

## SECTION 6

### COASTAL POLICIES AND IMPLEMENTATION

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

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

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

#### Coordination

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

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

### Policies

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

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

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

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

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

agricultural land (Policy 25)

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

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

wetlands (Policy 44)

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

siting energy facilities (Policy 17)

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

managing solid <sup>water</sup> (Policy 39)

ice management practices (Policy

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

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

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

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

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

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

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

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

**A. Explanation of Policy**

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

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

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

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

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

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

- a) Priority should be given to uses which are dependent on a location adjacent to the water;
- b) The action should enhance existing and anticipated uses. For example, a new highway should be designed and constructed so as to serve the potential access needs for desirable industrial development;
- c) The action should serve as a catalyst to private investment in the area;
- d) The action should improve the deteriorated condition of a site and, at a minimum, must not cause further deterioration. For example, a building could not be abandoned without protecting it against vandalism and/or structural decline;
- e) The action must lead to development which is compatible with the character of the area, with consideration given to scale, architectural style, density, and intensity of use;
- f) The action should have the potential to improve the existing economic base of the community, and, at a minimum, must not jeopardize this base. For example, waterfront development meant to serve consumer needs would be inappropriate in an area where no increased consumer demands were expected and existing development was already meeting demand;
- g) The action should improve adjacent and upland views of the water, and, at a minimum, must not affect these views in an insensitive manner;
- h) The action should have the potential to improve the potential for multiple uses of the site.

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

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

3. Public Building Law (Article 4-B)

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

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

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

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

**A. Explanation of Policy**

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

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

The following uses and facilities are considered as water dependent:

1. Uses which depend on the utilization of resources found in coastal waters (for example: fishing, mining of sand and gravel, mariculture activities);
2. Recreational activities which depend on access to coastal waters (for example: swimming, fishing, boating, wildlife viewing);
3. Uses involved in the sea/land transfer of goods (for example: docks, loading areas, pipelines, short-term storage facilities);
4. Structures needed for navigational purposes (for example: locks, dams, lighthouses);
5. Flood and erosion protection structures (for example: breakwaters, bulkheads);
6. Facilities needed to store and service boats and ships (for example: marinas, boat repair, boat construction yards);

7. Uses requiring large quantities of water for processing and cooling purposes (for example: hydroelectric power plants, fish processing plants, pumped storage power plants);
8. Uses that rely heavily on the waterborne transportation of raw materials or products which are difficult to transport on land, thereby making it critical that a site near to shipping facilities be obtained (for example: coal export facilities, cement plants, quarries);
9. Uses which operate under such severe time constraints that proximity to shipping facilities becomes critical (for example: firms processing perishable foods);
10. Scientific/educational activities which, by their nature, require access to coastal waters (for example: certain meteorological and oceanographic activities); and
11. Support facilities which are necessary for the successful functioning of permitted water dependent uses (for example: parking lots, snack bars, first aid stations, short-term storage facilities). Though these uses must be near the given water dependent use they should, as much as possible, be sited inland from the water dependent use rather than on the shore.

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

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

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

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

1. Competition for space -- competition for space or the potential for it, should be indicated before any given site is promoted for water dependent uses. The intent is to match water dependent uses with suitable locations and thereby reduce any conflicts between competing uses that might arise. Not just any site suitable for development should be chosen as a water dependent use area. The choice of a site should be made with some meaningful impact on the real estate market anticipated. The anticipated impact could either be one of increased protection to existing water dependent activities or else the encouragement of water dependent development.
2. In-place facilities and services -- most water dependent uses, if they are to function effectively, will require basic public facilities and services. In selecting appropriate areas for water dependent uses, consideration should be given to the following factors:
  - a. The availability of public sewers, public water lines and adequate power supply;
  - b. Access to the area for trucks and rail, if heavy industry is to be accommodated; and
  - c. Access to public transportation, if a high number of person trips is to be generated.
3. Access to navigational channels -- if commercial shipping, commercial fishing, or recreational boating are planned, the locality should consider setting aside a site, within a sheltered harbor, from which access to adequately sized navigation channels would be assured.

4. Compatibility with adjacent uses and the protection of other coastal resources -- water dependent uses should be located so that they enhance, or at least do not detract from, the surrounding community. Consideration should also be given to such factors as the protection of nearby residential areas from odors, noise and traffic. Affirmative approaches should also be employed so that water dependent uses and adjacent uses can serve to complement one another. For example, a recreation-oriented water dependent use area could be sited in an area already oriented towards tourism. Clearly, a marina, fishing pier or swimming area would enhance, and in turn be enhanced by, nearby restaurants, motels and other non-water oriented tourist activities. Water dependent uses must also be sited so as to avoid adverse impacts on the significant coastal resources.
5. Preference to underutilized sites -- the promotion of water dependent uses should serve to foster development as a result of the capital programming, permit expediting, and other State and local actions that will be used to promote the site. Nowhere is such a stimulus needed more than in those portions of the State's waterfront areas which are currently underutilized.
6. Providing for expansion -- a primary objective of the policy is to create a process by which water dependent uses can be accommodated well into the future. State agencies and localities should therefore give consideration to long-term space needs and, where practicable, accommodate future demand by identifying more land than is needed in the near future.

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

1. Favored treatment to water dependent use areas with respect to capital programming. Particular priority should be given to the construction and maintenance of port facilities, roads, railroad facilities, and public transportation within areas suitable for water dependent uses.
2. When areas suitable for water dependent uses are publicly owned, favored leasing arrangements could be given to water dependent uses.

3. Where possible, consideration should be given to providing water dependent uses with property tax abatements, loan guarantees, or loans at below market rates.
4. State and local planning and economic development agencies should actively promote water dependent uses. In addition, a list of sites available for non-water dependent uses should be maintained in order to assist developers seeking alternative sites for their proposed projects.
5. Local, State and Federal agencies should work together to streamline permitting procedures that may be burdensome to water dependent uses. This effort should begin for specific uses in a particular area.
6. Local land use controls, especially the use of zoning districts exclusively for waterfront uses, can be an effective tool of local government in assuring adequate space for the development of water dependent uses.

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

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

#### 4. Capital Construction

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

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

**A. Explanation of Policy**

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

1. In assessing proposed projects within or abutting a major port, given that all other applicable policies are adhered to, the overriding consideration is the maintenance and enhancement of port activity, i.e., development related to waterborne transportation, which will have precedence over other, non-port related activities.
2. Dredging to maintain the economic viability of major ports will be regarded as an action of regional or statewide public benefit if: a clear need is shown for maintaining or improving the established alignment, width, and depth of existing channels or for new channels essential to port activity; and, it can be demonstrated that environmental impacts would be acceptable level according to State regulations governing the activity.
3. Landfill projects in the near-shore areas will be regarded as an acceptable activity within major port areas, provided adverse environmental impacts are acceptable under all applicable environmental regulation and a strong economic justification is demonstrated.
4. If non-port related activities are proposed to be located in or near to a major port, these uses shall be sited so as not to interfere with normal port operations.

5. When not already restricted by existing laws or covenants, and when there is no other overriding regional or statewide public benefit for doing otherwise, surplus public land or facilities within or adjacent to a major port shall be offered for sale, in the first instance, to the appropriate port authority.
6. In the programming of capital projects for port areas, highest priority will be given to projects that promote the development and use of the port. However, in determining such priorities, consideration must also be given to non-port related interests within or near the ports that have demonstrated critical capital programming needs.
7. No buildings, piers, wharves, or vessels shall be abandoned or otherwise left unused by a public agency or sold without making provisions for their maintenance in sound condition or for their demolition or removal.
8. Proposals for the development of new major ports will be assessed in terms of the anticipated impact on: a) existing New York State major ports; b) existing modes of transportation; and c) the surrounding land uses and overall neighborhood character of the area in which the proposed port is to be located; and other valued coastal resources.
9. Port development shall provide opportunities for public access insofar as these opportunities do not interfere with the day-to-day operations of the port and the port authority and its tenants do not incur unreasonable costs.

B. State Means for Implementing the Policy

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

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

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

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

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

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

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

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

**A. Explanation of Policy**

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

The following guidelines shall be used in determining consistency:

1. The action shall give priority to those traditional and/or desired uses which are dependent on or enhanced by a location adjacent to the water.
2. The action will enhance or not detract from or adversely effect existing traditional and/or desired anticipated uses.
3. The action shall not be out of character with, nor lead to development which would be out of character with, existing development in terms of the area's scale, intensity of use, and architectural style.
4. The action must not cause a site to deteriorate, e.g., a structure shall not be abandoned without protecting it against vandalism and/or structural decline.
5. The action will not adversely affect the existing economic base of the community, e.g., waterfront development designed to promote residential development might be inappropriate in a harbor area where the economy is dependent upon tourism and commercial fishing.

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

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

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

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

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

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

**A. Explanation of Policy**

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

The above policy is intended to accomplish the following:

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

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

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

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

- a. Population density of the area surrounding or adjacent to the proposed site exceeds 1,000 persons per square mile;
- b. Fewer than 50% of the buildable sites (i.e., sites meeting lot area requirements under existing local zoning regulations) within one mile radius of the proposed site are vacant;
- c. Proposed site is served by or is near to public or private sewer and water lines;
- d. Public transportation service is available within one mile of the proposed site; and
- e. A significant concentration of commercial and/or industrial activity is within one-half mile of the proposed site.

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

- a. Streets and highways serving the proposed site can safely accommodate the peak traffic generated by the proposed land development;
- b. Development's water needs (consumptive and fire fighting) can be met by the existing water supply system;
- c. Sewage disposal system can accommodate the wastes generated by the development;
- d. Energy needs of the proposed land development can be accommodated by existing utility systems;
- e. Stormwater runoff from the proposed site can be accommodated by on-site and/or off-site facilities; and

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

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

1. Economic activities which depend upon sites at or near locations where natural resources are present, e.g., lumber industry, quarries.
2. Development which by its nature is enhanced by a non-urbanized setting, e.g., a resort complex, campgrounds, second home developments.
3. Development which is designed to be a self-contained activity, e.g., a small college, an academic or religious retreat.
4. Water dependent uses with site requirements not compatible with this policy or when alternative sites are not available.
5. Development which because of its isolated location and small-scale has little or no potential to generate and/or encourage further land development.
6. Uses and/or activities which because of public safety consideration should be located away from populous areas.
7. Rehabilitation or restoration of existing structures and facilities.
8. Development projects which are essential to the construction and/or operation of the above uses and activities.

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

B. State Means for Implementing the Policy

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

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

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

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

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 3)

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

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

3. New York State Land Use Element<sup>2</sup>

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

<sup>2</sup> New York State Land Use Element, Department of State, 1978, p. 25.

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

**A. Explanation of Policy**

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

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

**B. State Means for Implementing the Policy**

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

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

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

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

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

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

2. Article 39 of the Executive Law

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

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

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

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

**A. Explanation of Policy**

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

- (a) are essential to the survival of a large portion of a particular fish or wildlife population (e.g. feeding grounds, nursery areas);
- (b) support populations of rare and endangered species;
- (c) are found at a very low frequency within a coastal region;
- (d) support fish and wildlife populations having significant commercial and/or recreational value; and
- (e) would be difficult or impossible to replace.

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

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

1. Draining wetlands, ponds: Cause changes in vegetation, or changes in groundwater and surface water hydrology.
2. Filling wetlands, shallow areas of streams, lakes, bays, estuaries: May change physical character of substrate (e.g., sandy to muddy, or smother vegetation, alter surface water hydrology).
3. Grading land: Results in vegetation removal, increased surface runoff, or increase soil erosion and downstream sedimentation.
4. Clear cutting: May cause loss of vegetative cover, increase fluctuations in amount of surface runoff, or increase streambed scouring, soil erosion, sediment deposition.
5. Dredging or excavation: May cause change in substrate composition, possible release of contaminants otherwise stored in sediments, removal of aquatic vegetation, or change circulation patterns and sediment transport mechanisms.
6. Dredge spoil disposal: May induce shoaling of littoral areas, or change circulation patterns.
7. Physical alteration of shore areas through channelization or construction of shore structure: May change in volume and rate of flow or increased scouring, sedimentation.
8. Introduction, storage or disposal of pollutants such as chemical, petrochemical, solid wastes, nuclear wastes, toxic material, pesticide, sewage effluent, urban and rural runoff, leachate of hazardous and toxic substances stored in landfills: May cause increased mortality or sublethal effects on organisms, alter their reproductive capabilities, or reduce their value as food organisms.

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

1. Physical parameters such as: Living space, circulation, flushing rates, tidal amplitude, turbidity, water temperature, depth (loss of littoral zone), morphology, substrate type, vegetation, structure, erosion and sedimentation rates.
2. Biological parameters such as: Community structure, food chain relationships, species diversity, predator/prey relationships, population size, mortality rates, reproductive rates, behavioral patterns, and migratory patterns.
3. Chemical parameters such as: Dissolved oxygen, carbon dioxide, ph, dissolved solids, nutrients, organics, salinity, pollutants (heavy metals, toxic and hazardous materials).

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

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

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

B. State Means for Policy Implementation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**A. Explanation of Policy**

Hazardous wastes are unwanted by-products of manufacturing processes and are generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, waste is defined in Environmental Conservation Law [§27-0901(3)] as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or otherwise managed." A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

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

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

**B. State Means for Implementing the Policy**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sanitary Code, Public Health Law, Article 3)

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

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

**A. Explanation of Policy**

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

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

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

1. Consideration should be made by Federal and State agencies as to whether an action will impede existing or future utilization of the State's recreational fish and wildlife resources.
2. Efforts to increase access to recreational fish and wildlife resources should not lead to overutilization of that resource or cause impairment of the habitat. Sometimes such impairment can be more subtle than actual physical damage to the habitat. For example, increased human presence can deter animals from using the habitat area.
3. The impacts of increasing access to recreational fish and wildlife resources should be determined on a case-by-case basis, consulting the significant habitat narrative (see Policy 7) and/or conferring with a trained fish and wildlife biologist.
4. Any public or private sector initiatives to supplement existing stocks (e.g. stocking a stream with fish reared in a hatchery) or

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

**B. State Means for Implementing the Policy**

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

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

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

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

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

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

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

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

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

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

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

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

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

This law authorizes the Office of Parks, Recreation, and Historic Preservation to acquire, establish, and operate facilities for recreational purposes, including valuable fishing and hunting areas. For further information on the Office of Parks, Recreation, and Historic Preservation's powers, see the recreation policies contained in this report.

6. Urban Fisheries Program, Environmental Conservation Law (Article 11)

The Department of Environmental Conservation has elected to increase fishing activity in several metropolitan areas of the State, including Buffalo, Albany, Troy, and New York City, through its Urban Fisheries Program. Public education, eliminating problems of access to existing, under-utilized fisheries, and creation of new fisheries through stocking of ponds or establishing suitable habitat are specific means by which the objectives of this program will be accomplished. In most cases, these fishing areas are accessible by public transportation. However, in some instances, inadequate mass transportation constrains public use of these resources.

7. Urban Wildlife Program, Environmental Conservation Law (Article 11)
8. Fish and Wildlife Management Practices Co-operative Program, Environmental Conservation Law (Article 11-0501)

**POLICY 10 Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities.**

**A. Explanation of Policy**

Commercial fishery development activities must occur within the context of sound fishery management principals developed and enforced within the State's waters by the New York State Department of Environmental Conservation and the Management plans developed by the Regional Fisheries Management Councils (Mid-Atlantic and New England) and enforced by the U.S. National Marine Fisheries Service within the Fishery Conservation Zone. (The Fishery Conservation Zone is the area of coastal waters extending from the three mile State waters boundary to the 200 mile offshore boundary of U.S. Waters. The Conservation Zone is authorized by the U.S. Fishery Conservation and Management Act of 1976.) Sound resource management considerations would include optimum sustained yield levels developed for specific commercial fish species, harvest restrictions imposed by State and Federal governments, and the economic, political (uses conflicts) and technological constraints to utilizing these resources.

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

- a. A public agency's commercial fishing development initiative should not preempt or displace private sector initiative.
- b. A public agency's efforts to expand existing or create new on-shore commercial fishing support facilities should be directed towards unmet development needs rather than merely displacing existing commercial fishing activities from a nearby port. This may be accomplished by taking into consideration existing State or regional commercial fishing development plans.
- c. Consideration should be made by State and Federal agencies whether an action will impede existing utilization or future development of the state's commercial fishing resources.

- d. Commercial fishing development efforts should be made in a manner which ensures the maintenance and protection of the renewable fishery resources.

B. State Means for Implementing the Policy

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

Section 915 of this law authorizes the Department of State to encourage municipalities which choose to develop local waterfront revitalization programs to implement commercial fishing port development projects. Such facilities might include the construction or rehabilitation of piers; facilities for catch transfer, freezer storage, fishing processing and packaging; or aquaculture facilities.

Section 919, of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which is: Further develop commercial finfish, shellfish and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities. This provision of law is implemented by amendments to SEQR (of 2 below) and by DOS regulations.

DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the following policy: "Further develop commercial finfish, shellfish and crustacean resources in the coastal area by: (i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of the State's seafood products; (iii) maintaining adequate stocks and (iv) expanding aquaculture facilities. Such efforts shall be made in a manner which insures the protection of such renewable fish resources and considers other activities dependent on them.

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

Environmental impact as defined in this law include not only impact on the State's natural resources but also the State's economy.

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

"Further develop commercial finfish, shellfish and crustacean resources in the coastal area by: (i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities; (ii) increasing marketing of New York seafood products; (iii) maintaining adequate stocks and (iv) expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them."

**POLICY 11 Buildings and other structures will be sited in the coastal area so as to minimize damage to property and the endangering of human lives caused by flooding and erosion.**

**A. Explanation of Policy**

On coastal lands identified as coastal erosion hazard areas, buildings and similar structures shall be set back from the shoreline a distance sufficient to minimize damage from erosion unless no reasonable prudent alternative site is available as in the case of piers, docks and other structures necessary to gain access to coastal waters to be able to function. The extent of the setback will be calculated, taking into account the rate at which land is receding due to erosion, and the protection provided by existing erosion protection structures as well as by natural protective features such as beaches, sandbars, spits, shoals, barrier islands, bay barriers, nearshore areas, bluffs and wetlands. The only new structure allowed in coastal erosion hazard areas is a moveable structure as defined in Section 505.3(u) of the regulations for ECL, Article 34. Prior to its construction, an erosion hazard areas permit must be approved for the structure. Existing, non-conforming structures located in coastal erosion hazard areas may be only minimally enlarged.

In coastal lands identified as being subject to high velocity waters caused by hurricane or other storm wave wash - a coastal high hazard area - walled and roofed buildings or fuel storage tanks shall be sited landward of mean high tide; and no mobile home shall be sited in such area. In coastal lands identified as floodways, no mobile homes shall be sited other than in existing mobile home parks.

Where human lives may be endangered by major coastal storms, all necessary emergency preparedness measures should be taken, including disaster preparedness planning.

**B. State Means for Implementing the Policy**

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including natural protective features such as beaches

and dunes. The law also requires the calculation of rates of recession of coastal lands. Standards and criteria are also prescribed for the regulation of the siting of buildings and other structures in relation to those defined areas.

2. Flood Plain Management Act, Environmental Conservation Law (Article 36)

This law ensures that, if a community fails to qualify for the Federal flood insurance program, the State will develop flood hazard regulations for that community to make it eligible for participation in the program. The regulations are, at a minimum, those specified by the Federal Emergency Management Agency.

State agencies are also constrained by this law through regulation of such activities as the financing of projects, or the authorization of implementation of projects, on State lands. The regulations are, at a minimum, those specified by the Federal flood insurance program.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires the use of non-structural measures whenever possible to minimize damage from flooding and erosion. This provision of law is implemented by amendments to SEQR (see 4 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing or elevation of buildings above the base flood level."

(2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the use of set backs as a non-structural measure.

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

4. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing or elevation of buildings above the base flood level."

5. State and Local Natural and Man-made Disaster Preparedness Act, Executive Law (Article 2-B)

This law provides for the establishment of a State Disaster Preparedness Commission and the preparation of a State Disaster Preparedness Plan. The Act also declares that it is a policy of the State that local governments "continue their essential role as the first line of defense in times of disaster" and authorizes counties and cities to prepare Local Disaster Preparedness Plans.

**POLICY 12 Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs.**

A. Explanation of Policy

Beaches, dunes, barrier islands, bluffs, and other natural protective features help safeguard coastal lands and property from damage, as well as reduce the danger to human life, resulting from flooding and erosion. Excavation of coastal features, improperly designed structures, inadequate site planning, or other similar actions which fail to recognize their fragile nature and high protective values, lead to the weakening or destruction of those landforms. Activities or development in, or in proximity to, natural protective features must ensure that all such adverse effects are minimized. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law requires the identification of coastal erosion hazard areas, including natural protective features such as beaches, dunes, bluffs and barrier islands. Standards and criteria are also authorized for the promulgation of regulations which will require that activities and development will have minimal adverse effects on such natural protective features.

2. Flood Plain Management Act, Environmental Conservation Law (Article 36)

(See also Policy 11, B, 2 above)

Regulations promulgated under this law include a prohibition on the alteration of sand dunes in coastal high hazard areas so as to prevent an increase in potential flood damage to lands and property.

3. Water Resources Act, Environmental Conservation Law (Article 15)

Sections 15-0503 and 15-0505 regulate the placement of permanent docks, piers and similar structures, as well as the placement of fill, in the waters of the State. The law also recognizes the adverse effect of such activities on soil erosion and will be used to implement this policy.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage to natural resources from flooding and erosion be minimized, including the protection of beaches, dunes, barrier islands, bluffs and other natural protective features. This provision of law is implemented by amendments to SEQR (see 5 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of activities or development on natural protective features.

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

5. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQOR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity."

**POLICY 13** The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

A. Explanation of Policy

Erosion protection structures are widely used throughout the State's coastal area. However, because of improper design, construction and maintenance standards, many fail to give the protection which they were presumed to provide. As a result, development is sited in areas where it is subject to damage or loss due to erosion. This policy will help ensure the reduction of such damage or loss.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

Within coastal erosion hazard areas identified by this law, standards and criteria required by the Act will be used to regulate the construction or reconstruction and maintenance of erosion protection structures.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which states that it is State policy to minimize damage to property from erosion. This provision of law is implemented by amendments to SEQR (see 3 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs."

(2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of improperly designed, constructed or maintained erosion protection structures.

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

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs."

**POLICY 14 Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.**

**A. Explanation of Policy**

Erosion and flooding are processes which occur naturally. However, by his actions, man can increase the severity and adverse effects of those processes, causing damage to, or loss of property, and endangering human lives. Those actions include: the use of erosion protection structures such as groins, or the use of impermeable docks which block the littoral transport of sediment to adjacent shorelands, thus increasing their rate of recession; the failure to observe proper drainage or land restoration practices, thereby causing run-off and the erosion and weakening of shorelands; and the placing of structures in identified floodways so that the base flood level is increased causing damage in otherwise hazard-free areas.

**B. State Means for Implementing the Policy**

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

Within coastal erosion hazard areas identified pursuant to this law, standards and criteria will be established to regulate activities and development, including the construction or reconstruction of erosion control structures, so that on-site erosion, and erosion of other lands, will not measurably increase.

2. Water Resources Act, Environmental Conservation Law (Article 15)

Subsections 15-0503 and 15-0505 regulate the placement of permanent docks, piers and similar structures, as well as the placement of fill, in the waters of the State. The law also recognizes the adverse effect of such activities on soil erosion and will be used to implement this policy.

3. Flood Plain Management Act, Environmental Conservation Law (Article 36)

(See also Policy 11, B, 2 above)

This law regulates encroachments in floodways identified under the federal flood insurance program so as to prevent increases in flood-water levels.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which states that it is State policy to minimize damage to natural resources and property from flooding and erosion. This provision of law is implemented by amendments to SEQR (see 5 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of activities or development upon coastal lands.

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

5. State Environmental Quality Review Act,  
Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Activities and development including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations."

**POLICY 15 Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.**

**A. Explanation of Policy**

Coastal processes, including the movement of beach materials by water, and any mining, excavation or dredging in nearshore or offshore waters which changes the supply and net flow of such materials can deprive shorelands of their natural regenerative powers. Such mining, excavation and dredging should be accomplished in a manner so as not to cause a reduction of supply, and thus an increase of erosion, to such shorelands. Offshore mining is a future alternative option to land mining for sand and gravel deposits which are needed to support building and other industries.

**B. State Means for Implementing the Policy**

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage to natural resources from erosion is minimized. This provision of law is implemented by amendments to SEQR (see 2 below) and by Department of State regulations. Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land." (2) That the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the adverse effect of mining, excavation and dredging upon coastal lands.

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

2. State Environmental Quality Review Act, Environmental Conservation Law Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. The environment is broadly defined to include land and minerals: hence, sand, gravel, and other materials in coastal waters are viewed as environmental resources. Pursuant to Article 42 of the Executive Law, SEQOR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land."

3. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including nearshore natural protective features such as shoals, bars and spits, which if altered might lower the reserves of sand or other natural materials available to replenish storm losses through natural processes. The law requires also that excavation or other alteration of land will be regulated to minimize adverse effects on those natural protective features as well as to prevent erosion of other lands.

4. Public Lands Law (Article 2)

New York State owns the underwater lands in the State's coastal area, except where its rights have been sold, leased or otherwise transferred, or where they have been reserved to other interests. This law provides for the leasing of certain underwater lands for the mining of sand and gravel. Such mining activities must be implemented consistent with the policies of Executive Law, Article 34.

5. Protection of Waters Act, Environmental Conservation Law (Article 15)

This law recognizes the adverse effects on soil erosion of activities such as excavation in the State's navigable waters, or in marshes, estuaries, tidal marshes and wetlands adjacent thereto, and requires the regulation of such activity by permit.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The regulatory jurisdiction of this law in the State's tidal waters includes: (1) coastal shoals, bars and flats, as well as other lands no more than 6 feet underwater at low mean water, and adjacent areas; and (2) the dredging, excavation or removal of sand, or other aggregate. To protect the contribution which those lands make to flood, hurricane and storm control, those uses are presumed incompatible and a permit must be obtained from the Department of Environmental Conservation, upon demonstration that those values will not be adversely affected.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This law provides for the identification of freshwater wetlands and for the regulation of activities therein, including dredging, mining and excavation.

**POLICY 16** Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

A. Explanation of Policy

Public funds are used for a variety of purposes on the State's shorelines. This policy recognizes the public need for the protection of human life and existing investment in development or new development which requires a location in proximity to the coastal area or in adjacent waters to be able to function. However, it also recognizes the adverse impacts of such activities and development on the rate of erosion and on natural protective features and requires that careful analysis be made of such benefits and long-term costs prior to expending public funds.

B. State Means for Implementing the Policy

1. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

This law contains a provision that, within identified coastal erosion hazard areas, consideration be given to both the public benefits and long range adverse effects of proposed activities and development which use public funds.

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act, one of which requires that damage from erosion to natural resources and property is minimized by proper location of new development, protection of critical coastal features and the use of non-structural measures whenever possible. This provision of law is implemented by amendments to SEQR (see 3 below) and by Department of State regulations.

Those Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features." (2) The the Secretary of State shall review actions of State agencies that may affect achievement of the policy and (3) that SEQR regulations be amended to reflect consideration of the costs and benefits of publicly funded erosion protective structures.

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

3. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features."

**POLICY 17 Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible.**

**A. Explanation of Policy**

1. This policy recognizes both the potential adverse impacts of flooding and erosion upon development and upon natural protective features in the coastal area as well as the costs of protection against those hazards which structural measures entail.
2. "Non-structural measures" shall include, but not be limited to: (1) within coastal erosion hazard areas identified under Section 34-104, Coastal Erosion Hazard Areas Act (Article 34, Environmental Conservation Law), and subject to the permit requirements on all regulated activities and development established under that Law, (a) the use of minimum setbacks as provided for in Section 34-108; and (b) the strengthening of coastal landforms by the planting of appropriate vegetation on dunes and bluffs, the installation of sand fencing on dunes, the reshaping of bluffs to achieve an appropriate angle of repose so as to reduce the potential for slumping and to permit the planting of stabilizing vegetation, and the installation of drainage systems on bluffs to reduce runoff and internal seepage of waters which erode or weaken the landforms; and (2) within identified flood hazard areas, (a) the avoidance of risk or damage from flooding by the siting of buildings outside the hazard area, and (b) the flood-proofing of buildings or their elevation above the base flood level.
3. This policy shall apply to the planning, siting and design of proposed activities and development, including measures to protect existing activities and development. To ascertain consistency with the policy, it must be determined if any one, or a combination of, non-structural measures would afford the degree of protection appropriate both to the character and purpose of the activity or development, and to the hazard. If non-structural measures are determined to offer sufficient protection, then consistency with the policy would require the use of such measures, whenever possible.

4. In determining whether or not non-structural measures to protect against erosion or flooding will afford the degree of protection appropriate, an analysis, and if necessary, other materials such as plans or sketches of the activity or development, of the site and of the alternative protection measures should be prepared to allow an assessment to be made.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act, one of which calls for minimizing damage to natural resources and property from flooding and erosion by the use of non-structural measures whenever possible. This provision of law is implemented by amendments to SEQR (See 2 below) and by the Department of State regulations. The Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of the use of non-structural measures to minimize damage from flooding and erosion.

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

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Whenever possible, use non-structural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include: (i) the set back of buildings and structures; (ii) the planting of vegetation and the installation of sand fencing and drainage systems; (iii) the reshaping of bluffs; and (iv) the flood-proofing of buildings or their elevation above the base flood level."

3. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

Within coastal erosion hazard areas identified pursuant to this law, standards and criteria will be established to regulate activities and development as well as to protect natural protective features such as dunes, bluffs, beaches and barrier islands through a permit system.

**POLICY 18** To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

A. Explanation of Policy

Proposed major actions may be undertaken in the coastal area if they will not significantly impair valuable coastal waters and resources, thus frustrating the achievement of the purposes of the safeguards which the State has established to protect those waters and resources. Proposed actions must take into account the social, economic and environmental interests of the State and its citizens in such matters that would affect natural resources, water levels and flows, shoreline damage, hydro-electric power generation, and recreation.

B. State Means for Implementing the Policy

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

In part, Article 42 declares that it is the public policy of the State within its coastal area: to conserve and protect fish and wildlife and their habitats; achieve a balance between economic development and preservation needs that will permit the beneficial use of coastal resources while preventing permanent adverse changes to ecological systems; and minimize damage to natural resources and property from flooding and erosion. The Act's policies also call for the assurance of consistency of State actions and Federal actions with policies within the coastal area and cooperation and coordination with other states, the Federal government and Canada "to attain a consistent policy towards coastal management". Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of the Act. This provision of law is implemented by amendments to SEQR (See 2 below) and by the Department of State regulations. The Department of State

regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of this policy.

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

2. State Environmental Quality Review Act, Environmental Conservation Law (Article 18)

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action which might have a significant effect on the environment. Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas."

3. Water Resources Act, Environmental Conservation Law (Article 15)

Section 15-0101 states in part that "... the sovereign power to regulate and control the water resources of this State ever since its establishment has been and now is vested exclusively in the State of New York except to the extent of any delegation of powers to the United States..."

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

Along stretches of rivers designated by the State as "wild", "scenic", or "recreational", the State Department of Environmental Conservation is authorized by this law to exercise land use controls in order to protect the outstanding natural, scenic, historic, ecological and recreational resources of these rivers.

5. Protection of Waters, Environmental Conservation Law (Article 15, Title 5)

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

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

This Act requires that a permit be issued for activities or development in identified tidal wetlands. It must be demonstrated that proposed activities or development will not adversely affect water quality, flood and storm control, marine food production, wildlife habitat, open space, and aesthetically significant areas.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This law recognizes the value of freshwater wetlands in providing flood protection, wildlife habitats, open space and water resources. The program established under this Act regulates activities such as draining, dredging, and filling. It is administered by local governments pursuant to state guidelines and after official filing of wetland maps by the State. The Department of Environmental Conservation regulates fresh-

water wetlands through its interim permit program in communities where maps have yet to be filed. Before granting or denying a permit, the municipality or DEC must determine if the activity will have an adverse impact on the value of the wetland.

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

The Department of Environmental Conservation is empowered by this law to manage the State's fish and wildlife resources. The Department propagates fish and wildlife to supplement existing stocks, regulates their harvest through restricted seasons, bag limits, gear restrictions, and develops new or improves existing habitats with such devices as stream improvement structures.

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

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

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

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

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

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

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

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

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

The Department of Environmental Conservation (DEC) regulates the handling of hazardous wastes generation, storage, transportation, treatment and disposal in a manner consistent with the Federal Resource Conservation and Recovery Act of 1976 (RCRA). This state law mandates DEC to identify and list hazardous wastes, to develop and implement a manifest system for tracking the wastes "from cradle to grave", to regulate all phases of handling hazardous wastes. Enforcement of this law will minimize new introductions of hazardous wastes into the environment, thereby protecting coastal resources.

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

Unregulated discharge of petroleum or oil spills associated with the transport and storage of such products can damage the State's coastal fish, shellfish, wildlife, beaches and other resources. This law

authorizes the Department of Transportation and the Department of Environmental Conservation to control the methods of petroleum storage and transfer and to require prompt cleanup and compensation to damaged parties when spills or discharges occur.

15. Public Health Law (Article 11)

This law provides for the Department of Health to make rules and regulations for the protection from contamination of public supplies of potable waters.

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

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

17. Transportation Law (Article 2, Section 14-F)

This law authorizes the Commissioner of Transportation to regulate the transportation of hazardous materials.

Flood Plain Management Act, Environmental Conservation Law (Article 36)

This law ensures that, if a community fails to qualify for the federal national flood insurance program, the State will develop flood hazard regulations for that community to make it eligible for participation in the program. The regulations are, at a minimum, those specified by the federal program, administered by the Federal Emergency Management Agency.

State agencies are also constrained by this law through regulation of such activities as the financing of projects, or the authorization of implementation of projects on state lands. The regulations are, at a minimum, those specified by the federal national flood insurance program.

Coastal Erosion Hazards Area Act, Environmental Conservation Law (Article 34)

This law provides for the identification of coastal erosion hazard areas, including natural protective features such as beaches, dunes, barrier islands and nearshore areas, and coastal lands subject to significant erosion. Standards and criteria are also prescribed for the regulation of activities and development in relation to those defined areas so as to minimize damage to natural resources and property from erosion.

Protection of Natural and Man-Made Beauty, Environmental Conservation Law (Article 49)

Under this law, DEC has the power and duty to: (1) "develop policies and programs to preserve and enhance the natural and man-made beauty of the State" and (2) "designate scenic sites, areas and highways in the State and develop programs for their preservation and enhancement".

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

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

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

This law enables the Department of Environmental Conservation to acquire access rights (fee-simple or less-than-fee simple) on quality streams guaranteeing fishermen access to various stretches of streams and rivers.

27. New York State Historic Preservation Act of 1980, Parks & Recreation Law (Section 11.03, 11.09, 14); Public Building Law (Article 4-B); General Municipal Law (Article 5-K)

The New York State Historic Preservation Act greatly expands the responsibilities of New York State agencies and municipalities with regard to historic preservation. Specifically the Act provides several means for preserving the historic architectural, archeological, and cultural resources of the State (including resources under water). Each State agency must designate a historic preservation officer to coordinate and implement state historic preservation programs. A State Register of historic places is created and an inventory of properties which may qualify for the Register is established. A Statewide Preservation Plan is to be prepared and updated annually. A review process has been established, to be undertaken concurrently with existing environmental reviews; this process requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if a state-funded project will have an adverse effect upon a historic property. The review process requires consideration of alternatives and that adverse effects be avoided or mitigated. The Secretary of State is added to State Board of Historic Preservation, and the Commissioner of the Office of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

28. Parks and Recreation Law (Section 3.09)

This statute authorizes the NYS Office of Parks, Recreation and Historic Preservation to acquire, establish, operate, and maintain state parks, parkways, historic sites, and state recreational facilities.

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

This program provides for acquisition, when authorized by act of the Legislature, of real property (including less than fee interests) and administration of lands, outside the Forest Preserve counties, "... of special natural beauty, wilderness character or geological, ecological, or historical significance."

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

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

Harbors of Refuge, Navigation Law (Article 11, Section 141)

This law authorizes the Office of Parks, Recreation and Historic Preservation to enter into agreement with the federal government and with municipalities to construct, operate, and maintain such harbors. Priorities for locating harbors of refuge are determined by the State Comprehensive Recreation Plan Priority System.

State Marina Facilities, Navigation Law (Article 11, Section 143)

This section of the Navigation Law authorizes the State to construct, operate, and maintain State marina facilities, including those incidental to a harbor of refuge. Priorities for location of these facilities are also determined by the State Comprehensive Recreation Plan Priority System.

33. Local Marina Facilities, Navigation Law (Article 11, Section 142)

Municipalities can help meet the demand for marinas by participating in this program which authorizes state financial assistance to municipalities in the construction of local marina facilities, including those incidental to a harbor of refuge. Priorities for giving financial assistance to municipalities are determined by the State Comprehensive Recreation Plan Priority System.

**POLICY 19 Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities.**

**A. Explanation of Policy**

This policy calls for achieving balance among the following factors: the level of access to a resource or facility, the capacity of a resource or facility, and the protection of natural resources. The imbalance among these factors is the most significant in the State's urban areas. Because this is often due to access-related problems, priority will be given to improving physical access to existing and potential coastal recreation sites within the heavily populated urban coastal areas of the State and to increasing the ability of urban residents to get to coastal recreation areas by improved public transportation. The particular water related recreation resources and facilities which will receive priority for improved access are public beaches, boating facilities, fishing areas and waterfront parks. In addition, because of the greater competition for waterfront locations within urban areas, the Coastal Management Program will encourage mixed use areas and multiple use of facilities to improve access. Specific sites requiring access improvements and the relative priority the program will accord to each will be identified in the Public Access Planning Process.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access.

The following is an explanation of the terms used in the above guidelines:

- a. Access - the ability and right of the public to reach and use public coastal lands and waters.
- b. Public water-related recreation resources or facilities - all public lands or facilities that are suitable for passive or active recreation that requires either water or a waterfront location or is enhanced by a waterfront location.
- c. Public lands or facilities - lands or facilities held by State or local government in fee simple or less-than-fee simple ownership and to which the public has access or could have access, including underwater lands and the foreshore.
- d. A reduction in the existing level of public access - includes but is not limited to the following:

The number of parking spaces at a public water-related recreation resource or facility is significantly reduced.

The service level of public transportation to a public water-related recreation resource or facility is significantly reduced during peak season use and such reduction cannot be reasonably justified in terms of meeting systemwide objectives.

- (3) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.
- (4) There are increases in the following: already existing special fares of public transportation to a public water-related recreation resource or facility; and/or admission fees to such a resource or facility, and an analysis shows that such increases will significantly reduce usage by individuals or families with incomes below the State government established poverty level.

- e. An elimination of the possibility of increasing public access in the future includes, but is not limited to the following:

Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public water-related recreation resources and facilities.

Sale, lease, or other transfer of public lands that could provide public access to a public water-related recreation resource or facility.

Construction of private facilities which physically prevent the provision of convenient public access to public water-related recreation resources or facilities from public lands and facilities.

2. Any proposed project to increase public access to public water-related recreation resources and facilities shall be analyzed according to the following factors:
- a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
  - b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the resource or facility. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.
3. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
4. In their plans and programs for increasing public access to public water-related resources and facilities, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the boundaries of the Federal-Aid Metropolitan

Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies' actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing diminution of public access to the waterfront and another for encouraging and facilitating public access for recreational purposes. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, among which are the following:

Protect, maintain, and increase the levels and types of access to public water related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas, and waterfront parks;

Expand recreational use of fish and wildlife resources by increasing access to existing resources (19 NYCRR 600.5); and

Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast provided it is consistent with the preservation and enhancement of other coastal resources taking into account demand for such facilities. In facilitating such activities, priority shall

be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development (19 NYCRR 600.5);

2) that the Secretary of State review actions of State agencies that may affect achievement of the policies; and

3) that SEQR regulations be amended to reflect consideration of coastal resources that can accommodate public access needs.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have an impact upon the environment. Such actions include those contiguous to any publicly-owned or operated park land, recreation area or designated open space. Since actions deal with the provision of access, under this policy, to public water-related recreation resources and facilities, any action would require an environmental impact statement to be prepared if it exceeded 25 percent of any threshold specified for a Type I action (6 NYCRR Part 617). In addition, Article 42 of the Executive Law requires that SEQR regulations be amended to require that environmental impact statements address coastal policies whenever a proposed action would affect achievement of a coastal policy. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8).

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

Expand recreational use of fish and wildlife resources by increasing access to existing resources (19 NYCRR 600.5);

Protect, maintain, and increase the levels and types of access to public water related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority will be given to public beaches, boating facilities, fishing areas, and waterfront parks (19 NYCRR 600.5); and

Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast provided it is consistent with the preservation and enhancement of other coastal resources, taking into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development (19 NYCRR 600.5).

3. Acquisition-Parks and Recreation Law (3.09);  
Environmental Conservation Law (3-0305);  
Highway Law §22.

One of the most effective means of providing access to public beaches and other public areas of the type listed above is acquisition of real property, including either the full fee interest in real property or some lesser interest therein, such as an easement, or contractual right to use the real property. There are presently a number of specific

statutory acquisition powers which could be used to implement this public access policy. The cited Parks and Recreation Law and the Environmental Conservation Law provided broad acquisition powers to the Office of Parks, Recreation and Historic Preservation and the Department of Environmental Conservation respectively.

The State Department of Transportation is authorized to acquire land for highway and specific transportation purposes, but these acquisition powers could be used to achieve their intended purposes as well as to implement coastal access policies. In addition to the basic power to acquire property for transportation facilities per se, such powers include "Acquisition of Property...in order to provide multi-use areas adjacent to state highways and recreational, natural and scenic areas along, but not necessarily contiguous to, state highways..." (Highway Law §22). This is a power which could be used to carry out a number of coastal policies involving actual physical access. The "multi-use areas" are to complement highway facilities. The statute provides that multi-use areas may include, but are not limited to walking, hiking, bicycle, and recreational vehicle trails, and there is express power to acquire less than fee interest.

Acquisitions for this program must be reviewed by the Department of State, the Office of Parks, Recreation and Historic Preservation, and the Department of Environmental Conservation. The Secretary of State will review such acquisitions which are located within the coastal area.

Pursuant to its general acquisition powers (see above), the Department of Environmental Conservation has instituted a program to acquire public fishing access to lakes, rivers and streams, including provision of boat launching sites. Substantial access has been provided through acquisition of easements on private lands. The Parks and Recreation Bond Act of 1960 and the Environmental Quality Bond Act of 1972 have provided a source of funds for such acquisition. (See Environmental Conservation Law, §51-0701). Within the coastal area acquisition will be made in accordance with

the priorities established by the "access planning process."

Acquisition for improved coastal access made by these agencies or other funds must be consistent with the priorities described in Policy 20.

4. Access Road, Highway Law §10

This section of the Highway Law gives the Commissioner of Transportation the authority, upon request of any head of a State agency, to construct an access road from a State highway to an agency facility (the agency would, however, be required to reimburse DOT for all incurred costs). Thus, access to coastal recreational facilities may be increased at those facilities where road access has been identified as deficient.

5. Abandoned Railway Acquisition, Transportation Law (§18)

Railroads are a common feature of much of New York's coast and often restrict access to it. This section of the Transportation Law gives the Commissioner of the Department of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. Where such abandoned property would improve access to existing or proposed public recreation areas and there is no viable transportation use for it, the Commissioner should give priority to the public agency that has jurisdiction over such coastal lands. This Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to right-of-way, where a conflict over use exists between one or more government agencies, shall take action consistent with the effectuation of State plans and policies. This provision plus the State consistency provisions of the Coastal Management Program indicate coastal management policies will influence the decision where a conflict exists.

6. Siting of Energy Facilities, Public Service Laws (Article VII and VIII) and Commission Opinion 72-3, case #26108

Many transmission lines are located in the coastal area. Use of their rights-of-way can provide a suitable means of assuring additional access to water-related recreation opportunities including use by recreational vehicles. Under this Law a utility company is required to allocate an amount equal to two percent of the total construction cost of the transmission facilities to a fund to be used for recreational development of the right-of-way. Where the right-of-way could be used for needed additional access, this provision of the Law will be employed to provide that access. At the present time, however, recreational use of such rights-of-way is not being acted upon because of research that is underway in connection with health and safety effects which may be associated with high voltage transmission facilities.

Because power plants generally locate along the coast and a large land area around the facility is often owned by the utility, these sites present significant opportunities for multiple use. At a minimum they can provide additional access to water-related recreation opportunities such as fishing.

- 7 Fish and Wildlife Management Act, Environmental Conservation Law, (Article II, Title 5)

The Environmental Conservation Law provides for a "Fish and Wildlife Management Practices Cooperative Program", the purpose of which is to: "...obtain on the privately owned or leased lands and waters of the state practices of fish and wildlife management which will preserve and develop the fish and wildlife resources of the state and improve access to them for recreational purposes by the people of the state." The program is used to provide, by agreement with land-owners, public rights to access to such lands for hunting and fishing purposes. Within coastal areas, efforts to obtain agreements will reflect coastal management policies.

8. State Comprehensive Recreation Plan, Parks and Recreation Law (§3.15)

The State Comprehensive Recreation Plan has a priority system for allocating funds available for outdoor recreation acquisition and development projects under State and Federal grant programs and the State Environmental Quality Bond Act. One of the positive-rated allocation factors is the degree to which the project contributes to the implementation of State plans such as that for Coastal Management. In addition, consistency between the Coastal Management Program and the State Comprehensive Recreation Plan will be assured by the Secretary of State's review of such plan, and by the State Waterfront Revitalization and Coastal Resources Act which requires State agencies to act consistent with the Act's policies.

9. Parks and Recreation Law, §3.09 (7-a)

The Office of Parks, Recreation and Historic Preservation is required to promulgate a comprehensive plan for the establishment of a statewide trails system. Trails are to include footpaths, bike ways, snowmobile trails, horse trails, cross-country ski trails, roads and other rights-of-way suitable for hiking, strolling, cycling, horseback riding, skiing, and other means of motorized and non-motorized travel for recreational purposes. Included are to be combinations and systems of trails leading to scenic and recreational areas, such as those in coastal areas.

**POLICY 20 Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses.**

**A. Explanation of Policy**

In coastal areas where there are little or no recreation facilities providing specific water-related recreational activities, access to the publicly-owned lands of the coast at large should be provided for numerous activities and pursuits which require only minimal facilities for their enjoyment. Such access would provide for walking along a beach or a city waterfront or to a vantage point from which to view the seashore. Similar activities requiring access would include bicycling, birdwatching, photography, nature study, beachcombing, fishing and hunting.

For those activities, there are several methods of providing access which will receive priority attention of the Coastal Management Program. These include: the development of a coastal trails system; the provision of access across transportation facilities to the coast; the improvement of access to waterfronts in urban areas; and the promotion of mixed and multi-use development.

While such publicly-owned lands referenced in the policy shall be retained in public ownership, traditional sales of easements on lands underwater to adjacent onshore property owners are consistent with this policy, provided such easements do not substantially interfere with continued public use of the public lands on which the easement is granted. Also, public use of such publicly-owned underwater lands and lands immediately adjacent to the shore shall be discouraged where such use would be inappropriate for reasons of public safety, military security, or the protection of fragile coastal resources.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. Existing access from adjacent or proximate public lands or facilities to existing public coastal lands and/or waters shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or nearby public lands or facilities to public coastal lands and/or waters be

eliminated, unless such actions are demonstrated to be of overriding regional or statewide public benefit, or in the latter case, estimates of future use of these lands and waters are too low to justify maintaining or providing increased access.

The following is an explanation of the terms used in the above guidelines:

a. (See definitions under first policy of "access", and "public lands or facilities").

b. A reduction in the existing level of public access - includes but is not limited to the following:

(1) Pedestrian access is diminished or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

Pedestrian access is diminished or blocked completely by public or private development.

c. An elimination of the possibility of increasing public access in the future - includes but is not limited to, the following:

Construction of public facilities which physically prevent the provision, except at great expense, of convenient public access to public coastal lands and/or waters.

Sale, lease, or other conveyance of public lands that could provide public access to public coastal lands and/or waters.

Construction of private facilities which physically prevent the provision of convenient public access to public coastal lands and/or waters from public lands and facilities.

2. The existing level of public access within public coastal lands or waters shall not be reduced or eliminated.

a. A reduction or elimination in the existing level of public access - includes but is not limited to the following:

Access is reduced or eliminated because of hazardous crossings required at new or altered transportation facilities, electric power transmission lines, or similar linear facilities.

Access is reduced or blocked completely by any public development.

3. Public access from the nearest public roadway to the shoreline and along the coast shall be provided by new land use or development except where (a) it is inconsistent with public safety, military security, or the protection of identified fragile coastal resources; (b) adequate access exists within one-half mile; or (c) agriculture would be adversely affected. Such access shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
4. The State will not undertake or fund any project which increases access to a water-related resource or facility that is not open to all members of the public.
5. In their plans and programs for increasing public access, State agencies shall give priority in the following order to projects located: within the boundaries of the Federal-Aid Metropolitan Urban Area and served by public transportation; within the Federal-Aid Metropolitan Urban Area but not served by public transportation; outside the defined Urban Area boundary and served by public transportation; and outside the defined Urban Area boundary but not served by public transportation.
6. Proposals for increased public access to coastal lands and waters shall be analyzed according to the following factors:

- a. The level of access to be provided should be in accord with estimated public use. If not, the proposed level of access to be provided shall be deemed inconsistent with the policy.
- b. The level of access to be provided shall not cause a degree of use which would exceed the physical capability of the coastal lands or waters. If this were determined to be the case, the proposed level of access to be provided shall be deemed inconsistent with the policy.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing diminution of public access to the waterfront and another for encouraging and facilitating public access for recreational purposes. This provision of law is implemented by amendments to SEQR (of 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided and it shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership"; 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy; and 3) that SEQR regulations be amended to reflect consideration of the use of coastal resources for including accommodation of public access needs.

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

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

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership."

3. Acquisition of Property for Construction of  
Bikeways, Highway Law (§22)

An important component of coastal trails systems would be the inclusion of bikeways, which are particularly desirable for providing access because they create few disturbances of the natural environment and are compatible with the protection of private property rights. This section of the Highway Law could be the principal means to acquire land for bikeways, since it authorizes the Commissioner of Transportation to acquire property for the purpose of constructing such facilities.

4. Abandoned Railway Acquisition, Transportation  
Law (§18)

Where railroad transportation property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to a coastal trails system that will increase access to the coast. This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. The Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict

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

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided in a manner compatible with adjoining uses. To ensure that such lands remain available for public use they shall be retained in public ownership."

3. Acquisition of Property for Construction of Bikeways, Highway Law (§22)

An important component of coastal trails systems would be the inclusion of bikeways, which are particularly desirable for providing access because they create few disturbances of the natural environment and are compatible with the protection of private property rights. This section of the Highway Law could be the principal means to acquire land for bikeways, since it authorizes the Commissioner of Transportation to acquire property for the purpose of constructing such facilities.

4. Abandoned Railway Acquisition, Transportation Law (§18)

Where railroad transportation property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to a coastal trails system that will increase access to the coast. This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies, metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such abandoned property. The Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict

over use exists between one or more government agencies, shall take action consistent with the effectuation of State plans and policies. This provision plus the State consistency provisions of the Coastal Management Program indicate coastal management policies will influence the decision where a conflict exists.

5. Statewide Trails System, Parks and Recreation Law §3.09 (7-a)

This provision of the Parks and Recreation Law could be used in conjunction with the above provision, since it requires the Commissioner of the Office of Parks, Recreation and Historic Preservation to promulgate a comprehensive plan for the establishment of a statewide trails system which may be implemented by the purchase and improvement of abandoned railroad rights-of-way. Through coordination with the Office of Parks, Recreation and Historic Preservation, the Coastal Management Program will ensure that development of trails in coastal areas receives a high priority, and within the coastal area the Secretary of State will identify areas where trail development should receive priority.

6. Highway Law (Article II, §22)

Recreational, scenic and natural areas adjacent to coastal highways enhance not only the setting of the highway, but can provide access to coastal areas that, for example, would otherwise be cut off by the highway. This applies to both rural and urban areas. This section of the Highway Law could be used to provide for such areas because it authorizes the Commissioner of Transportation to acquire property in order to provide multi-use areas adjacent to State highways, and recreational, natural, and scenic areas along but not necessarily contiguous to State highways. Multi-use areas can be used for such facilities as walking, hiking, bicycle, trail-bike, recreational vehicle, and snowmobile trails. Plans for any acquisitions will be submitted to the Secretary of State for his review and recommendation.

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

Because power plants generally locate along the coast and a large land area around the facility is often owned by the utility, these sites present significant opportunities for multiple use, including access. Recognizing this, the law specifically provides for consideration of recreational use of power plant sites, which could, of course, include access to the shore. The law requires utilities to state "why the primary proposed location and source is best suited to promote the public health and welfare, including the recreational and other concerned uses which the site may serve." The Secretary of State will participate in the proceedings and will formally present to the Siting Board his recommendations on access.

8. Development of Transportation Corridors; Multiple Use Outside the Counties of Kings and Queens of Rights-of-Way, Transportation Law (Article 14-e)

All transportation facilities, especially those in coastal areas, have the potential for development and multiple-use activities, including recreation and its necessary component access, in their rights-of-way. This article of the Transportation Law could be used for general access purposes to coastal areas, since it gives the Commissioner of Transportation the power to provide for the multiple-use of transportation facility rights-of-way in connection with the construction of such facilities. This applies throughout the State with the exception of Kings and Queens Counties (New York City).

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

This statute empowers the Department of Environmental Conservation to promulgate regulations for the control of land use and development within an area up to one half mile from the banks of designated rivers. While this statute provides for police power regulations, not acquisition, the Commissioner of Environmental Conservation is authorized to order discontinuance of land uses, with payment of compensation.

Along designated rivers in coastal areas where development patterns deter access, this power could be indirectly used to facilitate the provision of access.

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

This program provides for acquisition, when authorized by act of the Legislature, of real property (including less than fee interests) and administration of lands, outside the Forest Preserve counties, "... of special natural beauty, wilderness character or geological, ecological, or historical significance." Wherever properties are purchased in coastal areas, an indirect benefit of the program could be the improvement of access to the coast for a variety of passive activities, provided physical access would not conflict with preservation of the resource.

11. Tidal and Freshwater Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)

These acts contain authority for programs applying both performance standards and land use regulations for the protection of wetlands. The exercise of the police power in relation to wetlands is to be accomplished within the context of the broadly stated purpose of these acts. While public access is not specifically listed, several listed purposes relate to access, including recreational benefits ("provision of areas for hunting, fishing, boating, hiking, birdwatching, photography, and other uses"); "...education and scientific research by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources"; and "...open space and aesthetic appreciation by providing often the only remaining open areas along crowded river fronts and coastal Great Lakes regions..."

**POLICY 21 Water dependent and water enhanced recreation will be encouraged and facilitated, and will be given priority over non-water related uses along the coast.**

**A. Explanation of Policy**

Water-related recreation includes such obviously water-dependent activities as boating, swimming, and fishing as well as certain activities which are enhanced by a coastal location and increase the general public's access to the coast such as pedestrian and bicycle trails, picnic areas, scenic overlooks and passive recreation areas that take advantage of coastal scenery.

Provided the development of water-related recreation is consistent with the preservation and enhancement of such important coastal resources as fish and wildlife habitats, aesthetically significant areas, historic and cultural resources, agriculture and significant mineral and fossil deposits, and provided demand exists, water-related recreation development is to be increased and such uses shall have a higher priority than any non-coastal dependent uses, including non-water-related recreation uses. In addition, water-dependent recreation uses shall have a higher priority over water enhanced recreation uses. Determining a priority among coastal dependent uses will require a case by case analysis.

Among priority areas for increasing water-related recreation opportunities are those areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and those areas where the use of the shore is severely restricted by highways, railroads, industry, or other forms of existing intensive land use or development. The DOS, working with the Office of Parks, Recreation, and Historic Preservation and with local governments, will identify communities whose use of the shore has been so restricted and those sites shoreward of such developments which are suitable for recreation and can be made accessible. Priority shall be given to recreational development of such lands.

The siting or design of new public development in a manner which would result in a barrier to the recreational use of a major portion of a community's shore should be avoided as much as practicable.

Among the types of water-dependent recreation, provision of adequate boating services to meet future demand is to be encouraged by this Program. The siting of boating facilities must be consistent with preservation and enhancement of other coastal resources and with their capacity to accommodate demand. The provision of new public boating facilities is essential in meeting this demand, but such public actions should avoid competition with private boating development. Boating facilities will, as appropriate, include parking, park-like surroundings, toilet facilities, and pumpout facilities. Harbors of Refuge are particularly needed along Lake Erie and Lake Ontario. There is a need for a better locational pattern of boating facilities to correct problems of overused, insufficient, or improperly sited facilities.

Also to be encouraged is non-motorized recreation in the State's coastal area. Water-related off-road recreational vehicle use is an acceptable activity, provide no adverse environmental impacts occur. Where adverse environmental impacts will occur, mitigating measures will be implemented, where practicable to minimize such adverse impacts. If acceptable mitigation is not practicable, prohibition of the use by off-road recreational vehicles will be posted and enforced.

B. State Means for Implementing the Policy

1. Parks and Recreation Law (Section 3.09)

This statute authorizes the NYS Office of Parks, Recreation and Historic Preservation to acquire, establish, operate, and maintain state parks, parkways, historic sites, and state recreational facilities. This Law is employed by the Office to implement the State Comprehensive Recreation Plan (SCRPlan) and funding priority system described below.

2. State Comprehensive Recreation Plan, Parks and Recreation Law (Section 3.15)

The State Comprehensive Recreation Plan has a priority system to allocate funding for public parks and outdoor recreation acquisition, development and rehabilitation projects under available State and Federal grant assistance funds and State Environmental Quality Bond Act monies. One of the positive rated allocation factors is the degree to which the project contributes to the implementation of the State Comprehensive Recreation Plan or other State, national or regional plans. Thus, the Coastal Management program would require that projects proposed for coastal areas be evaluated positively under this Priority System if they are water-related or negatively if they are not water-related. The DOS will work with the OPR & HP in a review of the State Comprehensive Recreation Plan to ensure that it assigns priority to water-related recreational facilities and activities within the coastal area.

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

Article 42, Section 919 provides: (1) that all State agency actions, including funding, planning, land transaction, as well as direct development activities must be consistent with the policies of this Act which call for the encouragement and facilitation of public access to the shore for recreation, recreational fishing, maintaining open space, and in general, the beneficial use of coastal resources, particularly for recreation whenever appropriate. This provision of law is implemented by amendments to SEQOR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Water dependent and water enhanced recreational activities shall be encouraged and facilitated and shall be given priority over non-water related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas

where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development." (2) that the Secretary of State review actions of State agencies that would affect achievement of the policies of the Act; and (3) that SEQOR regulations be amended to require consideration of impacts on the use of coastal resources for recreation.

Section 2 of the Act requires State agencies to analyze their programs' consistency with coastal policies and that the Secretary of State review such analyses and make recommendations to the Governor and Legislature for any needed changes. The formula for allocating funding to localities and the State Comprehensive Recreation Plan are among the programs that will be analyzed.

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. In assessing the significance of an action's impact on the environment, the impacts on open space and future recreational opportunities are among those considered. The SEQOR regulations (NYCRR 617.12) set a much lower threshold for triggering an environmental assessment for an action in or near a recreation area. In addition, as Article 42 of the Executive Law, requires SEQOR regulations are being amended to require the consideration of impacts on the use of coastal resources, such as potential recreational use of coastal resources. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQOR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent

with the coastal policies, one of which is: "Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over non water-related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development."

5. Plan for an Urban Cultural Park System; Parks and Recreation Law (Section 3.21)

This Law has resulted in the formulation of a plan for the creation of a statewide system of urban cultural parks, many located within the coastal boundary and which include, among other areas of concern, consideration of urban waterways and other natural areas that offer active and passive recreational opportunities.

6. Parks and Recreation Law (Section 3.09 (7-a))

Where railroad property in coastal areas has been abandoned for railroad transportation purposes, the potential is high for conversion of the right-of-way to recreational use and for increasing access to the land shoreward from the railroad. This provision of the Parks and Recreation Law gives the Commissioner of the Office of Parks, Recreation and Historic Preservation the power to purchase and improve such abandoned railroad rights-of-way as can be used to implement a comprehensive plan for the establishment of a statewide trails system.

7. Abandoned Railroad Acquisition, Transportation Law (Section 18)

This section of the Transportation Law gives the Commissioner of Transportation the preferential right to acquire abandoned railroads, or to authorize other appropriate State agencies; metropolitan or regional transportation authorities; or counties, cities, towns and villages to exercise a preferential acquisition right to such

abandoned property. The Department of Transportation is required to notify all interested State agencies of the availability of abandoned railway rights-of-way. This Law contains a consistency provision stating that the actions of the Department of Transportation in determining preferential rights to rights-of-way, where a conflict over use exists between one or more government agencies, shall be consistent to the extent practicable with the effectuation of all State plans, policies, and objectives. This provision fits well with the State consistency provisions of the Executive Article 42.

8. Highway Law (Article II, Section 22)

Recreational, scenic, and natural areas located adjacent to coastal highways enhance not only the setting of a highway, but can provide access to coastal areas that would otherwise be cut off by the highway. This section of the Highway Law can provide for such areas because the Commissioner of the State Department of Transportation is authorized to acquire property for multi-use areas adjacent to State highways, as well as recreational, natural, and scenic areas along, but not necessarily contiguous to, such highways. Multi-use areas can be used for such purposes as walking, hiking, bicycling, trail biking, and for snowmobile trails. Acquisition and development of such areas must be consistent with the coastal policies of Article 42, Executive Law.

9. Harbors of Refuge, Navigation Law (Article 11, Section 141)

This law authorizes the Office of Parks, Recreation and Historic Preservation to enter into agreement with the Federal government and with municipalities to construct, operate, and maintain such harbors. Priorities for locating harbors of refuge are determined by the State Comprehensive Recreation Plan Priority System. It is particularly important that the location of such harbors be consistent with the preservation and enhancement of coastal resources so that resource use conflicts are avoided.

10. Local Marina Facilities, Navigation Law  
(Article 11, Section 142)

Municipalities can help meet the demand for marinas by participating in this program which authorizes State financial assistance to municipalities in the construction of local marina facilities, including those incidental to a harbor of refuge. Priorities for giving financial assistance to municipalities are determined by the State Comprehensive Recreation Plan Priority System.

11. State Marina Facilities, Navigation Law  
(Article 11, Section 143)

This section of the Navigation Law authorizes the State to construct, operate, and maintain State marina facilities, including those incidental to a harbor of refuge. Priorities for location of these facilities are also determined by the State Comprehensive Recreation Plan Priority System.

**POLICY 22** Development when located adjacent to the shore will provide for water-related recreation whenever such use is compatible with reasonably anticipated demand for such activities, and is compatible with the primary purpose of the development.

A. Explanation of Policy

Many developments present practical opportunities for providing recreation facilities as an additional use of the site or facility. Therefore whenever developments are located adjacent to the shore they should to the fullest extent permitted by existing law provide for some form of water-related recreation use unless there are compelling reasons why any form of such recreation would not be compatible with the development, or a reasonable demand for public use cannot be foreseen.

The types of development which can generally provide water-related recreation as a multiple use include but are not limited to:

- o parks
- o highways
- o power plants
- o utility transmission rights of way
- o sewage treatment facilities
- o mental health facilities\*
- o hospitals\*
- o prisons\*
- o schools, universities\*
- o military facilities\*
- o nature preserves\*
- o large residential subdivisions (50 units)
- o shopping centers
- o office buildings

Prior to taking action relative to any development, State agencies should consult with the State Office of Parks, Recreation, and Historic Preservation, and if there is an approved local waterfront program, with the municipality in which the development is to locate, to determine appropriate recreation uses. The agency should provide OPRHP and the municipality with the opportunity to participate in project planning.

\* the types of recreation uses likely to be compatible with these facilities are limited to the more passive forms, such as trails or fishing access. In some cases, land areas not directly or immediately needed by the facility could be used for recreation.

Appropriate recreation uses which do not require any substantial additional construction shall be provided at the expense of the project sponsor provided the cost does not exceed 2% of total project cost.

In determining whether compelling reasons exist which would make inadvisable recreation as a multiple use, safety considerations should reflect a recognition that some risk is acceptable in the use of recreational facilities.

Whenever a proposed development would be consistent with CMP policies and the development could, through the provision of recreation and other multiple uses, significantly increase public use of the shore, then such development should be encouraged to locate adjacent to the shore (this situation would generally only apply within the more developed portions of urban areas).

**B. State Means for Implementing the Policy**

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

Section 919 of Article 42 requires that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act. These policies call for increased public access to the shore for recreation purposes. The Act therefore makes it incumbent on all State agencies to promote water-related recreation whenever there is an opportunity to do so. This provision of law is implemented by amendments to SEQR (see 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Developments when located adjacent to the shore shall provide for water-related recreation whenever appropriate in light of reasonably anticipated demand for such activities and the primary use of such land." Further, this Act requires review by the Secretary of State of State agency actions which may affect achievement of coastal policies. In addition SEQR regulations will be amended to require consideration of impacts on the use of coastal resources for such purposes as recreation.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant effect on the environment. In assessing the significance of an action's impact on the environment, the impacts on open space and future recreational opportunities are considered. Article 42 of the Executive Law requires that SEQR regulations be amended to require the consideration of impacts on the use of coastal resources for such activities as recreation. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable the adverse environmental effects revealed in the impact statement (ECL S 8-0109-S). In addition, pursuant to Article 42 of the Executive Law SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Developments when located adjacent to the shore shall provide for water-related recreation whenever appropriate in light of reasonably anticipated demand for such activities and the primary use of such land."

3. Utility Transmission Facility Siting (Commission Opinion 72-3, Case #26108)

Transmission line rights-of-way are often suitable for recreational activities such as hiking, cycling, cross-country skiing or horseback riding. Many transmission lines are located in coastal areas. Under this Commission opinion, a utility company is required to allocate an amount equal to two percent of the total construction cost of the

transmission facility to a fund for the recreational development of the right-of-way. The program applies to electric transmission lines of 115KV ten miles or more in length, or for higher voltage lines of one mile or more. Municipalities traversed by any part of the right-of-way, as well as State and Federal agencies, are eligible to use the fund, which provides fifty percent of the cost of any particular recreational development. The sponsor must pay the rest of the cost. The Public Service Commission policy relating to actual recreational development of a specific right-of-way is decided on a case-by-case basis. It is not an automatic part of every order issued by the Commission in connection with transmission line decisions. At the present time, the joint funding of recreational development for rights-of-way is not being acted upon because of research that is underway in connection with health and safety effects that may be associated with high-voltage transmission facilities.

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

Because power plants tend to locate along the coast and require a large land area around the facility, these sites present significant opportunities for multiple use. Recognizing this, this Law specifically provides for consideration of recreational use of power plant sites. It requires utilities to state "why the primary proposed location and source is best suited to promote the public health and welfare including the recreational and other concurrent uses which the site may serve."

5. Multi-use Areas Adjacent to Recreational, Natural, and Scenic Areas Along State Highways, Highway Law (Article 22)

Areas adjacent to highways in the coastal area can provide numerous opportunities for multi-use recreation. This part of the Highway Law authorizes the Department of Transportation to acquire property adjacent to State highways for multi-use recreational purposes and along, but not necessary contiguous to, State highways for recreational, natural and scenic purposes. Multi-use areas may be utilized for, but not limited to, hiking, bicycle, trailbike, recreational vehicle and snowmobile trails.

6. Development of Transportation Corridors; Multi-Use Outside the Counties of Kings and Queens of Right-of-Way, Transportation Law (Article 14-e)

All transportation facilities, especially those in coastal areas, have the potential for development of multi-use activities, including recreation, in their rights-of-way.

This article of the Transportation Law gives the Commissioner of the Department of Transportation the power to provide for the multi-use of transportation facility rights-of-way in conjunction with the construction of such facilities. This applies everywhere in the state except in Kings and Queens Counties.

7. Acquisition of Reforestation Areas, Environmental Conservation Law (9-0501)

Numerous coastal recreational activities are compatible with reforestation and forest management. This law gives the Department of Environmental Conservation the power to acquire lands for reforestation and for establishment and maintenance of forests for watershed protection, timber production and other forest products, and for recreation and other purposes. The reforestation areas must consist of at least five hundred acres of contiguous lands.

**POLICY 23 Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation.**

**A. Explanation of Policy**

Among the most valuable of the State's man-made resources are those structures on areas which are of historic, archeological, or cultural significance. The protection of these structures must involve a recognition of their importance by all agencies and the ability to identify and describe them. Protection must include concern not just with specific sites but with areas of significance, and with the area around specific sites. The policy is not to be construed as a passive mandate but must include active efforts when appropriate to restore or revitalize through adaptive reuse. While the program is concerned with the preservation of all such resources within the coastal boundary, it will actively promote the preservation of historic and cultural resources which have a coastal relationship.

The structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation comprise the following resources:

- (a) A resource which is in a Federal or State park established, among other reasons, to protect and preserve the resource.

A resource on, nominated to be on, or determined eligible to be on the National or State Registers of Historic Places.

A resource on or nominated to be on the State Nature and Historic Preserve Trust.

An archeological resource which is on the State Department of Education's inventory of archeological sites.

A local landmark, park, or locally designated historic district that is located within the boundary of an approved local waterfront revitalization program.

- (f) A resource that is a significant component of an Urban Cultural Park.

All practicable means to protect structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities or the Nation shall be deemed to include the consideration and adoption of any techniques, measures, or controls to prevent a significant adverse change to such significant structures, districts, areas or sites. A significant adverse change includes but is no limited to:

Alteration of or addition to one or more of the architectural, structural, ornamental or functional features of a building, structure, or site that is a recognized historic, cultural, or archeological resource, or component thereof. Such features are defined as encompassing the style and general arrangement of the exterior of a structure and any original or historically significant interior features including type, color and texture of building materials; entry ways and doors; fenestration; lighting fixtures; roofing; sculpture and carving; steps; rails; fencing; windows; vents and other openings; grillwork; signs; canopies; and other appurtenant fixtures and, in addition, all buildings, structures, outbuildings, walks, fences, steps, topographical features, earthworks, paving and signs located on the designated resource property. (To the extent they are relevant, the Secretary of the Interior's "Standards For Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be adhered to.)

Demolition or removal in full or part of a building, structure, or earthworks that is a recognized historic, cultural, or archeological resource or component thereof, to include all those features described in (a) above plus any other appurtenant fixture associated with a building structure or earthwork.

- (c) All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archeological resource and all actions within an

historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgement about compatibility should focus on the visual and locational relationship between the proposed action and the special character of the historic, cultural, or archeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the proposed actions. With historic districts this would include infrastructure improvements or changes, such as, street and sidewalk paving, street furniture and lighting.

This policy shall not be construed to prevent the construction, reconstruction, alteration, or demolition of any building, structure, earthwork, or component thereof of a recognized historic, cultural or archeological resource which has been officially certified as being imminently dangerous to life or public health. Nor shall the policy be construed to prevent the ordinary maintenance, repair, or proper restoration according to the U.S. Department of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings of any building, structure, site or earthwork, or component thereof of a recognized historic, cultural or archeological resource which does not involve a significant adverse change to the resource, as defined above.

**B. State Means for Implementing Policy**

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

Article 42 §919 requires: 1) that all State agency actions including funding, planning, land transactions, as well as direct development activities must be consistent with the policies of this Act. One of these policies calls for "restoration and revitalization of natural and man-made resources"; elsewhere the Legislature has determined that among most important man-made resources of the State are its historical, architectural, archeological, and cultural assets<sup>1</sup>; this

<sup>1</sup> Park & Recreation Law §14.01

provision of the Act will be implemented through amendments to SEQR regulations (see 2 below) and the regulations issued pursuant to Article 14 of the Parks and Recreation Law (see 3 below), and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities, or the Nation." 2) that the Secretary of State may review actions of State agencies that may affect achievement of the policies of the Act; and 3) that SEQR regulations be amended to, among other things, require consideration of the effects of an action on the use and conservation of coastal resources, such as the historical, architectural, archeological, and cultural resources of the coastal area.

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

Under this Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. In determining whether an action may have a significant effect on the environment, impairment of the character or quality of important historical, archeological, architectural, or of community or neighborhood character are to be considered as indicators of such significant effects. The SEQR regulations set a very low threshold for triggering an environmental assessment -- "any action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or contiguous to any facility or site listed on the National Register of Historic Places, or any historic building, structure, or site, or prehistoric site that has been proposed by the Committee on the Registers for consideration by the NYS Board on Historic Preservation for a recommendation to the State Historic Officer for nomination for inclusion in said National Register". Actions which have been subject to an environmental impact statement must, consistent with social,

economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement. In addition, pursuant to Article 42 of the Executive Law, SEQOR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Protect, enhance and restore structures, districts, areas, or sites that are of significance in the history, architecture, archeology, or culture of the State, its communities, or the Nation."

3. New York State Historic Preservation Act of 1980, Parks & Recreation Law (Sections 11.03, 11.09, 14); Public Building Law (Article 4-B); General Municipal Law (Article 5-K)

The New York State Historic Preservation Act greatly expands the responsibilities of New York State agencies and municipalities with regard to historic preservation. Specifically, the Act provides several means for preserving the historic architectural, archeological, and cultural resources of the State (including resources under water). Each State agency must designate a historic preservation officer to coordinate and implement State historic preservation programs. A State Register of Historic Places is created and an inventory of properties which may qualify for the Register is established. A Statewide Preservation Plan is to be prepared and updated annually. A review process has been established, to be undertaken concurrently with existing environmental reviews; this process requires State agencies to consult with the Commissioner of Parks, Recreation and Historic Preservation if a State-funded project will have an adverse effect upon a historic property. The review process requires consideration of alternatives and that adverse effects be avoided or mitigated. The Secretary of State is added to State Board for Historic Preservation, and the Commissioner of the Office of General Services is required to consider the use and restoration of historic buildings in meeting the State's needs for building space.

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

This program provides for the acquisition and administration of lands and waters which should be preserved for their historical significance, among other purposes. The Environmental Quality Bond Act of 1972 (ECL, Article 51, Section 51-0701) is the current source of State funds to acquire lands under this program.

**POLICY 24 Prevent impairment of scenic resources of statewide significance.**

**A. Explanation of Policy**

The Coastal Management Program will identify on the coastal area map scenic resources of statewide significance. A list of preliminarily identified resources appears in the Appendix. The following general criteria will be combined to determine significance:

Quality. The basic elements of design (i.e., two-dimensional line, three-dimensional form, texture and color) combine to create all high quality landscapes. The water, landforms, and man-made components of scenic coastal landscapes exhibit variety of line, form, texture and color. This variety is not, however, so great as to be chaotic. Scenic coastal landscapes also exhibit unity of components. This unity is not, however, so complete as to be monotonous. Example: the Thousand Islands where the mix of water, land, vegetative and man-made components creates interesting variety, while the organization of these same components creates satisfying unity.

Often, high quality landscapes contain striking contrasts between lines, forms, textures and colors. Example: A waterfall where horizontal and vertical lines and smooth and turbulent textures meet in dramatic juxtaposition.

Finally, high quality landscapes are generally free of discordant features, such as structures or other elements which are inappropriate in terms of siting, form, scale, and/or materials.

Uniqueness. The uniqueness of high quality landscapes is determined by the frequency of occurrence of similar resources in a region of the State or beyond.

Public Accessibility. A scenic resource of significance must be visually and, where appropriate, physically accessible to the public.

Public Recognition. Widespread recognition of a scenic resource is not a characteristic intrinsic to the resource. It does, however, demonstrate people's appreciation of the resource for its visual, as well as evocative, qualities. Public recognition serves to reinforce analytic conclusions about the significance of a resource.

When considering a proposed action, agencies shall first determine whether the action could affect a scenic resource of statewide significance. This determination would involve: 1.) a review of the coastal area map to ascertain if it shows an identified scenic resource which could be affected by the proposed action, and 2.) a review of the types of activities proposed to determine if they would be likely to impair the scenic beauty of an identified resource. Impairment will include: (i) the irreversible modification of geologic forms; the destruction or removal of vegetation; the modification, destruction, or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

The following siting and facility-related guidelines are to be used to achieve this policy, recognizing that each development situation is unique and that the guidelines will have to be applied accordingly. Guidelines include:

siting structures and other development such as highways, power lines, and signs, back from shorelines or in other inconspicuous locations to maintain the attractive quality of the shoreline and to retain views to and from the shore;

clustering or orienting structures to retain views, save open space and provide visual organization to a development;

incorporating sound, existing structures (especially historic buildings) into the overall development scheme;

removing deteriorated and/or degrading elements;

maintaining or restoring the original land form, except when changes screen unattractive elements and/or add appropriate interest;

maintaining or adding vegetation to provide interest, encourage the presence of wildlife, blend structures into the site, and obscure unattractive elements, except when selective clearing removes unsightly, diseased or hazardous vegetation and when selective clearing creates views of coastal waters;

using appropriate materials, in addition to vegetation, to screen unattractive elements;

using appropriate scales, forms and materials to ensure that buildings and other structures are compatible with and add interest to the landscape.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing impairment of scenic beauty. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600), provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include: (i) the irreversible modification of geological forms; destruction or removal of vegetation; modification, destruction or removal of structures, whenever the geologic forms, vegetation, or structures are significant to the scenic quality of an identified resource and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource." 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources such as scenic resources.

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development and land resources; hence scenic areas are viewed as an environmental resource. The SEQR regulations (6 NYCRR Part 617) require that

actions which have been subject to an environmental impact statement must, consistent with social, economic and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse effects revealed in the impact statement (ECL §8-0109-8).

In addition, pursuant to Article 42 of the Executive Law, SEOR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include: (i) the irreversible modification of geological forms; destruction or removal of vegetation; modification, destruction or removal of structures, whenever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource and (ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource."

3. Protection of Natural and Man-Made Beauty, Environmental Conservation Law (Article 49-0103.1 and 0.0314)

Under these two parts of the law, DEC has the power and duty to: (1) "develop policies and programs to preserve and enhance the natural and man-made beauty of the State" and (2) "designate scenic sites, areas and highways in the State and develop programs for their preservation and enhancement". Where such programs exist for areas in the coastal zone, they can be used as a guide for determining the consistency of proposed actions with coastal policy. The Coastal Management Program will work closely with DEC to designate additional sites and develop programs for their protection.

4. State Nature and Historic Preserve Trust Environmental Conservation Law (Article 45)

The Trust provides for the acquisition and administration of lands and waters which should be preserved for their natural beauty. Scenic resources of particular significance in the coastal area would, thus, be eligible for acquisition. The Environmental Quality Bond Act of

1972 (ECL, Article 51, Section 51-0701) is the major state funding mechanism to implement this acquisition program.

5. Utility Transmission Facility Siting Act and Power Plant Siting Act, Public Service Law, (Article VII and VIII)

Transmission lines and power plants are highly visible and sometimes unwelcome intrusions upon scenic landscapes. These two legislative devices require that Certificates of Environmental Compability and Public Need be issued for major utility transmission facilities and steam-electric generating facilities. Aesthetic factors in utility planning and development are incorporated into Article VII and VIII deliberations.

6. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The issuance of permits for regulated uses or activities in tidal wetlands requires that the preservation and protection of aesthetic resources be considered. 6 NYCRR, Part GG 1.10, specifically includes aesthetic considerations among the permit issuing standards.

7. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

The preservation and protection of aesthetic resources is one of the objectives of this act. The regulations require the consideration of aesthetics in the issuance of a permit.

8. Coastal Erosion Hazards Area Act, Environmental Conservation Law, (Article 34)

While the purpose of this law is not to protect the quality of coastal scenery, those natural protective features (dunes, beaches, spits, barrier islands, bluffs) which the act protects are major components of coastal scenery.

**POLICY 25 Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area.**

**A. Explanation of Policy**

When considering a proposed action, which would not affect a scenic resource of statewide significance, agencies shall undertake to ensure that the action would be undertaken so as to protect, restore or enhance the overall scenic quality of the coastal area. Activities which could impair or further degrade scenic quality are the same as those cited under the previous policy, i.e., modification of natural landforms, removal of vegetation, etc. However, the effects of these activities would not be considered as serious for the general coastal area as for significant scenic areas.

The siting and design guidelines listed under the previous policy should be considered for proposed actions in the general coastal area. More emphasis may need to be placed on removal of existing elements, especially those which degrade, and on addition of new elements or other changes which enhance. Removal of vegetation at key points to improve visual access to coastal waters is one such change which might be expected to enhance scenic quality.

**B. State Means for Implementing the Policy**

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for preventing impairment of scenic beauty. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area." 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources such as scenic resources.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development and land resources; hence actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area."

3. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

See Policy 24.

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

See Policy 24.

5. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

See Policy 24.

## **POLICY 26 Conserve and protect agricultural lands in the State's coastal area.**

### **A. Explanation of Policy**

The first step in conserving agricultural lands is the identification of such lands. The Department of State is mapping all important agricultural lands within the State's coastal area. The following criteria have been used to prepare the maps, and the mapped information will be incorporated in the New York State Coastal Resources Inventory and on the Coastal Area Map.

Land meeting any of the following criteria is being mapped.<sup>1</sup>

1. Land which meets the definition of the U.S. Department of Agriculture as being prime farmland, unique farmland, or farmland of statewide importance.
  - a. Prime farmland is defined by USDA Soil Conservation Service in CRF #7 Agriculture Part 657.5(a), January, 1979. A list of the soil associations that meet this definition has been prepared for each coastal county.<sup>2</sup>

<sup>1</sup> After mapping according to this definition was substantially completed, the NYS Department of Agriculture and Markets completed development of a new agricultural land classification system. As soon as is practical the following definition will be the basis for revising the maps of coastal agricultural land. Important agricultural land shall include all land within an agricultural district or subject to an eight-year commitment which has been farmed within at least two of the last five years, or any land farmed within at least two of the last of the last five years in soil groups 1-4 as classified by the Land Classification System established by the NYS Department of Agriculture and Markets, or any land farmed within at least two of the last five years which is influenced by climate conditions which support the growth of high value crops. Additionally, agricultural land not meeting the above criteria but located adjacent to any such land and forming part of an on-going agricultural enterprise shall be considered important agricultural land.

<sup>2</sup> For the purposes of this map the urban areas which are to be excluded are all cities, the counties of Nassau, Westchester, Rockland, Putnam and Erie, and any built up area (this applies to c. also).

- b. Unique farmland is defined by USDASCS in CRF #7 Agriculture Part 657.5(b). In the coastal area of New York all fruit and vegetable farming meets the terms of the definition.
  - c. Farmland of Statewide importance is defined by USDASCS in CRF #7 Agriculture Part 656.5(c). Lists of soil associations which constitute farmland of Statewide importance have been prepared for each coastal county.
2. Active farmland within Agricultural Districts. The maps of each Agricultural District shows land committed by farmers. This is the land that will be mapped as active farmland. The district boundary will also be shown.
  3. Areas identified as having high economic viability for farming. Any farm not identified under 1 and/or 2 above and which is located in an area identified as having "high viability" on the map entitled "Economic Viability of Farm Areas" prepared by the Office of Planning Coordination in May, 1969. This would be the basis for initial identification of areas having high economic viability for farming. Areas will be added and/or deleted based on comments from the agricultural community.
  4. Areas adjacent to land identified under 1 above if these areas are being farmed and are part of a farm with identified important agricultural lands.
  5. Prime farmland, unique farmland, and farmland of Statewide significance will not be identified as important agricultural land whenever it occurs as parcels of land less than 25 acres in size and these small parcels are not within a mile of areas of active farming.

Given the Program's application to a narrow strip of land, implementing a policy of promoting agricultural use of land must, to be practical, concentrate on controlling the replacement of agricultural land uses with non-agricultural land use as the result of some public action. The many other factors such as markets, taxes, and regulations, which influence the viability of agriculture in a given area, can only be addressed on a Statewide or national basis.

The Program policy requires a concern for the loss of any important agricultural land. However, the primary concern must be with the loss of agricultural land when that loss would have a significant effect on an agricultural area's ability to continue to exist, to prosper, and even to expand. A series of determinations are necessary to establish whether a public action is consistent with the conservation and protection of agricultural lands or whether it is likely to be harmful to the health of an agricultural area. In brief these determinations are as follows: First, it must be determined whether a proposed public action would result in the loss of important agricultural lands as mapped on the Coastal Inventory. If it would not result, either directly or indirectly, in the loss of identified important agricultural lands, then the action is consistent with the policy on agriculture. If it is determined that the action would result in a loss of identified important agricultural lands but that loss would not have an adverse effect on the viability of agriculture in the surrounding area, then the action may also be consistent with the agriculture policy. However, in that case the action must be undertaken in a manner that would minimize the loss of important farmland. If the action is determined to result in a significant loss of important agricultural land, that is if the loss is to a degree sufficient to adversely affect surrounding agriculture's viability, - its ability to continue to exist, to prosper, and even to expand - then the action is not consistent with this agriculture policy.

The following guidelines define more fully what must be considered in making the above determinations:

- A. A public action would be likely to significantly impair the viability of an agricultural area in which identified important agricultural lands are located if:
1. the action would occur on identified important agricultural lands and would:
    - a. consume more than 10% of the land of an active farm<sup>3</sup> containing such identified important agricultural lands
    - b. consume a total of 100 acres or more of identified important agricultural land, or
    - c. divide an active farm with identified important agricultural land into two or more parts thus impeding efficient farm operation
  2. the action would result in environmental changes which may reduce the productivity or adversely affect the quality of the product of any identified important agricultural lands.
  3. the action would create real estate market conditions favorable to the conversion of large areas of identified important agricultural lands to non-agricultural uses. Such conditions may be created by:
    - a. public water or sewer facilities to serve non-farm structures
    - b. transportation improvements, except for maintenance of, and safety improvements to, existing facilities, that serve non-farm or non-farm related development
    - c. major non-agribusiness commercial development adjacent to identified agricultural lands
    - d. major public institutions
    - e. residential uses other than farm dwellings.

<sup>3</sup>A farm is defined as an area of at least 10 acres devoted to agricultural production as defined in the Agricultural District Law and from which agricultural products have yielded gross receipts of \$10,000 in the past year.

- e. any change in land use regulations applying to agricultural land which would encourage or allow uses incompatible with the agricultural use of the land
- B. The following types of facilities and activities should not be construed as having adverse effects on the preservation of agricultural land:
- 1. Farm dwellings, barns, silos, and other accessory uses and structures incidental to agricultural production or necessary for farm family supplemental income
  - 2. Agribusiness development which includes the entire structure of local support services and commercial enterprises necessary to maintain an agricultural operation, e.g., milk hauler, grain dealer, farm machinery dealer, veterinarian, food processing plants
- C. In determining whether an action that would result in the loss of farmland is of overriding regional or Statewide benefit, the following factors should be considered:

For an action to be considered overriding it must be shown to provide significantly greater benefits to the region or State than are provided by the affected agricultural area (not merely the land directly affected by the action). In determining the benefits of the affected agriculture to the region or State, consideration must be given to its social and cultural value, its economic viability, its environmental benefits, its existing and potential contribution to food or fiber production in the State and any State food policy, as well as its direct economic benefits.

- a. An agricultural area is an area predominantly in farming and in which the farms produce similar products and/or rely on the same agribusiness support services and are to a significant degree economically inter-dependent. At a minimum this area should consist of at least 500 acres of identified important agriculture land. For the purpose of analyzing impacts of any action on agriculture, the boundary of such area need not be restricted to land within the coastal boundary. If the affected

agricultural lands lie within an agricultural district then, at a minimum, the agricultural area should include the entire agricultural district.

b. In determining the benefits of an agricultural area, its relationship to agricultural lands outside the area should also be considered.

c. The estimate of the economic viability of the affected agricultural area should be based on an assessment of

soil resources, topography, conditions of climate and water resources

ii. availability of agribusiness and other support services, and the level and condition of investments in farm real estate, livestock and equipment

the level of farming skills as evidenced by income obtained, yield estimates for crops, and costs being experienced with the present types and conditions of buildings, equipment, and cropland

iv. use of new technology and the rates at which new technology is adopted

v. competition from substitute products and other farming regions and trends in total demand for given products

patterns of farm ownership for their effect on farm efficiency and the likelihood that farms will remain in use

d. The estimate of the social and cultural value of farming in the area should be based on an analysis of:

i. the history of farming in the area

ii. the length of time farms have remained in one family

- iii. the degree to which farmers in the area share a cultural or ethnic heritage
  - iv. the extent to which products are sold and consumed locally
  - v. the degree to which a specific crop(s) has become identified with a community
- e. An estimate of the environmental benefits of the affected agriculture should be based on analysis of:
- i. the extent to which the affected agriculture as currently practiced provides a habitat or food for wildlife
  - ii. the extent to which a farm landscape adds to the visual quality of an area
  - iii. any regional or local open space plans, and degree to which the open space contributes to air quality
  - iv. the degree to which the affected agriculture does, or could, contribute to the establishment of a clear edge between rural and urban development
- D. Whenever a proposed action is determined to have an insignificant adverse effect on identified important agricultural land or whenever it is permitted to substantially hinder the achievement of the policy according to DOS regulations, Part 600, or as a result of the findings of an EIS, then the required minimization should be undertaken in the following manner:
- 1. The proposed action shall, to the extent practicable, be sited on any land not identified as important agricultural, or, if it must be sited on identified important agricultural land, sited to avoid classes of agricultural land according to the following priority:

- a. prime farmland in orchards or vineyards
  - b. unique farmland in orchard or vineyards
  - c. other prime farmland in active farming
  - d. other unique farmland
  - e. farmland of statewide importance in active farming  
active farmland identified as having high economic viability
  - g. prime farmland not being farmed
  - h. farmland of statewide importance not being farmed
2. To the extent practicable, agricultural use of identified important agricultural land not directly necessary for the operation of the proposed non-agricultural action should be provided for through such means as lease arrangements with farmers, direct undertaking of agriculture, or sale of surplus land to farmers. Agricultural use of such land shall have priority over any other proposed multiple use of the land.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, one of which calls for the conservation and protection of agricultural lands. This provision of law is implemented by amendments to SEQR (cf 2 below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies one of which is: To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss or impair the productivity of important agricultural land, as identified on the coastal area map,

if that loss or impairment would adversely affect the valuability of agriculture in an agricultural district or, in the area surrounding such lands, if there is no agriculture district. Secretary of State may review actions of State agencies that may affect achievement of the policy, and 3) that SEQOR regulations be amended to reflect consideration of coastal resources such as agricultural lands.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. The environment is broadly defined to include existing patterns of development, and land resources; hence farming and important agricultural lands are viewed as an environmental resource. The SEQOR regulation (6 NYCRR Part 617) set a very low threshold for triggering an environmental assessment for actions within agricultural districts. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law SEQOR regulations are amended to require that for actions by a state agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss or impair the the productivity of important agricultural land, as identified on the coastal area map, if that loss or impairment would adversely affect the valuability of agriculture in an agricultural district or, in the area surrounding such lands, if there is no agriculture district.

3. Agricultural District Program, Agriculture and Markets Law (Article 25AA)

The Agricultural District Law provides the primary means for the State to directly pursue a policy of conserving important agricultural lands. Most of the important coastal agricultural land is already included in agricultural districts. The provisions of the act which lead to the conservation of farmland include 1) farm value assessments, (recent amendments improve this provision); 2) limitations on the exercise of eminent domain; 3) a requirement that State agencies' regulations encourage maintenance of farming; 4) limitations on local ordinances that adversely affect farming and 5) limitations on the power of public service districts to impose taxes. These provisions, plus the power given the State to create such districts where it would further state environmental plans, policies or objectives, constitute the basic state program for conserving all important farmland.

4 Transportation Law (§14-a)

This law requires that the Commissioner of Transportation cooperate with the Commissioner of Agriculture and Markets to assure that measures to preserve farmland and the natural characteristics of the land traversed by transportation facilities are included in all stages of such projects.

**POLICY 27 Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.**

A. Explanation of Policy

Demand for energy in New York will increase, although at a rate slower than previously predicted. The State expects to meet these energy demands through a combination of conservation measures; traditional and alternative technologies; and use of various fuels including coal in greater proportion.

A determination of public need for energy is the first step in the process for siting any new facilities. The directives for determining this need are contained primarily in Article 5 of the New York State Energy Law. That Article requires the preparation of a State Energy Master Plan. With respect to transmission lines and steam electric generating facilities, Articles VII and VIII of the State's Public Service Law require additional forecasts and establish the basis for determining the compatibility of these facilities with the environment and the necessity for a shorefront location. The policies derived from the siting regulations under these Articles are entirely consistent with the general coastal zone policies derived from other laws, particularly the regulations promulgated pursuant to the Waterfront Revitalization and Coastal Resources Act. That Act is used for the purposes of ensuring consistency with the Coastal Management Program.

The Department of State will comment on the State Energy Master Plan; present testimony for the record during relevant certification proceedings under Articles VII and VIII of the PSL; and use the State SEQR and DOS regulations to ensure that decisions on other proposed energy facilities (other than transmission facilities and steam electric generating plants) which would impact the coastal area are made consistent with coastal policies.

B. State Means for Implementing the Policy

1. Energy Law (Article 5)

Under this law an Energy Planning Board was established. As required, the Board prepared and adopted the first State Energy Master Plan which is currently in effect. The Board is now considering an updated plan. See Section 7 of this document for a more detailed discussion of this plan.

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

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

- o Represents the minimum adverse environmental impact, considering the state of available technology; the nature and economics of the various alternatives; and the interests of the state with respect to aesthetics, preservation of historic sites, forests and parks, fish and wildlife, and viable agricultural lands;
- o Complies with applicable State laws concerning, among other matters, the environment and public health and safety;
- o Serves the public interest, convenience and necessity.

The regulations which implement Article VIII and govern the Board's decision (see Appendix A, #7) assure that this decision will be compatible with the policies articulated in this document, both those relating to environmental protection and to economic development.

To further ensure compatibility, the Department of State will review applications and may present testimony during proceedings

involving facilities proposed to be sited in coastal areas. When reviewing applications, the Department will examine the required description of reasonable alternate locations as well as the rationale for the preferred site, particularly with respect to potential land uses on or near the proposed site, and the justification for the amount of shore-front land to be used. Proposed uses which are likely to be regarded by the Department as requiring a shorefront location include:

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

3. Public Service Law (Article VII) - Siting of Major Utility Transmission Facilities

Prior to the construction of a major electric or fuel gas transmission facility, a Certificate of Environmental Compatibility and Public Need must be granted by the Public Service Commission. See Section 7 of this document for a detailed description of this process. In issuing a certificate, the Commission must determine that the facility:

- o Represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- o Conforms with applicable State laws;
- o Serves the public interest, convenience and necessity.

As with steam electric generating plants, the Department of State will review applications and may present testimony during proceedings involving transmission facilities proposed to be sited in the coastal area. The Department will examine the same matters as under Article VIII. It will also use the same

criteria to determine the need for a shore-front location and the consistency of the proposal with coastal policies.

Interstate transmission facilities, such as gas and petroleum pipelines, coal slurry pipelines and electric transmission lines associated with hydroelectric facilities, are regulated by Federal agencies. Through Federal consistency provisions, such facilities will be sited in a manner that is consistent with the Program's policies.

Environmental Conservation Law (Article 23, Title 17) - Liquefied Natural and Petroleum Gas

All liquefied natural gas (LNG) and liquefied petroleum gas (LPG) facilities, must obtain an environmental safety permit before construction and operation. For a permit to be granted, it must be shown that such facilities would not endanger residential areas and contiguous populations and would otherwise conform to siting criteria established by the Department of Environmental Conservation. During the review of proposed projects, consideration is given to: the location of the proposed facility; the design and capacity of the facility; expected sources of the gas; methods of transporting gas to and from the facility and transportation routes; the public need for the facility; its environmental impacts; and, descriptions of reasonable alternate locations for the facility.

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

Section 919 of Article 42 requires 1) that State agencies' actions, including direct energy development activities such as those undertaken by the Power Authority of the State of New York, must be consistent with the environmental protection and development policies of this act. This provision of law is implemented by amendments to SEQR (below) and by DOS regulations. DOS regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, 2) that the Secretary of State shall review actions

of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of coastal resources.

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

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

Under the State Environmental Quality Review Act, State agencies and local governments are required to prepare an environmental impact statement for any action that might have a significant impact upon the environment. This requirement applies to large scale energy facilities other than transmission lines and steam electric generating plants as described above. The environment is broadly defined to include existing patterns of development and land resources. Actions which have been subject to an environmental impact statement must, consistent with social, economic, and other essential considerations, minimize or avoid, to the maximum extent practicable, the adverse environmental effects revealed in the impact statement (ECL §8-0109-8). In addition, pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that for actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies.

7 Water Resources Law, Environmental Conservation Law (Article 15)

Proposals, including those to construct all pipelines, which would excavate or deposit fill in any navigable waters and adjacent marshes and estuaries of the State require permits issued by the Department of Environmental Conservation.

8. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

The Tidal Wetlands Act requires that a permit be issued for uses, including oil pipelines, in identified tidal wetlands. It must be demonstrated that proposed facilities will

not adversely affect water quality, flood and storm control, marine food production, wildlife habitats, open space, and aesthetically significant areas.

9. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

The Freshwater Wetlands Act requires that a permit be issued for uses, including oil pipelines, in identified freshwater wetlands. It must be demonstrated that proposed facilities will not adversely affect water quality, flood and storm control, erosion control, subsurface water resources, wildlife habitats, freshwater fish sanctuaries, open space, and aesthetically significant areas.

10. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, Section 170 et. seq.)

This Article provides for the protection of the State's environment and economy by preventing unregulated discharge of petroleum from major facilities; by authorizing the Departments of Environmental Conservation and Transportation to respond quickly to remove any discharges; and by establishing liability for any damages sustained within the State as a result of such discharges.

The Article also creates a fund for clean-up, restoration and compensation for damages caused by oil spills. Before a license to construct a major oil facility can be issued by the Department of Transportation, an applicant must pay the required fee to help maintain the fund and must show that the necessary equipment to prevent, contain and remove petroleum discharges will be provided. The Department will issue licenses for major onshore facilities only after the Department of Environmental Conservation has certified that the applicant has the necessary equipment to control oil discharges.

11. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 27)

This Article requires permits for construction of new outlets or new disposal systems to discharge industrial and other wastes into State waters, including wastes from nuclear power plants, other steam electric generating

plants, and petroleum facilities. This permit procedure ensures that established water quality standards are met.

12. Air Pollution Control, Environmental Conservation Law (Article 19, Title 3)

This Article gives the Department of Environmental Conservation the authority to promulgate and enforce regulations controlling air emissions, including those released by energy facilities. These regulations appear in the State Implementation Plan which details State strategies for meeting Federal air quality standards under the Clean Air Act.

**POLICY 28** Ice management practices shall not interfere with the production of hydroelectric power, damage significant fish and wildlife and their habitats, or increase shoreline erosion or flooding.

A. Explanation of Policy

Prior to undertaking actions required for ice management, an assessment must be made of the potential effects of such actions upon the production of hydroelectric power, fish and wildlife and their habitats as will be identified in the Coastal Area Maps, flood levels and damage, rates of shoreline erosion damage, and upon natural protective features.

Following such an examination, adequate methods of avoidance or mitigation of such potential effects must be utilized if the proposed action is to be implemented.

B. State Means for Implementing the Policy

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

Section 919 of Article 42 requires (1) that State agencies' actions, including funding, planning, land transactions, as well as direct development activities, must be consistent with the policies of this Act, which, among others, call for preventing the loss of fish and wildlife resources, minimizing damage to natural resources and property from flooding and erosion, and achieving the beneficial use of coastal resources. Those provisions of law are implemented by amendments to SEQR and by the Department of State regulations. In addition, the Department of State regulations (19 NYCRR Part 600) provide that, for their direct actions which do not have a significant effect on the environment, State agencies certify that the action is consistent with the coastal policies, one of which is: "Ice management practices shall not interfere with the production of hydro-electric power, damage significant fish and wildlife and their habitats, nor increase shoreline erosion or flooding." (2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and (3) that SEQR regulations be amended to reflect consideration of this policy.

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

Pursuant to Article 42 of the Executive Law, SEQR regulations are amended to require that actions by a State agency for which an EIS has been prepared, such actions shall be consistent with the coastal policies, one of which is: "Ice management practices shall not interfere with the production of hydro-electric power, damage significant fish and wildlife and their habitats, nor increase shoreline erosion or flooding."

3. Energy Law Article 5

See description under Policy 27

4. Tidal Wetlands Act, Environmental Conservation Law (Article 25)

See description under Policy 27

5. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

See description under Policy 27.

6. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12, §170 et. seq.)

See description under Policy 27.

- 7 Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34)

See description under Policy 27.

**POLICY 29 Encourage the development of energy resources on the Outer Continental Shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities.**

**A. Explanation of Policy**

The State recognizes the need to develop new indigenous energy sources. It also recognizes that such development may endanger the environment. Among the various energy sources being examined are those which may be found on the Outer Continental Shelf (OCS) or in Lake Erie. The State has been encouraging the wise development of both.

Matters pertaining to the OCS are the responsibility of the Department of Environmental Conservation. In 1977, the Department, in cooperation with regional and local agencies, completed a study which identified potential sites along the marine coast for on-shore OCS facilities. To date, these sites have not been developed for this purpose. The Department, also, actively participates in the OCS planning process by reviewing and voicing the State's concerns about federal OCS oil and gas lease sales and plans. In its review of these proposed sales and plans, the Department considers a number of factors such as the effects upon navigational safety in the established traffic lanes leading into and from New York Harbor; the impacts upon important finfish, shellfish and wildlife populations and their spawning areas; economic and other effects upon commercial and recreational fishing activities; impacts upon public recreational resources and opportunities along the marine coast; the potential for geohazards; impacts upon biological communities; and water quality.

The Department of Environmental Conservation has also examined the potential impacts of Lake Erie gas drilling and is instituting reasonable guidelines so that activities can proceed without damage to public water supplies and other valuable coastal resources. State law prohibits development of wells nearer than one-half mile from the shoreline, two miles from public water supply intakes, and one thousand feet from any other structure or installation in or on Lake Erie. Further, State law prohibits production of liquid hydrocarbons in Lake Erie, either alone or in association with natural gas. The Department has not, however, reached a decision as to whether or not the lands under Lake Erie will be leased for gas exploration purposes.

B. State Means for Implementing the Policy

Environmental Conservation Law (Section 23-1101)

The Department of Environmental Conservation may lease the lands beneath Lake Erie according to specific siting, operation, and liability requirements. Thus the State's environmental agency will retain control over the process and ensure appropriate environmental safeguards. The production of liquid hydrocarbons is, however, prohibited by this Article.

2. Environmental Conservation Law (Section 23-0305)

This law provides that the Department of Environmental Conservation will retain jurisdiction over any active or abandoned wells and wellheads and may limit production. The Department may act to terminate hazardous discharges which threaten natural resources. Under this law, producers and handlers must maintain accurate records of quantities of gas handled.

3. Siting of Major Utility Transmission Facilities, Public Service Law Article VII)

This law establishes procedures to be followed by developers of natural gas in the construction of any gathering pipelines from wellheads and any master collecting pipelines in accordance with the environmental considerations of this Article as discussed under the previous policy.

4. Public Service Law (Article 4, Section 66)

Under this law, the Public Service Commission regulates the safe construction and operation of natural gas pipelines from the wellhead to any onshore connection.

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

See description under Policy 27

6. State Environmental Quality Review Act, Environmental Conservation Law (Section 8-0113)

See description under Policy 27

- 7 Water Resources Law, Environmental Conservation Law (Article 15)

See description under Policy 27.

8. Freshwater Wetlands Act, Environmental Conservation Act (Article 24)

See description under Policy 27.

9. Freshwater Wetlands Act, Environmental Conservation Act (Article 24)

See description under Policy 27.

POLICY 30 Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to State and National water quality standards.

A. Explanation of Policy

Municipal, industrial and commercial discharges include not only "end-of-the pipe" discharges into surface and groundwater but also plant site runoff, leaching, spillages, sludge and other waste disposal, and drainage from raw material storage sites. Also, the regulated industrial discharges are both those which directly empty into receiving coastal waters and those which pass through municipal treatment systems before reaching the State's waterways.

B. State Means for Implementing the Policy

1. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)
2. Industrial Hazardous Waste Management, Environmental Conservation Law (Article 27, Title 9)
3. Substances Hazardous to the Environment, Environmental Conservation Law (Article 37)
4. State Certification of Public Sewage Treatment Plant Operators, Environmental Conservation Law, (Article 3-0301), Public Health Law (Section 225)

**POLICY 31 State coastal area policies and management objectives of approved local Waterfront Revitalization Programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already over-burdened with contaminants will be recognized as being a development constraint.**

**A. Explanation of Policy**

Pursuant to the Federal Clean Water Act of 1977 (PL 95-217) the State has classified its coastal and other waters in accordance with considerations of best usage in the interest of the public and has adopted water quality standards for each class of waters. These classifications and standards are reviewable at least every three years for possible revision or amendment. Local Waterfront Revitalization Programs and State coastal management policies shall be factored into the review process for coastal waters. However, such consideration shall not affect any water pollution control requirement established by the State pursuant to the Federal Clean Water Act.

The State has identified certain stream segments as being either "water quality limiting" or "effluent limiting." Waters not meeting State standards and which would not be expected to meet these standards even after applying "best practicable treatment" to effluent discharges are classified as "water quality limiting." Those segments meeting standards or those expected to meet them after application of "best practicable treatment" are classified as "effluent limiting," and all new waste discharges must receive "best practicable treatment." However, along stream segments classified as "water quality limiting," waste treatment beyond "best practicable treatment" would be required, and costs of applying such additional treatment may be prohibitive for new development.

**B. State Means for Implementing the Policy**

1. Waterfront Revitalization and Coastal Resources Act, Executive Law, (Article 42)
2. Classification of Waters and Adoption of Standards, Environmental Conservation Law (Article 17, Title 3)

**POLICY 32 Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high, given the size of the existing tax base of these communities.**

**A. Explanation of Policy**

Alternative systems include individual septic tanks and other subsurface disposal systems, dual systems, small systems serving clusters of households or commercial users, and pressure or vacuum sewers. These types of systems are often more cost effective in smaller less densely populated communities and for which conventional facilities are too expensive.

**B. State Means for Implementing the Policy**

1. Construction and Operation Grants, Environmental Conservation Law (Article 17, Title 9)
2. Appalachian Regional Commission, Executive Law (Article 60)
3. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

Approval of local waterfront revitalization programs authorized under Section 915 of this law would be contingent in part on the community's demonstrated effort to provide necessary treatment of any sanitary wastes being generated at waterfront properties. When hookup to the municipal sewage collection and treatment facilities is neither economically or technically feasible, installation of alternative treatment systems will be required as needed and practical.

**POLICY 33** Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

A Explanation of Policy

Best management practices include both structural and non-structural methods of preventing or mitigating pollution caused by the discharge of stormwater runoff and combined sewer overflows. At present, structural approaches to controlling stormwater runoff (e.g., construction of retention basins) and combined sewer overflows (e.g., replacement of combined system with separate sanitary and stormwater collection systems) are not economically feasible. Proposed amendments to the Clean Water Act, however, will authorize funding to address combined sewer overflows in areas where they create severe water quality impacts. Until funding for such projects becomes available, non-structural approaches (e.g., improved street cleaning, reduced use of road salt) will be encouraged.

B. State Means for Implementing the Policy

Agreement of a Five Year Water Quality Management Program

State "208" Water Quality Management Program

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

**POLICY 34** Discharge of waste materials into coastal waters from vessels subject to State jurisdiction into coastal waters will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

A. Explanation of Policy

The discharge of sewage, garbage, rubbish, and other solid and liquid materials from watercraft and marinas into the State's waters is regulated. Priority will be given to the enforcement of this Law in areas such as shellfish beds and other significant habitats, beaches, and public water supply intakes, which need protection from contamination by vessel wastes. Also, specific effluent standards for marine toilets have been promulgated by the Department of Environmental Conservation (6 NYCRR, Part 657).

B. State Means for Implementing the Policy

1. Disposal of Sewage and Litter in Waterways, Navigation Law (Section 33-c)
2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)
3. State Environmental Quality Review Act, Environmental Conservation Law (Article 8)

**POLICY 35** Dredging and dredge spoil disposal in coastal waters will be undertaken in a manner that meets existing State dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands.

A. Explanation of Policy

Dredging often proves to be essential for waterfront revitalization and development, maintaining navigation channels at sufficient depths, pollutant removal and meeting other coastal management needs. Such dredging projects, however, may adversely affect water quality, fish and wildlife habitats, wetlands and other important coastal resources. Often these adverse effects can be minimized through careful design and timing of the dredging operation and proper siting of the dredge spoil disposal site. Dredging permits will be granted if it has been satisfactorily demonstrated that these anticipated adverse effects have been reduced to levels which satisfy State dredging permit standards set forth in regulations developed pursuant to Environmental Conservation Law, (Articles 15, 24, 25 and 34), and are consistent with policies pertaining to the protection of coastal resources (State Coastal Management policies 7, 24, 15, 26 and 44).

State Means for Implementing the Policy

B.

1. Protection of Waters, Environmental Conservation Law (Article 15, Title 5): Summarized in Vol. 2, page 214
2. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25): Article 24 is in Vol. 2, page 53; Regulations are in Vol 2, page 83; Article 25 is in Vol. 2, page 47; Regulations are in Vol. 2, page 66
3. State Environmental Quality Review Act, Environmental Conservation Law (Article 8): Article 8 is in Vol. 2, page 7; Regulations are in Vol. 2, Page 35
4. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42); Article 42 is in Vol. 2, page 3, Regulations are in Vol. 1

5. Coastal Erosion Hazard Areas Act, Environmental Conservation Law (Article 34): Article 34 is in Vol. 2, page 375; Regulations are in Vol. 1

**POLICY 36** Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

A. Explanation of Policy

See Policy 39 for definition of hazardous materials.

B. State Means for Implementing the Policy

1. Oil Spill Prevention, Control and Compensation, Navigation Law (Article 12)
2. Penalties and Liabilities for Spills of Bulk Liquids, Environmental Conservation Law (Article 71-1941)
3. Transportation Law (Article 2, Section 14-F)

**POLICY 37 Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.**

**A. Explanation of Policy**

Best management practices used to reduce these sources of pollution could include but are not limited to, encouraging organic farming and pest management principles, soil erosion control practices, and surface drainage control techniques.

**B. State Means for Implementing the Policy**

1. Phosphate Limits, Environmental Conservation Law (Article 35)
2. State Pollutant Discharge Elimination System, Environmental Conservation Law (Article 17, Title 8)
3. Realty Subdivision Approval, Environmental Conservation Law (Article 17, Title 15)
4. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)
5. Public Health Law (Section 228)
6. State Water Quality Management (108 Program)
7. Soil and Water Conservation District Law (Section 9)

**POLICY 38** The quality and quantity of surface water and groundwater supplies, will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

A. Explanation of Policy

Surface and groundwater are the principle sources of drinking water in the State, and therefore must be protected. Since Long Island's groundwater supply has been designated a "primary source aquifer," all actions must be reviewed relative to their impacts on Long Island's groundwater aquifers.

B. State Means for Implementing the Policy

1. Well Drilling Regulation in Long Island, Environmental Conservation Law (151525 and 15-1527)
2. Realty Subdivision Approval, Environmental Conservation Law (Article 17, Title 15)
3. Solid Waste Management Act, Environmental Conservation Law, (Article 27)
4. Industrial Hazardous Wastes Management Act, Environmental Conservation Law (Article 27, Title 9)
5. Water Supply Approval, Environmental Conservation Law (Article 15)
6. Public Health Law (Article 11)
7. Phosphate Limits, Environmental Conservation Law (Article 35)
8. Public Health Law (Article 228)
9. Waterfront Revitalization and Coastal Resource Act, Executive Law (Article 42)

**POLICY 39** The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural lands and scenic resources.

A. Explanation of Policy

The definitions of terms "solid wastes" and "solid wastes management facilities" are taken from New York's Solid Waste Management Act (Environmental Conservation Law, Article 27). Solid wastes include sludges from air or water pollution control facilities, demolition and construction debris and industrial and commercial wastes.

Hazardous wastes are unwanted by-products of manufacturing processes generally characterized as being flammable, corrosive, reactive, or toxic. More specifically, waste is defined in Environmental Conservation Law (Section 27-0901 (3)) as "waste or combination of wastes which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or the environment which improperly treated, stored, transported or otherwise managed." A list of hazardous wastes (NYCRR Part 366) will be adopted by DEC within 6 months after EPA formally adopts its list.

Examples of solid waste management facilities include resource recovery facilities, sanitary landfills and solid waste reduction facilities. Although a fundamental problem associated with the disposal and treatment of solid wastes is the contamination of water resources, other related problems may include: filling of wetlands and littoral areas, atmospheric loading, and degradation of scenic resources.

B. State Means for Implementing the Policy

1. Solid Waste Management Act, Environmental Conservation Law (Article 27)
2. Registration of Septic Tank Cleaners, Environmental Conservation Law (Article 27, Title 3)

3. Industrial Hazardous Waste Management Act of 1978, Environmental Conservation Law (Article 17, Title 9)
4. Freshwater and Tidal Wetlands Acts, Environmental Conservation Law (Articles 24 and 25)
5. Protection of Waters Law, Environmental Conservation Law (Article 15, Title 5)
6. Coastal Erosion Hazard Areas, Environmental Conservation Law (Article 34)
7. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42)

**POLICY 40 Effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to State water quality standards.**

**A. Explanation of Policy**

The State Board on Electric Generation Siting and the Environment must consider a number of factors when reviewing a proposed site for facility construction. One of these factors is that the facility "not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the State, the public health, and public enjoyment of the receiving waters." The effects of thermal discharges on water quality and aquatic organisms will be considered by the siting board when evaluating an applicant's request to construct a new steam electric generating facility.

**B. State Means for Implementing the Policy**

1. Siting of Major Steam Electric Generation Facilities, Public Service Law (Article VIII)
2. Thermal Discharge Regulation, Environmental Conservation Law (Article 17, Title 3, 6 NYCRR, Part 704)

**POLICY 41 Land use or development in the coastal area will not cause National or State air quality standards to be violated.**

**A. Explanation of Policy**

New York's Coastal Management Program incorporates the air quality policies and programs developed for the State by the Department of Environmental Conservation pursuant to the Clean Air Act and State Laws on air quality. The requirements of the Clean Air Act are the minimum air quality control requirements applicable within the coastal area.

To the extent possible, the State Implementation Plan will be consistent with coastal lands and water use policies. Conversely, coastal management guidelines and program decisions with regard to land and water use and any recommendations with regard to specific sites for major new or expanded industrial, energy, transportation, or commercial facilities will reflect an assessment of their compliance with the air quality requirements of the State Implementation Plan.

The Department of Environmental Conservation will allocate substantial resources to develop a regulatory and management program to identify and eliminate toxic discharges into the atmosphere. The State's Coastal Management Program will assist in coordinating major toxic control programming efforts in the coastal regions and in supporting research on the multi-media nature of toxics and their economic and environmental effects on coastal resources.

**B. State Means for Implementing the Policy**

1. Air Pollution Control Act, Environmental Conservation Law (Article 19), Environmental Quality Bond Act, Environmental Conservation Law (Article 15, Title 5) and Hazardous Substance Act, Environmental Conservation Law (Article 37).

**POLICY 42 Coastal Management policies will be considered if the State reclassifies land areas pursuant to the prevention of significant deterioration regulations of the Federal Clean Air Act.**

**A. Explanation of Policy**

The policies of the State and local coastal management programs concerning proposed land and water uses and the protection and preservation of special management areas will be taken into account prior to any action to change prevention of significant deterioration land classifications in coastal regions or adjacent areas. In addition, the Department of State will provide the Department of Environmental Conservation with recommendations for proposed prevention of significant deterioration land classification designations based upon State and local coastal management programs.

**B. State Means for Implementing the Policy**

**1. Air Pollution Control Act, Environmental Conservation Law (Article 19)**

This law provides the Department of Environmental Conservation with the authority to designate areas of the State based upon degree of pollution that may be permitted. It allows the Department to consider that what may be proper for a residential area, for example, may not be proper for a highly developed industrial area.

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

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration and impacts on the use and conservation of coastal resources.

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

**POLICY 43 Land use or development in the coastal area must not cause the generation of significant amounts of the acid rain precursors: nitrates and sulfates.**

**A. Explanation of Policy**

The New York Coastal Management Program incorporates the State's policies on acid rain. As such, the Coastal Management Program will assist in the State's efforts to control acid rain. These efforts to control acid rain will enhance the continued viability of coastal fisheries, wildlife, agricultural, scenic and water resources.

**B. State Means for Implementing the Policy**

1. Air Pollution Control Act, Environmental Conservation Law (Article 19).
2. Waterfront Revitalization and Coastal Resources Act, Executive Law (Article 42).

Section 919 of Article 42 requires 1) that State agencies actions, including funding, planning, and land transactions, as well as direct development activities, must be consistent with the policies of this act, 2) that the Secretary of State shall review actions of State agencies that may affect achievement of the policy, and 3) that SEQR regulations be amended to reflect consideration of impacts on the use and conservation of coastal resources.

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

**POLICY 44** Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

A. Explanation of Policy

Tidal wetlands include the following ecological zones: coastal fresh marsh; intertidal marsh; coastal shoals, bars and flats; littoral zone; high marsh or salt meadow; and formerly connected tidal wetlands. These tidal wetland areas are officially delineated on the Department of Environmental Conservation's Tidal Wetlands Inventory Map.

Freshwater wetlands include marshes, swamps, bogs, and flats supporting aquatic and semi-aquatic vegetation and other wetlands so defined in the N.Y.S. Freshwater Wetlands Act and the N.Y.S. Protection of Waters Act.

The benefits derived from the preservation of tidal freshwater wetlands include but are not limited to:

habitat for wildlife and fish, including a substantial portion of the State's commercial fin and shellfish varieties; and contribution to associated aquatic food chains;

erosion, flood and storm control;

natural pollution treatment;

groundwater protection;

recreational opportunities;

educational and scientific opportunities; and

aesthetic open space in many otherwise densely developed areas.

B. State Means for Implementing the Policy

1. Tidal Wetlands Act, Environmental Conservation (Article 25)

This act is designed to "preserve and protect tidal wetlands, and to prevent their despoilation and destruction, giving due consideration to the reasonable economic and social development of the State". The regulatory program associated with the act is contained in the NYCRR, Title 6, Parts 660 and 661. Part 660 describes a moratorium regulatory program, while Part 661 details a permanent regulatory program.

The moratorium program provided interim protection to wetlands while the tidal wetlands inventory was being completed. Once maps were filed with the appropriate local governments, the moratorium on development in the majority of wetlands was lifted and permanent land use regulations went into effect.

For the purposes of the Tidal Wetlands Act, the permanent regulations apply to the six tidal wetland types and divide land uses into four categories: uses not requiring a permit; generally compatible uses; presumptively incompatible uses; and incompatible uses. All but the first category are subject to permit restrictions. More specifically, regulated uses include draining, dredging, excavation, filling, construction of facilities, pollution, and land subdivision.

Each application for a permit is subject to a hearing. A notice of public hearing is sent to affected parties. If no objections are received, the hearing may be cancelled. The application is then reviewed and denied or granted with conditions to minimize impact. Permits may be suspended or revoked upon grounds stated in the regulations.

2. Freshwater Wetlands Act, Environmental Conservation Law (Article 24)

This act authorizes the regulation of the use and development of the State's freshwater wetlands of 12.4 or more acres or of unusual local significance as determined by the Commissioner of DEC. The regulatory program is divided into two phases: the interim permit program and the permanent permit programs.

The interim permit program is described in the NYCRR, Title 6, Part 662. It is in effect in each locality until final county wetlands maps have been filed with the clerk of each local government and prior to implementation of a local freshwater wetlands protection law or ordinance.

Application for an interim permit must be made for certain alterations of regulated freshwater wetlands and adjacent areas within 100 feet of the wetland. Draining, dredging, filling, erecting structures and discharging pollutants are some of the activities which may substantially alter and impair the functions of a wetland. A public hearing may or may not be deemed necessary depending on the number of objections filed or the

nature of the alteration. DEC will finally decide to issue, deny or condition an interim permit depending on the effect a proposed activity would produce on the benefits of a wetland.

The permanent program is fully described in NYCRR, Title 6, Parts 663 and 664. The permanent program takes effect in a particular county after DEC files its official regulatory maps with all of the local governments in that county. These maps depict freshwater wetlands of 12.4 acres or more plus certain smaller freshwater wetlands of special local concerns. These maps are filed after public hearings are held. At this writing only certain counties (and their constituent municipalities) have received these maps. Once these maps are completed, reviewed, and filed wetland laws adopted by communities become operative. These laws must be at least as restrictive as DEC's regulations. If a city, town or village fails to adopt and implement a local law, the county may take responsibility. If the county fails to participate, DEC will regulate the wetlands. Any city, town or village which defaults or transfers its authority may recover it at any time.

Regulations for the permanent program contain standards for issuing permits to undertake specified activities. The standards are applied for four classes of wetlands granted according to their abilities to perform wetland functions and provide wetland benefits. DEC retains authority over Class I (highest quality) wetlands and certain other wetlands for reasons of size or other special characteristics. Where a local government has authority over a wetland associated with a major international or interstate river or lake (i.e., the Hudson, Niagara and St. Lawrence Rivers, and Lakes Erie and Ontario), it must consult with DEC before taking any regulatory action concerning that wetland.

3. Protection of Water Laws Act, Environmental Conservation Law (Article 15, Title 5)

This law effectively affords State regulatory protection to any remaining wetland areas not being protected under the Freshwater Wetlands Act. This law require that a permit be obtained from the Department of Environmental Conservation for any activities which require excavation or filling of all wetlands that are adjacent to and contiguous with navigable waters of the State, and that are inundated at mean high water level. Furthermore, wetlands associated with protected waters (streams and rivers classified C(t) or higher) tributary to navigable waters are also protected by this law.