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

§ 11. The executive law is amended by adding a new section 915–b to read as follows:

§ 915–b. Water dependent uses

Notwithstanding any other provision of law, water dependent use activities as defined in subdivision eleven of section nine hundred eleven of this article, shall not be considered a private nuisance, provided such activities were commenced prior to the surrounding activities and have not been determined to be the cause of conditions dangerous to life or health as determined by the commissioner of health, the local health officer, or local board of health pursuant to sections thirteen hundred, thirteen hundred-a, thirteen hundred three and thirteen hundred four of the public health law and any disturbance to enjoyment of land has not materially increased.

§ 12. The executive law is amended by adding a new section 922 to read as follows:

§ 922. Comprehensive harbor management plans

1. In order to implement a comprehensive harbor management plan the local legislative body of a city, town or village may adopt, amend and enforce local laws or ordinances, not inconsistent with the laws of this state or the United States, to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or other structures, temporary or permanent, in, on or above waters and the use of surface waters and underwater lands within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from the shore. Such local laws or ordinances may provide for the imposition of fees for reasonable expenses incurred by the city, town or village in carrying out this regulatory authority.

2. No local law or ordinance adopted pursuant to the powers granted by this section shall take effect until it shall have been submitted to and approved in writing by the secretary of state, nor shall such local law or ordinance affect projects and facilities undertaken or constructed by public authorities for which a statutory exemption has been provided or public authorities formed by compact with another state or any subsidiary thereof formed pursuant to bi-state legislation. The secretary of state shall not approve any local law or ordinance without first consulting with the commissioner of general services and other interested state agencies administering state-owned lands underwater, nor shall the secretary approve any local law or ordinance not in accordance with any comprehensive harbor management plan adopted as part of a local waterfront revitalization program by the local legislative body of the city, town or village and approved by the secretary pursuant to this article.

3. (a) Municipalities on lakes, other than those lakes identified in subdivision four of section nine hundred eleven of this article, may, pursuant to this section, develop cooperative lakewide local waterfront revitalization programs and harbor management plans.

(b) Where no local waterfront revitalization program and harbor management plan exists which has been cooperatively prepared by all of the municipalities which border the shores of such a lake, no local law or ordinance adopted by one such municipality pursuant to a harbor management plan shall be approved without a finding by the secretary of state that the local law or ordinance is consistent as well with the management of the lake by, and interests of, the lake residents and its municipalities as a whole.

(c) Where an organization or entity has been created by statute to provide lakewide planning or regulation, such local laws or ordinances shall be consistent with the plans

developed by such organization or entity pursuant to the procedures required in such statute.

4. No provision of this chapter shall be deemed to diminish the authority of any city, town or village pertaining to the regulation of harbors, surface waters and underwater lands granted by any other law, charter, patent or other instrument. Nor shall it be read to authorize local harbor management plans displacing conforming water-dependent businesses in existence on the effective date of this section.

5. Any conveyances of interests pursuant to subdivision seven of section seventy-five of the public lands law and any permits issued pursuant to subdivision one of section 15–0503 of the environmental conservation law shall be consistent, insofar as possible, with approved comprehensive harbor management plans adopted pursuant to this section.

§ 13. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 14. Nothing in this act shall be deemed to limit the existing powers of the commissioner of parks, recreation and historic preservation or the existing powers of the commissioner of environmental conservation under article 3 of the navigation law.

§ 15. This act shall take effect immediately, except that sections five, six, and seven of this act shall take effect two hundred seventy days after it shall have become a law, provided however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of the above mentioned sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date.

STATE OF NEW YORK MORTGAGE AGENCY—POOL INSURANCE

CHAPTER 792

S. 9000

Approved Aug. 7, 1992, effective as provided in section 3

AN ACT to amend the public authorities law, in relation to the state of New York mortgage agency providing pool insurance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Paragraph (b) of subdivision 3 of section 2405–d of the public authorities law, as amended by a chapter of the laws of 1992, amending the public authorities law relating to the state of New York mortgage agency, as proposed in legislative bill number S. 8449—B,[1] is amended to read as follows:

(b) The provisions of the emergency housing rent control law,[2] the local emergency housing rent control act,[3] the city rent and rehabilitation law,[4] the emergency tenant protection act of nineteen seventy-four[5] and the New York city rent stabilization law of nineteen hundred sixty-nine[6] shall not apply to ~~the tenancy of the tenant-purchaser under the lease-to-own contract from and after the purchase by the agency of the mortgage loan on the residence so long~~ a residence subject to a lease-to-own mortgage, provided that the mortgage is purchased by the agency. Such exemption shall begin at the commencement of the lease term and shall endure for so long thereafter as the agency holds the mortgage loan. The agency shall not sell the mortgage loan prior to the closing of the transfer of title to the tenant-purchaser or default by the tenant-purchaser under the lease-to-own contract.

[1] 1992 McKinney Session Laws,
[2] Uncon. Laws § 8581 et seq.
[3] Uncon. Laws § 8601 et seq.
[4] Uncon. Laws § 26–401 et seq.
[5] Uncon. Laws § 8621 et seq.
[6] Uncon. Laws § 26–501 et seq.

§ 2. Subdivision 1–a of se
chapter of the laws of 1992,
New York mortgage agency
amended to read as follows:

1–a. The agency may issue
an amount not in excess of tv
at the time of commitment
mortgage loans acquired pur
twenty-five percent of the in
loans.

[1] 1992 McKinney Session Laws, (

§ 3. This act shall take e
amending the public authoriti
as proposed in legislative bill
nothing contained herein shal
tion or repeal of any provisi
provisions shall be applied or
manner, to the same extent
provided by law.

BUDGET

Approved Au

**AN ACT to amend chapter 50 of
52 of the laws of 1992, enacti
the aid to localities budget;
budget; chapter 53 of the la
education law, in relation t
making certain technical cor**

Sections of this law

The People of the State of
as follows:

[§§ 1 to 13. Appropriations

§ 14. Paragraph b of subdi
chapter 683 of the laws of 19

b. Except as otherwise pr
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Article 46 of the Executive Law
(Long Island South Shore Estuary Reserve)

Executive

ARTICLE 46
LONG ISLAND SOUTH SHORE ESTUARY RESERVE

S 960. Short title. This article shall be known and may be cited as the "Long Island South Shore Estuary Reserve Act."

S 961. Legislative declaration. The legislature hereby declares it to be in the public interest to protect and manage the South Shore Estuary System as a single integrated estuary. It is further in the public interest to establish a council made up of representatives of state and local governments and private citizens to create a South Shore Estuary Reserve, prepare a comprehensive management plan and make recommendations to preserve, protect and enhance the natural, recreational, economic and educational resources of the reserve, which the state and local governments may incorporate into policy, laws or regulations.

S 961-a. Legislative findings and intent. The legislature hereby finds that the tidal waters located between the southern shore of Long Island and the coastal barrier beaches constitute a maritime region of statewide importance, referred to as the South Shore Estuary.

The legislature finds that within the South Shore Estuary and the associated lands and water bodies that discharge into or affect the South Shore Estuary, that the federal, state and local governments own and manage significant interdependent properties in the form of parks, preserves, historic sites, open space and underwater lands, which help

to sustain biological productivity and diversity, economic viability and recreational enjoyment.

The legislature also finds that the South Shore Estuary System contains and supports many unique marine habitats and locally significant populations and a diversity of rare, threatened and endangered species of plants and animals and the protection of their habitats is in the best interest of the people of New York.

The legislature further finds that the South Shore Estuary system contains numerous streams that flow into the bays; freshwater and tidal wetlands that serve as a breeding ground, source of primary production for the food chain and a natural filter media; and productive clam fisheries that are mutually supportive and ultimately dependent upon the maintenance of the hydrologic and ecologic integrity of the region.

The legislature, in addition, finds that the South Shore Estuary is of tremendous economic and social importance to the state, containing the largest concentration of recreational and commercial vessels, marinas and other water dependent businesses, supporting hundreds of baymen with a livelihood harvesting clams, finfish and other marine organisms and providing recreation opportunities to millions of residents and tourists each year.

The legislature finds that there is a multitude of governmental entities and agencies that share responsibility for the regulation, management, and protection of the Estuary and its resources and which govern private and public land use and activities; and despite existing programs, the water quality and productivity of the South Shore Estuary have declined due to the intensity and variety of land uses in a highly developed suburban setting which produce point and nonpoint source of pollution.

The legislature finds that this region, in which there are private and public water and land uses which depend upon the health and productivity of the South Shore Estuary, could better be protected and managed through the development of a comprehensive management plan.

Therefore, the legislature finds that the purpose of this article is to provide a means for public and private interests to act collectively and pool resources and expertise to: integrate and coordinate existing programs and studies; identify and make recommendations to mitigate pollution sources in order to maintain or enhance water quality, maximize natural productivity and improve management of shellfish harvest areas to insure economic viability and minimize health risk; make recommendations on policies designed to balance the preservation of natural resources while providing adequate access and use of resources for the public as well as stability for

water dependent businesses and tourism; make recommendations on methods to protect the value of existing public and private investment that has already been made in the region; and provide direction for state and local governments to protect, preserve and properly manage the unique natural resources of the South Shore estuary for the benefit of existing and future generations.

However, it is not the legislature`s intent for this article or the management plan created pursuant to this article to be construed to require or to be used as a basis for requiring a cumulative analysis or a generic environmental impact statement pursuant to article eight of the environmental conservation law from any applicant, owner of property, the state, its political subdivision or any agencies thereof as a precondition for the approval of any proposed development, action or alteration of the same proposed to be undertaken within the geographic area designated as the Long Island South Shore Estuary Reserve, unless otherwise required by law.

S 962. Definitions. As used in this article, the following terms shall mean and include:

1. "Council" shall mean the Long Island South Shore Estuary reserve council created by section nine hundred sixty-four of this article.

2. "Department" shall mean the secretary of state or his or her designee.

3. "Estuary" shall mean all or part of the mouth of a river or stream or any body of water having an unimpaired natural connection with the open sea and within which sea water is measurably diluted with fresh-water derived from land drainage, including associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

4. "Long Island South Shore Estuary Reserve" or "Reserve" shall mean all the water and underwater lands comprising the South Shore Estuary and the lands which gather and transmit precipitation as either groundwater or run-off into such system and which are designated on a map prepared by a designated planning entity and adopted by the council.

5. "South Shore Estuary" shall mean the Estuary located on the South Shore of Long Island between the western boundary of the Town of Hempstead and the Eastern Boundary of Shinnecock Bay.

6. "Plan" shall mean the comprehensive management plan created pursuant to section nine hundred sixty-six of this article.

S 963. Designation of planning entity or entities. The secretary of

state, after consultation with the council, shall designate a planning entity or entities for the purposes of assisting the council in conducting research and developing the plan.

S 964. Long Island South Shore Estuary reserve council. 1. There is hereby established a Long Island South Shore Estuary reserve council to assist in the development, advise in the implementation, and review the effectiveness of a comprehensive management plan for the Long Island South Shore Estuary Reserve that the state and local governments may implement.

2. The council shall consist of twenty-three voting members: the secretary of state, who shall be the chair; the county executive of the county of Nassau; the county executive of the county of Suffolk; the supervisor of the city of Long Beach, the supervisors of the towns of Hempstead, Oyster Bay, Babylon, Islip, Brookhaven and Southampton; a mayor, appointed by the conference of mayors, from a village bordering the South Shore Estuary to represent the villages within the South Shore Estuary Reserve, all of the aforementioned whom may appoint a designee; the chair of the citizens advisory committee; the chair of the technical advisory committee; a member of the Great South Bay Audubon Society, the dean of the Marine Sciences Research Center at Stony Brook or his or her designee, a member of the New York Sportsfishing Federation, a representative of the Long Island Association, and a representative of the Long Island Builders Institute, Incorporated, however, if any of the previous five member organizations decline to serve on the council, a replacement organization which represents the same interests as the organization that is vacating shall be nominated by a majority of the remaining voting members of the council and appointed by the secretary of state; the secretary of state shall appoint one member who shall be a representative of a property owner association from a community or communities bordering the South Shore Estuary to represent the interests of property owners within the South Shore Estuary Reserve; the county executive of the county of Nassau shall appoint two members, one of whom shall be a representative of the marina industry and one of whom shall be a representative of a regional environmental organization; the county executive of the county of Suffolk shall appoint two members, one of whom shall be a representative of a local baymen`s association and one of whom shall be a representative of the charter or party boat industry. All members shall reside in Nassau or Suffolk county and shall have demonstrated expertise in the functional areas to be addressed by the council.

3. The department shall convene and conduct the council`s meetings

and record and prepare minutes.

4. Terms of appointment. The terms of all members who are elected public officials shall be concurrent with their terms of office. All other members shall serve for a term of four years or thereafter until a successor is appointed. An appointment to fill a vacancy shall be made for the remainder of the affected term in the same manner as the original appointment was made. Such appointment shall be made within sixty days of the date the position becomes vacant.

5. Thirteen voting members shall constitute a quorum. Any action requiring a vote or any adoption by the council shall require an affirmative vote of at least a majority of all the voting members.

6. If any member of the council fails to attend at least sixty percent of the meetings during a period of twelve consecutive months, the department shall notify the designating authority.

7. The members of the council shall serve without compensation and shall not be reimbursed for personal expenses.

S 964-a. Powers of the council. The council shall have the following powers:

1. To conduct or contract for necessary planning, scientific and environmental studies pertaining to the reserve, where insufficient data exists;

2. To utilize, to the extent feasible, the staff and facilities of state and local agencies subject to the approval of such agencies to carry out the provisions of this article; and

3. To contract within amounts appropriated for services deemed necessary for the performance of the council`s functions.

S 964-b. Duties of the council. The council shall have the following duties:

1. To meet not less than once every two months until the adoption of the plan and to encourage attendance at such meeting of representatives of local governments and interested parties affected by the deliberations of the council;

2. To send copies of the minutes of each meeting to each town and village within the reserve, the county executive of the county of Nassau, the county executive of the county of Suffolk, the members of the Assembly and Senate representing areas within the reserve, and any other interested party upon request;

3. To hold public hearings pursuant to section nine hundred sixty-six of this article;

4. To designate land and water bodies to be included in the reserve as defined in subdivision four of section nine hundred sixty-two of

this article and to adopt and publish a map and written description delineating the boundary of the reserve;

5. To make appointments to the advisory committees authorized pursuant to section nine hundred sixty-five of this article, and to create other advisory committees as necessary;

6. To review and evaluate existing studies, modeling, methodologies, data and recommendations for their application to the plan;

7. To adopt a comprehensive management plan for the Long Island South Shore Estuary Reserve which the state and local governments may implement. Estuary segmentation or partitioning of the estuary into spatial units may be necessary at times for summarizing data for geographic areas, for the development of certain scientific models, or for interim management measures. The council shall prioritize problems and opportunities within the estuary based upon use impairments, resource management needs and areas experiencing intense recreational use;

8. To identify funding mechanisms for the preparation and implementation of the plan;

9. To identify specific tasks or studies and the amount of funding necessary to carry out the provisions of this article and report such findings to the governor and the legislature;

10. To prepare interim reports and recommendations;

11. To prepare or cause to be prepared educational materials designed to inform the public about the value of the Estuary, its appropriate uses and methods to protect it;

12. To consider designation of the South Shore Estuary into the Federal National Estuary program pursuant to section three hundred twenty of the Federal Clean Water Act. Development of a nomination application for federal designation of the South Shore Estuary may be concurrent with the development of the comprehensive management plan;

13. To encourage, and where feasible, facilitate implementation of the recommendations of the plan;

14. To encourage individuals, corporations, associations, and public entities to protect and preserve the unique resources of the reserve; and

15. To biannually review the plan and the effectiveness of its implementation, and where necessary, revise the plan and submit such revision to each town and village within the reserve, the governor, the legislature and any other interested party upon request.

S 965. Advisory committees to the council. The council shall establish advisory committees to make recommendations and provide guidance to the council for the preparation and implementation of the

comprehensive management plan. A citizens advisory committee, technical advisory committee, management advisory committee, and a local government advisory committee shall be formed. The committees may prepare reports, recommend studies and submit findings and recommendations to the council. The council shall make the initial appointments to the advisory committees. Each appointed member shall be a voting member of the advisory committee. The advisory committees shall meet and elect a chair. Once a chair is elected, the committee can appoint other voting members with expertise related to the function of the committee.

1. The citizens advisory committee shall be comprised of representatives of citizens or civic groups, environmental groups, user groups, and business organizations. The purpose of the committee shall be to integrate citizens` and user groups` concerns in the planning and decision-making process and to encourage public education and involvement. The committee membership shall include but not be limited to a representative of the Fire Island Association, a representative of Bluepoints Company Incorporated, a representative of a recreational boating association, a member of the Tribal council of the Shinnecock Indian Reservation, and a member of the Long Island Farm Bureau.

2. The technical advisory committee shall be comprised of individuals with technical expertise, including but not limited to scientists, engineers and planners. The purpose of the committee shall be to review and oversee studies, interpret and evaluate existing and new data to determine causes and effects of environmental problems, and provide technical support for the development of management measures and policies. The committee membership shall include but not be limited to the director of the Marine Science Center at the Long Island University at Southampton; the executive director of the Long Island Regional Planning Board; the director of the New York Sea Grant Institute and the director of the Long Island Maritime Museum, all of the aforementioned whom may appoint a designee.

3. The management advisory committee shall be comprised of representatives of government agencies associated with developing policy, regulating activities or enforcing laws and regulations affecting the South Shore Estuary Reserve. The purpose of the committee shall be to analyze existing laws, regulations and management programs and to make recommendations for improvements thereof. The committee membership shall include but not be limited to the secretary of state, the director of region one of the department of environmental conservation, the director of the Long Island region office of parks, recreation and historic preservation, the

commissioner of the department of economic development, the commissioner of the Suffolk county department of health services and the commissioner of the Nassau county department of health, all of the aforementioned whom may appoint a designee. The council shall request the participation of the director of region two of the federal environmental protection agency, the secretary of the United States department of the interior, and the director of the Fire Island National Seashore, all of whom may appoint a designee.

4. The local government advisory committee shall be comprised of representatives of towns, cities and villages. The purpose of the committee is to provide input regarding land use issues, zoning, planning and local implementation.

S 966. Comprehensive management plan. 1. The purpose of the plan is to make recommendations to integrate and coordinate existing programs and studies; mitigate pollution; balance preservation, recreation and economic development; protect appropriate existing investment; and protect the natural resources. The plan shall include but not be limited to the following, to the extent possible, considering financial resources and technological limitations:

(a) A statement of the public value of the reserve, including its ecological, economic, social, hydrologic and educational values, together with the general goals and objectives of the plan;

(b) A map and written description delineating the boundary of the reserve;

(c) An estimate of the economic value of the commercial and recreational industry and the tourism industry dependent upon the reserve;

(d) An inventory of all public lands and lands available for public use within the reserve specifying use, facilities and trails for public use, and the management agency with jurisdiction over the property;

(e) Identification of inventories compiled by the department pursuant to section nine hundred twenty of article forty-two of this chapter, including significant natural areas, historic sites, agricultural lands and water dependent areas;

(f) An identification and evaluation of existing regulatory and management programs, as well as all agencies having any jurisdiction within the reserve which affect land use and activities within the reserve;

(g) An evaluation of land use and zoning within the reserve and their actual or potential effects on water quality and productivity of the reserve;

(h) An inventory of point sources of pollution and an assessment of nonpoint sources of pollution, including suggested strategies for mitigation;

(i) An identification of areas containing contaminated sediments and sources that are contributing significantly to the decline of water quality and that need special attention;

(j) An assessment of trends in water quality within the reserve;

(k) An assessment of dredging and navigation needs in the South Shore Estuary taking into account environmental impact and public safety;

(l) Management recommendations for the preservation of plant, fish and wildlife and their habitats;

(m) Management recommendations for protection and management of dedicated public land;

(n) Management recommendations for protecting and supporting indigenous economic activities such as aquaculture, finfishing, shellfishing, boating and tourism;

(o) Recommendations for increased enforcement of laws and regulations pertaining to preservation and management of resources;

(p) Identification of environmentally sensitive land suitable for acquisition and dedication for public uses;

(q) Recommendations for institutional arrangements to coordinate and improve management of land and water resources, to maximize efficiency such as coordinating review pursuant to article eight of the environmental conservation law and article forty-two of this chapter, and to adopt uniform policies among agencies where appropriate;

(r) Recommendations for land use management as it relates to maintenance or enhancement of surface water quality and the resources within the reserve, including changes in zoning and restrictions on activities where appropriate within the reserve;

(s) Recommendations for best management practices for private and public landowners to minimize chemical pollution, sedimentation and erosion;

(t) Recommendations for management of commercial, recreational and tourism activities that may threaten sensitive habitats; (u) Strategies to resolve conflicts among competing demands of the resources and to achieve a balance among economic and recreational activities and preservation of natural resources;

(v) An identification of policies, land use controls and management measures that should be incorporated into the state coastal management program and local waterfront revitalization programs adopted pursuant to article forty-two of this chapter; and

(w) A local participation plan, which describes how local citizens,

officials and members of the tourism, fishing and marine industries will participate in the implementation of the management plan and which contains a statement identifying support for such program by the participating local governments.

2. Within one hundred eighty days after the appointments to the council have been made, the council shall adopt a statement of goals and objectives; adopt a map and boundaries of the South Shore Estuary Reserve for purposes of this article and develop a work plan which shall include a timetable to guide the progress of its compliance with this article. Within such time period, the council shall also hold two public scoping sessions, one in Nassau county and one in Suffolk county for the development of the plan.

The council shall hold at least two public hearings at different locations, one in Nassau county and one in Suffolk county within the reserve on the draft plan before adoption. The council shall adopt a final plan within four years of the effective date of this article unless insufficient funding is made available or obtained through appropriations, grants or gifts. The adopted plan shall be submitted to each town and village within the reserve, the county executive of the county of Nassau, the county executive of the county of Suffolk, and to the governor and the legislature.

3. The council shall continue to convene to fulfill its duties pursuant to subdivisions eleven, twelve, thirteen and fourteen of section nine hundred sixty-four-b of this article.

S 967. Cooperation of state and municipal agencies. The council may request and shall be provided with such cooperation, assistance, services and data, to the maximum extent feasible, subject to the approval of such agency, from any department, advisory board, task force, commission, bureau or any other agency having jurisdiction over land and water within the reserve, as are necessary to carry out the council's duties pursuant to this article. The council shall utilize the expertise of the marine resources advisory council established pursuant to section 13-0350 of the environmental conservation law. The council shall also seek technical assistance from, consult with and coordinate its actions with the department.

S 968. Acceptance of monies. The designated planning entity or entities may accept any grant or appropriation from federal, state and municipal sources and any gift for use to carry out the provisions of this article. An application from a designated planning entity or entities shall be eligible for assistance pursuant to sections nine hundred seventeen and nine hundred eighteen of this chapter for the

development and implementation of the comprehensive management plan. The expenditure of such monies shall be consistent with the recommendation of the council and shall not exceed the grants, appropriations and gifts received by the designated planning entity or entities.

S 969. Limitations on the regulation of hunting, fishing and recreational activities. Nothing in this article shall be interpreted to authorize the regulation of hunting, fishing, trapping, possession of wildlife or other recreational activities in the reserve, except as otherwise provided by law.

S 970. Affect on other laws. Nothing in this article shall affect the police powers, local planning powers, zoning powers or authority to regulate any activity by villages, towns or counties within the reserve or the police powers of the state to regulate any activity within the reserve or affect the authority of any state or public agency in the management of any state or public lands within the reserve.

S 970-a. Severability. The provisions of this article shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held invalid, the remainder of this article and the application thereof shall not be affected thereby.

Article 54 of the ECL
(Environmental Protection Fund)

ARTICLE 54
ENVIRONMENTAL PROTECTION ACT

TITLE 1
GENERAL PROVISIONS

S 54-0101. Definitions.

As used in this article, unless otherwise specified within any title of this article, the following terms shall mean and include:

1. "Commissioner" means the commissioner of environmental conservation; except that within and for the purposes of the projects undertaken by the office pursuant to title nine of this article, the term shall mean the commissioner of the office of parks, recreation and historic preservation.

2. "Cost" means the cost of an approved project, which shall include engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to such project less any federal assistance received or to be received and any other assistance from other parties.

3. "Department" means the department of environmental conservation.

4. "Facility" means any structure or site improvement including paths, trails, roads, bridges, ramps and buildings.

5. "Federal assistance" means funds available, other than by loan, from the federal government, either directly or through allocation by the state for construction or program purposes pursuant to any federal law or program.

6. "Governing body" means:

a. in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;

b. in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;

c. in the case of a town, the town board;

d. in the case of a public benefit corporation, the board of directors, members or trustees thereof;

e. in the case of a public authority, the governing board of directors, members, or trustees thereof;

f. in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and

g. in the case of an Indian tribe or nation, any governing body recognized by the United States or the state of New York.

7. "Municipality" means a local public authority or public benefit corporation, a county, city, town, village, or Indian tribe or nation residing within New York state, or any combination thereof. For the purposes of title 5 and title 9 of this article, municipality shall also include state agencies, state public authorities and state public benefit corporations. For the purposes of title 7 and title 9 of this article, the term municipality shall also include a school district and a supervisory district.

8. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under the federal internal revenue code.

9. "Office" means the office of parks, recreation and historic preservation.

10. "Solid waste" shall have the definition set forth in title 5 of article 27 of this chapter but shall not include hazardous waste as defined in title 9 of article 27 of this chapter.

11. "State assistance payment" means the payment of monies by the state for projects authorized by the environmental protection fund, to preserve, enhance, restore and improve the quality of the state's environment.

12. "Secretary" means the secretary of state.

S 54-0103. Powers and duties of the commissioner or secretary.

In administering the provisions of this article the respective commissioner or the secretary:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

2. may, in the name of the state, as further provided within this

article, contract to make, within the limitations of appropriations available therefor, state assistance payments to a municipality toward the cost of a project approved and to be undertaken pursuant to this article, or to a not-for-profit corporation toward the costs of a project approved and to be undertaken pursuant to titles three and nine of this article. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

3. may, in the name of the state, enter into contracts, within the limitations of appropriations available therefor, with not-for-profit corporations, public benefit corporations, and private contractors for services contemplated by this article to be funded hereunder. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

4. shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and

5. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

S 54-0105. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and

3. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

S 54-0107. Other powers not affected.

Nothing in this article shall be construed to limit or restrict any powers of the commissioner or any other agency pursuant to any other provision of law.

TITLE 3
OPEN SPACE LAND CONSERVATION PROJECTS

S 54-0301. Definitions.

For purposes of this title, "open space land conservation projects" shall mean acquisition projects including the purchase of conservation easements undertaken by the commissioner and/or the commissioner of the office of parks, recreation and historic preservation listed in the state open space land acquisition plan prepared pursuant to title 2 of article 49 of this chapter.

S 54-0303. Open space land conservation projects.

1. The commissioner and the commissioner of the office of parks, recreation and historic preservation are authorized to undertake open space land conservation projects.

2. a. The commissioner of the office of parks, recreation and historic preservation may enter into an agreement for the maintenance and operation of open space land conservation projects in urban areas or metropolitan park projects by a municipality, or a not-for-profit corporation or unincorporated association which demonstrates to the commissioner's satisfaction that it is financially or otherwise capable of operating and maintaining the project for the benefit of the public and of maximizing public access to such project. Any such agreement shall contain such provisions as shall be necessary to ensure that its operation and maintenance are consistent with and in furtherance of this article and shall be subject to the approval of the director of the budget, the comptroller and, as to form, the attorney general.

b. The commissioner, pursuant to appropriation therefor and in order to further the purposes of article forty-six of this chapter, may make available to the Albany Pine Bush preserve commission, established by article forty-six of this chapter, moneys for the operation of such commission, including the management of lands under the jurisdiction of such commission in accordance with a management plan prepared as specified in section 46-0111 of this chapter.

3. The cost of an open space land conservation project shall include the cost of preparation of a management plan for the preservation and beneficial enjoyment of the land acquired except where such considerations have already been undertaken as part of an existing plan applicable to the newly acquired land.

4. To the fullest extent practicable, it is the policy of the state to promote an equitable regional distribution of open space land conservation funds, consistent with the purpose of this title, taking into account regional differences in real property values, ecological resources and recreational opportunities.

5. No project, which was not listed on the state land acquisition plan as of the effective date of this title, shall be proposed for acquisition by the state under this title, pursuant to the state land acquisi-

tion plan, if any town, village or city within which such a project is located, by resolution, within ninety days of notification by the state of its interest in acquiring such project, objects to such acquisition. Such objection shall be transmitted to the commissioner through the regional land acquisition advisory committee and shall prevent the state from undertaking such acquisition.

6. No monies shall be expended for acquisition by eminent domain of any open space land conservation project except in accordance with the state land acquisition policy set forth in section 49-0203 of this chapter.

7. No monies shall be expended for open space land conservation projects except pursuant to an appropriation therefor.

TITLE 5
NON-HAZARDOUS MUNICIPAL LANDFILL CLOSURE PROJECTS

S 54-0501. Definitions.

As used in this title the following terms shall mean and include:

1. "Landfill" means a disposal facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure and which is not a land spreading facility, a surface impoundment, or an injection well.

2. "Municipal Landfill closure project" means activities undertaken to close, including by reclamation, a landfill owned or operated by a municipality to achieve compliance with regulations promulgated by the department, or activities undertaken to implement a landfill gas management system project.

3. "Cost" means the capital cost of a municipal landfill closure project including engineering and architectural services, plans and specifications, consultant and legal services, and other direct capital expenses incident to such project, less any federal or other assistance

for such project received or to be received.

4. "Landfill gas management system" means a system for the control, capture, and management of gas created within and emitted from a solid waste landfill.

S 54-0503. Eligibility to receive state assistance payments.

Any municipality which is the owner or operator of a landfill may apply for state assistance payments toward the cost of a municipal landfill closure project upon showing that the following criteria, in addition to applicable rules and regulations, have been met:

1. The landfill site has not been classified pursuant to subparagraph one or two of paragraph b of subdivision four of section 27-1305 of this chapter. Sites which have been removed from the registry may apply for state assistance payments.

2. The municipality has an obligation to close the landfill by a specific date pursuant to an administrative order, court order or permit which requires the municipality to cease acceptance of waste at the site within eighteen months of the date the application for state assistance payment is approved.

3. A closure investigation report which complies with the requirements of applicable regulations of the department shall have been submitted.

4. The municipality has agreed, upon project approval, to waive any right to state assistance for closure of the site under section 27-1313 of this chapter.

S 54-0505. Criteria for municipal landfill closure projects.

1. State assistance payments shall be approved only for projects that include plans for closure, post-closure and construction in accordance with the department's solid waste management regulations applicable to new projects, which were in effect six months prior to the date of submittal of the final application.

2. Municipal landfill closure project costs incurred prior to April first, nineteen hundred ninety-three shall not be eligible for state assistance payments funded pursuant to this article.

3. Prior to processing applications for state assistance payments for projects pursuant to this section, the commissioner shall promulgate, in consultation with the director of the budget, rules and regulations which shall include criteria for determining eligible expenditures and procedures governing the commitment and disbursement of funds appropriated in accordance with this section. The commissioner also shall promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria.

S 54-0507. State assistance application procedure.

1. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

a. the urgency of need to provide state assistance payments for the project in relation to the provision of monies for other project needs in the state known at the time such application is made;

b. any adverse environmental impact resulting from the municipal landfill, including effects on groundwater; and

c. the ability of the municipality to pay for the costs of closure.

3. No monies shall be expended for non-hazardous municipal landfill closure projects except pursuant to an appropriation therefor.

S 54-0509. Contracts for state assistance payments for municipal landfill closure projects.

After approval of the application, the commissioner and the municipality shall enter into a contract for state assistance payments toward the cost of such project which shall include the following provisions:

1. A current estimate of the cost of the project as determined by the commissioner at the time of the execution of the contract.

2. An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality for costs incurred during the progress of the project to a maximum of either fifty percent of the cost, or seventy-five percent of the cost for a municipality with a population smaller than thirty-five hundred as determined by the current federal decennial census, or two million dollars, whichever is less. The commissioner may consider landfill gas management projects separately from landfill closure projects. Such costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed the maximum cost set forth in the contract. For purposes of this subdivision, the approved project cost shall be reduced by the amount of any specific state assistance payments for landfill closure purposes received by the municipality from any source; provided, however, that non-specific state assistance payments, such as amounts paid pursuant to section fifty-four of the state finance law, shall not be included in

such cost reduction.

3. An agreement by the municipality to proceed expeditiously with the project and to complete the project in accordance with plans and reports approved by the department and with the conditions of applicable permits, administrative orders or judicial orders.

S 54-0511. Loans for municipal landfill closure projects.

1. A municipality eligible for a state assistance payment pursuant to subdivision two of section 54-0509 of this title and which has a population smaller than thirty-five hundred as determined by the current federal decennial census is also eligible for a loan to a maximum of the unfunded portion of such project.

2. Loans pursuant to this title shall be without interest and for a term not to exceed twenty years.

3. Loan repayments under this title shall be deposited to the credit of the environmental protection fund pursuant to subdivision two of section ninety-two-s of the state finance law.

4. A municipality obtaining a loan under subdivision one of this section shall enter into a contract with the commissioner. That contract shall contain the following provisions:

a. the loan shall be repaid in appropriate equal installments. There shall be a one percent per month surcharge for each month of delinquent payment added to any such installment tendered more than sixty days after the due date.

b. in the event a municipality shall fail to make any payment due to the state pursuant to this title, the commissioner shall certify to the comptroller and notify the chairman of the assembly ways and means committee, the chairman of the senate finance committee, the director of the division of the budget and the governing body of the municipality that such municipality has failed to make such payment. Such certificate shall be in the form as may be determined by the commissioner provided such certificate shall specify the exact amount of principal and surcharge required to satisfy such municipality`s unpaid obligation. The comptroller, upon receipt of such certificate from the commissioner, shall withhold from such municipality any state aid payable to it to the extent necessary to meet the certified amount of principal and surcharge due the commissioner and shall immediately pay over to the environmental protection fund the amount so withheld.

S 54-0513. Powers and duties of the commissioner.

In administering the provisions of this title the commissioner:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

2. may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments and loans toward the costs of an approved project. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

3. shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and

4. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

S 54-0515. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments and loans pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and

3. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

TITLE 7
MUNICIPAL WASTE REDUCTION OR RECYCLING PROJECTS

S 54-0701. Definitions.

As used in this title the following terms shall mean and include:

1. "Cost" means the capital cost of a municipal recycling project including engineering and architectural services, surveys, plans and specifications; consultant and legal services; lands acquired pursuant to the conditions set forth in section 54-0709 of this title, and other direct capital expenses incident to such a project, less any federal assistance or other assistance received or to be received. "Cost" shall also include the capital, planning and promotional costs associated with

waste reduction projects, the costs related to household hazardous waste collection and disposal programs, and the costs related to planning, educational and promotional activities associated with a recyclables recovery program. Provided, however, "cost" shall exclude any cost incurred prior to April first, nineteen hundred ninety-three, and shall further exclude costs related to planning, educational and promotional activities associated with a recyclables recovery program incurred prior to April first, two thousand.

2. "Recyclables recovery equipment" means structures, machinery or devices, singly or in combination, designed, constructed and required primarily to separate, process, modify, convert, treat, or prepare collected solid waste, which is included as part of a recyclables recovery program so that component materials or substances or recoverable resources may be used as a raw material for new products or for useful purposes other than for energy recovery, and for the collection and preparation for disposal of household hazardous waste.

3. "Recyclables recovery program" means a program undertaken by a municipality consistent with requirements of section one hundred twenty-aa of the general municipal law to provide for the environmentally sound recovery of recyclables, primarily involving the collection, aggregation and processing of recyclable materials for their use as raw materials for new products or for other useful purposes other than for energy recovery, through facilities planned, designed and constructed to ensure environmental protection and to maximize the potential for recyclables recovery. A recyclables recovery program also shall mean planning, educational and promotional activities to increase public awareness of and participation in recycling. Such program shall have been approved by the commissioner and undertaken consistent with any local solid waste management plan pursuant to section 27-0107 of this chapter.

4. "Recycling project" means recyclables recovery equipment, source separation equipment, a recyclables recovery program or any combination thereof required by a recyclables recovery program.

5. "Source separation equipment" means municipally-owned:

a. Add-ons or trailers designed to modify collection vehicles to allow sorting and separation of collected wastes held for the purpose of recycling;

b. Containers for the source separation and temporary storage of recyclable wastes by commercial, industrial and institutional generators, and for the source separation and temporary storage of recyclable wastes by single family and multiple family dwellings prior to collection;

c. Bins, sheds or other facilities for the temporary storage of mate-

rials prior to transport for the purposes of recycling; and

d. Collection vehicles specifically designed to hold and transport source separated recyclables.

6. "Waste reduction projects" means projects undertaken to reduce the volume or toxicity of material entering the municipal solid waste stream, by reducing the volume or toxicity of such material at the point of generation. Waste reduction projects shall include planning and educational or promotional activities to increase public awareness of methods to prevent the generation of waste including the reuse of certain materials, substitution of non-toxic household products, and the promotion of backyard composting.

7. "Household hazardous waste" shall mean solid waste emanating from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which but for their point of generation, would be a hazardous waste under title 9 of article 27 of this chapter or a "pesticide" as defined in article 33 of this chapter.

S 54-0703. Approval of state assistance payments for municipal recycling or waste reduction projects.

1. State assistance payments toward the cost of municipal recycling or waste reduction projects shall be made pursuant to this title with the approval of the commissioner pursuant to an approved contract or contracts.

2. In reviewing applications for state assistance payments for municipal recycling or waste reduction projects, the commissioner shall give due consideration to:

a. the adequacy of the municipality`s waste reduction or recycling program and its relationship to the needs and plans of other municipalities; provided, however, that such adequacy shall be determined in part by the efforts undertaken to date by the municipality to implement a mandatory source separation law or ordinance required pursuant to section one hundred twenty-aa of the general municipal law;

b. the suitability and feasibility of the project in relation to the recycling program and the area to be served;

c. the proportion of solid waste for which waste reduction or recyclables recovery is contemplated and the extent to which the project is consistent with the statewide solid waste reduction and recycling goals established under the state solid waste management plan, pursuant to section 27-0103 of this chapter;

d. the potential for coordination and consolidation of solid waste management practices among municipalities within specified areas, regions or planning units;

e. the implementation of the system or components thereof and their expected terms of usefulness, singly or in combination;

f. the present and projected population, land use, and rates and composition of solid waste generation;

g. the potential or contemplated markets for recovered recyclables and the extent to which the full avoided costs of proper collection, transportation and disposal of source separated recyclables are, or are projected to be, greater than the cost of collection, transportation and sale of said recyclables less the amount received from the sale of said recyclables;

h. the intergovernmental arrangements integral to the project;

i. the non-governmental arrangements integral to the project;

j. the urgency of the project, in relationship to all recyclables recovery program needs in the state; and

k. the environmental soundness of the project, including assurance that the project will meet all applicable laws, criteria, and rules and regulations.

3. State assistance payments toward the cost of a waste reduction or municipal recycling project shall not exceed fifty percent of the cost, and in the aggregate such payments shall in no event exceed two million dollars. Such costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed the maximum eligible cost set forth in the contract.

S 54-0705. Rules and regulations.

Prior to processing applications for state assistance payments toward the cost of municipal waste reduction or recycling projects, the commissioner shall promulgate, in consultation with the director of the budget and the commissioner of economic development, rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this title. The commissioner, in consultation with the commissioner of economic development, shall also promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria.

S 54-0707. State assistance application procedure.

1. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects.

3. Upon approval of a project application, a municipality shall enter into a contract, as further provided within this article, with the commissioner for state assistance payments toward the cost of such project to be received pursuant to this article.

4. No monies shall be expended for municipal waste reduction or recycling projects except pursuant to an appropriation therefor.

S 54-0709. Contracts for state assistance payments for waste reduction or municipal recycling projects.

1. The commissioner may, in the name of the state, enter into contracts with municipalities to provide state assistance payments toward the cost of waste reduction or municipal recycling projects. Such contracts shall include the following provisions:

a. an estimate of the costs of the project as determined by the commissioner;

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality, during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

c. an agreement by the municipality:

(i) to proceed expeditiously with and complete the project as approved by the commissioner;

(ii) to operate and maintain the waste reduction or municipal recycling project in accordance with applicable law and rules and regulations;

(iii) to provide for the payment of the municipality's share of the cost of the project;

(iv) to continue, upon evaluation of its effectiveness, operation of the project and not to dispose of the project or any portion thereof or change its use without the approval of the commissioner;

(v) to assume the full cost of any continued operation of the project;

(vi) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality:

(A) fails to complete the project as approved;

(B) fails to continue operation of the project;

(C) disposes of the project, or any portion thereof, without the prior written approval of the commissioner; or

(D) changes the use of the project, or any portion thereof, without the prior written approval of the commissioner.

No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety;

(vii) to apply for and make reasonable efforts to secure federal assistance for the project; and

(viii) to not sell, lease or otherwise dispose of or use lands acquired under this title for any purpose inconsistent with the project under which such land is acquired.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

TITLE 9
PARK, RECREATION AND HISTORIC PRESERVATION PROJECTS

S 54-0901. Definitions.

As used in this title the following terms shall mean and include:

1. "Municipal park project" means a project undertaken by a municipality or a not-for-profit corporation for the acquisition, development or improvement of recreational facilities including construction of structures, roads and parking facilities.

2. "Historic preservation project" means a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof, or undertaken by the office to improve, restore or rehabilitate state historic properties listed on the state or national registers of historic places to protect the historical, cultural or architectural significance thereof.

3. "Heritage area" or "Urban cultural park project" means a project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation for the acquisition and development of sites and facilities identified in a management plan prepared and approved by the commissioner in accordance with the provisions of section 35.05 of the parks, recreation and historic preservation law.

S 54-0903. Approval and execution of projects.

1. State historic preservation projects may be undertaken pursuant to the provisions of this article and other applicable provisions of law only with the approval of the commissioner.

2. All historic preservation projects, municipal park projects and urban cultural park projects shall be undertaken in the state of New York. Except for state projects undertaken by the office at state historic properties, the total amount of the state assistance payments toward the cost of any such project shall in no event exceed fifty percent of the cost. For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. The state assistance payments toward the cost of a project shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

3. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of an historic preservation project. Such historic preservation projects shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.

b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of an historic preservation project. Such an historic preservation project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.

4. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a municipal park project. Municipal park projects shall be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, may be undertaken by the municipality pursuant to this

title and any other applicable provisions of law. The office shall assess existing parks and recreational opportunities in the municipalities where the municipal park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a municipal park project. Such a contract shall be contingent upon the approval of the governing body of each municipality in which the project is located. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such project for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law. The office shall assess existing parks and recreational opportunities in the municipalities where the municipal park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

5. The commissioner and a municipality, public benefit corporation or not-for-profit corporation may enter into a contract, subject to the approval of the director of the budget, for the undertaking by or through the municipality, public benefit corporation or not-for-profit corporation of a local heritage area or urban cultural park project including parkwide and district projects identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law. Such projects shall be subject to an agreement by the local heritage area or urban cultural park management entity to operate or cause to be operated any public facility resulting from such project.

6. No monies shall be expended for park, recreation and historic preservation projects except pursuant to an appropriation therefor.

S 54-0905. Municipal regulations; limitations.

A municipality which acquires, develops, improves, restores or rehabilitates property with funds made available pursuant to this title may establish reasonable rules and regulations by local law or otherwise to assure the proper administration and development thereof, provided that no such rule or regulation which restricts the use of such lands or facilities by non-residents of the municipality shall be effective without the approval of the commissioner.

S 54-0907. Contracts.

1. The commissioner shall impose such contractual requirements and conditions upon any municipality and any not-for-profit corporation which receive state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality or not-for-profit corporation. Such conditions shall include limitations on the right of the municipality or not-for-profit corporation to demolish or convey such property, provisions for public access or use where appropriate, the granting of facade easements to the state, a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval, and such other conditions which shall assure the preservation and protection of the project.

2. Any not-for-profit corporation which receives state assistance payments pursuant to this title for the acquisition of land for outdoor recreation or conservation purposes shall execute a contract with the commissioner which shall include the following:

a. An agreement to make and keep the lands accessible to the public unless the commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith;

b. An agreement not to sell, lease, exchange or donate the lands except to the state, a local government unit or another qualifying tax exempt non-profit organization for recreation and conservation purposes approved by the commissioner; and

c. An agreement to execute and convey to the state at no charge a conservation easement, pursuant to title three of article forty-nine of this chapter, over the lands to be acquired with state assistance payments.

S 54-0909. Restriction on alienation.

1. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality pursuant to paragraph a of subdivision four of section 54-0903 of this title or undertaken by or on behalf of the city of New York with funds made available pursuant to

this title shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

2. Real property acquired by a not-for-profit organization with funds made available pursuant to paragraph b of subdivision four of section 54-0903 of this title shall not be used in violation of an agreement entered into pursuant to the provisions of paragraph b of subdivision two of section 54-0907 of this title, or sold, leased, exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.

S 54-0911. Rules and regulations.

The commissioner shall adopt, prior to the acceptance of applications for municipal park, historic preservation and urban cultural park projects, rules and regulations which shall include eligibility requirements, application procedures, office ranking and review processes, project approval guidelines and criteria, and funding distribution necessary for all state assistance payment programs established pursuant to section 54-0903 of this title.

TITLE 11
LOCAL WATERFRONT REVITALIZATION PLANS AND COASTAL REHABILITATION PROJECTS

S 54-1101. Local waterfront revitalization programs.

1. The secretary is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to municipalities toward the cost of any local waterfront revitalization program. Eligible costs include planning, studies, preparation of

local laws, and construction projects.

2. State assistance payments shall not exceed fifty percent of the cost of the program. For the purpose of determining the amount of state assistance payments, costs shall not be more than the amount set forth in the application for state assistance payments approved by the secretary. The state assistance payments shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

3. The secretary shall have the power to approve vouchers for payments pursuant to an approved contract.

4. No moneys shall be expended as authorized by this section except pursuant to an appropriation therefor.

5. The secretary shall impose such contractual requirements and conditions upon any municipality which receives state assistance payments pursuant to this article as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of such funds by the municipality.

S 54-1103. Coastal rehabilitation projects.

As used in this title, "coastal rehabilitation project" shall mean those projects which serve a public purpose for beach nourishment necessary to maintain the natural functions of beach areas, maintenance of the natural passage of sand along coastal areas, emergency breach closures and similar activities undertaken by the state, a municipality, or a not-for-profit corporation which demonstrates to the commissioner's satisfaction that it is financially and otherwise capable of operating and maintaining the project, for the restoration and rehabilitation of coastal areas diminished, damaged or destroyed by natural forces.

S 54-1105. State assistance payments for coastal rehabilitation projects.

1. The commissioner is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to a municipality or a not-for-profit corporation toward the cost of any coastal rehabilitation project approved by the commissioner.

2. The commissioner and a municipality or not-for-profit corporation may enter into a contract for the undertaking of a coastal rehabilitation project. Such project shall be recommended to the commissioner by the governing body of the municipality or not-for-profit corporation as that term is defined pursuant to subdivision six of section 54-0101, and when approved by the commissioner, undertaken by the municipality or not-for-profit corporation pursuant to this article and any other applicable provisions of law.

3. State assistance payments shall not exceed fifty percent of the project cost or two million dollars, whichever is less. Such costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed the maximum eligible cost set forth in the contract.

4. Prior to processing applications for state assistance payments toward the cost of coastal rehabilitation projects, the commissioner shall promulgate rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this title. The commissioner shall also promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria consistent with section 54-1107.

S 54-1107. State assistance application procedure and standards.

In the case of coastal rehabilitation projects, a municipality or not-for-profit corporation, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Such criteria and standards shall include, but not be limited to: the consistency of the project with the Coastal Erosion Hazard Areas Act, article 34 of this chapter, notwithstanding paragraph d of subdivision three of section 34-0108 of this chapter; the official coastal policies of the state pursuant to article 42 of the executive law; the extent of natural damages to the coastal area and the suitability and feasibility of the project in relation to maintaining natural resource features and functions; the importance of the coastal area to recreational resources, fish and wildlife resources, and/or endangered or threatened species habitat; and the public benefits provided by the project.

Upon approval of a project application, a municipality or not-for-profit corporation shall enter into a contract, as further provided within this article, with the commissioner for state assistance payments toward the cost of such project to be received pursuant to this article.

S 54-1109. Contracts for state assistance payments for coastal

rehabilitation.

1. The commissioner may, in the name of the state, enter into contracts with municipalities or not-for-profit corporations, to provide state assistance payments toward the cost of coastal rehabilitation projects which shall include the following provisions:

a. an estimate of the costs of the project as determined by the commissioner;

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality or not-for-profit corporation during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

c. an agreement by the municipality or not-for-profit corporation:

(i) to proceed expeditiously with and complete the project as approved by the commissioner;

(ii) to undertake and maintain the coastal rehabilitation project in accordance with applicable law and rules and regulations;

(iii) to provide for the payment of the municipality`s or not-for-profit corporation`s share of the cost of the project;

(iv) to assume the full cost of any additional elements or continued operation of the project;

(v) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality or not-for-profit corporation fails to complete the project as approved. No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety;

(vi) to apply for and make reasonable efforts to secure federal assistance for the project; and

(vii) to not sell, lease, or otherwise dispose of or use lands rehabilitated under this title for any purpose inconsistent with the project for a period of seven years from the commissioner`s approval of the project.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality or not-for-profit corporation. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

S 54-1111. State projects.

The commissioner is authorized, within amounts appropriated, to directly undertake a coastal rehabilitation project pursuant to this title in accordance with section 1 of chapter 535 of the laws of 1945, as amended, or as specifically appropriated, on state lands or state lands underwater.

TITLE 13

LONG ISLAND CENTRAL PINE BARRENS AREA AND SOUTH SHORE ESTUARY RESERVE PLANNING

S 54-1301. Long Island central pine barrens area planning.

In order to further the purposes of article 57 of this chapter, the commissioner shall provide, within amounts appropriated from the environmental protection fund, state assistance payments for the preparation of the comprehensive central pine barrens land use plan pursuant to section 57-0121 of this chapter. State assistance payments may be made to the central pine barrens joint planning and policy commission established in article 57 of this chapter for all eligible costs incurred after April first, nineteen hundred ninety-three. No monies shall be expended for Long Island central pine barrens area planning except pursuant to an appropriation therefor.

S 54-1303. Long Island south shore estuary reserve planning.

In order to further the purposes of article forty-six of the executive law, the commissioner shall provide, within amounts appropriated from the environmental protection fund, state assistance payments for the preparation of the comprehensive management plan for the Long Island south shore estuary reserve as provided for in section nine hundred sixty-six of the executive law. State assistance payments may be made to the Long Island south shore estuary reserve council established by section nine hundred sixty-four of the executive law for all eligible costs incurred after April first, nineteen hundred ninety-four. No moneys shall be expended for Long Island south shore estuary reserve management planning except pursuant to an appropriation therefor.

Article 56 of the ECL
(Clean Water/Clean Air Bond Act)

Environmental Conservation

ARTICLE 56
IMPLEMENTATION OF THE CLEAN WATER/CLEAN AIR BOND ACT OF 1996

TITLE 1
GENERAL PROVISIONS

S 56-0101. Definitions. As used in this article the following terms shall mean and include:

1. "Aquatic habitat restoration project" means the planning, design, construction, management, maintenance, reconstruction, revitalization, or rejuvenation activities intended to improve waters of the state of ecological significance or any part thereof, including, but not limited to ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and shorelines thereof, to support a spawning, nursery, wintering, migratory, nesting, breeding, feeding, or foraging environment for fish and wildlife and other biota.

2. "Clean water project" means a project undertaken pursuant to title 3 of this article but shall not include navigational dredging projects.

3. "Combined or separate sewer overflow abatement" means the planning, design, construction of, or improvement to, a system that prevents, eliminates, or partially eliminates raw untreated sewage from entering the receiving water as the result of a precipitation event, including but not limited to temporary storage tanks, pumping stations related thereto, sewer pipe, and pilot or demonstration technologies.

4. "Cost" means the cost of an approved project, which shall include appraisal, surveying, engineering and architectural services, plans and specifications, consultant and legal services, construction and other

direct expenses incident to such project less any federal or state funds, other than those provided pursuant to this article, for such project received or to be received.

5. "Drinking water infrastructure project" or "water supply project" means the planning, design, construction, improvement, or acquisition of facilities, equipment, sites, or buildings for the supply, control, treatment, distribution, and transport of drinking water and the testing and monitoring to ensure the integrity and quality of such water intended to improve drinking water facilities including achievement of compliance with the federal safe drinking water act or other applicable federal law and state drinking water quality goals and standards taking into consideration the water resources management strategy prepared pursuant to title twenty-nine of article fifteen of this chapter.

6. "Environmental compliance assistance project" means the planning, design, construction, improvement, maintenance, or acquisition of facilities, production processes, equipment {or}, buildings {owned or operated by small businesses} OR WATER OR WASTEWATER INFRASTRUCTURE for compliance with environmental laws and regulations or other pollution avoidance activities.

7. "Environmental restoration project" means a project to investigate or to remediate hazardous substances located on real property held in title by a municipality, pursuant to title five of this article.

8. "Federal assistance" means funds available, other than by loan, from the federal government, either directly or through allocation by the state for construction or program purposes pursuant to any federal law or program.

9. "Governing body" means:

(a) in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;

(b) in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;

(c) in the case of a town, the town board;

(d) in the case of a school district, the board of education thereof;

(e) in the case of a supervisory district, the board of cooperative educational services thereof;

(f) in the case of a public benefit corporation, the board of directors, members or trustees thereof;

(g) in the case of a public authority, the governing board of directors, members, or trustees thereof;

(h) in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and

(i) in the case of an Indian tribe, any governing body recognized by

the United States or the state of New York.

10. "Air quality project" means a project undertaken pursuant to title six of this article.

11. "Hazardous substances" mean substances found on the list of substances hazardous to the public health, safety or the environment promulgated pursuant to article 37 of this chapter and petroleum, as that term is defined in subdivision fifteen of section one hundred seventy-two of the navigation law.

12. "Heritage area project" means a project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation identified in a management plan prepared and approved by the commissioner of the office of parks, recreation and historic preservation in accordance with the provisions of section 35.05 of the parks, recreation and historic preservation law.

13. "Historic preservation project" means a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the state or national registers of historic places, including, but not limited to, projects at zoos, botanical gardens, and aquaria, to protect the historic, cultural, archeological, or architectural significance thereof, or undertaken by the office of parks, recreation and historic preservation to improve, restore or rehabilitate state historic properties listed on the state or national registers of historic places to protect the historical, cultural or architectural significance thereof.

14. "Marine holding tank" means any container aboard any vessel, as defined in section two of the navigation law, that is designed and used for the purpose of collecting and storing treated or untreated sewage from marine toilets.

15. "Municipality" means a local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by the state or the United States with a reservation wholly or partly within the boundaries of New York state, or any combination thereof. In the case of aquatic habitat restoration projects, the term municipality shall include the state.

16. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under the federal internal revenue code.

17. "Office" means the office of parks, recreation and historic preservation.

18. "Open space land conservation project" means acquisition projects undertaken with willing sellers including, but not limited to, the

purchase of conservation easements, undertaken by the commissioner, the commissioner of the office of parks, recreation and historic preservation or by municipalities pursuant to article twenty-five-AAA of the agriculture and markets law.

19. "Park project" means a project undertaken by a municipality, state agency, public benefit corporation, public authority, or not-for-profit corporation for the acquisition, development or improvement of parks, preserves, beaches, shorefronts, recreational sites and facilities including construction of structures, roads and parking facilities.

20. "Pollution prevention project" means the planning, design, construction, improvement, maintenance or acquisition of facilities, production processes, equipment or buildings owned or operated by municipalities for the reduction, avoidance, or elimination of the use of toxic or hazardous substances or the generation of such substances or pollutants so as to reduce risks to public health or the environment, including changes in production processes or raw materials; such projects shall not include incineration, transfer from one medium of release or discharge to another media, off-site or out-of-production recycling, end-of-pipe treatment or pollution control.

21. "Responsible party" means a party responsible under applicable principles of statutory or common law liability to remediate the hazardous substance located at, or emanating from, real property subject to an environmental restoration project.

22. "Safe drinking water project" means a project undertaken pursuant to title 2 of this article.

23. "Small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and employs not more than one hundred individuals.

24. "Solid waste project" means a project undertaken pursuant to title 4 of this article.

25. "Solid waste" shall have the definition set forth in title 5 of article 27 of this chapter but shall not include hazardous waste as defined in title 9 of article 27 of this chapter.

26. "State assistance payment" means payment of the state share of the cost of projects authorized by this act to preserve, enhance, restore and improve the quality of the state`s environment.

27. "Stormwater collecting system" means systems of conduits and all other constructions, devices, and appliances appurtenant thereto, designed and used to collect and carry stormwater and surface water, street wash, and other wash and drainage waters to a point source for discharge.

28. "Vessel pumpout station" means a project for the planning, design, acquisition or construction of a permanent or portable device

capable of removing human sewage from a marine holding tank.

29. "Wastewater treatment improvement project" means the planning, design, construction, acquisition, enlargement, extension, or alteration of a sewage treatment plant to treat, neutralize, stabilize, eliminate or partially eliminate sewage or reduce pollutants in treatment plant effluent or to create mechanisms to transport wastewater to a treatment plant, including permanent or pilot demonstration wastewater treatment, outfall and dispersal apparatus, pumping stations integral to such plants or sewers, sewer pipes, combined sewer overflow abatement, storm-water collecting systems, vessel pumpout stations, or equipment or furnishings thereof.

30. "Waterbodies" means waters or waters of the state as defined in section 17-0105 of this chapter except private waters which do not provide public access.

31. "Water quality improvement project" means:

(a) wastewater treatment improvement projects;

(b) non-point source abatement and control program projects developed pursuant to section eleven-b of the soil and water conservation districts law, title 14 of article 17 of this chapter, section 1455b of the federal coastal zone management act, or article forty-two of the executive law;

(c) aquatic habitat restoration projects; and

(d) pollution prevention projects.

S 56-0103. Allocation of moneys.

The moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996 shall be disbursed in the following amounts pursuant to appropriations as specifically provided for in titles 2, 3, 4, 5, and 6 of this article:

1. For creation of a state safe drinking water program as set forth in title 2 of this article, three hundred fifty-five million dollars ($355,000,000).

2. For preserving, enhancing, restoring and improving the quality of water as set forth in title 3 of this article, seven hundred ninety million dollars ($790,000,000).

3. For solid waste projects as set forth in title 4 of this article, one hundred seventy-five million dollars ($175,000,000).

4. For restoring and improving contaminated areas and returning them to productive use as set forth in title 5 of this article, two hundred million dollars ($200,000,000).

5. For preserving, enhancing, restoring and maintaining the quality of the air as set forth in title 6 of this article, two hundred thirty million dollars ($230,000,000).

S 56-0105. Powers and duties.

In administering the provisions of this article the respective commissioner or the secretary of state:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

2. shall, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments toward the cost of a project approved, and to be undertaken pursuant to this article;

3. shall approve vouchers for the payments pursuant to an approved contract; and

4. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

S 56-0107. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and

3. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

S 56-0109. Sale of bonds; certain limitations.

Notwithstanding any other section of law, no money received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996 shall be used to fund any project committed to by the state in any agreement with New York city regarding the New York city watershed.

S 56-0111. Consistency with federal tax law.

All actions taken pursuant to this article shall be reviewed for consistency with provisions of the federal internal revenue code and regulations thereunder, in accordance with procedures established in connection with the issuance of any tax exempt bonds pursuant to this article, to preserve the tax exempt status of such bonds.

S 56-0113. Compliance with other law.

Every recipient of funds to be made available pursuant to this article shall comply with all applicable state, federal and local laws.

TITLE 2
SAFE DRINKING WATER PROJECTS

S 56-0201. Safe drinking water projects.

Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, three hundred fifty-five million dollars ($355,000,000) shall be used for the capitalization of a drinking water revolving fund administered by the environmental facilities corporation pursuant to section one thousand two hundred eighty-five-m of the public authorities law and by the department of health pursuant to title four of article eleven of the public health law to finance drinking water infrastructure projects pursuant to the provisions of paragraph a of subdivision three of section one thousand two hundred eighty-five-m of the public authorities law, including financing of the state match for federal capitalization grants for the drinking water revolving fund.

TITLE 3
CLEAN WATER PROJECTS

Section 56-0301. Allocation of moneys.
56-0303. Management programs, plans and projects.
56-0305. Application procedure.
56-0307. Open space land conservation projects.
56-0309. Park, historic preservation and heritage area projects.

S 56-0301. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, five hundred ten million dollars ($510,000,000) shall be available for disbursements for state assistance payments to municipalities or county soil and water conservation districts for water quality improvement projects in accordance with section 56-0303 and for dam safety projects pursuant to section 56-0311 of this article. One hundred fifty million dollars ($150,000,000) shall be available for disbursements for projects developed pursuant to section 56-0307, fifty million dollars shall be available for municipal park projects, and historic preservation, and heritage area projects developed pursuant to section 56-0309 of this

article and fifty million dollars shall be available for state park projects. Thirty million dollars ($30,000,000) shall be available for environmental compliance assistance projects to enhance water quality.

S 56-0303. Management programs, plans and projects.

1. Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, five hundred twenty-five million dollars ($525,000,000) shall be allocated to water quality improvement projects identified as follows:

(a) Twenty-five million dollars ($25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Hudson River estuary plan as set forth in section 11-0306 of this chapter.

(b) Two hundred million dollars ($200,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Long Island Sound comprehensive conservation and management plan developed pursuant to section 320 of the federal clean water act.

(c) Fifteen million dollars ($15,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Lake Champlain management plan developed pursuant to the federal Lake Champlain special designation act of 1990.

(d) Seventy-five million dollars ($75,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Onondaga Lake plan developed pursuant to the consent order issued by the United States District Court for the Northern District of New York agreed to among Onondaga County, the state of New York, and the Atlantic States Legal Foundation, Inc. Provided, however, that such municipality shall adhere to the construction timetable set forth in said plan and shall provide the department with periodic updates as to the progress of said construction and the prospect of any pilot or demonstration technologies set forth in said plan. The commissioner shall have discretion not to make any disbursement until these conditions have been met to his or her satisfaction and upon the approval of the state comptroller.

(e) Twenty-five million dollars ($25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the New York/New Jersey harbor comprehensive conservation and management plan, developed pursuant to section 320 of the federal clean water act.

(f) Twenty-five million dollars ($25,000,000) shall be available for state assistance payments to municipalities for the cost of water quali-

ty improvement projects intended to implement the department's great lakes program developed in accordance with the federal great lakes critical programs act of 1990 and the great lakes water quality agreement of 1987, as amended, between the governments of Canada and the United States of America.

(g) Twenty-five million dollars ($25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects for the finger lakes and their tributaries which are approved by the secretary of state pursuant to article forty-two of the executive law or by the commissioner.

(h) For state assistance payments for the cost of water quality improvement projects intended for any waters of the state which have been (a) approved by the commissioner, (b) identified in plans in accordance with section 1455b of the federal costal zone management act or article forty-two of the executive law and approved by the secretary of state, or (c) developed in accordance with title eleven-b of article two of the soil and water conservation districts law and approved by the state soil and water conservation committee and commissioner of agriculture and markets.

(i) Twenty-five million dollars ($25,000,000) shall be available for the expenses of projects at facilities owned by the state of New York which enhance the quality of the waters of the state by remedying environmental deficiencies or complying with environmental laws and regulations.

(j) Fifty million dollars ($50,000,000) shall be available to municipalities for wastewater treatment improvement projects and the cost of municipal flood control projects in villages, towns, and cities with a population of seventy-five thousand or less.

(k) Thirty million dollars ($30,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the comprehensive conservation management plan for the peconic estuary developed pursuant to section 320 of the federal clean water act and for the comprehensive management plan for the south shore estuary reserve plan developed pursuant to article forty-six of the executive law.

(l) Thirty million dollars ($30,000,000) shall be available for state assistance payments through the environmental facilities corporation to villages, towns, and cities with a population of less than one million, for environmental compliance assistance projects for businesses which enhance the quality of the waters of the state through compliance with environmental laws and regulations, or to remedy or prevent environmental deficiencies.

(l) The president of the environmental facilities corporation is

authorized to provide state assistance payments to villages, towns, and cities with a population less than one million, for implementation of environmental compliance assistance projects which enhance the quality of the waters of the state.

(2) A village, town, and city with a population of less than one million may submit an application to the president, in such form and manner as the president may require, for state assistance payments toward the cost of environmental compliance assistance projects.

(3) Upon receipt of a request for state assistance application, the president shall review and, within ninety days from the receipt of a complete application, may approve, disapprove, or recommend modifications thereto consistent with applicable law criteria, standards, or rules and regulations relative to such projects.

(m) Notwithstanding any provision of law to the contrary, amounts allocated in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this subdivision may be interchanged between such paragraphs and may be interchanged to amounts allocated in paragraph (h) of this subdivision.

2. At least three wastewater treatment improvement projects funded pursuant to this title shall be projects designed to refine innovative technologies for use in the physical environment of New York state and serve as a catalyst for technology transfer. Such technologies may include, but shall not be limited to, technologies that reduce the amount and toxicity of sewage sludge and effluent; increase reliability and cost efficiency; reduce energy consumption; or achieve more reliable pathogen destruction.

S 56-0305. Application procedure.

1. Any municipality or soil and water conservation district may make an application for such state assistance payment, in a manner, form, and time frame and containing such information as the respective commissioner, the president of the environmental facilities corporation or the secretary of state may require. Subject to the provisions of section thirty-two of the chapter of the laws of 1996 which added this section, the respective commissioner, the president of the environmental facilities corporation or the secretary of state shall review such application and may approve, disapprove, or recommend modifications thereto consistent with applicable law, criteria, standards, or rules and regulations relative to such projects.

2. In reviewing such applications for eligibility, the respective commissioner, the president of the environmental facilities corporation or the secretary of state shall give due consideration to:

(a) the suitability and feasibility of the project in relation to

the goals of the applicable program or plan;

(b) the priority of the project in relationship to other projects proposed under the same program or plan. Highest priority shall be granted to projects which will provide the greatest reduction in pollutants or most significant habitat improvement. For water quality improvement projects which have been developed with the assistance of, or by any other state agencies, the respective commissioner, the president of the environmental facilities corporation or secretary of state shall be consulted with when determining the priority of the project;

(c) the availability of matching funds on the part of the municipality or the soil and water conservation district to finance the municipality`s or soil and water conservation district`s share of the project cost. In submitting the application, the municipality or soil and water conservation district shall submit proof to the satisfaction of the respective commissioner, the president of the environmental facilities corporation or secretary of state of the availability of such matching funds; and

(d) the urgency of the need to provide state assistance payments for the project in relation to the availability of other funding sources and the municipality`s or soil and water conservation district`s ability to finance such project based on the availability of other moneys including federal funds.

3. Upon approval of an application for such assistance payment, the respective commissioner, the president of the environmental facilities corporation or the secretary of state and the municipality or soil and water conservation district shall enter into a contract for such payment toward the cost of the approved project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the respective commissioner, the president of the environmental facilities corporation or the secretary of state at the time of the execution of the contract and a specific timetable for progress and completion of the project;

(b) An agreement by the respective commissioner, the president of the environmental facilities corporation or secretary of state to make state assistance payments toward the cost of the project by periodically reimbursing the municipality or soil and water conservation district for costs incurred during the progress of the project to the maximum agreed upon state share. Such costs are subject to final computation and determination by the respective commissioner, the president of the environmental facilities corporation or secretary of state upon completion of the project; and

(c) An agreement by the municipality or soil and water conservation district to proceed expeditiously with the project and to complete the project in accordance with the timetable set out in the contract as so approved by the respective department or authority and with the conditions of applicable permits, administrative orders, or judicial orders. A finding by the respective commissioner, the president of the environmental facilities corporation or secretary of state that the municipality or soil and water conservation district has not met the conditions of the contract in good faith shall constitute a material breach of the contract.

S 56-0307. Open space land conservation projects.

1. The commissioner and the commissioner of the office of parks, recreation and historic preservation are authorized to undertake open space land conservation projects, in cooperation with willing sellers. In undertaking projects, the respective commissioner shall give consideration to the plan prepared pursuant to section 49-0207 of this chapter. Projects shall develop, expand or enhance water quality protection or public access to water bodies, including but not limited to coastlines, aquifers, watersheds, lakes, rivers and streams.

2. Projects which are not identified in the state land acquisition plan prepared pursuant to section 49-0207 of this chapter shall not be proposed for acquisition by the state under this section if any town, village, or city within which such project is located notifies the state of its objection to such acquisition. Such objection shall be transmitted by resolution within ninety days of the notification by the state of its interest in such acquisition to the commissioner of the office of parks, recreation and historic preservation and shall effectively prevent the state from undertaking such acquisition.

3. The commissioner or the commissioner of the office of parks, recreation and historic preservation may enter into an agreement for the maintenance and operation of open space land conservation projects outside the Adirondack or Catskill Parks undertaken pursuant to this section by a municipality, a not-for-profit corporation, or unincorporated association which demonstrates to the commissioner's satisfaction that it is financially or otherwise capable of operating and maintaining the project for the benefit of the public and of maximizing public access to such project. Any such agreement shall contain such provisions as shall be necessary to ensure that its operation and maintenance are consistent with, and in furtherance of, this article and shall be subject to the approval of the director of the budget, the comptroller and, as to form, the attorney general.

4. The cost of an open space land conservation project shall include

the cost of preparation of a management plan for the preservation and beneficial enjoyment of the land acquired pursuant to this section except where such considerations have already been undertaken as part of any existing plan applicable to the newly acquired land.

5. The commissioner of agriculture and markets is authorized to provide state assistance payments to county agricultural and farmland protection boards, or to municipalities provided the proposed project is endorsed for funding by the agricultural and farmland protection board for the county in which the municipality is located, for implementation of projects identified in agricultural protection plans pursuant to the program as set forth in article twenty-five-AAA of the agriculture and markets law.

S 56-0309. Park, historic preservation and heritage area projects.

1. For purposes of this section "commissioner" means the commissioner of the office of parks, recreation and historic preservation.

2. Park projects and historic preservation projects may be undertaken by the office pursuant to the provisions of this article and other applicable provisions of law pursuant to the approval of the commissioner.

3. All historic preservation projects, park projects and heritage area projects shall be undertaken in the state of New York. Except for projects undertaken by the state, the total amount of the state assistance payments toward the cost of any such project shall not exceed fifty percent of the cost. For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. Park and heritage area projects shall develop, expand, or enhance public access to water bodies, promote water based recreation, or enhance the natural, cultural, or historic aspects of water bodies.

4. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of an historic preservation project. Such historic preservation projects shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.

5. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of an historic preservation project. Such a historic preservation project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of

the commissioner that it is capable of operating and maintaining such property for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.

6. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a park project. Such park projects shall be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provisions of law. The office shall also assess existing parks and recreational opportunities in the municipalities where the park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

7. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a park project on behalf of a municipality. Such a contract shall be contingent upon the approval of the governing body of each municipality in which the project is located. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such project for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law. The office shall assess existing parks and recreational opportunities in the municipalities where the park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

8. The commissioner and a municipality, public benefit corporation or not-for-profit corporation may enter into a contract, subject to the approval of the director of the budget, for the undertaking by or through the municipality, public benefit corporation or not-for-profit

corporation of a heritage area project including parkwide and district projects identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law. Such projects shall be subject to an agreement by the heritage area management entity to operate or cause to be operated any public facility resulting from such project.

9. A municipality which acquires, develops, improves, restores or rehabilitates property with funds made available pursuant to this title may establish reasonable rules and regulations by local law or otherwise to assure the proper administration and development thereof, provided that no such rule or regulation which restricts the use of such lands or facilities by non-residents of the municipality shall be effective without the approval of the commissioner.

10. The commissioner shall impose such contractual requirements and conditions upon any municipality and any not-for-profit corporation which receive state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality or not-for-profit corporation. Such conditions shall include limitations on the right of the municipality or not-for-profit corporation to demolish or convey such property, provisions for public access or use where appropriate, the granting of facade easements to the state, a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner`s approval, and such other conditions which shall assure the preservation and protection of the project.

11. Any not-for-profit corporation which receives state assistance payments pursuant to this section for the acquisition of land for outdoor recreation or conservation purposes shall execute a contract with the commissioner which shall include the following:

(a) An agreement to make and keep the lands accessible to the public unless the not-for-profit corporation can demonstrate to the commissioner`s satisfaction that public accessibility would be detrimental to the lands or any natural resources associated therewith;

(b) An agreement not to sell, lease, exchange or donate the lands except to the state, a local government unit or another qualifying tax exempt non-profit organization for recreation and conservation purposes consistent with this title and approved by the commissioner; and

(c) An agreement to execute and convey to the state at no charge a conservation easement, pursuant to title three of article forty-nine of this chapter, over the lands to be acquired with state assistance

payments.

12. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality for park projects undertaken pursuant to this section with funds made available pursuant to this section shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

13. Real property acquired by a not-for-profit organization with funds made available pursuant to this section for park projects undertaken pursuant to this section shall not be used in violation of an agreement entered into pursuant to this section, or sold, leased, exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.

14. The commissioner shall adopt, prior to the acceptance of applications for park, historic preservation and heritage area projects, rules and regulations which shall include eligibility requirements, application procedures, office ranking and review processes, project approval guidelines and criteria, and funding distribution necessary for all state assistance payment programs established pursuant to this title.

15. Notwithstanding any other provision of law, no state assistance payment under this article may be applied, with respect to any project located within the area of New York county bounded by (a) the northern boundary of Fifty-ninth street and Fifty-ninth street extended; (b) the United States pierhead line; (c) the northern boundary of the area known as Battery Park City; and (d) eight hundred feet inland easterly from the United States bulkhead line:

(i) for, other than for recreational use or access inland of the existing bulkhead line, any roads, bridges, ramps or parking facilities or sewers or water mains;

(ii) for any site improvement, including sewers, or water mains, to support residential, industrial or commercial development;

(iii) to excavate, place fill or plantings in, or place any piling, platform or structure, including a floating structure, in the Hudson river; or

(iv) to plan, evaluate or study any project involving such excavation or placement as described in subparagraph (iii) of this paragraph; and provided further that no contract, or subcontract, with

a public benefit corporation, public authority, or any other person or entity, or municipality other than the city of New York shall be entered into for any state assistance payments under this article with respect to any project, or portion thereof, located in the area described in this subdivision without the affirmative approval of the community board or boards wherein the project, or portion thereof, will be located.

16. Notwithstanding the provisions of this section, moneys received from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, and available for disbursements for projects developed pursuant to this section, shall also be available for state assistance payments to municipalities and not-for-profit corporations for the capital cost of projects described in subdivision nine of section 44-0119 of this chapter and subject to the review delineated in subdivision ten of section 44-0119 of this chapter. Such monies shall be subject to appropriation.

S 56-0311. Dam safety projects.

Of the moneys received by the state from the sale of the bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, fifteen million dollars shall be used for state assistance payments to municipalities for the cost of dam safety projects which have been approved by the commissioner.

TITLE 4
SOLID WASTE PROJECTS

Section 56-0401. Allocation of moneys.
56-0403. Municipal landfill projects.
56-0405. Municipal recycling projects.

S 56-0401. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996 to be used for solid waste projects, fifty million dollars ($50,000,000) shall be available for disbursements for municipal landfill projects, excluding any landfill closure project in the city of New York; fifty million dollars ($50,000,000) shall be available for disbursements for municipal recycling projects; and seventy-five million dollars ($75,000,000) shall be available for disbursements for the closure of Fresh Kills Landfill in the city of New York.

S 56-0403. Municipal landfill projects.

1. As used in this title the following terms mean and include:

(a) "Landfill" means a disposal facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure and which is not a land spreading facility, a surface impoundment, or an injection well.

(b) "Municipal landfill closure project" means activities undertaken to close, including by reclamation, a landfill owned or operated by a municipality to achieve compliance with regulations promulgated by the department, or activities undertaken to implement a landfill gas management system project.

(c) "Landfill gas management system" means a system for the control, capture, and management of gas created within and emitted from a solid waste landfill.

(d) "Adirondack landfill project" means a project undertaken by the state and a municipality or municipalities, where such project has the effect of eliminating the potential for the disposal of waste originating outside the Adirondack park at a municipal solid waste landfill located within the Adirondack park.

2. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a municipal landfill closure project incurred after April first, nineteen hundred ninety-three or Adirondack landfill project which is within the state of New York and which is eligible for state assistance pursuant to this title.

3. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

(a) the urgency of need to provide state assistance payments for the project in relation to the provision of monies for other project needs in the state known at the time such application is made;

(b) any adverse environmental impact resulting from the municipal landfill, including effects on groundwater; and

(c) the ability of the municipality to pay for the costs of the project.

4. After approval of an application, the commissioner and the municipality shall enter into a contract for state assistance payments toward the cost of such project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the

commissioner at the time of the execution of the contract.

(b) An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality for costs incurred during the progress of the project to a maximum of either fifty percent of the cost, or ninety percent of the cost for a municipality with a population smaller than thirty-five hundred as determined by the current federal decennial census, or two million dollars, whichever is less. The commissioner may consider landfill gas management projects separately from landfill closure projects. Such costs are subject to final computation and determination by the commissioner upon completion of the project. For purposes of this subdivision, the approved project cost shall be reduced by the amount of any specific state assistance payments for landfill closure purposes received by the municipality from any source; provided, however, that non-specific state assistance payments such as amounts paid pursuant to section fifty-four of the state finance law, shall not be included in such cost reduction.

(c) An agreement by the municipality to proceed expeditiously with the project and to complete the project in accordance with plans and reports approved by the department and with the conditions of applicable permits, administrative orders or judicial orders.

5. In administering the provisions of this title the commissioner:

(a) shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

(b) may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments toward the costs of an approved project. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

(c) shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and

(d) may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

6. A municipality shall have the power and authority to:

(a) undertake and carry out any project for which state assistance payments and loans pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

(b) expend money received from the state pursuant to this article for costs incurred in conjunction with an approved project; and

(c) perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

7. Any municipal solid waste landfill or portion thereof that has

closed or is in the process of closing that is required by federal or state law or regulation to install a landfill gas management system shall be eligible for state assistance for such landfill gas management system project pursuant to this section.

8. Notwithstanding paragraph (b) of subdivision four of this section, the commissioner, the commissioners of the Adirondack park agency, and such other state agencies as may be appropriate, may enter into an agreement with a municipality or municipalities for an Adirondack landfill project, the capital costs of which shall be eligible for state assistance payments pursuant to this section. Such project may be part of a locally created, region wide solution to the solid waste problems within the adirondack park.

S 56-0405. Municipal recycling projects.

1. As used in this section the following terms mean:

(a) "Recyclables recovery equipment" means structures, machinery or devices, singly or in combination, designed, constructed and required primarily to separate, process, modify, convert, treat, or prepare collected solid waste, including household hazardous waste, which is included as part of a recyclables recovery program so that component materials or substances or recoverable resources may be used as a raw material for new products or for useful purposes other than for energy recovery.

(b) "Recyclables recovery program" means a program undertaken by a municipality consistent with requirements of section one hundred twenty-aa of the general municipal law to provide for the environmentally sound recovery of recyclables, primarily involving the collection, aggregation and processing of recyclable materials for their use as raw materials for new products or for other useful purposes other than for energy recovery, through facilities planned, designed and constructed to ensure environmental protection and to maximize the potential for recyclables recovery. Such program shall have been approved by the commissioner and undertaken consistent with any local solid waste management plan pursuant to section 27-0107 of this chapter.

(c) "Recycling project" means recyclables recovery equipment, source separation equipment, a recyclables recovery program or any combination thereof required by a recyclables recovery program.

(d) "Source separation equipment" means municipally owned:

(i) add-ons or trailers designed to modify collection vehicles to allow sorting and separation of collected wastes held for the purpose of recycling;

(ii) containers for the source separation and temporary storage of recyclable wastes by commercial, industrial and institutional genera-

tors, and for the source separation and temporary storage of recyclable materials by single family and multiple family dwellings prior to collection;

(iii) bins, sheds or other facilities for the temporary storage of materials prior to transport for the purposes of recycling; and

(iv) collection vehicles specifically designed to hold and transport source-separated recyclables.

2. State assistance payments toward the cost of municipal recycling projects shall be made pursuant to this title with the approval of the commissioner.

3. In reviewing applications for state assistance payments for municipal recycling projects, the commissioner shall give due consideration to:

(a) the adequacy of the municipality`s recycling program and its relationship to the needs and plans of other municipalities; provided, however, that such adequacy shall be determined in part by the efforts undertaken to date by the municipality to implement a mandatory source separation law or ordinance required pursuant to section one hundred twenty-aa of the general municipal law;

(b) the suitability and feasibility of the project in relation to the recycling program and the area to be served;

(c) the proportion of solid waste for which recyclables recovery is contemplated and the extent to which the project is consistent with the statewide solid waste recycling goals established under the state solid waste management plan, pursuant to section 27-0103 of this chapter;

(d) the potential for coordination and consolidation of solid waste management practices among municipalities within specified areas, regions or planning units;

(e) the implementation of the system or components thereof and their expected terms of usefulness, singly or in combination;

(f) the present and projected population, land use, and rates and composition of solid waste generation;

(g) the potential or contemplated markets for recovered recyclables and the extent to which the full avoided costs of proper collection, transportation and disposal of source separated recyclables are, or are projected to be, greater than the cost of collection, transportation and sale of said recyclables less the amount received from the sale of said recyclables;

(h) the intergovernmental arrangements integral to the project;

(i) the non-governmental arrangements integral to the project;

(j) the urgency of the project, in relationship to all recyclables recovery program needs in the state; and

(k) the environmental soundness of the project, including assurance

that the project will meet all applicable laws, criteria, and rules and regulations.

4. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of municipal recycling projects incurred after April first, nineteen hundred ninety-three which is within the state of New York and which is eligible for state assistance pursuant to this title. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Upon approval of a project application, a municipality shall enter into a contract, as further provided within this article, with the commissioner for state assistance payments toward the cost of such project to be received pursuant to this article.

5. The commissioner may, in the name of the state, enter into contracts with municipalities to provide state assistance payments toward the cost of municipal recycling projects which shall include the following provisions:

(a) an estimate of the costs of the project as determined by the commissioner;

(b) an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality, during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

(c) an agreement by the municipality:

(i) to proceed expeditiously with and complete the project as approved by the commissioner;

(ii) to operate and maintain the municipal recycling project in accordance with applicable laws and rules and regulations;

(iii) to provide for the payment of the municipality`s share of the cost of the project;

(iv) to continue, upon evaluation of its effectiveness, operation of the project and not to dispose of the project or any portion thereof or change its use without the approval of the commissioner;

(v) to assume the full cost of any continued operation of the project and to assume the full cost of any continued operation for a period no less than three years;

(vi) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such moneys declared appropriate by the commission-

er, if the municipality:

(A) fails to complete the project as approved;

(B) fails to continue operation of the project;

(C) disposes of the project, or any portion thereof, without the prior written approval of the respective commissioner; or

(D) changes the use of the project, or any portion thereof, without the prior written approval of the commissioner. No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety;

(vii) to apply for and make reasonable efforts to secure federal assistance for the project; and

(viii) to not sell, lease or otherwise dispose of or use lands acquired under this title for any purpose inconsistent with the project under which such land is acquired.

In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

S 56-0407. Fresh Kills landfill closure project.

1. The commissioner, in the name of the state, may enter into a contract with the city of New York for state assistance payments for the Fresh Kills landfill closure project.

2. After approval of an application, the commissioner and the municipality shall enter into a contract for state assistance payments toward the cost of such project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the commissioner at the time of the execution of the contract.

(b) An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality for costs incurred during the progress of the project. Such costs are subject to final computation and determination by the commissioner upon completion of the project. For purposes of this subdivision, the approved project cost shall be reduced by the amount of any specific state assistance payments for landfill closure purposes received by the municipality from any source; provided, however, that non-specific state assistance payments, such as amounts paid pursuant to section fifty-four of the state finance law, shall not be included in such cost reduction.

(c) An agreement by the municipality to proceed expeditiously with

the project and to complete the project in accordance with plans and reports approved by the department and with the conditions of applicable permits, administrative orders or judicial orders.

TITLE 5
ENVIRONMENTAL RESTORATION PROJECTS

S 56-0501. Allocation of moneys. Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, two hundred million dollars ($200,000,000) shall be available for disbursements for environmental restoration projects.

S 56-0502. Definitions.

For purposes of this title "municipality" shall have the same meaning as provided in subdivision twelve of section 56-0101 of this article, except that such term shall not refer to a municipality that generated, transported or disposed of, arranged for, or that caused the generation, transportation or disposal of hazardous substance located at real property proposed to be investigated or to be remediated under an environmental restoration project.

S 56-0503. Environmental restoration projects; state assistance.

1. The commissioner may enter into a contract with a municipality to provide state assistance to such municipality to undertake an environmental restoration project. The amount of state assistance payment for such project shall be up to an amount of seventy-five percent of the eligible costs of such project.

2. In addition to such other terms and conditions that the commissioner may deem to be appropriate, such contract shall provide as follows:

(a) An estimate of the cost of such project as determined by the commissioner at the time of such contract`s execution;

(b) An agreement by the commissioner to periodically reimburse the municipality for eligible costs incurred during the progress of such project. Such payments shall be subject to final computation and

determination of the total state assistance share of the eligible costs of the entire environmental restoration project;

(c) A provision providing that if any federal payments, responsible party payments, and/or payments received from the disposition of the real property subject to an environmental restoration project become available, which were not included when the state share was calculated pursuant to this section, the state assistance share shall be recalculated and the municipality shall pay to the state, for deposit into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law, the difference between the original state assistance payment and the recalculated state share. Recalculation of the state share shall be done each time a federal payment, payment from a responsible party, or payment received from the disposition of such property is received by the municipality;

(d) A provision that if any monies received from any federal payments, payments from a responsible party, and/or payments received from the disposition of such property exceed the municipality`s cost of such property, including taxes owed to the municipality upon acquisition, and the cost of the environmental restoration project, such excess shall be divided equally between the municipality and the state of New York, the state share of which shall be deposited into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law;

(e) An agreement by the municipality to proceed expeditiously with and complete such project in accordance with plans approved for payment of the municipality`s share of such project`s cost;

(f) An agreement by the municipality that it shall prepare and implement a public participation plan prior to remedial activities undertaken pursuant to this section. The plan shall provide opportunities for early, inclusive participation prior to the selection of a preferred course of action, facilitate communication, including dialogue among the municipality, the department, and the interested public, and provide timely and accessible disclosure of information. At a minimum, the design of the plan shall take into account the scope and scale of the proposed environmental restoration project, local interest, and other relevant factors. The plan shall also provide for: adequate public notice of the availability of a draft remedial plan; a forty-five day period for submission of written comments; a public hearing on such plan if substantive issues are raised by members of the affected community; and technical assistance if so requested by members of the affected community. Provided,

however, that the requirements of this subdivision shall not apply to interim remedial measures undertaken as part of an environmental restoration project to address emergency site conditions. In such instance, the department or such persons implementing the interim remedial measure or making the request shall conduct public participation activities as the department deems necessary and appropriate under such circumstances.

(g) An agreement by the municipality that it shall put into place any engineering and/or institutional controls (including deed restrictions) that the department may deem necessary to allow the contemplated use to proceed, that such engineering and/or institutional controls shall be binding on such municipality, any successor in title, and any lessees and that any successors in title and any lessees cannot challenge state enforcement of such controls;

(h) In the event that engineering controls and/or institutional controls are necessary the municipality and its successors in title shall agree to develop a plan which ensures that such engineering and/or institutional controls be continually maintained in the manner required by the department. Such plan shall be approved by the department. Failure to implement the plan or maintain such controls shall constitute a violation of such contract and shall terminate for the duration of such failure the protection afforded under subdivision one of section 56-0509 of this title;

(i) In the event that deed restrictions are required, such municipality shall agree to cause such deed restrictions to be recorded and indexed as declarations of restrictions in the office of the recording officer of the county or counties where the real property subject to such environmental restoration project is located in the manner prescribed by article nine of the real property law. Such declaration of restriction shall contain the name of the owner of record of such property, along with the tax map parcel number or the section, block, and lot number of such property; and

(j) A provision that exempts a municipality and any successor in title from the requirement to obtain any state or local permit or other authorization for any activity needed to implement such project that is conducted on the real property subject to such project so long as the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

S 56-0505. Environmental restoration projects; criteria.

1. The department shall determine the eligibility of an environmental restoration project for state assistance under this title based upon the

following criteria:

(a) the benefit to the environment realized by the expeditious remediation of the property proposed to be subject to such project;

(b) the economic benefit to the state by the expeditious remediation of the property proposed to be subject to such project;

(c) the potential opportunity of the property proposed to be subject to such project to be used for public recreational purposes; and

(d) the opportunity for other funding sources to be available for the remediation of such property, including, but not limited to, enforcement actions against responsible parties (other than the municipality to which state assistance was provided under this title; or a successor in title, lender, or lessee who was not otherwise a responsible party prior to such municipality taking title to the property), state assistance payments pursuant to title thirteen of article twenty-seven of this chapter, and the existence of private parties willing to remediate such property using private funding sources. Highest priority shall be granted to projects for which other such funding sources are not available.

2. The department shall not enter into a contract with a municipality pursuant to section 56-0503 for an environmental restoration project for any site listed in the registry of inactive hazardous waste sites under section 27-1305 of this chapter and given a classification as described in subparagraph one or two of paragraph b of subdivision four of such section 27-1305.

3. The remediation objective of an environmental restoration project shall meet the same standard for protection of public health and the environment that applies to remedial actions undertaken pursuant to section 27-1313 of this chapter.

4. After completion of such project, the municipality may use the property for public purposes or may dispose of it. If the municipality shall dispose of such property by sale to a responsible party, such party shall pay to such municipality, in addition to such other consideration, an amount of money constituting the amount of state assistance provided to the municipality under this title plus accrued interest and transaction costs and the municipality shall deposit that money into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

5. In the event that such project`s remediation objective shall not have been attained to the department`s satisfaction at the time of the municipality`s disposition of such property, such municipality shall be liable to ensure that such objective is attained within the time called for in the state assistance contract.

S 56-0507. Recovery of state assistance.

1. A municipality receiving state assistance under this title undertakes an environmental restoration project as agent of the state with respect to the incurrence of eligible costs.

2. The state shall make all reasonable efforts to recover the full amount of any state assistance provided under this title through litigation brought under this section or other statute or under the common law, or through cooperative agreements, with responsible parties (other than the municipality to which state assistance was provided under this title; or a successor in title, lender or lessee who was not otherwise a responsible party prior to the municipality taking title to such property). Any and all monies recovered or reimbursed pursuant to this section shall be deposited into the environmental restoration project account of the hazardous waste remediation fund established under section ninety-seven-b of the state finance law.

S 56-0509. Liability limitation.

1. (a) Notwithstanding any other provision of law and except as provided in subdivision two of this section and in paragraph (h) of subdivision two of section 56-0503 of this title, the following shall not be liable to the state upon any statutory or common law cause of action, or to any person upon any statutory cause of action arising out of the presence of any hazardous substance in or on property at any time before the effective date of a contract entered into pursuant to this title:

(i) a municipality receiving state assistance under this title to undertake an environmental restoration project and complying with the terms and conditions of the contract providing such assistance; and

(ii) a successor in title to the real property subject to such project; any lessee of such property; and any person that provides financing to such party relative to the remediation, restoration, or redevelopment of such property, provided that such successor in title, lessee, or lender did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any hazardous substance located at such property, and did not own such property.

(b) Notwithstanding any other provision of this title, any person seeking the benefit of this subdivision shall bear the burden of proving that a cause of action, or any part thereof, is attributable solely to hazardous substances present in or on such parcel before the effective date of such contract.

2. Subdivision one of this section shall not apply to relieve any

municipality, successor in title, lessee, or lender from liability arising from:

(a) failing to implement such project to the department's satisfaction or failing to comply with the terms and conditions of the contract;

(b) fraudulently demonstrating that the cleanup levels identified in or to be identified in accordance with such project were reached;

(c) causing the release or threat of release at the property subject to such project of any hazardous substance after the effective date of such contract; or

(d) changing such property's use from the intended use as identified in the contract pursuant to section 56-0503 to a use requiring a lower level of residual contamination unless the additional remedial activities are undertaken which shall meet the same standard for protection of public health and the environment that applies to remedial actions undertaken pursuant to 27-1313 of this chapter so that such use can be implemented with sufficient protection of public health and the environment.

3. The state shall indemnify and save harmless any municipality, successor in title, lessee, or lender indentified in paragraph (a) of subdivision one of this section in the amount of any judgment, or settlement, obtained against such municipality, successor in title, lessee or lender in any court for any common law cause of action arising out of the presence of any hazardous substance in or on property at anytime before the effective date of a contract entered into pursuant to this title. Such municipality, successor in title, lessee or lender shall be entitled to representation by the attorney general, unless the attorney general determines, or a court of competent jurisdiction determines, that such representation would constitute a conflict of interest, in which case the attorney general shall certify to the comptroller that such party is entitled to private counsel of its choice, and reasonable attorneys' fees and expenses shall be reimbursed by the state. Any settlement of such an action shall be subject to the approval of the attorney general as to form and amount, and this subdivision shall not apply to any settlement of any such action which has not received such approval.

4. A municipality receiving state assistance and any successor in title shall implement a department-approved environmental sampling program and, in the event that conditions on such property are not sufficiently protective of human health for its current use due to environmental conditions related to the property subject to such project that were unknown to the department as of the effective date of such contract or due to information received in whole or in part

after the department's approval of such project's final engineering report and certification, take such emergency measures that are necessary to maintain sufficient protection of human health for such property's current use until such conditions are addressed; and the department shall take such measures as it may determine are necessary to return such property to a condition sufficiently protective of human health using monies from the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

5. In addition to any other powers the department may have, the department shall have the authority to periodically inspect each project site to ensure that the use of the property complies with the terms and conditions of the contract.

S 56-0511. Change of use.

1. At least sixty days before the start of physical alteration or construction constituting a change of use at a property remediated under an environmental restoration project, or at least sixty days before a change of use at such a property not involving any physical alteration or construction, as the case may be, the person proposing to make a change of use shall provide written notification to the department and the clerks of the county and other municipalities in which such property is located.

2. No person shall engage in any activity at a property remediated under an environmental restoration project that is not consistent with restrictions placed upon the use of the property, or that will, or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing, or completed project; or expose the public health or the environment to a significantly increased threat of harm or damage at such property. If the commissioner determines that a proposed change of use is prohibited pursuant to this section, he shall, within forty-five days after receipt of the complete notice required by this section, provide the person giving such notice with a written determination that such change of use will not be authorized, together with the reasons for such determination.

3. For the purposes of this section:

(i) "change of use" means the transfer of title to all or part of property subject to an environmental restoration agreement, the erection of any structure on such property, the paving of such property for use as a roadway or parking lot, and the creation of a park or other public or private recreational facility on such property, or any activity that is likely to disrupt or expose hazardous substances or to increase direct human exposure; or any

other conduct that will or may tend to significantly interfere with an ongoing or completed environmental restoration project.

(ii) "complete notice" means a notice that adequately apprises the department of the contemplated physical alteration of the property and how such alteration may affect the property's proposed, ongoing, or completed remediation, or of the proposed new owner's ability to implement the engineering and institutional controls associated with the property's remediation.

TITLE 6
AIR QUALITY PROJECTS

S 56-0601. Allocation of monies.

Of the monies received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, two hundred thirty million dollars ($230,000,000) shall be used to fund air quality projects as set forth in this title.

S 56-0603. State clean-fueled vehicle projects.

1. The office of general services is authorized, consistent with the strategy developed pursuant to subdivision three of section two hundred one-a of the executive law, to conduct a project to acquire clean-fueled vehicles and to develop and acquire the associated infrastructure including depot construction.

2. For the purposes of this section, the term "clean-fueled vehicle" shall mean any motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law, that uses electricity, including electricity generated from solar energy, either stored or generated on-board, as its primary motive force, or that is fueled by compressed natural gas, propane, methanol, hydrogen or ethanol.

S 56-0605. Clean-fueled buses projects.

1. The New York state energy research and development authority in cooperation with the department of transportation is authorized to make state assistance payments to "clean-fueled buses projects".

2. For the purposes of this section, the term "clean-fueled bus" shall mean any motor vehicle having a seating capacity of fifteen or more passengers in addition to the driver and used for the transportation of persons on public highways, that is fueled by compressed natural gas, propane, methanol, hydrogen, or ethanol, or uses electricity, including electricity generated from solar energy, either stored or generated on-board, as its primary motive force.

3. Any municipality, state agency or department, or state public authority, upon the approval of its governing body, may submit an application to the authority, in such a form and containing such information as the authority may require, for state assistance payments toward the cost of acquisition of clean-fueled buses and for installation of infrastructure, including depot construction directly associated with such acquisitions. The authority shall suballocate to the department such funds as are necessary for the development of a single facility to evaluate heavy duty vehicle emissions.

4. The authority shall review such application, and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such application. Reasons for disapproval shall be provided to the applicant in writing.

5. After approval of the application, the authority and the municipality, state agency or department, or state public authority shall enter into a contract for state assistance payments towards the cost of such project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the authority at the time of the execution of the contract;

(b) An agreement by the authority to make state assistance payments towards the cost of the project; and

(c) An agreement by the municipality, state agency or department, or state public authority to proceed expeditiously with the project and to complete the project in accordance with plans approved by the authority and provide reports as required by the authority.

S 56-0607. Other air quality projects.

Of monies received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, up to twenty million dollars ($20,000,000) shall be available for disbursements for air quality projects pursuant to this section.

The commissioner is authorized in consultation with other state agencies as may be necessary, to make state assistance payments or to enter into contracts in the name of the state for projects that will enhance the quality of the state`s environment and the state`s air quality..

S 56-0609. Clean air for schools projects.

1. Of the monies received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, one hundred twenty-five million dollars ($125,000,000) shall be available for disbursements for clean air for schools projects.

The power authority is authorized to undertake clean air for schools projects for elementary, middle and secondary schools. The power authority may undertake such projects in cooperation with local gas and electric corporations and/or energy service companies.

For the purposes of this section, "clean air for schools projects" shall mean projects to improve air quality by schools including, but not limited to, projects that replace coal-fired furnaces and heating systems with furnaces and systems fired by oil or gas.

2. Any school district may make an application to the power authority for state assistance payments from funds made available under this article toward the costs of clean air for schools projects.

a. The power authority shall review such applications and may approve, deny, or recommend modifications thereto, consistent with applicable law and consistent with criteria, standards, or rules and regulations, as the power authority may establish, relative to such projects. In the event that an application is denied, the power authority shall provide, in writing, reasons for the denial to the applicant.

b. In reviewing such applications, the power authority shall give due consideration to the following criteria:

(i) the extent to which the project provides the greatest improvement in air quality both within the school and in the surrounding neighborhood;

(ii) the age of the system being replaced; and

(iii) the potential for energy cost savings from efficiency improvements.

c. Upon approval of an application, the power authority may enter into a contract with the school district to undertake a clean air for schools project.

3. Notwithstanding any provision of law to the contrary, the comptroller is authorized and directed to release monies constituting state assistance payments, in amounts set forth in a schedule approved by the director of the budget, to the power authority for the purposes authorized by this section. Any monies constituting state assistance payments made available to the power authority for the purposes specified by this section shall not be subject to the requirements of section one thousand thirteen of the public authorities law.

S 56-0611. Environmental compliance projects.

Of moneys made available under this title thirty million dollars ($30,000,000) shall be made available for state assistance payments through the environmental facilities corporation to villages, towns, and cities with a population of less than one million, for small business environmental compliance assistance projects which enhance the quality of the air of the state through compliance with environmental laws and regulations, or by remedy or prevention of environmental deficiencies.

1. The president of the environmental facilities corporation is authorized to provide state assistance payments to villages, towns, and cities with a population of less than one million, for implementation of small business environmental compliance assistance projects which enhance the quality of the air of the state.

2. A village, town, and city with a population of less than one million may submit an application to the president, in such form and manner as the president may require, for state assistance payments toward the cost of environmental compliance assistance projects.

3. Upon receipt of a request for a state assistance application, the president shall review the request and, within ninety days from the receipt of a complete application, may approve, disapprove, or recommend modifications thereto consistent with applicable law criteria, standards, or rules and regulations relative to such projects.

Article X of the PSL
(Energy Facility Siting)

* ARTICLE X
SITING OF MAJOR ELECTRIC GENERATING FACILITIES

* S 160. Definitions. Where used in this article, the following terms, unless the context otherwise requires, shall have the following meanings:

1. "Municipality" means a county, city, town or village located in this state.

2. "Major electric generating facility" means an electric generating facility with a generating capacity of eighty thousand kilowatts or more, including interconnection electric transmission lines and fuel gas transmission lines that are not subject to review under article seven of this chapter.

3. "Person" means any individual, corporation, public benefit corporation, political subdivision, governmental agency, municipality, partnership, co-operative association, trust or estate.

4. "Board" means the New York state board on electric generation siting and the environment, which shall be in the department and consist of seven persons: the chairman of the department of public service, who shall serve as chairman of the board; the commissioner of environmental conservation; the commissioner of health; the chairman of the New York state energy research and development authority; the commissioner of economic development and two ad hoc public members appointed by the governor. One ad hoc public member shall be a resident of the judicial district in which the facility as proposed is to be located and one ad hoc public member shall be a resident of the county in which the facility as proposed is to be located. The term of the ad hoc members shall

continue until a final determination is made in the particular proceeding for which they were appointed.

5. "Department" means the state department of public service.

6. "Certificate" means a certificate of environmental compatibility and public need authorizing the construction of a major electric generating facility issued by the board pursuant to this article.

7. "Approved procurement process" means any electric capacity procurement process approved by the commission and subsequent to May first, nineteen hundred ninety-four, approved by the commission as reasonably consistent with the most recent state energy plan adopted pursuant to article six of the energy law.

* NB Expires and repealed January 1, 2003

* S 161. General provisions relating to the board. Upon receipt of an application under this article, the chairman shall promptly notify the governor. Within thirty days of such notification the governor shall appoint the ad hoc members. Four of the seven persons on the board shall constitute a quorum for the transaction of any business of the board, and the decision of four members of the board shall constitute action of the board. The board, exclusive of the ad hoc members, shall have the power to adopt rules and regulations relating to the procedures to be used in certifying facilities under the provisions of this article, including the suspension or revocation thereof, and shall further have the power to seek delegation from the federal government pursuant to federal regulatory programs applicable to the siting of major electric generating facilities. The chairman, after consultation with the other members of the board exclusive of the ad hoc members, shall have exclusive jurisdiction to issue declaratory rulings regarding the applicability of, or any other question under, this article and rules and regulations adopted hereunder. Regulations adopted by the board may provide for renewal applications for pollutant control permits to be submitted to and acted upon by the department of environmental conservation following commercial operation of a certified facility.

In addition to the requirements of the public officers law, no person shall be eligible to be an appointee of the governor to the board who holds another state or local office. No member of the board may retain or hold any official relation to, or any securities of an electric utility corporation operating in the state, any affiliate thereof or any other company, firm, partnership, corporation, association or joint-stock association that may appear before the board, nor shall either of the appointees have been a director, officer or, within the previous ten years, an employee thereof. The appointees of the governor shall receive the sum of two hundred dollars for each day in which they are

actually engaged in the performance of their duties herein plus actual and necessary expenses incurred by them in the performance of such duties. The chairman shall provide such personnel, hearing examiners, subordinates, employees and such legal, technological, scientific, engineering and other services and such meeting rooms, hearing rooms and other facilities as may be required in proceedings under this article. The board may provide for its own representation and appearance in all actions and proceedings involving any question under this article. The department of environmental conservation shall provide associate hearing examiners. Each member of the board other than the appointees of the governor may designate an alternate to serve instead of the member with respect to all proceedings pursuant to this article. Such designation shall be in writing and filed with the chairman.

* NB Expires and repealed January 1, 2003

* S 162. Board certificate. 1. After the one hundred eightieth day after the effective date of this article, no person shall commence the preparation of a site for, or begin the construction of a major electric generating facility in the state without having first obtained a certificate issued with respect to such facility by the board. Any such facility with respect to which a certificate is issued shall not thereafter be built, maintained or operated except in conformity with such certificate and any terms, limitations or conditions contained therein, provided that nothing herein shall exempt such facility from compliance with state law and regulations thereunder subsequently adopted or with municipal laws and regulations thereunder not inconsistent with the provisions of such certificate. A certificate for a major electric generating facility may be issued only pursuant to this article.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, limitations and conditions contained therein.

3. A certificate issued hereunder may be amended as herein provided.

4. This article shall not apply: (a) To a major electric generating facility if, on or before the one hundred eightieth day after the effective date of this article, an application has been made for a license, permit, certificate, consent or approval from any federal, state or local commission, agency, board or regulatory body, in which application the location of the major electric generating facility has been designated by the applicant; or if the facility is under construction at such time;

(b) To a major electric generating facility over which any agency or department of the federal government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such

jurisdiction, to the exclusion of regulation of the facility by the state;

(c) To normal repairs, replacements, modifications and improvements of a major electric generating facility, whenever built, which do not constitute a violation of any certificate issued under this article and which do not result in an increase in capacity of the facility of more than fifty thousand kilowatts;

(d) To a major electric generating facility (i) constructed on lands dedicated to industrial uses, (ii) the output of which shall be used solely for industrial purposes, on the premises, and (iii) the generating capacity of which does not exceed two hundred thousand kilowatts; or

(e) To a major electric generating facility which generates electricity from the combustion of solid waste or from fuel derived from solid waste.

5. Any person intending to construct a major electric generating facility excluded from this article pursuant to paragraph (a), (c), or (d) of subdivision four of this section may elect to become subject to the provisions of this article by delivering notice of such election to the chairman of the board. This article shall thereafter apply to each electric generating facility identified in such notice from the date of its receipt by the chairman of the board. For the purposes of this article, each such facility shall be treated in the same manner as a major electric generating facility as defined in this article.

* NB Expires and repealed January 1, 2003

* S 163. Pre-application procedures. 1. Any person proposing to submit an application for a certificate shall file with the chairman of the board a preliminary scoping statement containing a brief discussion, on the basis of available information, of the following items:

(a) description of the proposed facility and its environmental setting;

(b) potential environmental impacts from the construction and/or operation of the proposed facility;

(c) any proposed study or program of studies designed to evaluate potential environmental impacts;

(d) any measures proposed to minimize environmental impacts;

(e) reasonable alternatives to the proposed facility as may be required by paragraph (b) of subdivision one of section one hundred sixty-four of this article; and

(f) any other information that may be relevant or that the board may require.

2. Such person shall serve copies of the preliminary scoping statement on persons enumerated in paragraph (a) of subdivision two of section one

hundred sixty-four of this article and provide notice of such statement as provided in paragraph (b) of such subdivision.

3. To facilitate the application process and enable citizens to participate in decisions that affect their health and safety and the environment, the department shall provide opportunities for citizen involvement. Such opportunities shall encourage consultation with the public early in the application process, especially before any parties enter a stipulation pursuant to subdivision four of this section. The primary goals of the citizen participation process shall be to facilitate communication between the applicant and interested or affected persons. The process shall foster the active involvement of the interested or affected persons.

4. Such person may consult and seek agreement with any interested person, including, but not limited to, the staff of the department, the department of environmental conservation and the department of health, as appropriate, as to any aspect of the preliminary scoping statement and any study or program of studies made or to be made to support such application. The staff of the department, the department of environmental conservation, the department of health, the person proposing to file an application, and any other interested person may enter into a stipulation setting forth an agreement on any aspect of the preliminary scoping statement and the studies or program of studies to be conducted. Any such person proposing to submit an application for a certificate shall serve a copy of the proposed stipulation upon all persons enumerated in paragraph (a) of subdivision two of section one hundred sixty-four of this article, provide notice of such stipulation to those persons identified in paragraph (b) of such subdivision, and afford the public a reasonable opportunity to submit comments on the stipulation before it is executed by the interested parties. Nothing herein, however, shall bar any party to a hearing on an application, other than any party to a pre-application stipulation, from timely raising objections to any aspect of the preliminary scoping statement and the methodology and scope of any stipulated studies or program of studies in any such agreement. In order to attempt to resolve any questions that may arise as a result of such consultation, the board may designate a hearing examiner who shall mediate any issue relating to any aspect of the preliminary scoping statement and the methodology and scope of any such studies or programs of study.

* NB Expires and repealed January 1, 2003

* S 164. Application for a certificate. 1. An applicant for a certificate shall file with the chairman of the board an application, in such form as the board may prescribe containing the following information and

materials:

(a) A description of the site and a description of the facility to be built thereon; including available site information, maps and descriptions, present and proposed development, source and volume of water required for plant operation and cooling, and as appropriate, geological, aesthetic, ecological, tsunami, seismic, biological, water supply, population and load center data;

(b) A description and evaluation of reasonable alternative locations to the proposed facility, if any, and with respect to a facility that has not been selected pursuant to an approved procurement process, a description and evaluation of reasonable energy supply source alternatives and, where appropriate, demand-reducing measures to the proposed facility; a description of the comparative advantages and disadvantages of each such location, energy supply source and demand-reducing measure, as appropriate; and a statement of the reasons why the primary proposed location and source, as appropriate, is best suited, among the alternatives considered, to promote public health and welfare, including the recreational and other concurrent uses which the site may serve, provided that the information required pursuant to this paragraph shall be no more extensive than required under article eight of the environmental conservation law;

(c) Studies, identifying the author and date thereof, which have been made of the expected environmental impact and safety of the facility, both during its construction and its operation, which studies are sufficient to identify (i) the anticipated gaseous, liquid and solid wastes to be produced at the facility including their source, anticipated volumes, composition and temperature, and such other attributes as the board may specify and the probable level of noise during construction and operation of the facility; (ii) the treatment processes to reduce wastes to be released to the environment, the manner of disposal for wastes retained and measures for noise abatement; (iii) the anticipated volumes of wastes to be released to the environment under any operating condition of the facility, including such meteorological, hydrological and other information needed to support such estimates; (iv) conceptual architectural and engineering plans indicating compatibility of the facility with the environment; and (v) how the construction and operation of the facility, including transportation and disposal of wastes would comply with environmental health and safety standards, requirements, regulations and rules under state and municipal laws, and a statement why any variances or exceptions should be granted;

(d) Except with respect to a facility that has been selected pursuant to an approved procurement process, estimated cost information, including plant costs by account, all expenses by categories including fuel

costs, plant service life and capacity factor and total generating cost per kilowatt-hour, including both plant and related transmission, and comparative costs of alternatives considered;

(e) A statement (i) demonstrating that the facility will satisfy additional electric capacity or other electric system needs, and that the construction of the facility is reasonably consistent with long-range energy planning objectives and strategies, provided however, that subsequent to the adoption of a state energy plan pursuant to article six of the energy law, an applicant shall demonstrate that the construction of the facility is reasonably consistent with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan; or (ii) that the facility was selected pursuant to an approved procurement process;

(f) Such evidence as will enable the board or commissioner of environmental conservation to evaluate the facility`s pollution control systems and to reach a determination to issue therefor, subject to appropriate conditions and limitations, permits pursuant to federal recognition of state authority in accordance with the federal Clean Water Act, the federal Clean Air Act and the federal Resource Conservation and Recovery Act; and

(g) Such other information as the applicant may consider relevant or as may be required by the board. Copies of the application, including the required information, shall be filed with the board and shall be available for public inspection.

2. Each application shall be accompanied by proof of service, in such manner as the board shall prescribe, of:

(a) A copy of such application on (i) each municipality in which any portion of such facility is to be located as proposed or in any alternative location listed. Such copy to a municipality shall be addressed to the chief executive officer thereof and shall specify the date on or about which the application is to be filed;

(ii) each member of the board;

(iii) the department of agriculture and markets;

(iv) the secretary of state;

(v) the attorney general;

(vi) the department of transportation;

(vii) a library serving the district of each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed;

(viii) in the event that such facility or any portion thereof as proposed or in any alternative location listed is located within the Adirondack park, as defined in subdivision one of section 9-0101 of the environmental conservation law, the Adirondack park agency; and

(b) A notice of such application on (i) persons residing in municipalities entitled to receive a copy of the application under subparagraph (i) of paragraph (a) of this subdivision. Such notice shall be given by the publication of a summary of the application and the date on or about which it will be filed, to be published under regulations to be promulgated by the board, in such form and in such newspaper or newspapers as will serve substantially to inform the public of such application;

(ii) each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed; and

(iii) persons who have filed a statement with the board within the past twelve months that they wish to receive all such notices concerning facilities in the area in which the facility is to be located as proposed or in any alternative location listed.

3. Inadvertent failure of service on any of the municipalities, persons, agencies, bodies or commissions named in subdivision two of this section shall not be jurisdictional and may be cured pursuant to regulations of the board designed to afford such persons adequate notice to enable them to participate effectively in the proceeding. In addition, the board may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons and file proof thereof as the board may deem appropriate.

4. The board shall prescribe the form and content of an application for an amendment of a certificate to be issued hereunder. Notice of such an application shall be given as set forth in subdivision two of this section.

5. If a reasonable alternative location or, with respect to a facility that has not been selected pursuant to an approved procurement process, a reasonable alternative energy supply source or demand reducing measure not listed in the application is proposed in the certification proceeding, notice of such proposed alternative shall be given as set forth in subdivision two of this section.

6. (a) Each application shall be accompanied by a fee in an amount equal to one thousand dollars for each thousand kilowatts of generating capacity of the subject facility, but no more than three hundred thousand dollars to be deposited in the intervenor account, established pursuant to section ninety-seven-tt of the state finance law, to be disbursed at the board's direction, to defray expenses incurred by municipal and other local parties to the proceeding (except a municipality which is the applicant) for expert witness and consultant fees. If at any time subsequent to the filing of the application, the application is amended in a manner that warrants substantial additional scruti-

ny, the board may require an additional intervenor fee in an amount not to exceed one hundred thousand dollars. The board shall provide for transcripts, the reproduction and service of documents, and the publication of required notices, for municipal parties. Any moneys remaining in the intervenor fund, after the board has issued its decision on an application under this article and the time for applying for a rehearing and judicial review has expired, shall be returned to the applicant.

(b) Notwithstanding any other provision of law to the contrary, the board shall provide by rules and regulations for the management of the intervenor fund and for disbursements from the fund, which rules and regulations shall be consistent with the purpose of this section to make available to municipal parties at least one-half of the amount of the intervenor fund and for uses specified in paragraph (a) of this subdivision. In addition, the board shall provide other local parties up to one-half of the amount of the intervenor fund, provided, however, that the board shall assure that the purposes for which moneys in the intervenor fund will be expended will contribute to an informed decision as to the appropriateness of the site and facility and are made available on an equitable basis in a manner which facilitates broad public participation.

7. After public notice and an opportunity to comment, the board shall promulgate such regulations as may be necessary to implement, with respect to major electric generating facilities, permit programs established pursuant to requirements of the Federal Clean Water Act, the Federal Clean Air Act and the Federal Resource Conservation and Recovery Act. Such regulations shall be consistent with any state program requirements established by the United States environmental protection agency for state participation in such pollutant control permit programs and shall include procedures for early consideration and such prompt determination as is feasible of issues arising under such permit programs.

* NB Expires and repealed January 1, 2003

* S 165. Hearing schedule. 1. After the receipt of an application filed pursuant to section one hundred sixty-four of this article, the chairman of the board shall, within sixty days of such receipt, determine whether the application complies with such section and upon finding that the application so complies, fix a date for the commencement of a public hearing. Upon a determination that an application complies with section one hundred sixty-four of this article the department of environmental conservation may initiate a review pursuant to federally delegated or approved environmental permitting authority. The chairman of the board may require the filing of any additional information needed

to supplement an application before or during the hearings.

2. Within a reasonable time after the date has been fixed by the chairman for commencement of a public hearing, the presiding examiner shall hold a prehearing conference to expedite the orderly conduct and disposition of the hearing, to specify the issues, to obtain stipulations as to matters not disputed, and to deal with such other matters as the presiding examiner may deem proper. Thereafter, the presiding examiner shall issue an order identifying the issues to be addressed by the parties provided, however, that no such order shall preclude consideration of issues which warrant consideration in order to develop an adequate record as determined by an order of the board.

3. All parties shall be prepared to proceed in an expeditious manner at the hearing so that it may proceed regularly until completion. The place of the hearing shall be designated by the presiding examiner, except that hearings of sufficient duration to provide adequate opportunity to hear direct evidence and rebuttal evidence from residents of the area affected by the major electric generating facility.

4. Proceedings on an application shall be completed in all respects, including a final decision by the board, within twelve months from the date of a determination by the chairman that an application complies with section one hundred sixty-four of this article; provided, however, for facilities over two hundred thousand kilowatts which have not been selected pursuant to an approved procurement process the board may extend the deadline in extraordinary circumstances by no more than six months in order to give consideration to specific issues necessary to develop an adequate record. The board must render a final decision on the application by the aforementioned deadlines unless such deadlines are waived by the applicant. If, at any time subsequent to the commencement of the hearing, there is a material and substantial amendment to the application, the deadlines may be extended by no more than six months, unless such deadline is waived by the applicant, to consider such amendment.

5. On an application for an amendment of a certificate proposing a change in the facility likely to result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility, a hearing shall be held in the same manner as a hearing on an application for a certificate. The board shall promulgate rules, regulations and standards under which it shall determine whether hearings are required under this subdivision and shall make such determinations.

* NB Expires and repealed January 1, 2003

* S 166. Parties to a certification proceeding. 1. The parties to the

certification proceedings shall include:

(a) The applicant;

(b) The department of environmental conservation, which shall in any such proceeding present expert testimony and information concerning the potential environmental impacts of the proposed facility, and, as appropriate, any alternate facility or energy source on the environment, and whether and how such facility would comply with applicable state and federal environmental protection laws, standards, rules and regulations;

(c) The department of economic development;

(d) The department of health;

(e) The department of agriculture and markets;

(f) The New York state energy research and development authority;

(g) Where the facility or any portion thereof or of any alternate is to be located within the Adirondack park, as defined in subdivision one of section 9-0101 of the environmental conservation law, the Adirondack park agency;

(h) A municipality entitled to receive a copy of the application under paragraph (a) of subdivision two of section one hundred sixty-four of this article, if it has filed with the board a notice of intent to be a party, within forty-five days after the date given in the published notice as the date for the filing of the application; any municipality entitled to be a party herein and seeking to enforce any local ordinance, law, resolution or other action or regulation otherwise applicable shall present evidence in support thereof or shall be barred from the enforcement thereof;

(i) Any individual resident in a municipality entitled to receive a copy of the application under paragraph (a) of subdivision two of section one hundred sixty-four of this article if he has filed with the board a notice of intent to be a party, within forty-five days after the date given in the published notice as the date for filing of the application;

(j) Any non-profit corporation or association, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups or to promote the orderly development of any area in which the facility is to be located, if it has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application;

(k) Any other municipality or resident of such municipality located within a five mile radius of such proposed facility, if it or the resident has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as

the date for filing of the application;

(l) Any other municipality or resident of such municipality which the board in its discretion finds to have an interest in the proceeding because of the potential environmental effects on such municipality or person, if the municipality or person has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application, together with an explanation of the potential environmental effects on such municipality or person; and

(m) Such other persons or entities as the board may at any time deem appropriate, who may participate in all subsequent stages of the proceeding.

2. The department shall designate members of its staff who shall participate as a party in proceedings under this article.

3. Any person may make a limited appearance in the proceeding by filing a statement of his intent to limit his appearance in writing at any time prior to the commencement of the hearing. All papers and matters filed by a person making a limited appearance shall become part of the record. No person making a limited appearance shall be a party or shall have the right to present oral testimony or cross-examine witnesses or parties.

4. The board may for good cause shown, permit a municipality or other person entitled to become a party under subdivision one of this section, but which has failed to file the requisite notice of intent within the time required, to become a party, and to participate in all subsequent stages of the proceeding.

* NB Expires and repealed January 1, 2003

* S 167. Conduct of hearing. 1. (a) The hearing shall be conducted in an expeditious manner by a presiding examiner appointed by the department. An associate hearing examiner shall be appointed by the department of environmental conservation prior to the date set for commencement of the public hearing. The associate examiner shall attend all hearings as scheduled by the presiding examiner and he shall assist the presiding examiner in inquiring into and calling for testimony concerning relevant and material matters. The conclusions and recommendations of the associate examiner shall be incorporated in the recommended decision of the presiding examiner, unless the associate examiner prefers to submit a separate report of dissenting or concurring conclusions and recommendations. In the event that the commissioner of environmental conservation issues permits pursuant to federally delegated or approved authority under the federal Clean Water Act, the federal Clean Air Act and the federal Resource Conservation and Recovery Act, the record in the

proceeding and the associate hearing examiner's conclusions and recommendations shall, in so far as is consistent with federally delegated or approved environmental permitting authority, provide the basis for the decision of the commissioner of environmental conservation whether or not to issue such permits.

(b) The testimony presented at a hearing may be presented in writing or orally. The board may require any state agency to provide expert testimony on specific subjects where its personnel have the requisite expertise and such testimony is considered necessary to the development of an adequate record. A record shall be made of the hearing and of all testimony taken and the cross-examinations thereon. The rules of evidence applicable to proceedings before a court shall not apply. The presiding examiner may provide for the consolidation of the representation of parties, other than governmental bodies or agencies, having similar interests. In the case of such a consolidation, the right to counsel of its own choosing shall be preserved to each party to the proceeding provided that the consolidated group may be required to be heard through such reasonable number of counsel as the presiding examiner shall determine. Appropriate regulations shall be issued by the board to provide for prehearing discovery procedures by parties to a proceeding, consolidation of the representation of parties, the exclusion of irrelevant, repetitive, redundant or immaterial evidence, and the review of rulings by presiding examiners.

The testimony presented at a hearing may be presented in writing or orally. The board may require any state agency to provide expert testimony on specific subjects where its personnel have the requisite expertise and such testimony is considered necessary to the development of an adequate record. A record shall be made of the hearing and of all testimony taken and the cross-examinations thereon. The rules of evidence applicable to proceedings before a court shall not apply. The presiding examiner may provide for the consolidation of the representation of parties, other than governmental bodies or agencies, having similar interests. In the case of such a consolidation, the right to counsel of its own choosing shall be preserved to each party to the proceeding provided that the consolidated group may be required to be heard through such reasonable number of counsel as the presiding examiner shall determine. Appropriate regulations shall be issued by the board to provide for prehearing discovery procedures by parties to a proceeding, consolidation of the representation of parties, the exclusion of irrelevant, repetitive, redundant or immaterial evidence, and the review of rulings by presiding examiners.

2. A copy of the record shall be made available by the board at all reasonable times for examination by the public.

3. The chairman of the board may enter into an agreement with an agency or department of the United States having concurrent jurisdiction over all or part of the location, construction, or operation of a major electric generating facility subject to this article with respect to providing for joint procedures and a joint hearing of common issues on a combined record, provided that such agreement shall not diminish the rights accorded to any party under this article.

4. The presiding examiner shall allow testimony to be received on reasonable and available alternate locations, and, with respect to a facility that has not been selected pursuant to an approved procurement process, alternate energy supply sources and, where appropriate, demand-reducing measures, provided notice of the intent to submit such testimony shall be given within such period as the board shall prescribe by regulation, which period shall be not less than thirty nor more than sixty days after the commencement of the hearing. Nevertheless, in its discretion, the board may thereafter cause to be considered other reasonable and available locations, and, with respect to a facility that has not been selected pursuant to an approved procurement process, alternate energy supply sources and, where appropriate, demand-reducing measures.

5. Notwithstanding the provisions of subdivision four of this section, the board may make a prompt determination on the sufficiency of the applicant`s consideration and evaluation of reasonable alternatives to its proposed type of major electric generating facility and its proposed location for that facility, as required pursuant to paragraph (b) of subdivision one of section one hundred sixty-four of this article, before resolution of other issues pertinent to a final determination on the application; provided, however, that all interested parties have reasonable opportunity to question and present evidence in support of or against the merits of the applicant`s consideration and evaluation of such alternatives, as required pursuant to paragraph (b) of subdivision one of section one hundred sixty-four of this article, so that the board is able to decide, in the first instance, whether the applicant`s proposal is preferable to alternatives.

* NB Expires and repealed January 1, 2003

* S 168. Board decisions. 1. The board shall make the final decision on an application under this article for a certificate or amendment thereof, upon the record made before the presiding examiner, after receiving briefs and exceptions to the recommended decision of such examiner and to the report of the associate examiner, and after hearing such oral argument as the board shall determine. Except for good cause shown to the satisfaction of the board, a determination under subdivi-

sion five of section one hundred sixty-seven of this article that the applicant's proposal is preferable to alternatives shall be final. Such a determination shall be subject to rehearing and review only after the final decision on an application is rendered.

2. The board shall render a decision upon the record either to grant or deny the application as filed or to certify the facility upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the board may deem appropriate. The board shall issue, with its decision, an opinion stating in full its reasons for its decision. The board shall issue an order upon the decision and the opinion embodying the terms and conditions thereof in full. Following any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the board, exclusive of the ad hoc members, shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate. The commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the board's order. The board may not grant a certificate for the construction or operation of a major electric generating facility, either as proposed or as modified by the board, unless it shall first find and determine:

(a)(i) That the facility will satisfy additional electric capacity needs or other electric system needs, and that the construction of the facility is consistent with long-range energy planning objectives and strategies, provided however, that subsequent to the adoption of a state energy plan pursuant to article six of the energy law, the board shall find and determine that the construction of the facility is reasonably consistent with the policies and long-range energy planning objectives and strategies contained in the most recent state energy plan; or (ii) that the facility was selected pursuant to an approved procurement process;

(b) The nature of the probable environmental impacts, including an evaluation of the predictable adverse and beneficial impacts on the environment and ecology, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air and water quality, including the cumulative effect of air emissions from existing facilities and the potential for significant deterioration in local air quality, with particular attention to facilities located in areas designated as severe nonattainment, fish and other marine life and wildlife;

(c) That the facility (i) minimizes adverse environmental impacts, considering the state of available technology, the nature and economics of such reasonable alternatives as are required to be examined pursuant to paragraph (b) of subdivision one of section one hundred sixty-four of this article, the interest of the state with respect to aesthetics,

preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations, (ii) is compatible with public health and safety, (iii) will not be in contravention of water quality standards or be inconsistent with applicable regulations of the department of environmental conservation, or in case no classification has been made of the receiving waters associated with the facility, will not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the state, and public health and public enjoyment of the receiving waters, (iv) will not emit any pollutants to the air that will be in contravention of applicable air emission control requirements or air quality standards, (v) will control the runoff and leachate from any solid waste disposal facility, and (vi) will control the disposal of any hazardous waste;

(d) That the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may refuse to apply any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The board shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder; and

(e) That the construction and operation of the facility is in the public interest, considering the environmental impacts of the facility and reasonable alternatives examined as required pursuant to paragraph (b) of subdivision one of section one hundred sixty-four of this article.

3. The board may, either as a part of the decision described in subdivision two of this section or as a part of any determination as may be appropriately made in conformance with regulations adopted pursuant to subdivision seven of section one hundred sixty-four of this article, issue permits pursuant to federal recognition of state authority in accordance with the federal Clean Water Act, the federal Clean Air Act and the federal Resource Conservation and Recovery Act. Such permits shall be based upon the evidence of record with respect to the construction and operation of the pollution control systems of the facility and shall contain such conditions and limitations as the board shall deem appropriate. The issuance of such permits as part of a deter-

mination hereunder shall not prevent the board, if it be so disposed, from denying the application under subdivision two of this section in which event the permit shall thenceforth be deemed to be of no force or effect.

4. A copy of the board's decision and opinion shall be served on each party personally or by mail.

* NB Expires and repealed January 1, 2003

* S 169. Opinion to be issued with decision. In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any local ordinance, law, resolution, regulation or other action issued thereunder or any other local standard or requirement which would be otherwise applicable is unreasonably restrictive pursuant to paragraph (d) of subdivision two of section one hundred sixty-eight of this article, it shall state in its opinion the reasons therefor.

* NB Expires and repealed January 1, 2003

* S 170. Rehearing and judicial review. 1. Any party aggrieved by the board's decision denying or granting a certificate may apply to the board for a rehearing within thirty days after issuance of the aggrieving decision. Any such application shall be considered and decided by the board and any rehearing shall be completed and a decision rendered thereon within ninety days of the expiration of the period for filing rehearing petitions, provided however that the board may extend the deadline by no more than ninety days where a rehearing is required if necessary to develop an adequate record. The applicant may waive such deadline. Thereafter such a party may obtain judicial review of such decision as provided in this section. A judicial proceeding shall be brought in the appellate division of the supreme court of the state of New York in the judicial department embracing the county wherein the facility is to be located or, if the application is denied, the county wherein the applicant has proposed to locate the facility. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a final decision by the board upon the application for rehearing together with proof of service of a demand on the board to file with said court a copy of a written transcript of the record of the proceeding and a copy of the board's decision and opinion. The board's copy of said transcript, decision and opinion, shall be available at all reasonable times to all parties for examination without cost. Upon receipt of such petition and demand the board shall forthwith deliver to the court a copy of the record and a copy of the board's decision and opinion. Thereupon, the court shall have jurisdiction of

the proceeding and shall have the power to grant such relief as it deems just and proper, and to make and enter an order enforcing, modifying and enforcing as so modified, remanding for further specific evidence or findings or setting aside in whole or in part such decision. The appeal shall be heard on the record, without requirement of reproduction, and upon briefs to the court. No objection that has not been urged by the party in his application for rehearing before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of fact on which such decision is based shall be conclusive if supported by substantial evidence on the record considered as a whole and matters of judicial notice set forth in the opinion. The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court and by the court of appeals as expeditiously as possible and with lawful precedence over all other matters.

2. The grounds for and scope of review of the court shall be limited to whether the decision and opinion of the board are:

(a) In conformity with the constitution of the state and the United States;

(b) Supported by substantial evidence in the record and matters of judicial notice properly considered and applied in the opinion;

(c) Within the board`s statutory jurisdiction or authority;

(d) Made in accordance with procedures set forth in this article or established by rule or regulation pursuant to this article; or

(e) Arbitrary, capricious or an abuse of discretion.

3. Except as herein provided article seventy-eight of the civil practice law and rules shall apply to appeals taken hereunder.

* NB Expires and repealed January 1, 2003

* S 171. Jurisdiction of courts. Except as expressly set forth in section one hundred seventy of this article and except for review by the court of appeals of a decision of the appellate division of the supreme court as provided for therein, no court of this state shall have jurisdiction to hear or determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under this article or to stop or delay the construction or operation of a major electric generating facility except to enforce compliance with this article or the terms and conditions issued thereunder.

* NB Expires and repealed January 1, 2003

* S 172. Powers of municipalities and state agencies. 1. Notwithstanding any other provision of law, no state agency, municipality or any agency thereof may, except as expressly authorized under this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility with respect to which an application for a certificate hereunder has been filed, other than those provided by otherwise applicable state law for the protection of employees engaged in the construction and operation of such facility; provided, however, that in the case of a municipality or an agency thereof, such municipality has received notice of the filing of the application therefor; and provided further, however, that the department of environmental conservation may issue permits pursuant to federally delegated or approved authority under the federal Clean Water Act, the federal Clean Air Act and the federal Resource Conservation and Recovery Act. In issuing such permits, the commissioner of environmental conservation shall follow procedures established in this article to the extent that they are consistent with federally delegated or approved environmental permitting authority. The commissioner of environmental conservation shall provide such permits to the board prior to its determination whether or not to issue a certificate.

2. The Adirondack park agency shall not hold public hearings for a major electric generating facility with respect to which an application hereunder is filed, provided that such agency has received notice of the filling of such application.

* NB Expires and repealed January 1, 2003

New York State Scenic Byways Program - Article III -C of the Highway Law

Highway

ARTICLE XII-C
NEW YORK STATE SCENIC BYWAYS PROGRAM

S 349-aa. Statement of intent. The legislature hereby finds that certain portions of the state highway system are notable for their scenic, historic, recreational, cultural and archeological value and worthy of designation as scenic byways to provide special consideration of their unique features and special role in the highway system.

The legislature further finds that the public interest would be served by the formation of a coordinated scenic byways program to enhance recreation, preserve and protect scenic, historic, recreational, cultural and archeological resources, encourage economic development through tourism, improve the transportation system, and educate residents and visitors of the history and culture of this state.

The legislature further finds that several programs administered by various agencies of state government exist to assess scenic quality of highway corridors, to maintain state highways and rights-of-way, and to plan for recreation to promote economic development through tourism.

The legislature further finds that several not-for-profit organizations exist to encourage public participation in the enhancement of designated highway routes, and to coordinate and promote tourism along such designated highway routes.

It is therefore the intent of the legislature to establish a scenic byways program in the department of transportation to guide and coordinate the activities of state agencies, local governments and not-for-profit organizations in order to create a comprehensive program that will better serve the public interest.

S 349-bb. New York state scenic byways program. 1. The commissioner shall establish within the department a program to be known as the New York state scenic byways program (hereinafter referred to as scenic byways program or program) to encourage and coordinate state actions and the activities of others which relate to the development, protection, promotion and management of scenic byways. For the purposes of this article, a "scenic byway" is a transportation route and adjacent area of particular scenic, historic, recreational, cultural or archeological characteristics which is managed to protect such characteristics and to encourage economic

development through tourism and recreation.

2. To carry out the purposes of the scenic byways program, the commissioner is authorized:

(a) to plan, design, and develop the New York state scenic byways system;

(b) to make safety improvements to a highway designated as a scenic byway under this article to the extent such improvements are necessary to accommodate increased traffic, and changes in the types of vehicles using the highway due to such designation;

(c) to construct along the highway facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities;

(d) to improve the highway to enhance access to an area for the purpose of recreation, including water-related recreation;

(e) to protect historical and cultural resources in areas adjacent to the highway; and

(f) to develop and provide tourist information to the public, including interpretive information about the scenic byway.

2. The commissioner is hereby authorized to apply for funding from any appropriate sources to further the purposes of the scenic byways program.

3. The commissioner is hereby authorized to enter into contracts with qualified responsible not-for-profit organizations involved in scenic byways activities for services relating to the development of the New York state scenic byways program or services relating to the operation, development or promotion of a specific scenic byway.

4. The commissioner is authorized to promulgate such regulations as may be necessary or desirable to implement the New York state scenic byways program.

S 349-cc. New York state scenic byways advisory board. 1. An advisory board of state agencies with responsibilities related to the designation and management of scenic byways and not-for-profit organizations related to the promotion and development of scenic byways is hereby formed to advise and assist the department in the operation of its scenic byways program. The advisory board shall consist of the secretary of state, and the commissioners of the department of agriculture and markets, the department of economic development, and the department of environmental conservation, and the office of parks, recreation and historic preservation or their duly designated representatives. The commissioner shall appoint as members of the advisory board the chief executive officer, or his or her duly authorized representative, of not-for-profit organizations related to the promotion and development of a scenic byway designated pursuant to this article, and three representatives of organizations concerned with the preservation of scenic qualities, the

motoring public and tourism development. The commissioner, or his or her duly designated representative, shall serve as chair. Members of the advisory board shall receive no pay, but shall be eligible to receive actual and necessary expenses from their respective agencies, or for the expenses of representatives of organizations related to the promotion and development of a scenic byway, the preservation of scenic qualities, the motoring public and tourism development, from the department. The advisory board shall consult with the Adirondack Park Agency regarding scenic byways within the Adirondack Park. The advisory board shall also consult with the Hudson River Valley Communities Council regarding scenic byways within the Hudson River Valley Greenway as defined in article forty-four of the environmental conservation law.

2. The New York state scenic byways advisory board shall have the following duties:

(a) To develop and make recommendations to the commissioner on the organization and operation of a scenic byways program. Such recommendations shall include recommendations on the following:

(i) consideration of the scenic beauty and historic significance of highways proposed for designation as scenic byways and the areas surrounding such highways;

(ii) operation and management standards for highways designated as scenic byways, including strategies for maintaining or improving the qualities for which a highway is designated as a scenic byway, for protecting and enhancing the landscape and view corridors surrounding such a highway, and for minimizing traffic congestion on such a highway;

(iii) standards for scenic byway related signs, including those which identify highways as scenic byways;

(iv) standards for maintaining highway safety on the scenic byway system;

(v) measures to safely accommodate the largest variety of scenic byway users including, but not limited to, persons travelling by automobile, recreation vehicle, motor coach, bicycle, snowmobile, watercraft, horse and by foot;

(vi) design review procedures for location of highway facilities, landscaping, and travellers facilities on the scenic byway system;

(vii) procedures for reviewing and terminating the designation of a highway designated as a scenic byway;

(viii) such other matters as may be necessary or desirable to further the purposes of this program.

(b) To evaluate and recommend to the commissioner and the legislature amendments of the statutes and regulations relevant to the furtherance of a cohesive system of scenic byways.

3. The advisory board shall report to the governor and the legislature

within one year of the effective date of this article, and by January first each year thereafter on the implementation of this program. In the first report required by this subdivision, the advisory board shall provide a scenic byways program implementation plan identifying essential components for the New York state scenic byways system, and recommending actions by the legislature that may be necessary to implement a cohesive and coordinated scenic byways program that will serve the goals of preserving and protecting scenic, historic, recreational, cultural and archeological resources, enhancing recreation, economic development through tourism and education in the history and culture of New York state.

S 349-dd. Components. 1. The New York state scenic byways system is comprised of the following components:

(a) Adirondack Trail as designated by section three hundred forty-two-b of this chapter;

(b) Roosevelt-Marcy Memorial Highway as designated by section three hundred forty-two-e of this chapter;

(c) Seaway Trail as designated by section three hundred forty-two-f of this chapter;

(d) Olympic Trail as designated by section three hundred forty-two-i of this chapter;

(e) Revolutionary Trail as designated by section three hundred forty-two-j of this chapter;

(f) Black River Trail as designated by section three hundred forty-two-k of this chapter;

(g) Military Trail as designated by section three hundred forty-two-l of this chapter;

(h) Central Adirondack Trail as designated by section three hundred forty-two-m of this chapter;

(i) Dude Ranch Trail as designated by section three hundred forty-two-n of this chapter;

(j) Champlain Trail as designated by section three hundred forty-two-t of this chapter;

(j-1) Route 90 Scenic Corridor which shall consist of all that portion of state route 90 beginning at Montezuma in Cayuga county, traveling south along Cayuga lake turning east in King Ferry to Homer in Cortland county.

(k) highways designated as scenic roads pursuant to article forty-nine of the environmental conservation law;

(l) parkways as listed in the regulations of the commissioner of the office of parks, recreation and historic preservation pursuant to section 13.03 of the parks, recreation and historic preservation law and

similar highways operated and maintained by other state agencies.

2. As part of its reports to the governor and the legislature, the scenic byways advisory board shall recommend amendments to this article adding, deleting or modifying components of the New York state scenic byways system.

Sections 33c and 33e of the Navigation Law (vessel waste no discharge zones)

ARTICLE 3
NAVIGABLE WATERS OF THE STATE

S 30. Navigation, jurisdiction over. The commissioner shall have jurisdiction over navigation on the navigable waters of the state and, except as otherwise provided, shall enforce the provisions of this chapter and the regulations established thereunder. As a guide to the interpretation and application of this article, nothing authorized hereunder shall be construed to convey any property rights, either in real estate or material, or any exclusive privilege; nor authorize any

injury to private property or invasion of private rights or any infringement of federal, state or local laws or regulations, but shall express the assent of the state so far as it concerns the public rights of navigation. Nothing contained in this section shall be construed to limit, impair or affect the general powers and duties of the commissioner of transportation relating to canals as set forth in section ten of the canal law.

S 31. Excavation, fill or other modification of water course. No person or local public corporation shall excavate or place fill in the navigable waters of the state without first obtaining a permit therefor in conformity with the provisions of section 15-0505 of the environmental conservation law.

S 32. Location of structures in or on navigable waters. 1. Notwithstanding the provisions of subdivision two of section forty-six-a of this chapter, no wharf, dock, pier, jetty, platform or other structure built on floats, columns, open timber, piles or similar open-work supports, temporary or permanent, shall be constructed, installed, repaired, modified, expanded or otherwise placed by any person in the navigable waters of the state or in a navigable channel or replaced by any person in such waters or channel on or after the effective date of this section after having been removed from such waters or channel for a period in excess of thirty days so as to interfere with the free and direct access to such waters from the property, wharf, dock or similar structure of any other person unless written permission is obtained therefor from such other person.

2. In case any written complaint shall be filed with the commissioner of general services and he shall have cause to believe, or in case the commissioner himself shall have cause to believe, that any person is violating the provisions of this section or any rule or regulation promulgated pursuant to this section, the commissioner shall cause a prompt investigation to be made.

3. The commissioner shall have the power, after hearing on due notice, to make and serve an order, setting forth the findings of fact and conclusions therefrom, directing any person constructing, installing, repairing, modifying, expanding or otherwise placing or using any such structure to either move or remove the said structure or to reconstruct, repair or modify the same within such reasonable time and in such manner as shall be specified in said order, and it shall be the duty of every such person to obey, observe and comply with such order and the conditions therein prescribed. The commissioner is authorized to adopt, amend, repeal and enforce such rules and regulations as he may deem

necessary to govern administrative procedures applicable to hearings under this section.

4. It shall be unlawful for any person to fail, omit or neglect to comply with such order or to fail to move, remove, reconstruct, repair or modify said structure as provided in the order within a reasonable time as designated by the commissioner.

5. Any person who fails, omits or neglects to comply with or otherwise violates any such order shall be liable for a civil penalty of not more than one hundred dollars for such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues, to be assessed by the commissioner.

6. The commissioner is hereby authorized to commence an action or proceeding in a court of competent jurisdiction to compel compliance with any order made and to recover any penalty assessed pursuant to the provisions of this section.

7. Any civil penalty or order issued by the commissioner under this section shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

8. The provisions of this section shall not apply to marine terminals including piers, wharves, docks, bulkheads, slips, basins and other structures or facilities used in the transportation of waterborne cargo or passengers in interstate or foreign commerce.

Sec. 32-a. Using net or weir unlawfully in Hudson river. A person, who uses any net or weir for setting or attaching nets, or a pole or other fixture in any part of the Hudson river, except as permitted by statute, is guilty of a misdemeanor.

Sec. 32-b. Lights upon swing bridges. A corporation, company, or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a misdemeanor.

S 32-c. Interfering with navigation. A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into the tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties or any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders, stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a misdemeanor.

S 32-d. Dumping or depositing of certain materials in the Genesee river. Except as specifically authority by law, no person shall dump or deposit, or allow to be dumped or deposited, logs, lumber, timber, fabricated wood products or wood debris in the Genesee river which may interfere with the free and safe navigation thereof. A violation of the provisions hereof shall be a misdemeanor punishable by a fine of not to exceed one hundred dollars, or by imprisonment of not more than thirty days, or by both such fine and imprisonment.

S 32-e. Restriction and regulation of structures in certain towns and villages in the county of Niagara. The local legislative body of the towns of Lewiston and Porter and the villages of Youngstown and Lewiston for the purpose of responsible shoreline management, may adopt, amend and enforce local laws, rules and regulations not inconsistent with the laws of this state or of the United States, with respect to the restriction and regulation of the manner of construction and location of structures in the Niagara River within or bounding the towns of Lewiston and Porter and the villages of Youngstown and Lewiston to a distance of one-half the width of the river or up to the United States-Canadian border. Structures may include boathouses, wharfs, piers, docks, jetties or other types of structures which are non-permanent in nature or which are otherwise not subject to permit requirements.

S 33. Deposit of refuse in navigable waters of the state. No person shall drain, deposit or cast any dead animal, carrion, offal, excrement, garbage or other putrid or offensive matter into the navigable waters of the state or any tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties, except as the same may be authorized by the state department of health. Every person violating the provisions of this section shall upon conviction by any court of competent jurisdiction be guilty of a misdemeanor punishable by a fine of not to exceed one hundred dollars, or by imprisonment of not more than one year, or by both such fine and imprisonment for each offense. The district attorney of the county, in which the offense is committed or exists, is authorized and directed to prosecute such offender or offenders.

S 33-a. Sanitary facilities aboard craft on Lake George, Canandaigua Lake, Keuka Lake, Skaneateles Lake and on Greenwood Lake, Orange county. It shall be unlawful for any owner or operator or for a marina or other business to launch, moor, dock or operate any craft, or permit such launching, mooring or operating of any craft upon Lake George, upon Canandaigua Lake, upon Keuka Lake, upon Skaneateles Lake, and upon Greenwood Lake, Orange county, their tributaries or outlets, equipped

with toilets, sinks, tubs, showers, or other equipment resulting in the drainage of waste water or other sanitary facilities which in any manner discharge into the waters of the lake, its tributaries or outlet. All such toilets, sinks, tubs, showers, or other equipment resulting in the drainage of waste water, or other sanitary facilities, shall be removed or sealed or made to drain into a tank or reservoir which can be carried or pumped ashore for disposal according to the regulations of local boards of health or county and state health agencies. Failure to comply with the provisions of this section aboard craft on Lake George, Canandaigua Lake, Keuka Lake, and on Greenwood Lake, Orange county shall be a misdemeanor punishable by a fine of not to exceed one hundred dollars, or by imprisonment of not more than one year, or by both such fine and imprisonment. Failure to comply with the provisions of this section aboard craft on Skaneateles Lake shall be a misdemeanor punishable by a fine not to exceed five hundred dollars, or by imprisonment of not more than one year, or by both such fine and imprisonment.

Sec. 33-b. Dumping or depositing trash and other debris in Chautauqua lake and its tributaries; ice fishing shanties on lakes within the state of New York; identification of duck blinds. Any person who dumps, deposits or allows or causes to be dumped or deposited in any manner any trash, glass, bottles, garbage or any other debris in the waters of Chautauqua lake or its tributaries, or upon the shore line adjacent thereto, or upon the ice covering the waters of Chautauqua lake, or any person who constructs, moves, places or causes or allows to be constructed, moved or placed any structure upon the ice covering the waters of lakes within the state of New York, shall be guilty of, a violation punishable by a fine of not to exceed one hundred dollars, unless the person who constructs, moves, places or causes or allows to be constructed, moved or placed any structure upon the ice covering the waters of lakes within the state of New York shall have placed thereon with paint or in some other permanent manner the owner`s full name in characters at least three inches high and his address in a contrasting color to the surrounding structure, and provided further the said structure is removed not later than the fifteenth day of March in each year or such other date as may be set by the department of environmental conservation. Every duck blind, placed in the waters of lakes within the state of New York, shall have prominently placed thereon, in some permanent manner, the owner`s full name and address, and further each duck blind so placed shall be removed

from the water no later than the fifteenth day of March following its placement. The wilful failure of an owner of a duck blind to affix such identification or remove it from the water by the prescribed date shall subject said owner to a fine of one hundred dollars.

S 33-c. Regulating disposal of sewage; littering of waterways. 1. As used in this section, unless the context clearly indicates otherwise:

(a) The term "watercraft" means any contrivance used or capable of being used for navigation upon water whether or not capable of self-propulsion, except passenger or cargo-carrying vessels subject to the Quarantine Regulations of the United States Public Health Service adopted pursuant to Title forty-two of the United States Code.

(b) The term "marina" means any installation which provides any accommodations or facilities for watercraft, including mooring, docking, storing, leasing, sale, or servicing of watercraft, located adjacent to waters of the state.

(c) The term "sewage" means all human body wastes.

(d) The term "litter" means any bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, trash, or similar refuse.

(e) The term "marine toilet" means any toilet on or within any watercraft, except those that have been permanently sealed and made inoperative.

(f) The term "waters of this state" means all of the waterways, or bodies of water located within New York state or that part of any body of water which is adjacent to New York state over which the state has territorial jurisdictions on which watercraft may be used or operated.

(g) The term "person" means an individual, partnership, firm, corporation, association, or other entity.

(h) The term "department" means the state department of environmental conservation, except as otherwise provided in this section.

(i) The term "marine holding tank" means any container aboard any vessel that is designed and used for the purpose of collecting and storing treated or untreated sewage from marine toilets.

(j) The term "pumpout facility" means any device, portable or permanent, capable of removing sewage from a marine holding tank.

2. (a) No person, whether engaged in commerce or otherwise, shall place, throw, deposit, or discharge, or cause to be placed, thrown, deposited, or discharged into the waters of this state, from any watercraft, marina or mooring, any sewage, or other liquid or solid materials which render the water unsightly, noxious or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes.

(b) No person, whether engaged in commerce or otherwise, shall place, throw, deposit or discharge, or cause to be placed, thrown, deposited, or discharged, any litter into the waters of this state or upon any public lands contiguous to and within one hundred feet of such waters or upon any private lands contiguous to and within one hundred feet of such waters unless such lands are owned by such person or unless such person enters or remains with the permission of the owner of record or his representative or agent.

3. (a) No marine toilet on any watercraft used or operated upon waters of this state shall be operated so as to discharge any untreated sewage into said waters directly or indirectly. (b) No person owning or operating a watercraft with a marine toilet shall use, or permit the use of, such toilet on the waters of this state unless the toilet is equipped with facilities that will adequately treat, hold, incinerate or otherwise handle sewage in a manner that is capable of preventing water pollution, as required by this section.

(c) Except as provided in subdivisions four and seven of this section, no container of sewage shall be placed, left, discharged or caused to be placed, left or discharged in or bordering any waters of this state by any person at any time.

4. (a) Every marine toilet on watercraft used or operated upon the waters of this state shall be equipped with a pollution control device, either for the treatment or holding of sewage, in operating condition, of a type approved by the state health department, in conformance with applicable public health standards and rules and regulations; and approved by the department in conformance with the boating safety standards and rules and regulations adopted by the department. Pollution control devices shall be securely affixed to the interior discharge opening of marine toilets and all sewage passing into or through such toilets shall pass solely through such treatment facilities.

(b) Sewage passing through a marine toilet equipped with a chlorinator or chemical treatment facility shall be deemed untreated unless the effluent meets standards established by the state commissioner of health.

(c) The disinfecting agent used in the facility shall be of a kind which when discharged as a part of the effluent is not toxic to humans, fish or wildlife.

(d) The active ingredient in deodorizers used in marine toilets may only consist of formaldehyde, enzymes, bacterial cultures or any other ingredient which would not interfere with the operation of sewage treatment plants. No zinc or other heavy metal or phenol may be used in any marine toilet.

5. No marine toilet pollution control device shall be used, sold or

physically offered for sale in this state unless it is of a type which has officially been approved by the department. The department approval shall be issued only after approval of such devices by the state department of health, as required by subdivision four of this section. Notice of such approval may be required by the department to be displayed on the pollution control device.

6. The department shall require persons making application for a boat registration certificate for a watercraft pursuant to section seventy-one of the navigation law to disclose whether such watercraft has within or on it a marine toilet, and if so, to certify that such toilet is equipped with a pollution control device as required by this section. The department is further empowered to direct that the issuance of a boat registration certificate or a renewal thereof be withheld if such device had not been installed as provided in this section.

7. The owner or whoever is lawfully vested with the possession, management or control of a marina shall be required to provide suitable trash receptacles or similar devices designed for the depositing of litter at locations where they can be conveniently utilized by watercraft users.

8. All marinas that provide pumpout facilities and dump stations for the handling and disposal of sewage from marine holding tanks and portable toilets shall do so in a manner that will prevent the pollution of the surface waters of the state. The facilities for unloading and disposal of such sewage shall be approved by either the local or the state health department in accordance with guidelines set forth by the department in consultation with the department of health. The department of environmental conservation shall require that municipal sewage treatment facilities accept such waste originating from marine holding tanks and portable toilets unless the commissioner determines that such action would cause an unacceptable threat to human health or the environment or the operation of a sewage treatment plant.

9. All watercraft located upon waters of this state shall be subject to boarding and inspection by the department or health department or any lawfully designated agents or inspectors thereof, for the purpose of determining whether such watercraft is equipped with approved marina toilet pollution control facilities operated in compliance herewith.

10. Any municipality within which a vessel waste no-discharge zone has been designated pursuant to subdivision one of section thirty-three-e of this article or any municipality adjacent to which a vessel waste no-discharge zone has been designated pursuant to subdivision one of section thirty-three-e of this article, may adopt and enforce local laws, not inconsistent with section thirty-three-e of this article, prohibiting the discharge of vessel wastes in waters within such munici-

pality, or in waters adjacent to such municipality to a distance of one thousand five hundred feet from shore. Nothing in this section shall preclude the political subdivisions of Nassau and Suffolk counties from regulating gray water discharge from residential vessels moored on tide-waters bordering on and lying within the boundaries of Nassau or Suffolk county.

11. The department is hereby authorized and empowered to make, adopt, promulgate, amend and repeal such standards and rules and regulations as are necessary, or convenient for the carrying out of duties and obligations and powers conferred on the department by this section.

12. A copy of the regulations adopted pursuant to this section and any of the amendments thereto, shall be filed in the office of the department, the health department, the water resources commission, and in the office of the secretary of state. Rules and regulations and standards shall be published by the department in convenient form.

13. (a) Any person who violates paragraph (b) of subdivision two of this section, shall be guilty of an offense and upon conviction shall be punished with a fine of not more than two hundred fifty dollars, or by imprisonment of not more than sixty days, or by both such fine and imprisonment; provided, however, that in the event any person violates this section more than twice during the same calendar year and is convicted of more than two such violations, the third and each subsequent violation shall be deemed a misdemeanor.

(b) Any person who violates any other provision of this section or regulations of the department adopted pursuant hereto shall be deemed guilty of a misdemeanor and upon conviction shall be punished with a fine of not more than one hundred dollars, or by imprisonment of not more than sixty days, or by both such fine and imprisonment.

14. Any action taken by the department or the state department of health pursuant to subdivisions five or six of this section shall be subject to review by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules provided that no stay shall be granted pending the determination of the matter except on notice to the department and the state department of health and for a period not exceeding thirty days.

Proceedings to review any action enumerated herein shall be entitled to a preference.

15. If any court shall find any subdivision or subdivisions of this section to be unconstitutional or otherwise invalid, such findings shall not affect the validity of any sections of this act which can be given effect.

16. Nothing in this section, shall be deemed to repeal, amend, modify or alter the provisions of article twelve of the public health law or

the provisions of sections thirty-three-a and thirty-three-b of the navigation law.

S 33-d. Sanitary facilities aboard crafts on Lake Champlain. It shall be unlawful for any owner or operator of any craft upon Lake Champlain, its tributaries or outlets, to operate any craft equipped with a marine toilet which in any manner discharges sewage into the waters of said lake, its tributaries or outlets. All marine toilets on any such craft shall also incorporate or be equipped with a holding tank which can be carried or pumped ashore for disposal according to the regulations of local boards of health or county or state health agencies. Any holding tank designed so as to provide for an optional means of discharge to the waters on which the craft is operating shall have the discharge openings sealed shut and any discharge lines, pipes or hoses shall be removed or disconnected and stored while operating on the waters of said lake, its tributaries or outlets. Failure to comply with the provisions of this section shall be a violation punishable by a fine not to exceed two hundred fifty dollars or by imprisonment of not more than fifteen days or by both such fine and imprisonment.

S 33-e. Marine sanitation devices aboard vessels in vessel waste no-discharge zones. 1. Any waters of the state of which the commissioner has received an affirmative determination regarding the adequate availability of marine sanitation device pump-out or dump station facilities pursuant to the Federal Clean Water Act, are hereby designated as vessel waste no-discharge zones.

2. It shall be unlawful for any operator or person in control of a vessel being operated upon any waters of the state designated as vessel waste no-discharge zones to discharge sewage from marine toilets into such waters. Any marine sanitation device on board any vessel being operated in such waters must be secured to prevent any marine sanitation device discharges to such waters. In accordance with federal requirements, any marine sanitation device aboard any vessel being operated upon any waters within such vessel waste no-discharge zone shall be secured by closing the seacock and padlocking, using a non-releasable wire-tie, removing the seacock handle or locking the door to the "head" while such vessel is being operated upon waters within vessel waste no-discharge zones. If a marine sanitation device on any such vessel provides a means of discharging sewage directly to such waters, the discharge valve must be secured in a readily visible manner and closed position while the vessel is being operated upon such waters.

Use of a padlock, heavy non-resealable tape, wire-tie, or the removal of the valve handle are adequate methods of securing the device. The

method chosen shall be one that presents a physical barrier to the use of the valve. It is unlawful for any person operating or in control of a vessel with a marine sanitation device on board to operate or control such vessel in a vessel waste no-discharge zone when the marine sanitation device is not secured in the manner described herein.

3. The provisions of subdivision two of this section, requiring that marine sanitation devices be rendered inoperable, shall not apply while the wastes from the marine sanitation device are being lawfully disposed of in an approved marine sanitation device pump-out or dump station located within a vessel waste no-discharge zone.

4. Any vessel being operated upon waters of the state that have been designated as vessel waste no-discharge zones may be boarded and inspected by the department or health department or any lawfully designated agents or inspectors thereof, acting pursuant to their special duties in accordance with subdivision nine of section thirty-three-c of this article for the purpose of determining whether such vessel is being operated in compliance with this section.

5. Failure to comply with the provisions of this section shall be a violation punishable by a fine not to exceed five hundred dollars. Any subsequent failure by the same operator or person in control of a vessel to comply with the provisions of this section shall be a violation punishable by a fine not to exceed one thousand dollars.

S 34. Regattas. The commissioner may authorize the holding of regattas or boat races on any navigable waters of the state within his jurisdiction. He shall adopt and may, from time to time, amend regulations concerning the safety of vessels and the passengers and other persons thereon, either observers or participants. Whenever a regatta or boat race is proposed to be held on such waters, the person in charge thereof, shall, at least fifteen days prior thereto, file an application with the commissioner in his office at Albany for permission to hold such regatta or boat race. The application shall set forth the date and location where it is proposed to hold such regatta or boat races and it shall not be conducted without authorization of the commissioner in writing. A copy of the regulations adopted pursuant to this section, and of any amendments thereto, shall be filed in the office of the commissioner and in the office of the department of state. A copy of such regulations shall be furnished by the commissioner to any person making due application therefor. Any person who shall violate any regulation adopted pursuant to this section shall for every such violation forfeit to the people of the state the sum of not to exceed two hundred and fifty dollars to be recovered in a civil action.

S 34-a. Permits for racing shell regattas not required. Nothing contained in section thirty-four of this chapter or in any other general or special law shall be deemed or construed as requiring any permit or permission to hold a regatta or race of rowing shells by any educational institution or amateur rowing organization in navigable waters of the state. For the purpose of this section, a "racing shell" is defined to mean any boat, specially designed for racing and propelled solely by means of oars, not including lifeboats or standard type rowboats, not specifically designed for rowing races. Any educational institution or amateur rowing organization, however, shall file with the commissioner a notification of all races to be held, setting forth the dates, places, a description of the course and the number of entrants in each race. No fee shall be charged for such filing.

S 35. Aids to navigation. The commissioner may authorize, through the issuance of a revocable permit, the placing of aids to navigation in the navigable waters of the state, and any tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties, to mark obstructions to navigation, or for any other purpose, if, in his judgment, it will promote safety of navigation. Any person interested in the navigation of the navigable waters of the state, and any tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties, who may desire to place such aids to navigation therein, without expense to the state, may make application to the commissioner and submit a map suitable for blue print reproduction showing the proposed location of such aids to navigation and their color and meaning. The commissioner shall make rules and regulations establishing the size, shape, color and significance of such aids to navigation. When authorization has been granted the said aids to navigation shall be deemed lawfully placed. If, in the judgment of the commissioner, aids to navigation authorized by him are found to be improperly placed or that the reason for their placement no longer exists, he may revoke the permit authorizing their placement by written notice mailed to the person to whom the permit was issued directing their removal within a specified time. The person to whom such notice is directed shall thereupon remove the aids to navigation in accordance with such instructions. In case of failure by the person so directed to remove the aids to navigation within the specified time, the commissioner may cause their removal. The cost and expense of such removal shall be a charge against the person authorized to place the aids to navigation and it shall be recoverable through action in any court of competent jurisdiction. Each aid to navigation lawfully placed shall bear in a conspicuous place and in legible condition the letters "NYS". Any person

placing such designating letters on an aid to navigation not lawfully placed, in accordance with this section, shall be guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall be subject to a fine of not more than twenty-five dollars for each and every offense. Any person who shall moor or fasten a vessel to a lawfully placed aid to navigation or shall wilfully damage, alter the location of, or otherwise render ineffective a lawfully placed aid to navigation shall be guilty of a misdemeanor and upon conviction before a court of competent jurisdiction shall be subject to a fine of not more than fifty dollars for each and every offense.

S 35-a. Floating objects other than aids to navigation. 1. The commissioner may authorize, through the issuance of a revocable permit, the placing in the navigable waters of the state, of mooring buoys, bathing beach markers, swimming floats, speed zone markers, or any other floating object having no navigational significance, if in his opinion the placing of such floating object will not be a hazard to navigation.

2. The commissioner is hereby authorized to make rules and regulations for the issuance of such permits and he shall establish a uniform system of marking all floating objects that he authorizes to be placed.

3. Adjacent upland owners may place one mooring buoy and one swimming float of not more than one hundred square feet of surface area, in the waters adjacent to and within the boundaries of their shoreline, provided however, that no floating object and no vessel or part thereof which is secured to a mooring buoy shall at any time extend more than one hundred feet from shore and further provided that no floating object may be placed in a navigable channel or in any location in which it will interfere with free and safe navigation or free access to another person`s property. The commissioner shall have the right to remove or alter the location of any such buoy or float in the interest of navigation.

4. The commissioner may, by rule, regulation, or order, designate lakes, or areas within lakes, in which fishing buoys may be placed. The commissioner shall specify the size, shape, color and material of construction for such buoys, the manner of placing same and the type of ground tackle to be used. No fishing buoys may be placed in the navigable waters of the state except as specified by the commissioner in rules and regulations authorized herein.

5. The commissioner may prescribe a reasonable service charge to cover the cost of issuance of permits authorized by this section. Revenues from such service charges shall be deposited into the "I love NY waterways" boating safety fund established pursuant to section ninety-seven-nn of the state finance law.

6. The provisions of this section which pertain to the mooring of vessels shall not apply to areas in which local ordinances so pertaining have been duly approved by the commissioner or in which areas federal laws or rules and regulations regulate the anchoring or mooring of vessels.

7. A violation of this section or the rules and regulations authorized herein shall constitute an offense punishable by a fine of not to exceed fifty dollars.

S 35-b. Markers for skin or scuba divers. 1. The commissioner is hereby authorized to make rules and regulations requiring the use of a red flag with a diagonal white bar to be displayed on the water or from a boat by skin divers or scuba divers which would indicate underwater diving and significantly mark their position in such waters. The commissioner shall specify the size, shape, material of construction and manner of placing such markers.

2. A violation of such rules and regulations so established pursuant to subdivision one herein, shall constitute an offense punishable by a fine not to exceed fifty dollars.

Sec. 35-c. Real time and wind water level telemetry system. 1. Establishment of system. The seceretary of state shall arrange for the establishment of a real time and wind water level telemetry system to inform and assist users of the harbors and waterways of the state.

2. General functions and powers. To provide for such a real time and wind water level telemetry system, the department of state shall have the power, duty and authority:

a. To arrange for the construction, installation, operation and maintenance of a computerized information system based on water level gauges and other remote sensing devices, starting from lower New York harbor and the lower Hudson river to Haverstraw bay and the Albany area and including the entrance to Long Island sound extending, as user demand may warrant, to other ports and waterways of the state;

b. To arrange for the establishment of a schedule of fees to be charged to actual users for the information provided from such a system, adequate to amortize the cost of installation and construction, to recover the annual costs of operation and maintenance and to collect such fees; and

c. To report annually to the governor and the legislature on the operation of the program for the year preceding and plans and recommendations for the future.

3. Specific functions. To carry out this program the department of state may:

a. Develop and promulgate orders, rules and regulations to effectuate the purposes of this section;

b. Contract with public or private organizations to perform the various activities required by this section, including construction, operation, maintenance, collection of fees and monitoring of the program;

c. Designate employees of the department of state who shall be empowered to examine the records of such contractors as to the collection and expenditure of funds;

d. Apply for, accept and expend any federal or other monies made available for the purposes of this section;

e. Require and receive assistance from any agency of the state or any political subdivision thereof in the furtherance of this program;

f. Act as the agent of the state, when required by this program, in arranging cooperative agreements with other states and Canada; and

g. Set up an advisory committee of experts and representatives of other public and private agencies to facilitate the program`s execution.

Sec. 36. Removal of unauthorized floating object. No unattended floating object shall be anchored within the navigable waters of the state for any purpose, except as same may be authorized under the United States laws, rules and regulations or by section thirty-five and thirty-five-a of this chapter or by local ordinances as may be duly approved by the commissioner. Any person finding such anchored object is authorized to remove the same.

Sec. 37. Public use of privately owned navigable waters. The provisions of this chapter shall apply to privately owned navigable waters to which the public has or is granted access, for compensation or otherwise, for boating, bathing, swimming or other recreational uses or purposes.

Sec. 38. Lake George water levels. Any dam or other similar structure so located in the outlet of Lake George as to affect the water levels of the lake shall, with due allowance for fluctuations due to natural causes or to emergencies and for a reasonable use of water for power and for sanitary purposes, be

operated in such a manner as to maintain the waters of the lake from the first day of June to the thirtieth day of September in each year as nearly as may be at an average level of three and five-tenths feet on the gage of the United States Geological Survey at Rogers Rock on Lake George, known as Rogers Rock gage, and in such a manner as to maintain the waters of the lake from the first day of October to the first day of December at a level which shall not fall below two and five-tenths feet on said gage; and, consistent with the above mentioned fluctuations and reasonable use, the waste gates of any such dam or other structure shall be operated so that, to the extent possible, the waters of the lake will not be permitted to rise above a level of four feet on such gage at any time during the year or to fall below a level of two and five-tenths feet on said gage at any time after the first day of June and prior to the first day of December in any year. If at any time during the year the waters of the lake shall rise above such level of four feet any person owning or operating such dam or other structure shall immediately open the waste gates thereof and take such other appropriate action as in the judgment of the water resources commission may be necessary to lower the waters of the lake with the least practicable delay to a level not higher than four feet of said gage. If at any time after the first day of June and prior to the first day of December in any year the waters of the lake shall fall below such level of two and five-tenths feet such person shall immediately close the waste gates of such dam or other structure; and no person shall withdraw water from the lake for the purpose of generating power during any period of time between the first day of June and the first day of October in any year when the level of the waters of the lake is below two and five-tenths feet on said gage. The water resources commission or its duly authorized representative shall at all times have access to such dam or other structure and is hereby authorized and directed to operate the waste gates thereof whenever necessary for the purpose of carrying out the provisions of this section. The water resources commission shall establish such rules and regulations as in its judgment may be necessary for the enforcement of the provisions of this section, and it is hereby authorized to enter into such agreement or agreements with any person or persons owning or operating any such dam or other structure as in its judgment may be necessary in order to carry into effect the provisions of this section and of such rules and regulations. In addition, the water resources commission shall,

once in each year during the first week in July, cause to be published in at least three daily newspapers serving the area the reading on the Rogers Rock gage on the first day of July in that year. Any person violating any provision of this section or of any rule or regulation established or of any agreement entered into pursuant thereto shall for every such violation forfeit to the people of the state the sum of not to exceed two hundred fifty dollars to be recovered in a civil action.

S 39. Motor boat regulation on Lake George. 1. Definitions. The term "motor boat" shall be deemed to mean and include a mechanically propelled vessel having a source of power other than propulsion by wind propelled sail or human propelled oar or paddle. The term shall also include a craft temporarily or permanently equipped with a detachable motor, commonly known as an "outboard" motor boat.

2. No motor boat shall be operated in the stream and marshland south of the Dunham`s Bay highway bridge (Route 9L) south of a point which is approximately eighteen hundred feet south of the south side of the Route 9L Dunham`s Bay highway bridge, at which point there will be anchored in the water two large floating buoys warning that motor boats are prohibited beyond said point.

3. No motor boat shall be operated in the stream and marshland south of the point where 9L crosses the Warner Bay inlet stream south of a point which is approximately one thousand feet south of the south side of Route 9L at the center of its crossing over the Warner Bay inlet stream at which point there will be anchored in the water two large floating buoys warning that motor boats are prohibited beyond said point.

4. No motor boat shall be operated in the stream or marshland in Harris Bay of Lake George south of Route 9L, and warning buoys shall be installed in the open water area south of Route 9L.

5. The expense attached to the purchase of the buoys, mentioned in subdivisions two, three and four of this section, which after their installation shall become part of the Lake George buoyage system, shall be payable from moneys available therefor by appropriation and from moneys, if any, contributed by persons, towns and counties interested.

6. Penalties for violations. A person violating any of the provisions of this section shall be deemed guilty of a violation and punishable by a fine of not more than fifty dollars or imprisonment for not more than ten days or by both such fine and imprisonment.

Article 42
Waterfront Revitalization of Coastal Areas and Inland Waterways
Long Island Sound Coastal Advisory Comission

Executive

ARTICLE 42
WATERFRONT REVITALIZATION OF COASTAL AREAS AND INLAND WATERWAYS

S 910. Legislative findings. The legislature hereby finds that New York state`s coastal area and inland waterways are unique with a variety of natural, recreational, industrial, commercial, ecological, cultural, aesthetic and energy resources of statewide and national significance.

The resources of the state`s coastal areas and inland waterways are increasingly subject to the pressures of population growth and economic development, which include requirements for industry, commerce, residential development, recreation and for the production of energy. These competing demands result in the loss of living marine resources and wildlife, the diminution of open space areas, shoreline erosion, permanent, adverse changes to ecological systems and a loss of economic opportunities.

The social and economic well-being and the general welfare of the people of the state are critically dependent upon the preservation, enhancement, protection, development and use of the natural and man-made resources of the state`s coastal area and inland waterways.

The legislature further finds that it is in the interest of the

people of the state that coordinated and comprehensive policy and planning for preservation, enhancement, protection, development and use of the state`s coastal and inland waterway resources take place to insure the proper balance between natural resources and the need to accommodate the needs of population growth and economic development.

S 911. Definitions. As used in this article, the following terms shall have the meaning ascribed to them, unless the context otherwise requires:

1. "Coastal area" shall mean (a) the state`s coastal waters, and (b) the adjacent shorelands, including landlocked waters and subterranean waters, to the extent such coastal waters and adjacent lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, inter-tidal estuaries and erosion prone areas. The coastal area extends to the limit of the state`s jurisdiction on the water side and inland only to encompass those shorelands, the uses of which have a direct and significant impact on the coastal waters. The coastal area boundaries are as shown on the coastal area map on file in the office of the secretary of state as required in section nine hundred fourteen of this article.

2. "Coastal area boundaries" shall mean the boundaries prepared by the secretary of state pursuant to section forty-seven of chapter four hundred sixty-four of the laws of nineteen hundred seventy-five.

3. "Coastal waters" means lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill von Kull and Arthur Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes.

4. "Designated inland waterways" shall mean (a) the state`s major inland lakes consisting of lakes Big Tupper, Black, Canandaigua, Cayuga, Champlain, Chautauqua, Conesus, Cranberry, George, Indian, Keuka, Long, Oneida, Onondaga, Otsego, Owasco, Raquette, Sacandaga, Saratoga, Schroon, Seneca, Skaneateles, and Upper Saranac; (b) the state`s major rivers comprised of the Black, Chemung, Delaware, Grasse, Hudson north of the federal dam at Troy, Indian, Mohawk, Oswegatchie, Racquette and Susquehanna rivers; (c) the Barge Canal System as defined in section two of article one of the canal law; and (d) the adjacent shorelands to the extent that such inland waters and adjacent lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs and erosion prone areas.

5. "Non-designated inland waterways" shall mean any inland waterway not designated pursuant to subdivision four of this section and their adjacent shorelands to the extent that such inland waters and adjacent

lands are strongly influenced by each other including, but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, and erosion prone areas.

6. "Economically distressed municipality" shall mean any city, town or village that exhibits economically distressed conditions. The criteria for determining such conditions shall be adopted by the secretary in rules and regulations following consultation with the department of economic development.

7. "Severely economically distressed municipality" shall mean any city, town or village that exhibits severely economically distressed conditions. The criteria for determining such conditions shall be adopted by the secretary in rules and regulations following consultation with the department of economic development.

8. "Secretary" means the secretary of state.

9. "State agency" means any department, bureau, commission, board, public authority or other agency of the state, including any public benefit corporation any member of which is appointed by the governor.

10. "Comprehensive harbor management plan" shall mean a plan to address the problems of conflict, congestion and competition for space in the use of harbors, surface waters and underwater lands of the state within a city, town or village or abounding a city, town or village to a distance of fifteen hundred feet from shore. A harbor management plan must consider regional needs and, where applicable, must consider the competing needs of commercial shipping and recreational boating, commercial and recreational fishing and shellfishing, aquaculture and waste management, mineral extraction, dredging, public access, recreation, habitat and other natural resource protection, water quality, open space, aesthetic values and common law riparian or littoral rights, and the public interest in such lands underwater.

11. "Water dependent use" means an activity which can only be conducted on, in, over or adjacent to a water body because such activity requires direct access to that water body, and which involves, as an integral part of such activity, the use of the water.

S 912. Declaration of policy. It is hereby declared to be the public policy of the state of New York within the coastal areas and inland waterways:

1. To achieve a balance between economic development and preservation that will permit the beneficial use of coastal and inland waterway resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems.

2. To encourage the development and use of existing ports and small harbors including use and maintenance of viable existing infrastructures, and to reinforce their role as valuable components within the state's transportation and industrial network.

3. To conserve, protect and where appropriate promote commercial and recreational use of fish and wildlife resources and to conserve and protect fish and wildlife habitats identified by the department of environmental conservation as critical to the maintenance or re-establishment of species of fish or wildlife. Such protection shall include mitigation of the potential impact from adjacent land use or development.

4. To encourage and facilitate public access for recreational purposes.

5. To minimize damage to natural resources and property from flooding and erosion, including proper location of new land development, protection of beaches, dunes, barrier islands, bluffs and other critical coastal and inland waterway features and use of non-structural measures, whenever possible.

6. To encourage the restoration and revitalization of natural and man-made resources.

7. To encourage the location of land development in areas where infrastructure and public services are adequate.

8. To conserve and protect agricultural lands as valued natural and ecological resources which provide for open spaces, clean air sheds and aesthetic value as well as for agricultural use.

9. To assure consistency of state actions and, where appropriate, federal actions, with policies within the coastal area and inland waterways, and with accepted waterfront revitalization programs within the area defined by such programs.

10. To work cooperatively with the federal government, local governments and private parties to implement programs to control and abate sources of nonpoint source pollution that may affect coastal and inland waterways.

11. To cooperate and coordinate with other states, the federal government and Canada to attain a consistent policy towards coastal and inland waterway management.

12. To encourage and assist local governments in the coastal area and inland waterways to use all their powers that can be applied to achieve these objectives.

S 913. Functions; powers and duties. The secretary shall have the following functions, powers and duties:

1. To advise the governor and agencies of state government concerning planning, programs and policies for the achievement of wise

use of the land and water resources of coastal areas and inland waterways, giving full consideration to ecological, cultural, historic, aesthetic values and the needs for economic development and to encourage public and private institutions to preserve, protect, enhance, develop and use coastal and inland waterway resources in a manner consistent with the purposes and policies of this article.

2. To evaluate and make recommendations on federal, state and local programs and legislation relating to coastal and inland waterway resources issues;

3. To review and approve acceptable waterfront revitalization programs as herein provided;

4. To review, evaluate and issue recommendations and opinions concerning programs and actions of state agencies which may have the potential to affect the policies and purposes of this article, including but not limited to, programs within the jurisdiction of the departments of state, agriculture and markets, environmental conservation, public service, commerce and transportation, the offices of energy and parks and recreation and the office of general services.

5. To enter into contracts with any person, firm, corporation, municipality or governmental agency;

6. To adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the secretary; and

7. To do all other things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article or as may from time to time be confined upon the secretary by the legislature of the state.

S 914. Coastal area boundary. 1. The coastal area boundary is hereby adopted as part of this article as though fully incorporated herein. Such boundary delineates the coastal area, which shall be the area within which the coastal policies and purposes shall apply.

2. A representation of the coastal area boundary shall be on file in the office of the secretary. The secretary shall file with the clerk of each county and local government which has any portion of its jurisdiction within the boundaries of the coastal area, a copy of the representation of such affected portion of the coastal area boundary and a copy of the representation of the coastal area boundary of the affected portion of any adjacent municipality. The secretary shall provide a copy of the representation of the coastal area boundary to each state agency having jurisdiction over programs identified pursuant to this article. The secretary, on its own initiative or on petition submitted in such form or manner as the secretary may

prescribe by rule or regulation, may amend the coastal area boundary to correct errors or make changes that are in furtherance of the policies and purposes of this article. All such changes shall be filed with the clerk of each county and local government affected thereby.

S 915. Optional local government waterfront revitalization programs for coastal areas.

1. It is the intention of this article to offer the fullest possible support by the state and its agencies to those local governments that desire to revitalize their waterfronts. Accordingly, any local government or two or more local governments acting jointly which has any portion of its jurisdiction contiguous to the state's coastal waters and which desires to participate may submit a waterfront revitalization program to the secretary as herein provided.

2. The secretary may provide technical and financial assistance as provided in sections nine hundred seventeen and nine hundred eighteen to any local government for the preparation of a waterfront revitalization program for the purposes of this article.

3. A local government or two or more local governments acting jointly which intends to submit a waterfront revitalization program for the purposes of this article is strongly encouraged to consult, during its preparation, with other entities that may be affected by its program, including local governments, county and regional agencies, appropriate port authorities, community based groups and state and federal agencies. On request by the local government, the secretary shall take appropriate action to facilitate such consultation.

4. The secretary shall prepare and distribute guidelines and regulations for local governments desiring to prepare, or cause to be prepared, a waterfront revitalization program (hereinafter referred to as the "program"). Such guidelines shall provide that the program will be consistent with the policies and purposes of this article generally and shall include, but not be limited to:

a. Boundaries of the waterfront area;

b. An inventory of natural and historic resources of the waterfront area to be protected;

c. A statement of the goals and objectives of the program;

d. Identification of the uses, public and private, to be accommodated in the waterfront area;

e. Description of proposed means for long-term management and maintenance of waterfront development and activities including organizational structures and responsibilities and appropriate land use controls;

f. Description of necessary and appropriate state actions for successful implementation of the program; and

g. Specification of the adequate authority and capability of the local government to implement the program.

5. The secretary shall approve any local government waterfront revitalization program as eligible for the benefits set forth in section nine hundred sixteen of this article if he finds that such program will be consistent with coastal policies and will achieve the waterfront revitalization purposes of this article. In making such determination, the secretary shall find that the program incorporates each of the following to an extent commensurate with the particular circumstances of that local government:

a. The facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location, such as but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture.

b. The increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking and picnicking.

c. The promotion and preservation of scenic, historic, cultural and natural resources as community amenities and tourist designations.

d. The strengthening of the economic position of the state`s major ports and small harbors.

e. The re-use of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions that have negative effects upon the waterfront area and adjacent neighborhoods.

f. The application of local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites.

g. The protection of sensitive ecological areas, including but not limited to dunes, tidal and freshwater wetlands, fish and wildlife habitats, and the protective capability of coastal land features. Such protection will assure that land use or development will not affect such areas.

h. A statement identifying those elements of the program which can be implemented by the local government, unaided, and those that can only be implemented with the aid of other levels of government or other agencies. Such statement shall include those permit, license, certification or approval programs, grant, loan, subsidy or other funding assistance programs, facilities construction and planning programs which may affect the achievement of the waterfront revitalization program.

i. The establishment of a comprehensive harbor management plan and

the means for its implementation.

6. Before approving any such waterfront revitalization program, or any amendments thereto, as eligible for the benefits of this article, the secretary shall consult with potentially affected state and federal agencies; the secretary shall not approve any such program if he finds after such consultation that there is a conflict with any state or federal policies.

7. Where there is a conflict between a submitted waterfront revitalization program and any state or federal policy, at the request of the local government or the state or federal agency affected, the secretary shall attempt to reconcile and resolve the differences between the submitted program and such policies and shall meet with the local government and involved state and federal agencies to this end.

8. Subsequent to approval of the local program by the secretary, state agency actions shall be consistent to the maximum extent practicable with the local plan. Provided, however, that nothing in this article shall be construed to authorize or require. the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

Where implementation of an approved local program depends upon the availability of other than local funds and program actions, the secretary shall meet with the involved state and federal agencies to explore the possibility of programming of such assistance in a manner that would provide the maximum practicable assistance toward the implementation of the local program.

9. Before undertaking any action pursuant to any programs identified pursuant to paragraph (h) of subdivision five of section nine hundred fifteen of this article the affected state agency shall submit, through appropriate existing clearing house procedures including but not limited to the state environmental quality review law, information on the proposed action to local government. The local government shall identify potential conflicts and so notify the secretary. Upon notification of the conflict, the secretary will confer with the affected state agency and the local government to modify the proposed action to be consistent with the local plan.

10. Any local government which has had a waterfront revitalization program approved pursuant to this section may withdraw its program at any time by filing with the secretary a copy of a resolution of its legislative body providing for such withdrawal. Upon receipt of such

resolution, the secretary shall immediately notify all affected state agencies.

S 915-a. Optional waterfront revitalization programs for municipalities on inland waterways. 1. It is the intention of this article to offer the fullest possible support by the state and its agencies to those municipalities that desire to revitalize their waterfronts. Accordingly, any economically distressed municipality which has any portion of its jurisdiction contiguous to a designated inland waterway and which desires to participate may receive assistance to prepare a waterfront revitalization program as herein provided. In addition, any severely economically distressed municipality which has any portion of its jurisdiction contiguous to a non-designated inland waterway may also receive assistance provided that such municipality demonstrates to the secretary that it is a severely distressed area and that its economic revitalization is heavily dependent upon development of its waterfront. All municipalities on inland waterways should be encouraged to prepare and submit a waterfront revitalization program as herein provided.

2. In order to be considered by the secretary for technical and financial assistance as provided in sections nine hundred seventeen and nine hundred eighteen-a of this article, an economically distressed municipality on a designated inland waterway, or severely economically distressed municipality on a non-designated inland waterway, must submit an application to the secretary providing the following information:

a. The boundaries of the inland waterway;

b. An inventory of natural and historic resources of the waterfront area to be protected;

c. A detailed statement of the significant potential impact that a waterfront revitalization program would have on the local economy; and

d. Any other information that the secretary deems necessary.

3. A municipality which intends to submit a waterfront revitalization program for the purposes of this article is strongly encouraged to consult, during its preparation, with other entities that may be affected by its program, including local governments, county and regional agencies, appropriate port authorities, community based groups and state and federal agencies. On request by the local government, the secretary shall take appropriate action to facilitate such consultation.

4. The secretary shall prepare and distribute guidelines and regulations for municipalities desiring to prepare, or cause to be prepared, a waterfront revitalization program hereinafter referred to

as the "program". Such guidelines shall provide that the program will be consistent with the policies and purposes of this article generally and shall include, but not be limited to:

a. A statement of the goals and objectives of the program;

b. Identification of the uses, public and private, to be accommodated in the waterfront area;

c. Description of proposed means for long-term management and maintenance of waterfront development and activities including organizational structures and responsibilities and appropriate land use controls;

d. Description of necessary and appropriate state actions for successful implementation of the program; and

e. Specification of the adequate authority and capability of the local government to implement the program.

5. The secretary shall approve any local government waterfront revitalization program as eligible for the benefits set forth in section nine hundred sixteen of this article if he or she finds that such program will be consistent with designated inland water policies and will achieve the waterfront revitalization purposes of this article. In making such determination, the secretary shall find that the program incorporates each of the following to an extent commensurate with the particular circumstances of that local government:

a. The facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location such as, but not limited to, waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture.

b. The increased use of and access to designated inland waters and the waterfront for water-related activities such as boating, swimming, fishing, walking and picnicking.

c. The promotion and preservation of scenic, historic, cultural and natural resources as community amenities and tourist destinations.

d. The re-use of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions that have negative effects upon the waterfront area and adjacent neighborhoods.

e. The application of local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites.

f. The protection of sensitive ecological areas including, but not limited to, freshwater wetlands and fish and wildlife habitats. Such protection will assure that land use or development will not affect such areas.

g. A statement identifying those elements of the program which can

be implemented by the local government, unaided, and those that can only be implemented with the aid of other levels of government or other agencies. Such statement shall include those permit, license, certification or approval programs; grant, loan, subsidy or other funding assistance programs; and facilities construction and planning programs which may affect the achievement of the waterfront revitalization program.

6. Before approving any such waterfront revitalization program, or any amendments thereto, as eligible for the benefits of this article, the secretary shall consult with potentially affected state and federal agencies; the secretary shall not approve any such program if he or she finds after such consultation that there is a conflict with any state or federal policies.

7. Where there is a conflict between a submitted waterfront revitalization program and any state or federal policy, at the request of the local government or the state or federal agency affected, the secretary shall attempt to reconcile and resolve the differences between the submitted program and such policies and shall meet with the local government and involved state and federal agencies to this end.

8. Subsequent to approval of the local program by the secretary, state agency actions shall be consistent to the maximum extent practicable with the local plan. Provided, however, that nothing in this article shall be construed to authorize or require the issuance of any permit, license, certification or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

Where implementation of an approved local program depends upon the availability of other than local funds and program actions, the secretary shall meet with the involved state and federal agencies to explore the possibility of programming of such assistance in a manner that would provide the maximum practicable assistance toward the implementation of the local program.

9. Before undertaking any action pursuant to any programs identified pursuant to paragraph g of subdivision five of this section, the affected state agency shall submit, through appropriate existing clearing house procedures including, but not limited to, the state environmental quality review law, information on the proposed action to local government. The local government shall identify potential conflicts and so notify the secretary. Upon notification of the conflict, the secretary shall confer with the affected state agency

and the local government to modify the proposed action to be consistent with the local plan.

10. Any local government which has had a waterfront revitalization program approved pursuant to this section may withdraw its program at any time by filing with the secretary a copy of a resolution of its legislative body providing for such withdrawal. Upon receipt of such resolution, the secretary shall immediately notify all affected state agencies.

S 915-b. Water dependent uses. Notwithstanding any other provision of law, water dependent use activities as defined in subdivision eleven of section nine hundred eleven of this article, shall not be considered a private nuisance, provided such activities were commenced prior to the surrounding activities and have not been determined to be the cause of conditions dangerous to life or health as determined by the commissioner of health, the local health officer, or local board of health pursuant to sections thirteen hundred, thirteen hundred-a, thirteen hundred three and thirteen hundred four of the public health law and any disturbance to enjoyment of land has not materially increased.

S 916. Benefits of approved waterfront revitalization programs. In recognition of the state policy set forth in this article to encourage the revitalization of waterfront areas in a manner consistent with local objectives, the following benefits shall apply where a local government waterfront revitalization program has been approved pursuant to section nine hundred fifteen or section nine hundred fifteen-a of this article.

1. a. The secretary shall examine programs operated by state agencies which may have the potential to affect the policies and purposes of an approved waterfront revitalization program. Such examination shall include programs which involve issuance of permits, licenses, certifications and other forms of approval of land use or development, the provision of grants, loans and other funding assistance which leads to or influences land use or development, directly undertaken land use or development and planning activities. The secretary shall, within sixty days after approval of a waterfront revitalization program, identify actions under such state agency programs which are likely to affect the achievement of the policies and purposes of such approved program, and shall notify the affected state agency. The secretary may at any time identify additional actions and notify the affected state agencies thereof.

b. The state agency program actions so identified shall be

undertaken in a manner which is consistent to the maximum extent practicable with the approved waterfront revitalization program. Reviews by state agencies of proposed actions to determine consistency with approved waterfront revitalization programs shall be coordinated with and made a part of other agency procedures, including reviews conducted under the state environmental quality review act as provided in article eight of the environmental conservation law.

2. The office of business permits shall conduct continuing studies of means of expediting development called for in approved programs. The secretary shall assist the office of business permits in the conduct of such studies, which should address the consolidation, simplification, expediting or otherwise improving permit procedures which may affect development called for in such areas taking into account the state policy set forth in this article to provide consistency of program actions at all levels of government for such areas.

3. The secretary shall consult and work with state agencies, including, but not limited to, the urban development corporation, the job development authority, the environmental facilities corporation, the office of parks, recreation and historic preservation and the departments of economic development and transportation, to seek to identify additional means of effectuating approved waterfront revitalization programs. The secretary shall make recommendations to local, state and federal agencies and the legislature, as appropriate.

S 917. Technical assistance. The secretary shall encourage and assist local governments in the preparation of waterfront revitalization programs and in the administration and implementation of approved programs. Such assistance shall be provided on request by the local government and shall include, as may be deemed appropriate by the secretary, the provision of maps, data, criteria, model implementation provisions, and technical counsel and advice. In addition, the secretary shall facilitate consultation and coordination among local, county, regional, state and federal agencies and community based groups in connection with the preparation and administration of approved waterfront revitalization programs, and to facilitate the development of projects called for by approved programs.

S 918. Financial assistance for coastal areas. 1. The secretary may enter into a contract or contracts for grants to be made, within the limits of any appropriations therefor, for the following:

a. To any local governments, or to two or more local governments,

for projects approved by the secretary which lead to preparation of a waterfront revitalization program; provided, however, that such grants shall not exceed fifty percent of the approved cost of such projects;

b. To any local government or local government agency for research, design, and other activities which serve to facilitate construction projects provided for in an approved waterfront revitalization program; provided, however, that such grants shall not exceed ten percent of the estimated cost of such construction project.

2. Funds available for the purposes of this section shall be allocated in a fair and equitable manner; such allocation shall reflect the initiative shown by local governments in preparing waterfront revitalization programs and in carrying them out.

S 918-a. Financial assistance for inland waterways. 1. The secretary may, after consultation with the department of economic development regarding economic development factors, enter into a contract or contracts for grants to be made, within the limits of any appropriations therefor, for the following:

a. To any economically distressed municipality located on a designated inland waterway for projects approved by the secretary which lead to preparation of a waterfront revitalization program; provided however, that all information required pursuant to subdivision two of section nine hundred fifteen-a of this article, has been satisfactorily submitted to the secretary. Grants shall not exceed fifty percent of the approved cost of such projects or a maximum of twenty-five thousand dollars;

b. To any severely economically distressed municipality located on a non-designated inland waterway for projects approved by the secretary which lead to preparation of a waterfront revitalization program; provided however, that such municipality has demonstrated to the secretary that development of its waterfront will make a significant contribution to the revitalization of its local economy, and that all information required pursuant to subdivision two of section nine hundred fifteen-a of this article has been satisfactorily submitted to the secretary. Grants shall not exceed fifty percent of the approved cost of such projects or a maximum of twenty-five thousand dollars;

c. To any economically distressed or severely economically distressed municipality for research, design and other activities which serve to facilitate construction projects provided for in an approved waterfront revitalization program; provided, however, that such projects would make a significant contribution to the local economy of the applicant municipality and that such construction project is in compliance with any existing overall economic development plan for the region. Grants shall

provide up to sixty percent of the cost of such activities but shall not exceed ten percent of the estimated total cost of such construction project or twenty-five thousand dollars, whichever is less;

d. To any municipality located on a designated or non-designated inland waterway, based solely upon economic development factors:

(i) for projects approved by the secretary which lead to preparation of a waterfront revitalization program; provided, however, that such projects would make a significant contribution to the local economy of the applicant municipality and that such construction project is in compliance with any existing overall economic development plan for the region and that all information required pursuant to subdivision two of section nine hundred fifteen-a of this article has been satisfactorily submitted to the secretary. Grants shall not exceed forty percent of the approved cost of such projects or a maximum of twenty-five thousand dollars; or

(ii) for research, design and other activities which serve to facilitate construction projects provided for in an approved waterfront revitalization program; provided, however, that such projects would make a significant contribution to the local economy of the applicant municipality and that such construction project is in compliance with any existing overall economic development plan for the region. Grants shall provide up to fifty percent of the cost of such activities but shall not exceed ten percent of the estimated total cost of such construction project or twenty-five thousand dollars whichever is less.

2. Funds available for the purposes of this section shall be allocated in a fair and equitable manner; such allocation shall reflect the initiative shown by local governments in preparing waterfront revitalization programs and in carrying them out.

S 919. Coordination of state actions and programs. 1. Actions directly undertaken by state agencies within the coastal area including grants, loans or other funding assistance, land use and development, or planning, and land transactions shall be consistent with the coastal area policies of this article. Provided, however, that nothing in this article shall be construed to authorize or require the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

2. The secretary shall review actions proposed by state agencies which may affect the achievement of the policies of this article and

shall make recommendations to such agencies with respect to achievement of such policies.

3. The commissioner of environmental conservation shall amend the regulations promulgated pursuant to article eight of the environmental conservation law as necessary and appropriate to assure adequate consideration of impacts on the use and conservation of coastal resources.

S 920. Data collection and inventory. 1. The secretary shall maintain a resource inventory of information collected pursuant to coastal and inland waterways program planning including significant natural areas, historic sites, agricultural lands and water dependent use areas.

2. The secretary may collect additional information to supplement the inventory and may delegate the preparation of such information to appropriate state and local agencies.

3. The secretary shall make this inventory available to state agencies, local governments and the public for planning purposes.

S 921. Amendment of coastal zone management program. 1. The secretary shall amend this state's coastal zone management program submitted to the United States secretary of commerce pursuant to section fourteen hundred fifty-five of the coastal zone management act (16 USC SS 1451 et seq.), to incorporate the requirements of this section and the findings and purposes specified in title sixteen of article fifteen of the environmental conservation law and shall formally submit the proposed amendments to the United States secretary of commerce.

2. After approval by the United States secretary of commerce of the amendments submitted pursuant to subdivision one of this section, the secretary shall, under section nine hundred nineteen of this article, consider the requirements, findings and purposes specified under subdivision one of this section, if applicable, when reviewing actions proposed by state agencies which may affect the achievement of the policies of this article, and make recommendations to such agencies with respect to achievement thereof.

S 922. Comprehensive harbor management plans. 1. In order to implement a comprehensive harbor management plan the local legislative body of a city, town or village may adopt, amend and enforce local laws or ordinances, not inconsistent with the laws of this state or the United States, to regulate the construction, size and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters or

other structures, temporary or permanent, in, on or above waters and the use of surface waters and underwater lands within a city, town or village or bounding a city, town or village to a distance of fifteen hundred feet from the shore. Such local laws or ordinances may provide for the imposition of fees for reasonable expenses incurred by the city, town or village in carrying out this regulatory authority.

2. No local law or ordinance adopted pursuant to the powers granted by this section shall take effect until it shall have been submitted to and approved in writing by the secretary of state, nor shall such local law or ordinance affect projects and facilities undertaken or constructed by public authorities for which a statutory exemption has been provided or public authorities formed by compact with another state or any subsidiary thereof formed pursuant to bi-state legislation. The secretary of state shall not approve any local law or ordinance without first consulting with the commissioner of general services and other interested state agencies administering state-owned lands underwater, nor shall the secretary approve any local law or ordinance not in accordance with any comprehensive harbor management plan adopted as part of a local waterfront revitalization program by the local legislative body of the city, town or village and approved by the secretary pursuant to this article.

3. (a) Municipalities on lakes, other than those lakes identified in subdivision four of section nine hundred eleven of this article, may, pursuant to this section, develop cooperative lakewide local waterfront revitalization programs and harbor management plans.

(b) Where no local waterfront revitalization program and harbor management plan exists which has been cooperatively prepared by all of the municipalities which border the shores of such a lake, no local law or ordinance adopted by one such municipality pursuant to a harbor management plan shall be approved without a finding by the secretary of state that the local law or ordinance is consistent as well with the management of the lake by, and interests of, the lake residents and its municipalities as a whole.

(c) Where an organization or entity has been created by statute to provide lakewide planning or regulation, such local laws or ordinances shall be consistent with the plans developed by such organization or entity pursuant to the procedures required in such statute.

4. No provision of this chapter shall be deemed to diminish the authority of any city, town or village pertaining to the regulation of harbors, surface waters and underwater lands granted by any other law, charter, patent or other instrument. Nor shall it be read to authorize local harbor management plans displacing conforming water-dependent businesses in existence on the effective date of this section.

5. Any conveyances of interests pursuant to subdivision seven of section seventy-five of the public lands law and any permits issued pursuant to subdivision one of section 15-0503 of the environmental conservation law shall be consistent, insofar as possible, with approved comprehensive harbor management plans adopted pursuant to this section.

S 923. Long Island Sound coastal advisory commission. 1. Definitions. As used in this section, the following words and terms shall have the following meanings unless the context indicates another or different meanings or intent:

(a) "Long Island Sound coastal management program" or "program" shall mean that regional program prepared by the department pursuant to the recommendation of the governor's task force on coastal resources.

(b) "Long Island Sound coastal advisory commission" or "commission" shall mean that commission created pursuant to subdivision two of this section.

2. Long Island Sound coastal advisory commission. (a) The Long Island Sound coastal advisory commission is hereby created in the department. The commission shall consist of seventeen members. The legislature shall appoint six members, all of whom must be local government officials, two of whom shall reside in Westchester county, two of whom shall reside in Nassau county and two of whom shall reside in Suffolk county. Of these six, two voting members shall be appointed by the temporary president of the senate, and two members shall be appointed by the speaker of the assembly. One voting member shall be appointed by the minority leader of the senate and one member shall be appointed by the minority leader of the assembly. In addition five members shall be appointed by the secretary, one of whom shall be chair; one of whom shall represent builders, one of whom shall represent recreational anglers, one of whom shall represent commercial fishing, one of whom shall represent recreational boaters and one of whom shall represent birders; in addition, membership on the commission shall include one member, a New York state resident, appointed by and from the Long Island Sound study management conference; the Long Island Sound study citizens' advisory committee co-chair residing in New York state; the director of New York sea grant; and the commissioners of economic development, environmental conservation and parks, recreation and historic preservation; one member shall be appointed by the commissioner of economic development and shall represent business; one member shall be appointed by the commissioner of environmental conservation and shall represent

environmental protection; and one member shall be appointed by the commissioner of parks, recreation and historic preservation and shall represent recreation. The commission shall meet at least once a year and shall encourage attendance at such meetings of representatives from local governments on the sound and other interested parties. Copies of the minutes of each meeting shall be forwarded to the secretary.

(b) Every state agency and public corporation having jurisdiction over land or water on or in the sound, or over programs relating to the purposes and goals of this article shall, to the fullest extent practicable, offer full cooperation and assistance to the council in carrying out the provisions of this section.

(c) Every local agency with programs relating to the sound shall offer assistance to the commission, to the extent practicable, in carrying out the provisions of this section.

(d) In the event of a vacancy occurring in the office of any member, such vacancy shall be filled in the same manner as the original appointment. The members of the commission shall serve without compensation.

3. Powers and duties of the commission. The commission shall have the power:

(a) to make by-laws for the management and regulation of its affairs;

(b) to utilize, to the extent practicable, the staff and facilities of existing state and local agencies;

(c) to annually review the Long Island Sound coastal management program and policies and recommend revisions thereto;

(d) to assist in the coordination of this program with other programs and activities affecting Long Island Sound;

(e) to hold public hearings to solicit input and comment from the public on implementation of the program; and

(f) to prepare an annual report on the conduct of its activities.

Harbor Management Regulations

HARBOR MANAGEMENT

Section 603.1 Authority, intent and purpose.

(a) This Part is adopted under authority of sections 913, 915, 915-a, 915-b and 922 of article 42 of the Executive Law to implement the provisions of the Waterfront Revitalization of Coastal Areas and Inland Waterways Act.

(b) In chapter 791 of the Laws of 1992, the Legislature emphasized the importance of New York State's navigable waters and underwater lands, and acknowledged the need to control uses, projects, and structures in or over these areas. The Legislature specifically identified the regulation of such projects and structures as necessary to meet the State's obligations, founded principally on the Public Trust Doctrine, to responsibly manage the State's proprietary interests, protect vital assets held in the name of the People of the State, and guarantee common law and sovereign rights. To this end, the Legislature declared that the reasonable exercise of riparian or littoral rights by waterfront owners shall be consistent with the public interest in reasonable use and responsible management of navigable waters and lands underwater for purposes of navigation, commerce, fishing, bathing, recreation, environmental and aesthetic protection, and access. Along with recognizing the importance of State agency actions in fulfilling these obligations, the Legislature also recognized the significant role New York's cities, towns, and villages are capable of taking in the regulation and management of activities in or over the State's navigable waters and underwater lands if granted clear authority to regulate these areas. Accordingly, the Legislature has provided for the development and approval of local government comprehensive harbor management plans (hereafter LGHMP) and the local laws or ordinances necessary to implement these plans. It is the intention of this Part to enable cities, towns, and villages to exercise this new authority in a manner which meets local needs while accommodating the significant interest of the State, on behalf of the public, in lands underwater and navigable waters. It is the purpose of this Part to provide the procedural and substantive requirements for approval of LGHMPs and local laws and ordinances necessary to implement these plans.

603.2 Eligibility and authority. Subject to review and approval by the Secretary of State:

(a)(1) A city, town, or village may adopt a LGHMP to regulate the surface waters and underwater lands within the city, town, or village, or bounding it to a distance of 1,500 feet from shore, whichever is greater.

(2) Determination of the line from which the 1,500 feet shall be measured shall be made as follows:

(i) where the shore is generally even, the 1,500 feet shall be measured from the mean low water line;

(ii) where the shore is uneven because of indentations such as coves, small bays, inlets or similar conditions, the 1,500 feet shall be measured from a straight line drawn across the indentation from the two points representing the furthest waterward extent of the mean low water line on either side of the indentation. Any water area and underwater lands landward of this line will, however, be subject to harbor management planning and regulation pursuant to this Part;

(iii) Where an offshore island is part of a municipality, the 1,500 feet shall be measured from the mean low water line surrounding the island;

(iv) in all instances, the area between the mean low water and mean high water lines shall be subject to LGHMP coverage; and

(v) whenever necessary the Secretary shall make a determination of the bounds of an LGHMP area, based upon written findings which take into account the size of the waterbody; existing municipal regulation of waters and underwater lands; the avoidance of conflicts among local, State, and Federal governments; and other relevant considerations.

(b) Subject to the written approval of the Secretary of State, the local legislative body of such city or town may adopt, amend and enforce local laws or ordinances, and a village may adopt, amend and enforce local laws to implement the LGHMP. Such local laws or ordinances may provide fees for reasonable expenses incurred in carrying out this authority. Proposed local laws and ordinances to implement the LGHMP shall be submitted to the Secretary of State for approval in accordance with the provisions of section 922 of the Executive Law and section 603.5 of this Part.

(c)(1) Municipalities on lakes, excepting those on lakes identified in section 911(4) of the Executive Law, may develop cooperative lakewide LGWRPs and LGHMPs, and may adopt, amend and enforce local laws or ordinances to implement such plans.

(2) In the absence of a cooperative lakewide LGWRP and LGHMP prepared by all of the municipalities on such lake, a municipality may still adopt and have approved a LGWRP and LGHMP, and may adopt, amend and enforce local laws and ordinances to implement the LGHMP, provided the Secretary of State finds, in approving such local laws or ordinances, that it is consistent with the management of the lake by, and the interests of, the lake residents and its municipalities as a whole.

(3) Such local laws or ordinances shall also be consistent with the plans of any organization created by statute to provide lakewide planning or regulation.

(d) As provided in section 119-o of the General Municipal Law, other municipalities may adopt cooperative LGHMPs and may adopt, amend and enforce local laws or ordinances to cooperatively implement such plans.

603.3 Contents. A LGHMP shall contain the following, either in a separate document prepared to augment a LGWRP, or integrated into a LGWRP in an identifiable manner:

(a) identification of the LGHMP boundary area;

(b) an inventory and analysis of existing uses, features, and conditions in this area;

(c) identification and discussion of issues of local importance;

(d) identification and discussion of issues of regional importance;

(e) discussion of opportunities, long and short-term goals and objectives;

(f) identification of conditions which operate as constraints on utilization of underwater lands and navigable waters by the public;

(g) discussion of water dependent uses;

(h) identification and discussion of economic, cultural, and social considerations fundamental to responsible management of underwater lands and navigable waters;

(i) a water use plan;

(j) specification of policies concerning present and future use and management of such areas;

(k) identification of capital projects necessary to implement the LGHMP;

(l) specification of existing and proposed techniques and authorities to implement the LGHMP; and

(m) to the extent commensurate with the particular circumstance of the city, town, or village, a LGHMP shall address the following considerations:

(1) conflict and competition for space among the uses and users of harbors, surface waters, and underwater lands;

(2) regulation of the construction, size, and location of wharves, docks, moorings, piers, jetties, platforms, breakwaters, or other structures whether temporary or permanent;

(3) regional needs for any of the various uses or users likely to be attracted to the particular qualities of the area; and

(4) where applicable:

(i) commercial shipping;
(ii) recreational boating;
(iii) commercial and recreational fishing and shellfishing;
(iv) aquaculture and mariculture;
(v) waste management;
(vi) mineral extraction;
(vii) dredging;
(viii) public access;
(ix) recreation;
(x) habitats and other natural resource protection;
(xi) water quality;
(xii) open space;
(xiii) aesthetic values;
(xiv) water dependent uses;
(xv) common law riparian or littoral rights; and
(xvi) public interests, including interest under the Public Trust Doctrine; and

(n) LGHMPs shall also consider other circumstances determined to be of significance by the Secretary of State, and LGHMPs may also consider those determined to be of significance by the city, town, or village.

603.4 Development.

(a) LGHMPs shall be developed with the participation of the public, and Federal, State, and local governments and agencies.

(b) Within the limits of appropriated funds, the Department of State will be available for guidance and assistance.

(c) A schedule for incremental completion, submission of work products and final adoption and submission of the LGHMP shall be agreed to between the participating city, town, or village and the Department of State.

603.5 Review and approval.

(a) LGHMPs shall be reviewed and approved in accordance with Part 601 of this Title.

(b)(1) Local laws or ordinances to implement the LGHMP shall be developed with the secretary, and shall be submitted for review and comment a reasonable time prior to the scheduling of any public hearing on any such local law or ordinance.

(2) In order to ensure the effectiveness of such local laws or ordinances under section 922 of the Executive Law and whatever general or specific authority pursuant to which they are enacted, the secretary shall approve and the municipality shall adopt any local laws or ordinances in a coordinated manner.

603.6 Participation by municipalities with approved LGWRPs or LGWRPs near approval.

(a) Cities, towns, or villages with approved LGWRPs on the effective date of this Part may develop and submit a LGHMP for review and approval. However, any city, town, or village which seeks to amend an approved LGWRP must include a LGHMP for approval in any such amendment. This requirement may be waived by the Secretary to the extent commensurate with the particular circumstances of the local government proposing the LGWRP amendment.

(b) Cities, towns, or villages which have completed the review period provided in section 601.4(b) of this Title before July 1, 1994 shall not be required to submit a LGHMP as a precondition to approval of a LGWRP.

603.7 Practical considerations.

(a) A number of cities, towns, and villages in the coastal area of New York State possess either several distinctive harbor areas, or have the clear need to engage in some level of cooperative intermunicipal LGHMP development and implementation, or both. Resources, public access, and other interests may suffer unless the planning process engaged in by these municipalities results in expeditious measures to address significant existing and projected conditions in or over navigable waters and underwater lands.

(b) To accommodate the realities of size, complexity, location or other uniqueness and the need for action, such a municipality may submit a written request to the secretary for permission to prepare an expedited LGHMP. Any request shall specify those circumstances which justify approval of such a request.

(c) The secretary shall advise the appropriate municipal officials in writing of his or her decision on the request, and of the terms and conditions applicable to the permission to develop an expedited LGHMP. The Secretary shall also specify any additional requirements for approval of the program and implementing laws.

State Environmental Quality Review Act Regulations

SECTION 617.1 AUTHORITY, INTENT AND PURPOSE.

(a) This Part is adopted pursuant to sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113 of the Environmental Conservation Law to implement the provisions of the State Environmental Quality Review Act (SEQR).

(b) In adopting SEQR, it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(c) The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

(d) It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy, and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.

(e) This Part is intended to provide a statewide regulatory framework for the implementation of SEQR by all state and local agencies. It includes:

(1) procedural requirements for compliance with the law;

(2) provisions for coordinating multiple agency environmental reviews through a single lead agency (section 617.6 of this Part);

(3) criteria to determine whether a proposed action may have a significant adverse impact on the environment (section 617.7 of this Part);

(4) model environmental assessment forms to aid in determining whether an action may have a significant adverse impact on the environment (Appendices A, B and C of section 617.20 of this Part); and

(5) examples of actions and classes of actions which are likely to require an EIS (section 617.4 of this Part), and those which will not require an EIS (section 617.5 of this Part).

617.2 DEFINITIONS.

As used in this Part, unless the context otherwise requires:

(a) "Act" means article 8 of the Environmental Conservation Law (SEQR).

(b) "Actions" include:

(1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:

(i) are directly undertaken by an agency; or

(ii) involve funding by an agency; or

(iii) require one or more new or modified approvals from an agency or agencies;

(2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;

(3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

(4) any combinations of the above.

(c) "Agency" means a state or local agency.

(d) "Applicant" means any person making an application or other request to an agency to provide funding or to grant an approval in connection with a proposed action.

(e) "Approval" means a discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity.

(f) "Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the Office of the Secretary of State, as required by section 914(2) of the Executive Law.

(g) "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.

(h) "Conditioned negative declaration" (CND) means a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in subdivision 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result.

(i) "Critical environmental area" (CEA) means a specific geographic area designated by a state or local agency, having exceptional or unique environmental characteristics.

(j) "Department" means the New York State Department of Environmental Conservation.

(k) "Direct action" or "directly undertaken action" means an action planned and proposed

for implementation by an agency. "Direct actions" include but are not limited to capital projects, promulgation of agency rules, regulations, laws, codes, ordinances or executive orders and policy making that commit an agency to a course of action that may affect the environment.

(l) "Environment" means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

(m) "Environmental assessment form" (EAF) means a form used by an agency to assist it in determining the environmental significance or nonsignificance of actions. A properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment. The model full and short EAFs contained in Appendices A and C of section 617.20 of this Part may be modified by an agency to better serve it in implementing SEQR, provided the scope of the modified form is as comprehensive as the model.

(n) "Environmental impact statement" (EIS) means a written "draft" or "final" document prepared in accordance with sections 617.9 and 617.10 of this Part. An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process. A draft EIS is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment. An EIS may also be a "generic" in accordance with section 617.10, of this Part, a "supplemental" in accordance with paragraph 617.9(a)(7) of this Part or a "federal" document in accordance with section 617.15 of this Part.

(o) "Environmental Notice Bulletin" (ENB) means the weekly publication of the department published pursuant to section 3-0306 of the Environmental Conservation Law.

(p) "Findings statement" means a written statement prepared by each involved agency, in accordance with section 617.11 of this Part, after a final EIS has been filed, that considers the relevant environmental impacts presented in an EIS, weighs and balances them with social, economic and other essential considerations, provides a rationale for the agency's decision and certifies that the SEQR requirements have been met.

(q) "Funding" means any financial support given by an agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a proposed action.

(r) "Impact" means to change or have an effect on any aspect(s) of the environment.

(s) "Involved agency" means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an "involved agency", notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced. The lead agency is also an "involved agency".

(t) "Interested agency" means an agency that lacks the jurisdiction to fund, approve or

directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action. An "interested agency" has the same ability to participate in the review process as a member of the public.

(u) "Lead agency" means an involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required.

(v) "Local agency" means any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the state.

(w) "Ministerial act" means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the act, such as the granting of a hunting or fishing license.

(x) "Mitigation" means a way to avoid or minimize adverse environmental impacts.

(y) "Negative declaration" means a written determination by a lead agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A negative declaration may also be a conditioned negative declaration as defined in subdivision 617.2(h). Negative declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part.

(z) "Person" means any agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

(aa) "Permit" means a permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by an agency.

(ab) "Physical alteration" includes, but is not limited to, the following activities: vegetation removal, demolition, stockpiling materials, grading and other forms of earthwork, dumping, filling or depositing, discharges to air or water, excavation or trenching, application of pesticides, herbicides, or other chemicals, application of sewage sludge, dredging, flooding, draining or dewatering, paving, construction of buildings, structures or facilities, and extraction, injection or recharge of resources below ground.

(ac) "Positive declaration" means a written statement prepared by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement will be required. Positive declarations must be prepared, filed and published in accordance with sections 617.7 and 617.12 of this Part.

(ad) "Project sponsor" means any applicant or agency primarily responsible for undertaking an action.

(ae) "Residential" means any facility used for permanent or seasonal habitation, including but not limited to: realty subdivisions, apartments, mobile home parks, and campsites offering any utility hookups for recreational vehicles. It does not include such facilities as hotels, hospitals, nursing homes, dormitories or prisons.

(af) "Scoping" means the process by which the lead agency identifies the potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS including the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed and the identification of nonrelevant issues. Scoping provides a project sponsor with guidance on matters which must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

(ag) "Segmentation" means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.

(ah) "State agency" means any state department, agency, board, public benefit corporation, public authority or commission.

(ai) "Type I action" means an action or class of actions identified in section 617.4 of this Part, or in any involved agency's procedures adopted pursuant to section 617.14 of this Part.

(aj) "Type II action" means an action or class of actions identified in section 617.5 of this Part. When the term is applied in reference to an individual agency's authority to review or approve a particular proposed project or action, it shall also mean an action or class of actions identified as Type II actions in that agency's own procedures to implement SEQR adopted pursuant to section 617.14 of this Part. The fact that an action is identified as a Type II action in any agency's procedures does not mean that it must be treated as a Type II action by any other involved agency not identifying it as a Type II action in its procedures.

(ak) "Unlisted action" means all actions not identified as a Type I or Type II action in this Part, or, in the case of a particular agency action, not identified as a Type I or Type II action in the agency's own SEQR procedures.

617.3 GENERAL RULES.

(a) No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR. A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with. The only exception to this is provided under paragraphs 617.5(c)(18), (21) and (28) of this Part. An involved agency may not issue its findings and decision on an action if it knows any other involved agency has determined that the action may have a significant adverse impact on the environment until a final EIS has been filed. The only exception to this is provided under subparagraph 617.9(a)(5)(i) of this Part.

(b) SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among state and local agencies. SEQR provides all involved agencies with the authority, following the filing of a final EIS and written findings statement, or pursuant to subdivision 617.7(d) of this Part to impose substantive conditions upon an action to ensure that the requirements of this Part have been satisfied. The conditions imposed must be practicable and reasonably related to impacts identified in the EIS or the conditioned negative declaration.

(c) An application for agency funding or approval of a Type I or Unlisted action will not be complete until:

(1) a negative declaration has been issued; or

(2) until a draft EIS has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy. When the draft EIS is accepted, the SEQR process will run concurrently with other procedures relating to the review and approval of the action, if reasonable time is provided for preparation, review and public hearings with respect to the draft EIS.

(d) The lead agency will make every reasonable effort to involve project sponsors, other agencies and the public in the SEQR process. Early consultations initiated by agencies can serve to narrow issues of significance and to identify areas of controversy relating to environmental issues, thereby focusing on the impacts and alternatives requiring in-depth analysis in an EIS.

(e) Each agency involved in a proposed action has the responsibility to provide the lead agency with information it may have that may assist the lead agency in making its determination of significance, to identify potentially significant adverse impacts in the scoping process, to comment in a timely manner on the EIS if it has concerns which need to be addressed and to participate, as may be needed, in any public hearing. Interested agencies are strongly encouraged to make known their views on the action, particularly with respect to their areas of expertise and jurisdiction.

(f) No SEQR determination of significance, EIS or findings statement is required for actions which are Type II.

(g) Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.

(1) Considering only a part or segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.

(2) If it is determined that an EIS is necessary for an action consisting of a set of activities or steps, only one draft and one final EIS need be prepared on the action provided that the statement addresses each part of the action at a level of detail sufficient for an adequate analysis of the significant adverse environmental impacts. Except for a supplement to a generic environmental impact statement (see subdivision 617.10(d) of this Part), a supplement to a draft or final EIS will only be required in the circumstances prescribed in paragraph 617.9(a)(7) of this Part.

(h) Agencies must carry out the terms and requirements of this Part with minimum procedural and administrative delay, must avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and must expedite all SEQR proceedings in the interest of prompt review.

(i) Time periods in this Part may be extended by mutual agreement between a project sponsor and the lead agency, with notice to all other involved agencies by the lead agency.

617.4 TYPE I ACTIONS.

(a) The purpose of the list of Type I actions in this section is to identify, for agencies, project sponsors and the public, those actions and projects that are more likely to require the preparation of an EIS than Unlisted actions. All agencies are subject to this Type I list.

(1) This Type I list is not exhaustive of those actions that an agency determines may have a significant adverse impact on the environment and require the preparation of an EIS. However, the fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS. For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in subdivision 617.7(c) of this Part.

(2) Agencies may adopt their own lists of additional Type I actions, may adjust the thresholds to make them more inclusive, and may continue to use previously adopted lists of Type I actions to complement those contained in this section. Designation of a Type I action by one involved agency requires coordinated review by all involved agencies. An agency may not designate as Type I any action identified as Type II in section 617.5 of this Part.

(b) The following actions are Type I if they are to be directly undertaken, funded or approved by an agency:

(1) the adoption of a municipality's land use plan, the adoption by any agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations;

(2) the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district;

(3) the granting of a zoning change, at the request of an applicant, for an action that meets or exceeds one or more of the thresholds given elsewhere in this list;

(4) the acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency;

(5) construction of new residential units that meet or exceed the following thresholds:

(i) 10 units in municipalities that have not adopted zoning or subdivision regulations;

(ii) 50 units not to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(iii) in a city, town or village having a population of less than 150,000, 250

units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(iv) in a city, town or village having a population of greater than 150,000 but less than 1,000,000, 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works; or

(v) in a city or town having a population of greater than 1,000,000, 2,500 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;

(6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:

(i) a project or action that involves the physical alteration of 10 acres;

(ii) a project or action that would use ground or surface water in excess of 2,000,000 gallons per day;

(iii) parking for 1,000 vehicles;

(iv) in a city, town or village having a population of 150,000 persons or less, a facility with more than 100,000 square feet of gross floor area;

(v) in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;

(7) any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;

(8) any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, article 25-AA, sections 303 and 304) and exceeds 25 percent of any threshold established in this section;

(9) any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.17 of this Part));

(10) any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly

owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR Part 62, 1994 (see section 617.17 of this Part); or

(11) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

617.5 TYPE II ACTIONS.

(a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.

(b) Each agency may adopt its own list of Type II actions to supplement the actions in subdivision (c) of this section. No agency is bound by an action on another agency's Type II list. An agency that identifies an action as not requiring any determination or procedure under this Part is not an involved agency. Each of the actions on an agency Type II list must:

(1) in no case, have a significant adverse impact on the environment based on the criteria contained in subdivision 617.7(c) of this Part; and

(2) not be a Type I action as defined in section 617.4 of this Part.

(c) The following actions are not subject to review under this Part:

(1) maintenance or repair involving no substantial changes in an existing structure or facility;

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

(3) agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;

(4) repaving of existing highways not involving the addition of new travel lanes;

(5) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;

(6) maintenance of existing landscaping or natural growth;

(7) construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;

(8) routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;

(9) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;

(10) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;

(11) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;

(12) granting of individual setback and lot line variances;

(13) granting of an area variance(s) for a single-family, two-family or three-family residence;

(14) public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;

(15) minor temporary uses of land having negligible or no permanent impact on the environment;

(16) installation of traffic control devices on existing streets, roads and highways;

(17) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;

(18) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;

(19) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);

(20) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;

(21) conducting concurrent environmental, engineering, economic, feasibility and

other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;

(22) collective bargaining activities;

(23) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;

(24) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;

(25) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;

(26) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;

(27) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;

(28) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;

(29) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;

(30) adoption of a moratorium on land development or construction;

(31) interpreting an existing code, rule or regulation;

(32) designation of local landmarks or their inclusion within historic districts;

(33) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;

(34) actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 253 of the Laws of 1977 and 460 of the Laws of 1978), except in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental impacts, or to choose a feasible or less environmentally damaging alternative, the commissioner may, at the request of any person, or

on his own motion, require the preparation of an environmental impact statement; or, in the case of an action where the responsible agency proposed a modification of the action and the modification may result in a significant adverse impact on the environment, an environmental impact statement must be prepared with respect to such modification;

(35) actions requiring a certificate of environmental compatibility and public need under articles VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate;

(36) actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or a local government pursuant to section 807, 808 and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law; and

(37) actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as rezoning where the local legislative body determines the action will not be entertained.

617.6 INITIAL REVIEW OF ACTIONS AND ESTABLISHING LEAD AGENCY.

(a) Initial review of actions.

(1) As early as possible in an agency's formulation of an action it proposes to undertake, or as soon as an agency receives an application for funding or for approval of an action, it must do the following:

(i) Determine whether the action is subject to SEQR. If the action is a Type II action, the agency has no further responsibilities under this Part.

(ii) Determine whether the action involves a federal agency. If the action involves a federal agency, the provisions of section 617.15 of this Part apply.

(iii) Determine whether the action may involve one or more other agencies.

(iv) Make a preliminary classification of an action as Type I or Unlisted, using the information available and comparing it with the thresholds set forth in section 617.4 of this Part. Such preliminary classification will assist in determining whether a full EAF and coordinated review is necessary.

(2) For Type I actions, a full EAF (see section 617.20, Appendix A, of this Part) must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the full EAF, including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence. The lead agency is responsible for preparing Part 2 and, as needed, Part 3.

(3) For Unlisted actions, the short EAF (see section 617.20, Appendix C, of this Part) must be used to determine the significance of such actions. However, an agency may instead use the full EAF for Unlisted actions if the short EAF would not provide the lead agency with sufficient information on which to base its determination of significance. The lead agency may require other information necessary to determine significance.

(4) An agency may waive the requirement for an EAF if a draft EIS is prepared or submitted. The draft EIS may be treated as an EAF for the purpose of determining significance.

(5) For state agencies only, determine whether the action is located in the coastal area. If the action is either Type I or Unlisted and is in the coastal area, the provisions of 19 NYCRR 600 also apply. This provision applies to all state agencies, whether acting as a lead or involved agency.

(6) Determine whether the Type I or Unlisted action is located in an agricultural district and comply with the provisions of subdivision (4) of section 305 of article 25-AA of the Agriculture and Markets Law, if applicable.

(b) Establishing lead agency.

(1) When a single agency is involved, that agency will be the lead agency when it proposes to undertake, fund or approve a Type I or Unlisted action that does not involve another agency.

(i) If the agency is directly undertaking the action, it must determine the significance of the action as early as possible in the design or formulation of the action.

(ii) If the agency has received an application for funding or approval of the action, it must determine the significance of the action within 20 calendar days of its receipt of the application, an EAF, or any additional information reasonably necessary to make that determination, whichever is later.

(2) When more than one agency is involved:

(i) For all Type I actions and for coordinated review of Unlisted actions involving more than one agency, a lead agency must be established prior to a determination of significance. For Unlisted actions where there will be no coordinated review, the procedures in paragraph 617.6(b)(4) of this Part must be followed.

(ii) When an agency has been established as the lead agency for an action involving an applicant and has determined that an EIS is required, it must, in accordance with subdivision 617.12(b) of this Part, promptly notify the applicant and all other involved agencies, in writing, that it is the lead agency, that an EIS is required and whether scoping will be conducted.

(iii) The lead agency will continue in that role until it files either a negative

declaration or a findings statement or a lead agency is re-established in accordance with paragraph 617.6(b)(6) of this Part.

(3) Coordinated review.

(i) When an agency proposes to directly undertake, fund or approve a Type I action or an Unlisted action undergoing coordinated review with other involved agencies, it must, as soon as possible, transmit Part 1 of the EAF completed by the project sponsor, or a draft EIS and a copy of any application it has received to all involved agencies and notify them that a lead agency must be agreed upon within 30 calendar days of the date the EAF or draft EIS was transmitted to them. For the purposes of this Part, and unless otherwise specified by the department, all coordination and filings with the department as an involved agency must be with the appropriate regional office of the department.

(ii) The lead agency must determine the significance of the action within 20 calendar days of its establishment as lead agency, or within 20 calendar days of its receipt of all information it may reasonably need to make the determination of significance, whichever occurs later, and must immediately prepare, file and publish the determination in accordance with section 617.12 of this Part.

(iii) If a lead agency exercises due diligence in identifying all other involved agencies and provides written notice of its determination of significance to the identified involved agencies, then no involved agency may later require the preparation of an EAF, a negative declaration or an EIS in connection with the action. The determination of significance issued by the lead agency following coordinated review is binding on all other involved agencies.

(4) Uncoordinated review for Unlisted actions involving more than one agency.

(i) An agency conducting an uncoordinated review may proceed as if it were the only involved agency pursuant to subdivision (a) of this section unless and until it determines that an action may have a significant adverse impact on the environment.

(ii) If an agency determines that the action may have a significant adverse impact on the environment, it must then coordinate with other involved agencies.

(iii) At any time prior to its final decision an agency may have its negative declaration superseded by a positive declaration by any other involved agency.

(5) Actions for which lead agency cannot be agreed upon.

(i) If, within the 30 calendar days allotted for establishment of lead agency, the involved agencies are unable to agree upon which agency will be the lead agency, any involved agency or the project sponsor may request, by certified mail or other form of receipted delivery to the

commissioner, that a lead agency be designated. Simultaneously, copies of the request must be sent by certified mail or other form of receipted delivery to all involved agencies and the project sponsor. Any agency raising a dispute must be ready to assume the lead agency functions if such agency is designated by the commissioner.

(ii) The request must identify each involved agency's jurisdiction over the action, and all relevant information necessary for the commissioner to apply the criteria in subparagraph (v) of this subdivision, and state that all comments must be submitted to the commissioner within 10 calendar days after receipt of the request.

(iii) Within 10 calendar days of the date a copy of the request is received by them, involved agencies and the project sponsor may submit to the commissioner any comments they may have on the action. Such comments must contain the information indicated in subparagraph (ii) of this subdivision.

(iv) The commissioner must designate a lead agency within 20 calendar days of the date the request or any supplemental information the commissioner has required is received, based on a review of the facts, the criteria below, and any comments received.

(v) The commissioner will use the following criteria, in order of importance, to designate lead agency:

('a') whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency);

('b') which agency has the broadest governmental powers for investigation of the impact(s) of the proposed action; and

('c') which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

(vi) Notice of the commissioner's designation of lead agency will be mailed to all involved agencies and the project sponsor.

(6) Re-establishment of lead agency.

(i) Re-establishment of lead agency may occur by agreement of all involved agencies in the following circumstances:

('a') for a supplement to a final EIS or generic EIS;

('b') upon failure of the lead agency's basis of jurisdiction; or

('c') upon agreement of the project sponsor, prior to the acceptance of a draft EIS.

(ii) Disputes concerning re-establishment of lead agency for a supplement to a final EIS or generic EIS are subject to the designation procedures contained in paragraph (5) of subdivision (b) of this section.

(iii) Notice of re-establishment of lead agency must be given by the new lead agency to the project sponsor within 10 days of its establishment.

617.7 DETERMINING SIGNIFICANCE.

(a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.

(2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

(b) For all Type I and Unlisted actions the lead agency making a determination of significance must:

(1) consider the action as defined in subdivisions 617.2(b) and 617.3(g) of this Part;

(2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;

(3) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and

(4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

(c) Criteria for determining significance.

(1) To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(ii) the removal or destruction of large quantities of vegetation or fauna;

substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

(vi) a major change in the use of either the quantity or type of energy;

(vii) the creation of a hazard to human health;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

(2) For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected.

(d) Conditioned negative declarations.

(1) For Unlisted actions involving an applicant, a lead agency may prepare a conditioned negative declaration (CND) provided that it:

(i) has completed a full EAF;

(ii) has completed a coordinated review in accordance with paragraph 617.6(b)(3) of this Part;

(iii) has imposed SEQR conditions pursuant to subdivision 617.3(b) of this Part that have mitigated all significant environmental impacts and are supported by the full EAF and any other documentation;

(iv) has published a notice of a CND in the ENB and a minimum 30-day public comment period has been provided. The notice must state what conditions have been imposed. An agency may also use its own public notice and review procedures, provided the notice states that a CND has been issued, states what conditions have been imposed and allows for a minimum 30-day public comment period; and

(v) has complied with subdivisions 617.7(b) and 617.12(a) and (b) of this Part.

2) A lead agency must rescind the CND and issue a positive declaration requiring the preparation of a draft EIS if it receives substantive comments that identify:

(i) potentially significant adverse environmental impacts that were not previously identified and assessed or were inadequately assessed in the review; or

(ii) a substantial deficiency in the proposed mitigation measures.

(3) The lead agency must require an EIS if requested by the applicant.

(e) Amendment of a negative declaration.

(1) At any time prior to its decision to undertake, fund or approve an action, a lead agency, at its discretion, may amend a negative declaration when substantive:

(i) changes are proposed for the project; or

(ii) new information is discovered; or

(iii) changes in circumstances related to the project arise;

that were not previously considered and the lead agency determines that no significant adverse environmental impacts will occur.

(2) The lead agency must prepare, file and publish the amended negative declaration in accordance with section 617.12 of this Part. The amended negative declaration must contain reference to the original negative declaration and discuss the reasons supporting the amended determination.

(f) Rescission of negative declarations.

(1) At any time prior to its decision to undertake, fund or approve an action, a lead agency must rescind a negative declaration when substantive:

(i) changes are proposed for the project; or

(ii) new information is discovered; or

(iii) changes in circumstances related to the project arise;

that were not previously considered and the lead agency determines that a significant adverse environmental impact may result.

(2) Prior to any rescission, the lead agency must inform other involved agencies and the project sponsor and must provide a reasonable opportunity for the project sponsor to respond.

(3) If, following reasonable notice to the project sponsor, its determination is the same, the lead agency must prepare, file and publish a positive declaration in accordance with section 617.12 of this Part.

617.8 SCOPING.

(a) The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or nonsignificant. Scoping is not required. Scoping may be initiated by the lead agency or the project sponsor.

(b) If scoping is conducted, the project sponsor must submit a draft scope that contains the items identified in paragraphs 617.8(f)(1) through (5) of this section to the lead

agency. The lead agency must provide a copy of the draft scope to all involved agencies, and make it available to any individual or interested agency that has expressed an interest in writing to the lead agency.

(c) If scoping is not conducted, the project sponsor may prepare a draft EIS for submission to the lead agency.

(d) Involved agencies should provide written comments reflecting their concerns, jurisdictions and information needs sufficient to ensure that the EIS will be adequate to support their SEQR findings. Failure of an involved agency to participate in the scoping process will not delay completion of the final written scope.

(e) Scoping must include an opportunity for public participation. The lead agency may either provide a period of time for the public to review and provide written comments on a draft scope or provide for public input through the use of meetings, exchanges of written material, or other means.

(f) The lead agency must provide a final written scope to the project sponsor, all involved agencies and any individual that has expressed an interest in writing to the lead agency within 60 days of its receipt of a draft scope. The final written scope should include:

(1) a brief description of the proposed action;

(2) the potentially significant adverse impacts identified both in the positive declaration and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;

(3) the extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;

(4) an initial identification of mitigation measures;

(5) the reasonable alternatives to be considered;

(6) an identification of the information/data that should be included in an appendix rather than the body of the draft EIS; and

(7) those prominent issues that were raised during scoping and determined to be not relevant or not environmentally significant or that have been adequately addressed in a prior environmental review.

(g) All relevant issues should be raised before the issuance of a final written scope. Any agency or person raising issues after that time must provide to the lead agency and project sponsor a written statement that identifies:

(1) the nature of the information;

(2) the importance and relevance of the information to a potential significant

impact;

(3) the reason(s) why the information was not identified during scoping and why it should be included at this stage of the review.

(h) The project sponsor may incorporate information submitted consistent with subdivision 617.8(g) of this section into the draft EIS at its discretion. Any substantive information not incorporated into the draft EIS must be considered as public comment on the draft EIS.

(i) If the lead agency fails to provide a final written scope within 60 calendar days of its receipt of a draft scope, the project sponsor may prepare and submit a draft EIS consistent with the submitted draft scope.

617.9 PREPARATION AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS.

(a) Environmental impact statement procedures.

(1) The project sponsor or the lead agency, at the project sponsor's option, will prepare the draft EIS. If the project sponsor does not exercise the option to prepare the draft EIS, the lead agency will prepare it, cause it to be prepared or terminate its review of the action. A fee may be charged by the lead agency for preparation or review of an EIS pursuant to section 617.13 of this Part. When the project sponsor prepares the draft EIS, the document must be submitted to the lead agency.

(2) The lead agency will use the final written scope, if any, and the standards contained in this section to determine whether to accept the draft EIS as adequate with respect to its scope and content for the purpose of commencing public review. This determination must be made in accordance with the standards in this section within 45 days of receipt of the draft EIS.

(i) If the draft EIS is determined to be inadequate, the lead agency must identify in writing the deficiencies and provide this information to the project sponsor.

(ii) The lead agency must determine whether to accept the resubmitted draft EIS within 30 days of its receipt.

(3) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency must prepare, file and publish a notice of completion of the draft EIS and file copies of the draft EIS in accordance with the requirements set forth in section 617.12 of this Part. The minimum public comment period on the draft EIS is 30 days. The comment period begins with the first filing and circulation of the notice of completion.

(4) When the lead agency has completed a draft EIS or when it has determined that a draft EIS prepared by a project sponsor is adequate for public review, the lead agency will determine whether or not to conduct a public hearing concerning the action. In determining whether or not to hold a SEQR hearing, the lead agency will consider: the degree of interest in the action shown by the

public or involved agencies; whether substantive or significant adverse environmental impacts have been identified; the adequacy of the mitigation measures and alternatives proposed; and the extent to which a public hearing can aid the agency decision-making processes by providing a forum for, or an efficient mechanism for the collection of, public comment. If a hearing is to be held:

(i) the lead agency must prepare and file a notice of hearing in accordance with subdivisions 617.12(a) and (b) of this Part. Such notice may be contained in the notice of completion of the draft EIS. The notice of hearing must be published, at least 14 calendar days in advance of the public hearing, in a newspaper of general circulation in the area of the potential impacts of the action. For state agency actions that apply statewide this requirement can be satisfied by publishing the hearing notice in the ENB and the State Register;

(ii) the hearing will commence no less than 15 calendar days or no more than 60 calendar days after the filing of the notice of completion of the draft EIS by the lead agency pursuant to subdivision 617.12(b) of this Part. When a SEQR hearing is to be held, it should be conducted with other public hearings on the proposed action, whenever practicable; and

(iii) comments will be received and considered by the lead agency for no less than 30 calendar days from the first filing and circulation of the notice of completion, or no less than 10 calendar days following a public hearing at which the environmental impacts of the proposed action are considered, whichever is later.

(5) Except as provided in subparagraph (i) of this paragraph, the lead agency must prepare or cause to be prepared and must file a final EIS, within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft EIS, whichever occurs later.

(i) No final EIS need be prepared if:

('a') the proposed action has been withdrawn or;

('b') on the basis of the draft EIS, and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment. A negative declaration must then be prepared, filed and published in accordance section 617.12 of this Part.

(ii) The last date for preparation and filing of the final EIS may be extended:

('a') if it is determined that additional time is necessary to prepare the statement adequately; or

('b') if problems with the proposed action requiring material reconsideration or modification have been identified.

(6) When the lead agency has completed a final EIS, it must prepare, file and

publish a notice of completion of the final EIS and file copies of the final EIS in accordance with section 617.12 of this Part.

(7) Supplemental EISs.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

('a') changes proposed for the project; or

('b') newly discovered information; or

('c') a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

('a') the importance and relevance of the information; and

('b') the present state of the information in the EIS.

(iii) If a supplement is required, it will be subject to the full procedures of this Part.

(b) Environmental impact statement content.

(1) An EIS must assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives. EISs must be analytical and not encyclopedic. The lead agency and other involved agencies must cooperate with project sponsors who are preparing EISs by making available to them information contained in their files relevant to the EIS.

(2) EISs must be clearly and concisely written in plain language that can be read and understood by the public. Within the framework presented in paragraph 617.9(b)(5) of this subdivision, EISs should address only those potential significant adverse environmental impacts that can be reasonably anticipated and/or have been identified in the scoping process. EISs should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts. Highly technical material should be summarized and, if it must be included in its entirety, should be referenced in the statement and included in an appendix.

(3) All draft and final EISs must be preceded by a cover sheet stating:

(i) whether it is a draft or final EIS;

(ii) the name or descriptive title of the action;

(iii) the location (county and town, village or city) and street address, if

applicable, of the action;

(iv) the name and address of the lead agency and the name and telephone number of a person at the agency who can provide further information;

(v) the names of individuals or organizations that prepared any portion of the statement;

(vi) the date of its acceptance by the lead agency; and

(vii) in the case of a draft EIS, the date by which comments must be submitted.

(4) A draft or final EIS must have a table of contents following the cover sheet and a precise summary which adequately and accurately summarizes the statement.

(5) The format of the draft EIS may be flexible; however, all draft EISs must include the following elements:

(i) a concise description of the proposed action, its purpose, public need and benefits, including social and economic considerations;

(ii) a concise description of the environmental setting of the areas to be affected, sufficient to understand the impacts of the proposed action and alternatives;

(iii) a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence. The draft EIS should identify and discuss the following only where applicable and significant:

('a') reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts;

('b') those adverse environmental impacts that cannot be avoided or adequately mitigated if the proposed action is implemented;

('c') any irreversible and irretrievable commitments of environmental resources that would be associated with the proposed action should it be implemented;

('d') any growth-inducing aspects of the proposed action;

('e') impacts of the proposed action on the use and conservation of energy (for an electric generating facility, the statement must include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan);

('f') impacts of the proposed action on solid waste management and

its consistency with the state or locally adopted solid waste management plan;

('g') impacts of public acquisitions of land or interests in land or funding for non-farm development on lands used in agricultural production and unique and irreplaceable agricultural lands within agricultural districts pursuant to subdivision (4) of section 305 of article 25-AA of the Agriculture and Markets Law; and

('h') if the proposed action is in or involves resources in Nassau or Suffolk Counties, impacts of the proposed action on, and its consistency with, the comprehensive management plan for the special groundwater protection area program as implemented pursuant to article 55 or any plan subsequently ratified and adopted pursuant to article 57 of the Environmental Conservation Law for Nassau and Suffolk counties;

(iv) a description of the mitigation measures;

(v) a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. The range of alternatives may also include, as appropriate, alternative:

('a') sites;

('b') technology;

('c') scale or magnitude;

('d') design;

('e') timing;

('f') use; and

('g') types of action.

For private project sponsors, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to, a private project sponsor;

(vi) for a state agency action in the coastal area the action's consistency: with the applicable coastal policies contained in 19 NYCRR 600.5; or when the action is in an approved local waterfront revitalization program

area, with the local program policies;

(vii) for a state agency action within a heritage area or urban cultural park, the action's consistency with the approved heritage area management plan or the approved urban cultural park management plan;

(viii) a list of any underlying studies, reports, EISs and other information obtained and considered in preparing the statement including the final written scope.

(6) In addition to the analysis of significant adverse impacts required in subparagraph 617.9(b)(5)(iii) of this section, if information about reasonably foreseeable catastrophic impacts to the environment is unavailable because the cost to obtain it is exorbitant, or the means to obtain it are unknown, or there is uncertainty about its validity, and such information is essential to an agency's SEQR findings, the EIS must:

(i) identify the nature and relevance of unavailable or uncertain information;

(ii) provide a summary of existing credible scientific evidence, if available; and

(iii) assess the likelihood of occurrence, even if the probability of occurrence is low, and the consequences of the potential impact, using theoretical approaches or research methods generally accepted in the scientific community.

This analysis would likely occur in the review of such actions as an oil supertanker port, a liquid propane gas/liquid natural gas facility, or the siting of a hazardous waste treatment facility. It does not apply in the review of such actions as shopping malls, residential subdivisions or office facilities.

(7) A draft or final EIS may incorporate by reference all or portions of other documents, including EISs that contain information relevant to the statement. The referenced documents must be made available for inspection by the public within the time period for public comment in the same places where the agency makes available copies of the EIS. When an EIS incorporates by reference, the referenced document must be briefly described, its applicable findings summarized, and the date of its preparation provided.

(8) A final EIS must consist of: the draft EIS, including any revisions or supplements to it; copies or a summary of the substantive comments received and their source (whether or not the comments were received in the context of a hearing); and the lead agency's responses to all substantive comments. The draft EIS may be directly incorporated into the final EIS or may be incorporated by reference. The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it. All revisions and supplements to the draft EIS must be specifically indicated and identified as such in the final EIS.

617.10 GENERIC ENVIRONMENTAL IMPACT STATEMENTS.

(a) Generic EISs may be broader, and more general than site or project specific EISs and should discuss the logic and rationale for the choices advanced. They may also include an assessment of specific impacts if such details are available. They may be based on conceptual information in some cases. They may identify the important elements of the natural resource base as well as the existing and projected cultural features, patterns and character. They may discuss in general terms the constraints and consequences of any narrowing of future options. They may present and analyze in general terms a few hypothetical scenarios that could and are likely to occur. A generic EIS may be used to assess the environmental impacts of:

(1) a number of separate actions in a given geographic area which, if considered singly, may have minor impacts, but if considered together may have significant impacts; or

(2) a sequence of actions, contemplated by a single agency or individual; or

(3) separate actions having generic or common impacts; or

(4) an entire program or plan having wide application or restricting the range of future alternative policies or projects, including new or significant changes to existing land use plans, development plans, zoning regulations or agency comprehensive resource management plans.

(b) In particular agencies may prepare generic EISs on the adoption of a comprehensive plan prepared in accordance with subdivision 4, section 28-a of the General City Law; subdivision 4, section 272-a of the Town Law; or subdivision 4, section 7-722 of the Village Law and the implementing regulations. Impacts of individual actions proposed to be carried out in conformance with these adopted plans and regulations and the thresholds or conditions identified in the generic EIS may require no or limited SEQR review as described in subdivisions (c) and (d) of this section.

(c) Generic EISs and their findings should set forth specific conditions or criteria under which future actions will be undertaken or approved, including requirements for any subsequent SEQR compliance. This may include thresholds and criteria for supplemental EISs to reflect specific significant impacts, such as site specific impacts, that were not adequately addressed or analyzed in the generic EIS.

(d) When a final generic EIS has been filed under this part:

(1) No further SEQR compliance is required if a subsequent proposed action will be carried out in conformance with the conditions and thresholds established for such actions in the generic EIS or its findings statement;

(2) An amended findings statement must be prepared if the subsequent proposed action was adequately addressed in the generic EIS but was not addressed or was not adequately addressed in the findings statement for the generic EIS;

(3) A negative declaration must be prepared if a subsequent proposed action was not addressed or was not adequately addressed in the generic EIS *and the* subsequent action will not result in any significant environmental impacts;

(4) A supplement to the final generic EIS must be prepared if the subsequent

proposed action was not addressed or was not adequately addressed in the generic EIS and the subsequent action may have one or more significant adverse environmental impacts.

(e) In connection with projects that are to be developed in phases or stages, agencies should address not only the site specific impacts of the individual project under consideration, but also, in more general or conceptual terms, the cumulative impacts on the environment and the existing natural resource base of subsequent phases of a larger project or series of projects that may be developed in the future. In these cases, this part of the generic EIS must discuss the important elements and constraints present in the natural and cultural environment that may bear on the conditions of an agency decision on the immediate project.

617.11 DECISION-MAKING AND FINDINGS REQUIREMENTS.

(a) Prior to the lead agency's decision on an action that has been the subject of a final EIS, it shall afford agencies and the public a reasonable time period (not less than 10 calendar days) in which to consider the final EIS before issuing its written findings statement. If a project modification or change of circumstance related to the project requires a lead or involved agency to substantively modify its decision, findings may be amended and filed in accordance with subdivision 617.12(b) of this Part.

(b) In the case of an action involving an applicant, the lead agency's filing of a written findings statement and decision on whether or not to fund or approve an action must be made within 30 calendar days after the filing of the final EIS.

(c) No involved agency may make a final decision to undertake, fund, approve or disapprove an action that has been the subject of a final EIS, until the time period provided in subdivision 617.11(a) of this section has passed and the agency has made a written findings statement. Findings and a decision may be made simultaneously.

(d) Findings must:

(1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;

(2) weigh and balance relevant environmental impacts with social, economic and other considerations;

(3) provide a rationale for the agency's decision;

(4) certify that the requirements of this Part have been met;

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

(e) No state agency may make a final decision on an action that has been the subject of a final EIS and is located in the coastal area until the agency has made a written

finding that the action is consistent with applicable policies set forth in 19 NYCRR 600.5. When the Secretary of State has approved a local government waterfront revitalization program, no state agency may make a final decision on an action, that is likely to affect the achievement of the policies and purposes of such program, until the agency has made a written finding that the action is consistent to the maximum extent practicable with that local waterfront revitalization program.

617.12 DOCUMENT PREPARATION, FILING, PUBLICATION AND DISTRIBUTION.

The following SEQR documents must be prepared, filed, published and made available as prescribed in this section.

(a) Preparation of documents.

(1) Each negative declaration, positive declaration, notice of completion of an EIS, notice of hearing and findings must state that it has been prepared in accordance with article 8 of the Environmental Conservation Law and must contain: the name and address of the lead agency; the name, address and telephone number of a person who can provide additional information; a brief description of the action; the SEQR classification; and, the location of the action.

(2) In addition to the information contained in paragraph (a)(1) of this subdivision:

(i) A negative declaration must meet the requirements of subdivision 617.7(b) of this Part. A conditioned negative declaration must also identify the specific conditions being imposed that have eliminated or adequately mitigated all significant adverse environmental impacts and the period, not less than 30 calendar days, during which comments will be accepted by the lead agency.

(ii) A positive declaration must identify the potential significant adverse environmental impacts that require the preparation of an EIS and state whether scoping will be conducted.

(iii) A notice of completion must identify the type of EIS (draft, final, supplemental, generic) and state where copies of the document can be obtained. For a draft EIS the notice must include the period (not less than 30 calendar days from the date of filing or not less than 10 calendar days following a public hearing on the draft EIS) during which comments will be accepted by the lead agency.

(iv) A notice of hearing must include the time, date, place and purpose of the hearing and contain a summary of the information contained in the notice of completion. The notice of hearing may be combined with the notice of completion of the draft EIS.

(v) Findings must contain the information required by subdivisions 617.11(d) and (e) of this Part.

(b) Filing and distribution of documents.

(1) A Type I negative declaration, conditioned negative declaration, positive declaration, notice of completion of an EIS, EIS, notice of hearing and findings must be filed with:

(i) the chief executive officer of the political subdivision in which the action will be principally located;

(ii) the lead agency;

(iii) all involved agencies (see also paragraph 617.6(b)(3)) of this Part;

(iv) any person who has requested a copy; and

(v) if the action involves an applicant, with the applicant.

(2) A negative declaration prepared on an Unlisted action must be filed with the lead agency.

(3) All SEQR documents and notices, including but not limited to, EAFs, negative declarations, positive declarations, scopes, notices of completion of an EIS, EISs, notices of hearing and findings must be maintained in files that are readily accessible to the public and made available on request.

(4) The lead agency may charge a fee to persons requesting documents to recover its copying costs.

(5) If sufficient copies of the EIS are not available to meet public interest, the lead agency must provide an additional copy of the documents to the local public library.

(6) A copy of the EIS must be sent to the Department of Environmental Conservation, Division of Regulatory Services, 50 Wolf Road, Albany, NY 12233-1750.

(7) For state agency actions in the coastal area a copy of the EIS must be provided to the Secretary of State.

(c) Publication of notices.

(1) Notice of a Type I negative declaration, conditioned negative declaration, positive declaration and completion of an EIS must be published in the Environmental Notice Bulletin (ENB) in a manner prescribed by the department. Notice must be provided by the lead agency directly to Business Environment Publications, 6 Sevilla Drive, Clifton Park, NY 12065-5013 for publication in the ENB.

(2) A notice of hearing must be published, at least 14 days in advance of the hearing date, in a newspaper of general circulation in the area of the potential impacts of the action. For state agency actions that apply statewide this requirement can be satisfied by publishing the hearing notice in the ENB and the State Register.

(3) Agencies may provide for additional public notice by posting on sign boards or by other appropriate means.

(4) Notice of a negative declaration must be incorporated once into any other subsequent notice required by law. This requirement can be satisfied by indicating the SEQR classification of the action and the agency's determination of significance.

617.13 FEES AND COSTS.

(a) When an action subject to this Part involves an applicant, the lead agency may charge a fee to the applicant in order to recover the actual costs of either preparing or reviewing the draft and/or final EIS. The fee may include a chargeback to recover a proportion of the lead agency's actual costs expended for the preparation of a generic EIS prepared pursuant to section 617.10 of this Part for the geographic area where the applicant's project is located. The chargeback may be based on the percentage of the remaining developable land or the percentage of road frontage to be used by the project, or any other reasonable methods. The fee must not exceed the amounts allowed under subdivisions (b) through (d) of this section. If the lead agency charges for preparation of a draft and/or final EIS, it may not also charge for review; if it charges for review of a draft and/or final EIS, it may not also charge for preparation. Scoping will be considered part of the draft EIS for purposes of determining a SEQR fee; no fee may be charged for preparation of an EAF or determination of significance.

(b) For residential projects, the total project value will be calculated on the actual purchase price of the land or the fair market value of the land (determined by assessed valuation divided by equalization rate) whichever is higher, plus the cost of all required site improvements, not including the cost of buildings and structures, as determined with reference to a current cost data publication in common use. In the case of such projects, the fee charged by an agency may not exceed two percent of the total project value.

(c) For nonresidential construction projects, the total project value will be calculated on the actual purchase price of the land or the fair market value of the land (determined by the assessed valuation divided by equalization rate) whichever is higher, plus the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material as determined with reference to a current cost data publication in common use. In the case of such projects the fee charged may not exceed one half of one percent of the total project value.

(d) For projects involving the extraction of minerals, the total project value will be calculated on the cost of site preparation for mining. Site preparation cost means the cost of clearing and grubbing and removal of over-burden for the entire area to be mined plus the cost of utility services and construction of access roads. Such costs are determined with reference to a current cost data publication in common use. The fee charged by the agency may not exceed one half of one percent of the total project value. For those costs to be incurred for phases occurring three or more years after issuance of a permit, the total project value will be determined using a present value calculation.

(e) Where an applicant chooses not to prepare a draft EIS, the lead agency will provide the applicant, upon request, with an estimate of the costs for preparing the draft EIS

calculated on the total value of the project for which funding or approval is sought.

(f) "Appeals procedure". When a dispute arises concerning fees charged to an applicant by a lead agency, the applicant may make a written request to the agency setting forth reasons why it is felt that such fees are inequitable. Upon receipt of a request the chief fiscal officer of the agency or his designee will examine the agency record and prepare a written response to the applicant setting forth reasons why the applicant's claims are valid or invalid. Such appeal procedure must not interfere with or cause delay in the EIS process or prohibit an action from being undertaken.

(g) The technical services of the department may be made available to other agencies on a fee basis, reflecting the costs thereof, and the fee charged to any applicant pursuant to this section may reflect such costs.

617.14 INDIVIDUAL AGENCY PROCEDURES TO IMPLEMENT SEQR.

(a) Article 8 of the Environmental Conservation Law requires all agencies to adopt and publish, after public hearing, any additional procedures that may be necessary for them to implement SEQR. Until an agency adopts these additional procedures, its implementation of SEQR will be governed by the provisions of this Part. If an agency rescinds its additional SEQR procedures, it will continue to be governed by this Part. The agency must promptly notify the commissioner, and the commissioner shall publish a notice in the ENB, of the adoption of additional procedures or the rescission of agency SEQR procedures.

(b) To the greatest extent possible, the procedures prescribed in this Part must be incorporated into existing agency procedures. An agency may by local law, code, ordinance, executive order, resolution or regulation vary the time periods established in this Part for the preparation and review of SEQR documents, and for the conduct of public hearings, in order to coordinate the SEQR environmental review process with other procedures relating to the review and approval of actions. Such time changes must not impose unreasonable delay. Individual agency procedures to implement SEQR must be no less protective of environmental values, public participation and agency and judicial review than the procedures contained in this Part. This Part supersedes any SEQR provisions promulgated or enacted by an agency that are less protective of the environment.

(c) Agencies may find it helpful to seek the advice and assistance of other agencies, groups and persons on SEQR matters, including the following:

(1) advice on preparation and review of EAF's;

(2) recommendations on the significance or non-significance of actions;

(3) preparation and review of EISs and recommendations on the scope, adequacy, and contents of EISs;

(4) preparation and filing of SEQR notices and documents;

(5) conduct of public hearings; and

(6) recommendations to decisionmakers.

(d) Agencies are strongly encouraged to enter into cooperative agreements with other agencies regularly involved in carrying out or approving the same actions for the purposes of coordinating their procedures.

(e) All agencies are subject to the lists of Type I and Type II actions contained in this Part, and must apply the criteria provided in subdivision 617.7(c) of this Part. In addition, agencies may adopt their own lists of Type I actions, in accordance with section 617.4 of this Part and their own lists of Type II actions in accordance with section 617.5 of this Part.

(f) Every agency that adopts, has adopted or amends SEQR procedures must, after public hearing, file them with the commissioner, who will maintain them to serve as a resource for agencies and interested persons. The commissioner will provide notice in the ENB of such procedures upon filing. All agencies that have promulgated their own SEQR procedures must review and bring them into conformance with this Part. Until agencies do so, their procedures, where inconsistent or less protective, are superseded by this Part.

(g) A local agency may designate a specific geographic area within its boundaries as a critical environmental area (CEA). A state agency may also designate as a CEA a specific geographic area that is owned or managed by the state or is under its regulatory authority. Designation of a CEA must be preceded by written public notice and a public hearing. The public notice must identify the boundaries and the specific environmental characteristics of the area warranting CEA designation.

(1) To be designated as a CEA, an area must have an exceptional or unique character covering one or more of the following:

(i) a benefit or threat to human health;

(ii) a natural setting (e.g., fish and wildlife habitat, forest and vegetation, open space and areas of important aesthetic or scenic quality);

(iii) agricultural, social, cultural, historic, archaeological, recreational, or educational values; or

(iv) an inherent ecological, geological or hydrological sensitivity to change that may be adversely affected by any change.

(2) Notification that an area has been designated as a CEA must include a map at an appropriate scale to readily locate the boundaries of the CEA, the written justification supporting the designation, and proof of public hearing and, must be filed with:

(i) the commissioner;

(ii) the appropriate regional office of the department; and

(iii) any other agency regularly involved in undertaking, funding or approving actions in the municipality in which the area has been designated.

(3) This designation shall take effect 30 days after filing with the commissioner.

Each designation of a CEA must be published in the ENB by the department and the department will serve as a clearinghouse for information on CEAs.

(4) Following designation, the potential impact of any Type I or Unlisted Action on the environmental characteristics of the CEA is a relevant area of environmental concern and must be evaluated in the determination of significance prepared pursuant to Section 617.7 of this Part.

617.15 ACTIONS INVOLVING A FEDERAL AGENCY.

(a) When a draft and final EIS for an action has been duly prepared under the National Environmental Policy Act of 1969, an agency has no obligation to prepare an additional EIS under this Part, provided that the federal EIS is sufficient to make findings under section 617.11 of this Part. However, except in the case of Type II actions listed in section 617.5 of this Part, no involved agency may undertake, fund or approve the action until the federal final EIS has been completed and the involved agency has made the findings prescribed in section 617.11 of this Part.

(b) Where a finding of no significant impact (FNSI) or other written threshold determination that the action will not require a federal impact statement has been prepared under the National Environmental Policy Act of 1969, the determination will not automatically constitute compliance with SEQR. In such cases, state and local agencies remain responsible for compliance with SEQR.

(c) In the case of an action involving a federal agency for which either a federal FNSI or a federal draft and final EIS has been prepared, except where otherwise required by law, a final decision by a federal agency will not be controlling on any state or local agency decision on the action, but may be considered by the agency.

617.16 CONFIDENTIALITY.

When a project sponsor submits a completed EAF, draft or final EIS, or otherwise provides information concerning the environmental impacts of a proposed project, the project sponsor may request, consistent with the Freedom of Information Law (FOIL), article 6 of the Public Officers Law, that specifically identified information be held confidential. Prior to divulging any such information, the agency must notify the applicant of its determination of whether or not it will hold the information confidential.

617.17 REFERENCED MATERIAL.

The following referenced documents have been filed with the New York State Department of State. The documents are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and for inspection and copying at the Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-1750.

(a) National Register of Historic Places, (1994), 36 Code of Federal Regulation (CFR) Parts 60 and 63.

(b) Register Of National Natural Landmarks,(1994), 36 Code of Federal Regulation (CFR) Part 62.

617.18 SEVERABILITY.

If any provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

617.19 EFFECTIVE DATE.

This Part, as revised, applies to actions for which a determination of significance has not been made prior to January 1, 1996. Actions for which a determination of significance has been made prior to January 1, 1996 must comply with Part 617 effective June 1, 1987.

617.20 APPENDICES.

Appendices A, B and C are model environmental assessment forms which may be used to satisfy this Part or may be modified in accordance with sections 617.2 and 617.14 of this Part.

9NYCRR Part 270 & 271
Lands Underwater
Grants, Easements, Leases, Permits

Part 270

Lands Underwater

Grants, Easements, Leases, Permits

3.0 Underwater Chap 91 Final regs. adopted Aug 10 '92

9NYCRR is amended by repealing existing Parts 270, 271 and 273 and adding new Parts 270 and 271 to read as follows:

Part 270

Lands Underwater

Grants, Easements, Leases, Permits

Subpart 270-1 General Provisions

Section 270-1.1 Purpose and intent. The purpose of these regulations is to implement Article 6 of the Public Lands Law to establish a set of regulations in accordance with the statutory amendments. In furtherance thereof, it is hereby declared to be the purpose and intent to manage the State's interest in its underwater lands, to regulate the projects and structures constructed in or over such underwater lands consistent with the public interest in navigation, commerce, public access, fishing, bathing, recreation, environmental and aesthetic protection, and to ensure the waterfront owners reasonable exercise of riparian rights and access to those underwater lands.

Section 270-1.2 Severability. If any provision of Part 270 or Part 271, or its application to any person or circumstance, is held invalid, it is hereby expressly declared to be the intent of the Commissioner that the remainder of Part 270 and/or Part 271 and the application thereof to any person or circumstances shall not be affected thereby.

Subpart 270-2 Definitions.

(1) Boat - A generic term for watercraft of different sizes and types.

(2) Breakwater - A structure protecting a shore area, harbor, anchorage or basin from wave action, including wave attenuators.

(3) Commercial Use - A use involving the sale, rental or distribution of facilities, goods, equipment, services or commodities, either retail or wholesale, or the provision of recreational facilities for a fee.

(4) Conversion Grant - A conveyance by Letters Patent of the State's remaining right, title or interest or a part thereof in State-owned land underwater which was subject to a prior conveyance.

(5) Dock - A fixed or floating structure used solely as a landing place on water against which a boat may be berthed.

(6) Existing Structure - A wharf, dock, pier, jetty, platform, breakwater, mooring or other structure which was constructed, erected, anchored, suspended, placed or substantially replaced, altered, modified, enlarged or expanded prior to June 17, 1992.

(7) Jetty - A structure which extends into a body of water to prevent material from filling in a shoreline or channel, or protects a shoreline or channel from wave action.

(8) Keyhole Development - Means a residential development characterized by a number of dwelling units constructed on an upland tract or parcel associated with a relatively small shorefront area providing water access for all or a large portion of the residents of the upland tract or parcel.

(9) Marketable Title - As used in the statute means the minimum interest or title that a person of reasonable prudence and intelligence would be willing to accept.

(10) Mean Low Water and Mean High Water - Means, respectively, the approximate average low-water level or high-water level for a given body of water at a given location, which distinguishes between predominantly

aquatic and predominantly terrestrial habitat as determined in order of us by the following:

(i) available hydrologic data, calculations, and other relevant information concerning water levels (e.g. discharge, storage, tidal, and other recurrent water elevation data);

(ii) vegetative characteristics (e.g. location, presence, absence or destruction of terrestrial or aquatic vegetation);

(iii) physical characteristics (e.g. clear natural line impressed on a bank, scouring, shelving or the presence of sediments, litter or debris), and

(iv) other appropriate means that consider the characteristics of the surrounding area.

(11) Mooring - Means a float, buoy, chain, cable, rope, pile, spar, dolphin or any other devise or combination of devices which is anchored or fixed in State-owned lands underwater, to which a boat/vessel may be made fast.

(12) Mooring Facility - Means a collection of 10 or more individual moorings located within a definable area of State-owned lands underwater and under single ownership or control or under a common scheme or plan.

(13) Net Annual Income - As used in the statute, income derived from earnings or rental of structures on State-owned lands underwater after deduction for associated operating and maintenance expenses and excluding earnings derived from operations not directly associated with the rental of such structures such as but not limited to the sale and repair of boats, the sale of gasoline.

(14) Noncommercial Use - Means a use which does not involve the sale, rental or distribution of facilities, goods, equipment, services or

commodities, either retail or wholesale, or the provision of recreational facilities for a fee.

(15) Original Mean Low Water and Original Mean High Water - Means the original average low water level or high water level for a given body of water at a given location prior to the placement of fill for the purpose of determining ownership of lands formerly underwater, as such level may be determined from prior survey, historical maps, photographs and similar sources.

(16) Perimeter - Means a boundary of a marina, mooring or structure(s) consisting of a series of connected imaginary lines on a planimetric map and which encompass all related structures such as docks, bulkheads, breakwaters, pilings, piers, platforms or moorings that function together to create a facility or area at which boats may be docked or moored.

(17) Pier - A nonfloating fixed platform usually extending out over the water from the shore.

(18) Residential Use - Means a use of State-owned land underwater which is accessory to single or double family occupancy and does not include condominiums and cooperative forms of ownership, residential multi-lot subdivisions and keyhole developments.

(19) SEQRA - Means the State Environmental Quality Review Act, which is Article 8 of the Environmental Conservation Law and regulations promulgated thereunder.

(20) Slip - A berthing space for a boat.

(21) Special Use - Means the use of State-owned lands underwater associated with condominiums and cooperative forms of ownership, residential multi lot subdivisions and keyhole developments.

(22) State-Owned Lands Underwater - Means those lands now or formerly underwater or periodically subject to the ebb and flow of the tides, any right, title or interest to which is in the State of New York.

(23) Structure - Means anything constructed, erected anchored, suspended, placed in, on or above State-owned lands underwater or any object constructed, erected, anchored, suspended or placed on those lands other than cables, conduits, pipelines and hydroelectric facilities.

(24) Substantially (replaced, altered, etc.) - Means replacement, alteration, modification, enlargement or expansion in, on or above State-owned lands underwater that causes the wharf, dock, pier, jetty, platform, breakwater, mooring or other structure to exceed the thresholds set forth in Section 75, subdivision 7(b).

(25) Water Dependent Activity - Means an activity which can only be conducted in, on, above or adjacent to a water body because such activity requires direct access to that water body and which involves, as an integral part of such activity, the use of the water.

(26) Wharf - Means a structure built or maintained for the purpose of providing a berthing place for vessels.

Subpart 270-3 General Prohibition; Application Factors.

Section 270-3.1 General Prohibition of Construction. No wharf, dock, pier, jetty, platform, breakwater, mooring or other structure shall be constructed, erected, anchored, suspended or expanded or substantially replaced, altered, modified, enlarged or expanded in, on or above State-owned land underwater, nor shall any fill be placed on such land underwater unless a lease, easement, permit or other interest is obtained from the Commissioner of General Services in accordance with Section 75(b) of the Public Lands Law and Part 270; excepting therefrom easements for cables,

conduits, pipelines and hydroelectric power which shall be subject to the provisions of Section 3(2) of the Public Lands Law and Part 271.

Section 270-3.2 Application Factors: Agency Review. Prior to making any grant in fee, lease, easement, permit or lesser interest in lands underwater, the Commissioner of General Services shall ascertain the probable effect of the use, structure or facility on the public interest in State-owned lands underwater and in consultation with the Department of Environmental Conservation (DEC), Department of State (DOS) and Office of Parks, Recreation and Historic Preservation (OPR&HP) or such other agencies or authorities as required by law, shall examine the following factors:

(i) environmental impact of the project,

(ii) values for natural resource management, public recreation and commerce,

(iii) size, character and effects of the project in relation to neighboring uses,

(iv) potential for interference with navigation, public uses of waterway and riparian/littoral rights,

(v) water dependent nature of use,

(vi) adverse economic impact on existing commercial enterprises.

(vii) effect of the project on the natural resource interests of the State in the lands.

(viii) consistency with the public interest for purposes of fishing, bathing and access to navigable waters and the need of the owners of private property to safeguard their property.

The Commissioner may require the applicant to submit an environmental assessment form, including marine project information, indicating the purpose, scope and potential impacts of the project. The Commissioner

shall solicit the written comments of DEC, DOS and OPR&HP in their respective areas of expertise and give due regard to incorporating those comments in the review of the application and any plan of the use, structure or facility and shall incorporate into any grant, lease, easement, permit or lesser interest those conditions deemed necessary by the Department of Environmental Conservation to adequately protect the affected environment or natural resource. If the environment or natural resource cannot be protected as determined in Findings by the Commissioner of Environmental Conservation, the proposed application shall be denied. Failure of the agencies to respond to the solicitation of comments within 45 days of the receipt of said solicitation shall constitute a waiver of review under Section 75(d)(i) of the Public Lands Law but shall not affect review authority of the solicited agency pursuant to any other applicable statute or regulation. The comment period may be extended by agreement between the Commissioner and any of the reviewing agencies. In making any grant, lease, permit or other conveyance, the Commissioner of General Services shall, upon administrative findings, and to the extent practicable, reserve such interests or attach such conditions to preserve the public interest in use of State-owned lands underwater and waterways for navigation, commerce, fishing, bathing, recreation, environmental protection and access to the navigable waters of the State, with due regard for the need of affected owners or private property to safeguard their property.

The Commissioner will, to the extent practicable, coordinate the review of marine project applications with DEC, DOS and OPR&HP and integrate review of the listed application factors in the SEQRA process.

Section 270-3.3 Optional Preapplication Conference. Any applicant may request a preapplication conference with appropriate agency staff as a means of clarifying application procedures. Such a request should be made at the earliest possible stage of the applicant's project planning. At the conference, the proposed or existing project will be informally discussed, permits required will be identified and the applicant will be provided with guidance in the mechanics of the application and review process based upon information provided by the applicant.

Subpart 270-4 Application for a Grant in Fee Simple of Land Underwater.

Section 270-4.1. Grants of Land Underwater; Limitation; Outline. Grants of land underwater in fee simple, including conversion grants pursuant to Section 75(11) of the Public Lands Law, shall be limited to exceptional circumstances and only to those conveyances which will not impair the public interest in the lands and waters remaining, based upon factors set forth in Section 270-3.2. Applicants shall be required to apply to the Office of General Services pursuant to the provisions of Article 6 of the Public Lands Law and the following regulations, which are generally outlined as follows:

1) Notice of Intention: Preliminary notice advising the Commissioner of the lands sought to be conveyed.

2) Preparation of Maps: If lands can be conveyed, appropriate map and description are prepared according to regulatory specifications - payment of $500.00 fee; submission of deeds, abstract of title, for review.

3) Notice of Application: Upon approval of map and description, applicant proceeds with publication, posting of Notice of Application and service of Notice on adjoining owners and municipality, as required.

4) Submission of Application: Applicant submits necessary affidavits and papers together with final application for formal approval and preparation of the instrument of conveyance.

Section 270-4.2 Notice of Intention. Any person, firm or corporation intending to apply for a grant of State-owned land underwater pursuant to Section 75 of the Public Lands Law shall give written notice of such intention (forms available) to the Commissioner of General Services, Albany, New York, setting forth in said notice the complete name and address of the applicant, and if a corporation, the state of incorporation and, if an out-of-state corporation, whether licensed to do business in the State of New York. Said notice shall state the purpose for which the application is made and shall be accompanied by certified copies of the applicant's deeds to the lands adjacent to such lands underwater, together with certified copies of the deeds to the lands of others adjoining such lands of the applicants along the waterfront. Notices pursuant to the provisions of subdivision 11 of Section 75 of said law (Conversion Grants), shall, in addition, set forth the name of the original grantee, the date of the Letters Patent and the purpose for which the grant was made. All notices shall state fully and in detail the contemplated use and the estimated cost of same, and shall limit the land to be surveyed and applied for to such area as is necessary for said use. The applicant shall also send a copy of the Notice form to DEC, DOS and OPR&HP.

Section 270-4.3 Preparation of maps. The application must include a map which shall be prepared by a New York State licensed land surveyor to show the land underwater applied for and the adjacent land owned by the applicant. The survey shall be referenced to the New York Plane Coordinate System. Said map shall be 24 by 36 inches in size. The working space on

the tracing shall be 22 by 34 inches, except that sufficient space shall be reserved in the lower corner for the title, scale and date of preparation, and in the upper corner for a location map.

The scale of said maps will be as set forth in this section:

(a) The scale of the map shall be 50 feet to an inch or such other scale as may be approved by the Office of General Services. It must show the owner's property boundaries on each side, together with the owners' names, deed references, tax map identification number and all docks, bulkheads or other improvements within the limits of the lands of such owners. In addition, it must show the mean low water or mean high water line or if directed to do so, the original mean high or original mean low water line, (whichever is applicable); the boundaries of all previous grants within the limits of such map, and the bearings and distances of the boundaries of the lands applied for and the depth of the soundings of the lands applied for. The description of the lands applied for shall be placed on the map and, whenever possible, it will be in the upper right corner.

(b) The scale of the location map shall be 2,000 feet to an inch or such other scale as may be approved by the Office of General Services. It shall show the general course of the shoreline for a distance of one mile in each direction from the land applied for, as well as the particular course in the area of the land applied for. If the body of water be a river, or a body of water less than two miles wide, the width of such water or river shall be shown, together with an outline of each shore extending one mile above and below the land applied for.

Section 270-4.4 Fee: review of maps. A certified check in the amount of $500.00 made payable to the New York State Commissioner of

General Services shall accompany any notices of intention referred to in Section 270-4.2 of this Subpart. Such check will be used to defray the cost of reviewing the survey map(s), title and description(s). A refund may be made in the event the application is withdrawn.

Section 270-4.5 Notice of Application. Any person, firm or corporation intending to apply for a grant of State-owned land underwater pursuant to Section 75 of the Public Lands Law shall file with the Commissioner of General Services a notice of application. Such notice of application shall state the date on which an application will be made to such commissioner. It shall contain a description of the land underwater applied for as set forth on the official map(s) and directions that all objections to such grant shall be filed with the Division of Land Utilization on or before the date such application will be made and in all applications, except those made pursuant to the provisions of subdivision 11 of Section 75 of the Public Lands Law, the names of adjacent landowners and the boundaries of said land, together with an explanation of how the applicant intends to use the lands applied for and specifying the exceptional circumstances necessitating a grant in fee. Service of the notice shall be in the manner hereinafter provided.

Section 270-4.6 Necessary affidavits and papers. The following affidavits, maps and papers are to be filed with the Commissioner of General Services on or before the return date set forth in the application:

(a) An affidavit showing publication of the notice of application at least once a week for four weeks, successively, in a newspaper printed in the county or counties in which the land applied for is situated, the first publication of such notice to be at least 28 days before the date of application. This provision shall not apply if the application is made

under the provisions of subdivisions 11 and 12 of Section 75 of the Public Lands Law.

(b) An affidavit showing that a copy of said notice of application was posted at the courthouse in the county or counties in which the land applied for is situated. The said copy of such notice shall be posted on or before the first day of publication and for at least 28 days before the date of application. When an application is made under the provisions of subdivisions 11 and 12 of Section 75 of said law, a copy of such notice need not be posted.

(c) An affidavit showing that a copy of said notice of application was served at least 20 days before the date of application upon the owners of waterfront land adjoining the upland of the applicant. Said notice shall be served on such owners personally, if such service can be made within this State. If the applicant is not able to cause said notice to be served personally within this State after making diligent efforts to do so, he may cause the same to be served by affixing the notice of application to the door of either the actual place of business, dwelling place or usual place of abode within the State of the person to be served and by either mailing the notice to such person at his last known residence or by mailing the notice to the person to be served at his actual place of business certified mail, return receipt requested. When an application is made under the provisions of subdivision 11 of Section 75 of the Public Lands Law, an affidavit is required showing that a copy of the notice of application was served at least 20 days before date of the application on the owners of the land, if any, inshore of the land applied for, to and including the high water line. If such latter requirement is not

practicable of performance, such fact will be made known to the Division of Land Utilization.

(d) In all applications for grants of land underwater within the City of New York, an affidavit of service of said notice of application and maps upon the corporation counsel of the City of New York.

(e) In cities having a population of one million or more inhabitants, an affidavit of personal service or by registered or certified mail of the notice of application upon all owners of waterfront land within three hundred (300) feet from the side boundaries of the upland of the applicant including the latest complete tax assessment roll to identify such owners.

(f) An affidavit of the applicant stating: that the land is necessary for one or more of the purposes set forth in subdivision 7 of Section 75 of the Public Lands Law; that the applicant intends in good faith to use and maintain the land for such purpose; the amount of the assessed value of the upland owned by applicant on the current assessment roll of the city or town in which said land is situated; and the area of said upland including the equalization rate of the municipality and a copy of the applicable section of the tax map.

(g) When the land applied for is situated within the corporate limits of any city or incorporated village, an affidavit of the personal service of a copy of the notice upon the mayor or clerk of the common council of the city or upon the mayor or clerk of the village shall be submitted. If the land applied for is not within the limits of any city or incorporated village, an affidavit of personal service of a copy of the notice upon the supervisor or town clerk of the town in which said land is situated shall be submitted. Such service shall be made at least 20 days before the date of application.

(h) Except in cases where an application is made under the provisions of subdivision 11 of Section 75 of the Public Lands Law, a search or an abstract of title of the land of the applicant covering a period of at least 30 years prior to the time of application shall be submitted. Liens and encumbrances, unpaid taxes, restrictive covenants and agreements need not be set forth unless relevant to the chain of title. A full description of such land shall be set forth in the abstract, but need not be repeated. Copies of maps referred to in the description or copies of portions thereof, diagrams, or other information, where any of these are necessary in order that the location or boundaries of the land may be understood, shall be furnished. The abstract shall be certified by a county clerk, title company or attorney. In the event title insurance and/or title certification includes the lands applied for, the requirement of an abstract of title may be waived or modified by the Commissioner of General Services.

(1) Where evidence of record title of the adjacent upland satisfactory to the commissioner cannot be submitted, and where the applicant relies on adverse possession to establish title to said adjacent upland, the claim of title shall be determined by judgment in an action pursuant to Article 15 of the Real Property Actions and Proceedings Law.

(2) When the application is made under the provisions of subdivision 11 of Section 75 of the Public Lands Law, an abstract of title to the land applied for is required. The abstract shall begin with the date of the original grant from the People of the State of New York, and shall be in such form and manner as specified by the Commissioner.

(i) The original tracing of the official map as described in Section 270-4.3.

(j) When the land applied for is under the waters of the St. Lawrence or Niagara Rivers, an affidavit of service of a copy of the notice upon the Power Authority of the State of New York shall be submitted. Such service shall be made at least 20 days before the date of application.

(k) A duplicate copy of any permit issued by the U.S. Department of the Army, Corps of Engineers or any pending application.

(l) A completed environmental assessment form and/or marine project information, if necessary, or other completed pertinent SEQRA documentation.

(m) The Commissioner may require additional submissions when such information is necessary for review of the application.

Section 270-4.7 Order of submission. All affidavits shall be fastened together in the order listed above, preceded by a copy of the appropriate notice of application.

Section 270-4.8 Objections.

a) All objections to the grant applied for shall be filed with the Division of Land Utilization in duplicate and a copy mailed to the applicant or his attorney by the objector prior to the date when such application is to be made, which date is shown on the Notice of Application served in accordance with Section 270-4.6.

b) Where the Commissioner determines that additional public notice and comment will assist in the review of the proposed project and application, the applicant may be required to publish additional public notice in newspaper of general circulation in the county in which the proposed project is to be located. The notice shall describe, in sufficient detail, the project and location thereof and direct that all public comment be filed with the Division of Land Utilization prior to the

close of the public comment period, which shall not be later than 40 days after the last publication under this section.

Section 270-4.9 Hearing regarding objections. The Commissioner of General Services will determine if a hearing on the objection(s) is to be held. If a hearing is scheduled, the Division of Land Utilization will advise the applicant, the objector and DEC, DOS and OPR&HP as to when and where such a hearing shall be held. If an objector does not appear at such hearing, the objection may be deemed withdrawn.

Section 270-4.10 Covenants to be contained in grants of land under the waters of the Niagara River. All grants thereof of land under the waters of the Niagara River hereinafter made by the State shall contain the following provisions:

"The Patentee hereby covenants with The People of the State of New York, their successors and assigns, that the Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the lands hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the Niagara River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the Niagara River, and Patentee further covenants that Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them, for or on account of any cause of

action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The covenants herein contained shall run with the land herein granted.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the Niagara River."

Section 270-4.11 Covenants to be contained in grants of land under the waters of the St. Lawrence River. All grants thereof of land under the waters of the St. Lawrence River hereafter made by the State shall contain the following provisions:

"The Patentee hereby covenants with The People of the State of New York, their successors and assigns, that the Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the lands hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the St. Lawrence River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the river or in the interest of public recreation and/or fish and wildlife resources and Patentee further covenants that Patentee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in

interest or assigns, or any of them for or on account of any cause of action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The covenants herein contained shall run with the land herein granted.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the St. Lawrence River."

Subpart 270-5 Application for a grant of easement, lease, permit, lesser interest in lands underwater (docks, structures, etc.).

Section 270-5.1 Applications. An application for a grant of an easement, lease, permit or lesser interest pursuant to subdivision 7 of Section 75 of the Public Lands Law shall be made to the Commissioner of General Services and shall state the full name and address of the applicant (if a corporation, the State in which incorporated and the address of its principal office and place of business). It shall also describe the existing or proposed use, structures or facility located or to be located upon the land applied for and directions that all objections to such easement, lease, permit or lesser interest shall be filed with the Division of Land Utilization on or before the date such application will be made. Review of applications shall be in accordance with the factors set forth in Section 270-3.2.

Section 270-5.2 Documents to be submitted. The following documents shall be submitted with the notice of application for lease, easement, permit or lesser interest:

(a) certified copy of deed(s) of applicant's adjacent upland. (In applications for easement, permit or lesser interest, applicant shall submit a certified copy of deed(s) of applicant's adjacent upland or the consent of the owner of such adjacent upland together with a certified copy of deed(s) of such owner);

(b) a duplicate copy of any permit issued by the U.S. Department of the Army, Corps of Engineers or any pending application;

(c) a completed environmental assessment form together with marine project information, if necessary, or other pertinent SEQRA documentation;

(d) a plan or sketch showing the project.

(e) a reproducible map made by a licensed land surveyor showing the location of the structure(s), the upland property of the applicant and those of adjoining properties along the waterfront; the survey shall be referenced to the New York State Plane Coordinate System;

(f) a metes and bounds description of the lands applied for;

(g) for the purposes of the application, the Commissioner may waive or modify the requirement that a survey be prepared in those instances where the location of the structures and the lands applied for can be satisfactorily determined from existing map(s) or survey(s);

(h) the Commissioner may require additional submissions, including but not limited to copies of tax maps, photographs and diagrams when such information is necessary for review of the application.

Section 270-5.3 Service of Notice of Application. The applicant shall serve a notice of application to apply for such grant upon the city, town or village in which the land is situated and upon the owner of properties adjoining along the shorefront. Such notice of application shall state the date on which the application will be made to the

Commissioner of General Services and shall contain a description of the land underwater applied for, the use of the land underwater applied for, and directions that all objections to such application shall be filed with the Division of Land Utilization on or before the date such application will be made. All such notices shall be served 20 days before the date such application will be made. Affidavits of service of such notice shall be attached to the notice of application.

Section 270-5.4 Objections.

a) All objections to the grant applied for shall be filed with the Division of Land Utilization in duplicate and a copy mailed to the applicant or his attorney by the objector prior to the date when such application is to be made, which date is shown on the Notice of Application served in accordance with Section 270-5.3.

b) Where the Commissioner determines that additional public notice and comment will assist in the review of the proposed project and application, the applicant may be required to publish additional public notice in newspaper of general circulation in the county in which the proposed project is to be located. The notice shall describe, in sufficient detail, the project and location thereof and direct that all public comment be filed with the Division of Land Utilization prior to the close of the public comment period, which shall not be later than 40 days after the last publication under this section.

Section 270-5.5 Hearing regarding objections. The Commissioner of General Services will determine if a hearing on the objection(s) is to be held. If a hearing is scheduled, the Division of Land Utilization will advise the applicant, the objector and DEC, DOS and OPR&HP as to when and

where such a hearing shall be held. If an objector does not appear at such hearing, the objection may be deemed withdrawn.

Section 270-5.6 Covenants to be contained in grants of easements and leases in land under the waters of the Niagara River. All grants of easements and leases in land under the waters of the Niagara River hereafter made by the State shall contain the following provisions:

"The Grantee hereby covenants with The People of the State of New York, their successors and assigns, that the Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the easement rights hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the Niagara River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the Niagara River, and Grantee further covenants that Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them, for or on account of any cause of action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any

adjoining land by reason of or arising from the control or regulation of the waters of the Niagara River."

Section 270-5.7 Covenants to be contained in grants of easements and leases in land under the waters of the St. Lawrence River. All grants of easements and leases in land under the waters of the St. Lawrence River hereafter made by the State shall contain the following provisions:

"The Grantee hereby covenants with The People of the State of New York, their successors and assigns, that the Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the easement rights hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the St. Lawrence River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the river or in the interest of public recreation and of fish and wildlife resources and Grantee further covenants that Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them for on account of any cause or action, claim or demand of any kind whatsoever by reason of any such damage or loss.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any

adjoining land by reason of or arising from the control or regulation of the waters of the St. Lawrence River.

Section 270-5.8 Bond, when required. The Commissioner may require, as a condition to a lease, easement, permit or lesser interest and prior to commencement of work, that the lessee, grantee or permittee post a bond of specified amount with the Commissioner. The bonds shall be required in an amount to ensure faithful compliance with the terms and conditions of the lease, easement, permit or lesser interest, and is used for the indemnification of the State for any costs which might result from failure to so comply. Such bond may also be utilized by the Commissioner to implement performance of conditions upon the failure of a lessee, grantee or permittee to properly implement any such conditions. The bond shall remain in effect until the work is completed to the satisfaction of the Commissioner.

Subpart 270-6 Fees, appraisal, limitations.

Section 270-6.1 Fees, commercial structures. The consideration to be charged for each grant of easement, lease, permit or lesser interest in lands underwater shall be fixed by the Commissioner of General Services in accordance with Article 6 of the Public Lands Law and the following guidelines:

(1) Commercial structures (not in existence on August 7, 1992) shall be charged the following:

- annual fee not to exceed 2% (two percent) of net annual income.

(2) Commercial structures (in existence and commercial use on or before August 7, 1992) shall be charged the following:

- annual fee not to exceed following percentage of net annual income:

Year 1 - .2 (two tenths) of one percent

Year 2 - .4 (four tenths) of one percent

Year 3 - .6 (six tenths) of one percent

Year 4 - .8 (eight tenths) of one percent

Year 5 and thereafter, one percent.

(3) The net annual income upon which the fee is based shall include income derived from the earnings or rental of structures on State-owned lands underwater after deduction for associated operating and maintenance expenses and shall exclude earnings derived from operation not directly associated with the rental of such structures, such as the sale and repair of boats and the sale of gasoline. The Commissioner may request the applicant to provide financial statements for the preceding two year period in order to calculate the net annual income.

(4) As an alternative to income based fees, the Commissioner, in cooperation and consultation with the marine trades industry, may develop a regional fee schedule based upon a market analysis of annual fees charged by marina facilities for slip rental and classified by factors such as location, access and condition, with appropriate deduction for related operating expenses. The regional fee will be expressed in terms of "dollars per foot of slip length" and remain subject to the fee guidelines of this section. In the event the regional fee schedule is developed, any marina owner disputing the regional fee shall have the opportunity to object to the imposition of the regional fee, pursuant to the terms of Section 270-6.6.

(5) No increase in the value of the dollar shall be permitted during the initial five year period. Adjustments after the initial five year

period shall be based upon the Consumer Price Index (CPI-W) as provided by the United States Bureau of Labor Statistics.

(6) In the event calculation of net annual income from the nonexempt structure(s) is not possible based upon type of structure involved or the financial information provided by the applicant, the Commissioner may appraise the structure using either the cost or market approach to value, as appropriate.

(7) In the event an annual permit is issued for the structure, the fee to be charged shall be discounted ten (10) percent.

(8) Payment of fees shall be made annually on the anniversary date o the lease, easement, permit or lesser interest. The Commissioner may, upo request of the owner or user of the adjacent upland, agree to provide for different periodic payments or a more flexible payment structure than the fee caps and fees set forth herein.

Section 270-6.2 Nonexempt residential use. The annual fee to be charged for nonexempt residential use of structures shall be the lesser of $20 per slip or $100.

Section 270-6.3 Special uses. Condominiums and cooperative forms of real property ownership, residential multi-lot subdivision and keyhole developments and their accompanying use of structures on State-owned lands underwater including those described in Article 6 shall be appraised based upon market analysis of comparable structures.

Section 270-6.4 Fee mitigation. The Commissioner of General Services, in determining the fee to be charged, may negotiate a more flexible payment schedule and otherwise mitigate fees based upon factors such as public access, surrender of prior State grants pursuant to Section 76 of the Public Lands Law, preservation of open space or other actual

public benefits as determined by the Commissioner with the approval of the State Comptroller.

Section 270-6.5 Municipal, not for profit, religious corporations. Fees to be paid for placement of nonexempt structures set forth in Public Lands Law Section 75(7)(b) by the following corporations shall be limited to an administrative fee upon satisfactory evidence of the following:

- Municipal Corporation: Use of dock or structures for public, noncommercial uses offering services to the public either free or for nominal fees.

- Not For Profit Corporation: Corporate status as a "Type B" corporation pursuant to subdivision (b) of Section 201 of the Not For Profit Corporation Law.

- Religious Corporation: Corporate status as a Religious Corporation pursuant to the Religious Corporation Law or by special act of the legislature.

Section 270-6.6 Dispute Resolution: Appraisal. In the event an applicant for a lease, easement or other interest in real property shall dispute and request a reduction of the Commissioner's determination of the value of the interest to be conveyed, the Commissioner shall, upon the applicant's submission of an appraisal of the value of such property interest conducted in accord with standard and accepted appraisal methodology by an independent appraiser qualified as prescribed in this paragraph and which appraisal varies in its conclusion as to value by ten percent or more or the value previously established by the Commissioner, and upon the applicant's agreement to be bound thereby, contract with a second independent appraiser, qualified as prescribed in this paragraph, to render an appraisal of the value of the interest proposed to be conveyed,

the results of which appraisal shall be binding upon both the applicant and the Commissioner of General Services. Such appraiser shall be selected by the Commissioner of General Services from among a group of at least three appraisers identified by the applicant all of whom must be qualified as prescribed in this paragraph and each of whom must agree to employ standard appraisal methodology. For the purposes of this provision a qualified appraiser shall be certified by the Secretary of State to transact business as a real estate general appraiser and shall conduct a regular business of the appraisal of real property interest. In the event that the appraisal contracted for in such manner shall conclude that the value of the property interest in question is equal to the value previously determined by the Commissioner plus or minus ten percent, the entire cost of such appraisal shall be borne by the applicant, otherwise, the entire cost thereof shall be borne by the Commissioner of General Services.

Section 270-6.7 Administrative Fee. The Commissioner may impose an administrative fee not to exceed $500, based upon the costs of processing the conveyance or interest, such costs to be in addition to any other fee or appraised value. The fee may be prorated and collected annually over the term of the conveyance or interest.

Section 270-6.8 Grants in Fee Simple or Conversion: Appraisal. Grants in fee simple of State-owned lands underwater shall be appraised based upon the value of the adjacent upland developed from the income, cost or market approach to value, as appropriate, reduced by the value of the riparian or littoral interest of the adjacent upland owner. Grants converting prior conditional conveyances to fee conveyances shall be appraised based upon the value of the remaining interest in the State.

Subpart 270-7 Statutory thresholds: Exemptions.

Section 270-7.1 Exemption: Criteria. Commercial structures constructed prior to June 17, 1992 of any size or use are not exempt under this Part, and must apply for a lease, easement, permit or lesser interest in State-owned lands underwater.

However, the following structures shall be exempt from the requirements of this Part:

(1) Existing noncommercial structure constructed by or on behalf of the owner prior to June 17, 1992, containing a surface area (outermost perimeter) less than 5,000 square feet or less and if a docking facility has a capacity of seven or fewer boats up to 30 feet in length.

(2) Any water dependent structure constructed after June 17, 1992 containing a surface area (outermost perimeter) of less than 4,000 square feet and not exceeding 15 feet in height (above mean high water) and, if a docking facility, has the capacity for five or fewer boats up to 30 feet in length and if a mooring facility has a capacity of fewer than ten boats up to 30 feet in length.

(3) The relocation or reconfiguration within the described perimeter of the dock, piles, ramps and like structures authorized by lease, easement, permit or lesser interest provided such relocation or reconfiguration does not interfere with the riparian or littoral rights of adjacent upland owners.

(4) Nothing in these regulations shall be construed to mean that structures below the thresholds constitute a valid and reasonable exercise of riparian or littoral rights.

Structures failing to meet any applicable criteria shall be subject to the requirements of Public Lands Law Section 75(7) and these regulations.

Section 270-7.2 Date of structure - proof required. The Commissioner of General Services in determining qualifications for exemption from the statute may require proof of the date of construction including but not limited to regulatory permits, construction contracts and/or affidavits of the applicant detailing the age and date of construction of the structure.

Section 270-7.3 Fill - lands underwater - interest of the State. The Commissioner of General Services shall not require the person or entity who was the upland owner on June 17, 1992 adjacent to filled State-owned lands underwater or formerly underwater, to make application for a lease, easement, permit or other interest pursuant to Section 75 of the Public Lands Law. The exemption provided in this section does not in any way impair or diminish the title of the State of New York to the lands previously filled. Upland owners may apply for a grant of such lesser interest as may be required to allow conveyance of a marketable title of the adjacent upland or to resolve outstanding title questions. Fill placed in State-owned lands underwater after June 17, 1992 will require a grant, easement, lease, permit or lesser interest pursuant to Section 75 of the Public Lands Law may be considered a trespass pursuant to Section 8 of the Public Lands Law.

The Commissioner of General Services may require upland owners not otherwise exempt to apply for conveyance of the interest of the State in such filled land upon application to the Office of General Services for a grant, lease, easement, permit or lesser interest of any parcel of State-owned land adjoining said filled area. The area of the fill on State-owned lands shall be established by a licensed surveyor.

Section 270-7.4 Lake George: Coordination of Programs. Structures not exempted by this Part and located in, on or over State-owne lands underwater at Lake George and complying with Environmental Conservation Law Article 43 and accompanying regulations shall be exempt from this Part, except in those cases where in the judgment of the Commissioner and the Lake George Park Commission, a review of the structur pursuant to this Part will assist in the protection and preservation of Lake George Park and the State's proprietary interest, then in such event the Commissioner shall assist the Lake George Park Commission by providing services including but not limited to examination of title and/or issuance of an easement, lease, permit or lesser interest for a fee determined, pursuant to this Part with an appropriate credit for fees paid to the Lake George Park Commission.

Subpart 270-8 Cessions of Jurisdiction. The Commissioner of General Services may make cessions of jurisdiction involving the United States of America on State-owned lands underwater pursuant to the procedures set forth in Section 75(8) of the Public Lands Law and Article 3 of the State Law.

Subpart 270-9 Transfers of Jurisdiction.

Section 270-9.1 Application. Pursuant to the provisions of Section 3, subdivision 4 and Section 75 (7a) of the Public Lands Law, upon the application of any State department or a division, bureau or agency thereof, or upon the application of any State agency, the Commissioner may transfer to such State department State-owned lands underwater to such agency for the purpose of protecting environmentally sensitive lands underwater. The transfer of jurisdiction may be made even if the State agency is not the proprietor of the adjacent upland but shall be subject tc

the provisions of Section 75 (9) of the Public Lands Law. The agency requesting the transfer of jurisdiction shall submit a Findings with its transfer application explaining the reasons why the subject lands require protection, describing the environmental sensitivity of the lands.

Subpart 270-10 Enforcement Procedures.

Section 270-10.1 Applicability. This Part shall apply in all civil administrative enforcement proceedings brought pursuant to Public Lands Law Article 6 by the Commissioner against an alleged violator of Public Lands Law Article 6, or rules or regulations promulgated thereunder, or any determination or orders issued by the Commissioner.

Section 270-10.2 Notice of Violation and Hearing. (a) All civil enforcement proceedings shall be initiated by service upon the respondent of a written notice of violation and hearing. The notice of violation and hearing shall contain a statement of the legal authority and jurisdiction including the provisions of Section 75(7)(g)(i), a description of the prohibited structure, occupation or area of fill, the amount of the penalty and any additional daily penalties imposed by said statute, and notice of hearing on the alleged violation.

(b) The notice of hearing shall specify the time and place of the hearing and shall set a date for a hearing not earlier than 20 days after service of notice of violation and hearing. In lieu of a hearing date, a notice of hearing may set a return date not less than seven days after service, at which time a hearing date will be set if the matter is not disposed of at that time.

(c) Service of a notice of violation and hearing shall be by certified mail and service shall be complete when the notice of violation and hearing is received by the respondent.

Section 270-10.3 Answer. (a) Within 20 days of receipt of the notice of violation and hearing, but no later than 5 days before the date of the hearing, whichever is shorter, the respondent shall serve upon the Commissioner an answer, signed by the respondent or his attorney.

(b) The respondent shall specify in the answer which allegations are admitted, which allegations are denied and which allegations the responden lacks sufficient information upon which to form an opinion as to the allegation.

(c) The respondent's answer may contain affirmative defenses, in which event the answer shall contain a statement of any facts which constitute the grounds of the affirmative defense.

(d) The failure to file an answer or the failure by the respondent t appear on the return date or at the hearing shall constitute a default and a waiver of hearing upon proof of service of a notice of violation and hearing.

Section 270-10.4 Service of Papers. All notices, papers and intermediate process connected with a hearing, other than the notice of violation and hearing and the order containing the final determination of the Commissioner, may be served by ordinary mail. Except where otherwise specifically provided, service by ordinary mail shall be complete when mailed.

Section 270-10.5 Discovery. (a) Notice to produce. A party to a hearing under this Part, upon receipt of notice to produce documents and things from any other party, shall furnish all such requested items relevant to the proceeding within 10 days of receipt of such notice.

(b) Subpoenas. Consistent with the CPLR, any attorney of record in a proceeding under this Part, or any person designated by the Commissioner

for this purpose shall have the power to issue subpoenas. A party who is not represented by an attorney may request the hearing officer to issue a subpoena by submitting a petition stating the items or witnesses needed by the party to present its case.

Section 270-10.6 Stipulations and Consent Orders. (a) At any time prior to the final determination by the Commissioner, the Director of the Division of Land Utilization, with the advise and consent of the Counsel to the Commissioner, may enter into a stipulation to resolve an issue of fact or law pending in a proceeding initiated by the Commissioner.

(b) At any time, the Commissioner may enter into a consent order with a respondent, whereby the latter agrees to discontinue the acts or practices which violate Article 6 of the Public Lands Law or rules or regulations promulgated thereunder, or any determination or order issued by the Commissioner, and provide such other and further relief to which the respondent may agree. Such consent order shall be admissible as evidence to provide the basis for a finding of fact in any subsequent proceeding brought by the Commissioner against such respondent involving the same or similar violation(s).

Section 270-10.7 Hearing Officer. (a) The Commissioner may appoint a hearing officer who shall preside over such hearing and report to the Commissioner regarding the hearing.

(1) The hearing officer shall conduct the hearing in a fair and impartial manner.

(2) Subject to review by the Commissioner upon receipt of the hearing officer's report, the hearing officer shall have power to: (i) rule upon motions and requests; (ii) set the time and place of hearing; (iii) administer oaths and affirmations; (iv) issue subpoenas requiring the

attendance and testimony of witnesses and the production of books, records contracts, papers and other evidence; (v) summon and examine witnesses; (vi) admit or exclude evidence; (vii) hear argument on facts or law; (viii) do all acts and take all measures necessary for the maintenance of order and efficient conduct of the hearing.

(3) The designation of a hearing officer shall be in writing and filed with the Commissioner.

(b) Appearances.

(1) A party may appear in person and/or by counsel. If an attorney represents a party, all service of papers not required by law to be served personally upon such party shall be made upon the party's attorney.

(2) Any person appearing on behalf of a party in a representative capacity may be required to show his authority to act in such capacity.

(3) If a party who answers the notice of violation and hearing fails to appear at the hearing, issues on which that party has the burden of proof shall be resolved against the non-appearing party. The party who is present may elect, subject to the discretion of the hearing officer, to present all or part of his evidence by affidavit rather than oral testimony.

(4) The hearing officer may open a default or relieve any party of the consequences of a default upon good cause shown.

(5) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the final determination and order and to proceed otherwise in any manner prescribed by law.

(c) Evidence.

(1) Each witness shall, before testifying, be sworn or make affirmation.

(2) Prefiled, written testimony may be presented by any party with permission of and subject to the discretion of the hearing officer.

(3) The rules of evidence shall not be strictly applied; provided, however, the hearing officer shall exclude irrelevant, immaterial or undul repetitious evidence and shall give effect to the rules of privilege recognized by law.

(4) Every party shall have the right to present evidence and cross-examine witnesses.

(5) The hearing officer may take official notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the Commissioner.

(6) Oral argument may be permitted by the hearing officer within his discretion and shall be recorded.

(d) Adjournment. A request for an adjournment of the hearing shall be in writing and submitted to the hearing officer prior to the hearing.

(e) Record.

(1) Testimony given and other proceedings had at a hearing shall be recorded verbatim. For this purpose, and consistent with respondent's rights, the Commissioner may use whatever means he deems appropriate, including but not limited to the use of stenographic transcriptions or recording devices.

(2) The record of the hearing shall include: the notice of violatio and hearing; the transcript or recording of the testimony taken at the hearing; exhibits submitted and filed therein; stipulations, if any; the hearing officer's report; and any briefs submitted in connection with the hearing.

(3) A copy of the stenographic transcript of the hearing or, if the hearing is recorded, a copy of the tape or a transcript of the recording, shall be available to any party upon request to the stenographer or the Commissioner, as appropriate, and upon payment of the fees allowed by law.

Section 270-10.8 Report. Following the close of the record, including receipt of the transcript, if any, the hearing officer shall prepare and submit to the Commissioner a hearing report, which shall become part of the record.

Section 270-10.9 Final Determination and Order. (a) After receipt of the hearing officer's report, the Commissioner shall make a final determination based upon the record.

(b) The final determination shall be embodied in a final order which shall contain findings of fact and conclusions of law or reasons for the final determination, and which may provide for:

(1) the dismissal of charges;

(2) an assessment of penalties consistent with applicable provisions of Article 6 of the Public Lands Law;

(3) a direction for abatement;

(4) a combination of any or all of the foregoing; or

(5) any determination deemed appropriate under the circumstances, consistent with applicable provisions of Article 6 of the Public Lands Law, or the rules and regulations promulgated thereunder, or any determination or order issued by the Commissioner.

(c) A copy of the final determination and order shall be served on the parties by certified mail.

Grant of Easement in Lands Underwater for Cables, Conduits, Pipelines, Hydroelectric Power

Part 271

Grant of Easement in Lands Underwater

(Cables, conduits, pipelines and hydroelectric power)

Subpart 271-1 Application Procedure; Fees

Section 271-1.1 Applications. An application for a grant of an easement for cables, conduits, pipelines and hydroelectric power and appurtenant structures pursuant to subdivision 2 of Section 3 of the Public Lands Law shall be made to the Commissioner of General Services and shall state the full name and address of the applicant (if a corporation, the State in which incorporated and the address of its principal office and place of business). It shall also describe the existing or proposed structures placed or to be placed upon the land applied for and the current or proposed use of the structures.

Section 271-1.2 Documents to be submitted. The following documents shall be submitted with the application for easement:

a) a plan and profile showing the existing or proposed work or structure;

b) a map made by a licensed land surveyor and/or professional engineer pursuant to Section 7208 of the New York State Education Law showing the location of the pipeline, cable, conduit, the upland property of the applicant and those of adjoining properties along the waterfront;

c) a metes and bounds or centerline description, as appropriate, of the lands applied for including the desired width of the proposed easement. The centerline shall be described with reference to permanent tie points or monuments on the shore;

d) a certified copy of the deed(s) of the applicant's adjacent upland or the consent of the owner of such adjacent upland together with a certified copy of the deed(s) thereto;

e) a copy of adjoining shorefront deed(s) and a copy of the applicable tax map section;

f) a duplicate copy of any permit or letter issued by the U.S. Department of the Army Corps of Engineers;

g) a completed environmental assessment form, if applicable;

h) other satisfactory evidence of compliance with the State Environmental Quality Review Act;

i) the Commissioner may require such additional submissions as may be necessary for review of the application.

j) affidavits of service of notice of application as required by Section 271-1.3.

Section 271-1.3 Service of Notice of Application. If the application is for a cable, conduit or pipeline, the applicant shall serve a notice of application for such grant on the city, town or village in which the land is situated and upon the owner(s) of properties immediately adjoining along the shorefront where the cable, conduit or pipeline enters and leaves the water. Such notice of application shall state the date on which the application will be made to the Commissioner of General Services and shall contain a description of the land underwater applied for, the use of the land underwater applied for, and directions that all objections to such grant shall be filed with the Division of Land Utilization on or before the date such application will be made. All such notices shall be served at least 20 days before the date such application will be made. Affidavits of service of such notice shall be filed with the application.

Section 271-1.4 Special requirements for hydroelectric easements. The applicant shall serve a notice of application for such grant upon owner(s) of properties immediately adjoining or adjacent to the project area. Such notice of application shall state the date on which the application will be made to the Commissioner of General Services and shall contain a description of the land underwater applied for, the use of the land underwater applied for, and directions that all objections to such grant shal be filed with the Division of Land Utilization on or before the date such application will be made. All such notices shall be served at least 20 days before the date such application will be made. Affidavits of service of such notice shall be filed with the application. The application shall contain a description of the project area and a reproducible map prepared by a licensed land surveyor and/or professional engineer pursuant to Section 7208 of the New York State Education Law showing the proposed easement area. The applicant shall submit with the application an abstract of title or title search of the proposed easement area together with a license issued by the Federal Energy Regulatory Commission for the hydroelectric project.

Section 271-1.5 Covenants to be contained in grants of easement in land under the waters of the Niagara River. All grants of easement of land under the waters of the Niagara River hereafter made by the State shall contain the following provisions:

"The Grantee, hereby covenants with The People of the State of New York, their successors and assigns, that the Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all

claims for damages or loss occurring to the easement rights hereby conveyed arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the Niagara River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the Niagara River, and Grantee further covenants that Grantee, his heirs, distributees, successors, in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them, for or on account of any cause of action, claim or demand of any kind whatsoever by reason of any such damages or loss.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the Sate of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the Niagara River."

Section 271-1.6 Covenants to be contained in grants of easement in land under the waters of the St. Lawrence River. All grants of easement in land under the waters of the St. Lawrence River hereafter made by the State shall contain the following provisions:

"The Grantee hereby covenants with The People of the State of New York, their successors and assigns, that the Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will forever release the State and Power Authority of the State of New York, their respective successors and assigns, of and from any and all claims for damages or loss occurring to the easement rights hereby conveyed

arising out of, or by reason of, or occasioned at any time or times by, the control or regulation of the waters of the St. Lawrence River by the State or Power Authority of the State of New York in the interests of commerce including navigation, the development of hydroelectric power or the preservation and enhancement of the scenic beauty of the river or in the interest of public recreation and of fish and wildlife resources and Grantee further covenants that Grantee, his heirs, distributees, successors in interest, legal representatives and assigns, will not make claim against or sue the State or Power Authority of the State of New York, their successors in interest or assigns, or any of them for or an account of any cause of action, claim or demand of any kind whatsoever by reason of any such damage or loss.

The foregoing covenants shall in no event be construed to be an admission on the part of the State or Power Authority of the State of New York that they are legally responsible for any damage or loss to any adjoining land by reason of or arising from the control or regulation of the waters of the St. Lawrence River."

Section 271-1.7 Fees: Appraisal.

1)(a) Fees for cables, conduits, pipelines and like facilities shall be determined using a rate per lineal foot which shall be established by the Commissioner and adjusted annually on April 1 based upon the United States Department of Labor consumer price index (CPI-W).

The term of easement for cables, conduits, pipelines and like facilities shall be twenty-five (25) years and the standard width of such easements shall be thirty (30) feet, unless otherwise determined by the Commissioner.

Upon the effective date of these regulations, the fee for cables, conduits, pipelines and like facilities shall be $12.74 per lineal foot. Annual adjustments in the fee per lineal foot will be available upon request from the Office of General Services, Division of Land Utilization. The Commissioner may mitigate the fee for those cables, conduits, pipelines and like facilities which are determined to be for the purpose of connecting individual service.

(b) The fee for municipal water and sewer conduits or pipelines shall be twenty-five (25) percent of the rate determined in (b) above and may be granted for a term of fifty (50) years.

2) Hydroelectric easements shall be valued based upon the following factors:

(a) In those instances where applicant or its predecessor in interest have no legislative authorization or grant of easement or other interest from the State of New York for placement and operation of a power facility on the State-owned lands underwater, the applicant shall be required to pay a fee of up to 3 percent of gross annual revenue from power sales to the State of New York and the appraised land underwater value of those State-owned lands permanently encumbered.

(b) In those instances where the applicant or his predecessor in interest has acquired title by prior legislative authorization or prior grant from the State for a hydroelectric or other power facility, any easement granted for any new hydroelectric facility shall be valued based upon the appraisal of the adjoining upland, exclusive of improvements.

(c) In determining the amount of the fee or percentage to be charged under (a) or (b), the Commissioner of General Services shall prepare an appraisal findings detailing the State's real property interest, the value of that interest, and any adjustments to value including but not limited to those based upon actual cost avoidance to the State occasioned by applicant's repair or reconstruction of State-owned structures, if any. The appraisal findings shall be subject to the review and approval of the State Comptroller.

3) In the event the cable conduit, pipeline, hydroelectric facility and appurtenances cannot be appraised using the methods set forth in 1 and 2 above, the Commissioner may appraise the affected land and/or structure using an income, cost or market value approach as appropriate.

4) Fees for cable, conduits and pipelines and like facilities shall be paid on or before the date the easement is granted.

5) Fees for hydroelectric easements shall be paid at the close of the calendar year but, in no event, later than February 15th of the following year.

Memorandum of Understanding on Underwater Lands

MEMORANDUM OF UNDERSTANDING
ON UNDERWATER LANDS
OCTOBER 1993

BACKGROUND

1) The Office of General Services ("OGS"), the Office of Parks, Recreation and Historic Preservation ("OPRHP"), the Department of State ("DOS") and the Department of Environmental Conservation ("DEC") recognize that state-owned lands underwater or formerly underwater ("lands") are the property of the People of the State, and are administered by various agencies as authorized by the Legislature. Reasonable use of such lands by riparian and littoral owners and others is subject to the control of the State consistent with the public interest in the use of such lands and the responsible management reflecting varied public and private rights. Such control should be exercised to preserve, protect and minimize adverse impacts to natural resources, the environment, navigation, public use of waterways, open space, cultural and historic resources, recreational, aesthetic and other values of state importance, including the reasonable exercise of riparian and littoral rights.

2) The November 1991 Report of the Governor's Task Force on Coastal Resources affirmed that "public trust lands...support diversified and important ecosystems...(that) public interest demands the preservation and conservation of these vital natural resources" and that conveyances of real property interests in such lands requires a balancing of interests of riparian or littoral owners with the interests of the state in protecting such lands'

natural resource values and the public's rights in these lands. The Coastal Task Force recommended that control of lands where natural resource and recreational values clearly predominate should be transferred to DEC or OPRHP for management.

3) In passing Chapter 791 of the Laws of 1992, the Legislature found:

> that regulation...is necessary to responsibly manage the state's proprietary interests in such lands, to protect vital assets held in the name of the people of the state, to guarantee common law and sovereign rights, and to ensure that waterfront owners' reasonable exercise of riparian rights and access to navigable waters, shall be consistent with the public interest in reasonable use and responsible management of waterways and such public lands for the purposes of navigation, commerce, fishing, bathing, recreation, environmental and aesthetic protection and access to navigable waters and lands underwater of the state.

That legislation clarifies the authority of OGS to take action against trespasses on state-owned lands and to define certain private rights as to the construction and placement of certain structures on lands. It also provides for the transfer of jurisdiction of environmentally sensitive lands, authorizes DEC and DOS to review proposed conveyances and authorizes DEC to recommend conditions to protect the environment and natural resources.

Nothing in this MOU shall be construed to conflict with the provisions of that legislation.

4) The mission of OGS is to provide coordinated customer-focused support service to New York State agencies, political subdivisions, not-for-profit organizations and the public in a business-like fashion through the development and management of efficient, timely and cost-effective programs. This mission includes the care and superintendence of state lands and the management, including the grant, lease, easement or other conveyance of lands to promote commerce or for the beneficial enjoyment of riparian or littoral owners and for agricultural, public park, beach, street, recreational or conservation purpose.

5) The mission of DEC includes the protection, preservation and prevention of damage to the natural resources of the state, including aquatic resources for their habitat, scenic, recreational and other natural resource values.

6) The mission of OPRHP includes the provision of safe and enjoyable recreational opportunities to the public and to be responsible stewards of natural, historic, navigational and cultural resources.

7) The mission of DOS includes the administration of the state's Coastal Management Program, the purpose of which is to achieve the wise use and protection of the land and water resources of coastal areas and inland waterways.

8) OGS, OPRHP, DOS and DEC recognize that the management of state-owned lands underwater for the public benefit involves

balancing of various policy interests. The conveyance of interests in certain parcels must be consistent with the responsibilities of OGS relating to the disposition of such lands, the protection of public interests and the conservation and acquisition of lands with the above-listed values consistent with the purposes of DOS, DEC and OPRHP.

TRANSFER OF JURISDICTION

The agencies recognize the need to prioritize the sequence of the transfer of appropriate parcels with the above-listed values to DEC or OPRHP. The agencies also wish to minimize the expenditure of agency resources involved in conducting surveys, drafting deed descriptions and searching real property titles. OGS may, consistent with the Public Lands Law and private property rights, transfer to DEC or OPRHP certain lands now or formerly underwater according to the following principles and procedures:

1) DEC and OPRHP shall establish criteria in consultation with OGS and DOS which allow identification of lands of unusual sensitivity, including lands with natural resource, recreational, navigational, historic, aesthetic or public access value which require protection and management. DEC and OPRHP shall identify such lands with as much particularity as possible. DEC and OPRHP will use their respective Bureaus of Real Property staff and other program staff with expertise to undertake the technical work needed to identify, survey and research titles for such lands.

2) OGS will circulate, on a quarterly basis, a list of properties for which it has received applications for any conveyance, including grants, leases, easements or other interests. The list will be directed to the DEC Division of Regulatory Affairs in the nine DEC Regional Offices, to the OPRHP Deputy Commissioner for Planning and Development and to the DOS Division of Coastal Resources. If DEC or OPRHP identify a listed parcel as requiring protection, either agency may request its transfer to that agency.

3) DEC or OPRHP will provide written justification in support of any requested transfer to OGS. DEC requests will be made by the Deputy Commissioner for Natural Resources. OPRHP requests will be made by the Deputy Commissioner for Planning and Development. After receipt of all reasonable and necessary information from DEC or OPRHP, OGS will make a decision within a reasonable time. OGS will provide written justification for any decision not to grant a transfer or to grant it only with substantial conditions. Any order transferring a parcel shall be prepared pursuant to sections 3(4) and 75 of the Public Lands Law.

COORDINATION OF REVIEW

OGS receives applications from interested persons for conveyances of interests in lands. DEC receives applications for permits for activities in waters of the state. DOS receives coastal consistency certifications for review when federal actions are required in the coastal area and reviews state agency consistency certifications under certain circumstances. OPRHP may

need to approve a local navigation ordinance, law or regulation or be consulted if there is a potential for impacts to navigation or to cultural resources, particularly archaeological resources, on such lands. Although some informal actions have occurred among the agencies to share information, a more formal process is needed to carry out the legislative intent of Chapter 791. The Coastal Task Force recommended that the environmental review process for management of lands should be expanded to ensure that identified environmentally sensitive parcels are not conveyed or are conveyed only with appropriate environmental restrictions. The agencies agree to share lists of pending projects on a regular basis and to notify each other of the availability for review of all applications that they receive for actions proposed in, on or over or otherwise affecting state-owned lands underwater or formerly underwater. The agencies also agree treat each other as involved agencies and to follow the lead agency coordination procedures for Type I actions provided in the State Environmental Quality Review Act (SEQRA) regulations (6 NYCRR Part 617) for both Type I and Unlisted actions for which another agency has responded to the notice of availability for review:

1) When OGS receives a request for a conveyance of an interest in lands and DEC, OPRHP or DOS are interested or involved agencies, OGS will send a notice of availability for review to those agencies. If any agency notifies OGS of its interest within 15 days of receipt of the notice, OGS will coordinate its review with those agencies, using the SEQRA process as the means to do

this. OGS will include any conditions recommended by DOS or OPRHP in any conveyance it grants, as appropriate. DEC may recommend conditions to protect the environment and natural resources which shall be incorporated by OGS in any conveyance or may recommend denial of the proposal on written findings that the proposal does not adequately protect the environment or natural resources.

2) When OGS receives a request for a conveyance of an interest in lands under DEC or OPRHP jurisdiction, OGS will direct the request to the agency with jurisdiction. DEC or OPRHP will send a notice of availability for review to the other agencies. If any agency notifies DEC or OPRHP of its interest within 15 days of its receipt of the notice, DEC or OPRHP will coordinate review, using the SEQRA process as described above. If DEC or OPRHP decides to grant the application, or grant it with conditions, the agency will forward its determination to OGS for preparation and filing of real property conveyancing documents.

3) When DEC receives an application for a permit pertaining to underwater lands and there may be OGS or OPRHP jurisdiction or the need for OPRHP or DOS review, DEC will send a notice of availability for review to those agencies. If any agency notifies DEC of its interest within 15 days of receipt of the notice, DEC will coordinate its review, using the SEQRA process as described above, for any action requiring OGS transfer or OPRHP or DOS review. DEC will include any permit conditions recommended by the agencies, as appropriate, consistent with DEC jurisdiction.

4) Where there is no regulatory jurisdiction and either DEC, OPRHP or DOS receives notice of a proposed action on underwater lands, that agency shall send a notice of availability for review to OGS and, as appropriate, all other interested agencies.

5) The agencies may agree on categories of projects by size or type which, by their nature, will not adversely affect natural resources, public access, recreation, navigation or other important state interests and do not require coordination of review.

6) DEC agrees to notify OGS at the earliest possible time of any enforcement action taken by or on behalf of DEC against any person for a violation of the Environmental Conservation Law purported to affect state-owned lands underwater. Such notice will be directed to the OGS Bureau of Land Management in Albany.

Thomas C. Jorling, Commissioner
NYS Department of Environmental Conservation

Robert B. Adams, Commissioner
NYS Office of General Services

Gail S. Shaffer, Secretary
NYS Department of State

Joan K. Davidson, Commissioner
NYS Office of Parks, Recreation and Historic Preservation