UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUN 19 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William L. Sharp, Esquire
State of New York
Department of State
Albany, New York 12231-0001

Dear Mr. Sharp:

Mr. Joseph M. Mattone (Appellant) filed with the Secretary of Commerce a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the State of New York Department of State (State) to the Appellant's proposal to construct a seawall that would result in the filling of approximately 5,500 square feet of tidal wetlands.

On May 26, 1994, the Assistant General Counsel for Ocean Services (Assistant General Counsel) granted a stay of this appeal so that the State and Appellant could conduct informal negotiations in an effort to resolve the State's objection to the project. At the Appellant's request, additional stays were granted, including a one-year stay through March 26, 1997. During the course of these stays, the Appellant has pursued an appeal with the state appellate court on a state permit denial for the same project that is the subject of this consistency appeal.

As a condition for granting the most recent, one-year stay, the Appellant was required to submit to the office of the Assistant General Counsel on September 26, 1996, a six-month status report and to supply the State with a copy of that report. The status report was never filed. Based upon telephone conversations between the office of the Assistant General Counsel and Appellant's representative regarding the status report, it was understood that the Appellant anticipated receiving a permit for a modified project and that he intended to request a dismissal upon receipt of that permit. No additional communication was received from the Appellant.

The Assistant General Counsel's letter, granting the one-year stay, stated that if at the expiration of the stay the issues under dispute had not been successfully resolved, the appeal would automatically resume. At the expiration of the one-year stay, the Assistant General Counsel sent a letter notifying the Appellant that the appeal had resumed and

outlining the briefing schedule. That letter advised the Appellant that if his brief, or some communication, was not provided within 30 days of his receipt of the letter, his appeal may be dismissed for good cause. The deadline for filing his brief has now expired and the Appellant has failed to timely file a brief or any additional communication regarding his appeal.

I have reserved the authority to dismiss consistency appeals for good cause. See NOAA Administrative Order 201-104, issued January 5, 1990. Based upon the Appellant's failure to timely file his initial brief, or in the alternative, provide some additional communication, the appeal is hereby dismissed, with prejudice. The Appellant is barred from filing another appeal from the State's objection to his original consistency certification. This is a final agency action for purposes of judicial review.

Sincerely,

D. James Baker

cc: George R. Stafford,
Special Deputy Secretary of State
Christoper J. Todd, Esquire
Joseph M. Mattone
Joseph Seebode

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUN 19 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Joseph M. Mattone
19-02 Whitestone Expressway
Whitestone, New York 11357

Dear Mr. Mattone:

You filed a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the State of New York Department of State (State) to your proposal to construct a seawall that would result in the filling of approximately 5,500 square feet of tidal wetlands.

On May 26, 1994, the Assistant General Counsel for Ocean Services (Assistant General Counsel) granted a stay of this appeal so that the State and you, as the Appellant, could conduct informal negotiations in an effort to resolve the State's objection to the project. At your request, additional stays were granted, including a one-year stay through March 26, 1997. During the course of these stays, you have pursued an appeal with the state appellate court on a state permit denial for the same project that is the subject of this consistency appeal.

As a condition for granting the most recent, one-year stay, you were required to submit to the office of the Assistant General Counsel on September 26, 1996, a six-month status report and to supply the State with a copy of that report. The status report was never filed. Based upon telephone conversations between the office of the Assistant General Counsel and your representative regarding the status report, it was understood that you anticipated receiving a permit for a modified project and that you intended to request a dismissal upon receipt of that permit. No additional communication has been received from you.

The Assistant General Counsel's letter, granting the one-year stay, stated that if at the expiration of the stay the issues under dispute had not been successfully resolved, the appeal would automatically resume. At the expiration of the one-year stay, the Assistant General Counsel sent a letter notifying you that the appeal had resumed and outlining the briefing schedule. That letter also advised you that if your brief, or some communication, was not provided within 30 days o

THE ADMINISTRATOR

your receipt of the letter, that your appeal may be dismissed for good cause. The deadline for filing your brief has now expired and you have failed to timely file a brief or any additional communication regarding your appeal.

I have reserved the authority to dismiss consistency appeals for good cause. See NOAA Administrative Order 201-104, issued January 5, 1990. Based upon your failure to timely file an initial brief, or in the alternative, provide some additional communication, the appeal is hereby dismissed, with prejudice. You are barred from filing another appeal from the State's objection to your original consistency certification. This is a final agency action for purposes of judicial review.

Sincerely,

Diana H. Josephson

for D. James Baker

cc: George R. Stafford,
Special Deputy Secretary of State
William L. Sharp, Esquire
State of New York
Robert H. Fox, Esquire