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THE EFFECTS OF THE NEW YORK STATE TIDAL WETLANDS ACT MORATORIUM PHASE

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TIDAL WETLANDS ACT - MORATORIUM PHASE

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May 1976

Special Report 4
Reference 76-6

Approved for Distribution



J. R. Schubel, Director

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PREFACE

The author of this paper has been an employee of the New York State Department of Environmental Conservation and its predecessor for approximately 7 1/2 years. On November 19, 1973 he was designated Alternate Local Tidal Wetlands Permit Administrator for Region 1, which encompasses Nassau and Suffolk Counties. From that time to the writing of this paper, he has administered the Moratorium Permit program for Region 1.

A sincere attempt has been made to view the subject in a factual and objective manner, uninfluenced by official New York State Department of Environmental Conservation policy. The paper was prepared at the author's expense and on his own time. Any opinions generated are his own and are not to be construed as official policy of the New York State Department of Environmental Conservation.

This paper has been published through the cooperation of the New York State Department of Environmental Conservation and the Marine Sciences Research Center, State University of New York at Stony Brook.

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ABSTRACT

Marine wetlands play a vital role in the ecology of the estuarine environment. Wetlands support varied populations of specialized plants, mollusks, and crustaceans, as well as offering food and cover to waterfowl and shorebirds. Wetlands also are important as spawning and feeding grounds for many species of commercial, sport, and forage fish. Other values include protection from erosion, enhancement of estuarine productivity, treatment of excess nutrients, and as sites for recreation. During the moratorium, requests for alterations to tidal waters or wetlands or within 300 feet of them must meet standards of hardship and compatibility. A review of the moratorium applications made to the Department of Environmental Conservation indicates that no authorized wetlands losses occurred in some townships while minimal losses occurred in others. A total loss of approximately 20 acres was calculated. An additional undetermined amount was lost through illegal activities. While several court cases are presently pending, it is likely that the Act will be found to be constitutional and not constitute a "taking." A trend toward more environmentally acceptable projects is developing. A survey of individuals with varied interests in the Tidal Wetlands Act indicates that it is having an economic effect upon businesses and land values. While most respondents were satisfied with the administration of the Act, they were unanimous in criticism of delays in rendering decisions after public hearings. It is concluded that the Tidal Wetlands Act is having a beneficial effect upon the preservation of wetlands.

THE VALUES OF WETLANDS

A salt marsh is described by Chapman (1964) as a "tract of land covered with phanerogamic (flowering) vegetation and subject to periodic flooding by the sea." Long Island possesses extensive tidal salt marshes or wetlands. For many years these wetlands have been looked upon as breeding grounds for mosquitoes and other pests, sources of unpleasant odors, sites for garbage disposal, and areas to be filled to create high-priced waterfront acreage for residential and industrial development. Only recently have the myriad natural values of our coastal tide marshes been widely appreciated. The wetlands and their surrounding shores and waters support varied populations of specialized plants, mollusks, crustaceans, and annelids which are either harvested by man or

which are incorporated in the local food pyramid. The maze of creeks, pools and estuaries provide essential spawning, feeding or nursery grounds for a variety of commercial, sport and forage fish species. In addition, many species of shorebirds and waterfowl use the sheltered waters and grasses of the tide marsh as vital nesting or wintering habitat (Taormina, 1967).

The wetlands play an important role in the productivity of the estuary and its adjacent coastal waters since it is at this level that the complex food web of the sea begins. Inorganic compounds are synthesized by wetland plants into organic matter that supplies nourishment directly to herbivores or decomposes to provide detritus available to filter feeders and other types of animals. The detritus serves as a substrate for bacteria which

then enter the food chain directly or ultimately remineralize the contained nutrients.

Other assets of the wetlands, perhaps not as tangible as the preceding but equally significant, are their educational and psychological values. These areas are laboratories for the study of food-chains, ecosystems, and organisms in their natural habitat. In a period of increasing urbanization, their quiet and calm can provide welcome relief to those caught up in the whirlwind pace of modern society. Uplands having a fringe of wetlands also have a natural buffer against storm and wave action. The millions of supple stalks absorb energy when bending and thereby reduce the intensity of wave action upon solid land or man-made structures. In contrast, artificial protective structures such as sea-walls or bulkheads may compound destructive energy by refracting waves and causing sand scouring immediately in front of the bulkhead. The ultimate result of such action could be the undermining and failure of the structure.

Another value of wetlands which has been attracting widespread interest of late is the capability for tertiary sewage treatment by removal of phosphorus, nitrogen, and sulfur from the water. Various individuals such as Valiela, Teal and Sass (1973) and organizations including Brookhaven National Laboratory, NASA, and the University of Michigan are exploring this possibility as an alternative to man-made sewage treatment plants.

While all of the attributes of wetlands have an inherent natural value, man has a penchant for placing a monetary value upon things so that he may feel more comfortable when dealing with them. Over the years, many estimates of the value of wetlands to man have been made ranging from about \$1,000 (Perry, 1965) to \$83,000 per wetland acre (Odum, 1973). The accuracy and applicability of any of these figures for wetlands of various types,

sizes and locations is questionable. They may, however, serve as a reference in legal actions where numbers are often requested.

A different sort of monetary value is more commonly applied to wetlands; that is their value as sites for housing, marinas, or industrial development.

Since 1953, when the first complete inventory of Long Island wetlands was compiled, the loss of wetlands had reached alarming proportions. Estimates vary according to source, but it is evident that approximately 10,000 acres have been lost in Nassau and Suffolk Counties over that period. According to the U.S. Fish and Wildlife Service (1965), 12,635 acres were lost between 1954 and 1964. The following table spans 1954 to 1968 and separates the figures for Nassau and Suffolk.

Looking at the same time period (1954-1964), the Office of Planning Services estimated loss is 8,217 acres. For the purposes of this paper, it is immaterial which is the correct figure. It is enough to recognize the magnitude of the loss.

HISTORY OF WETLANDS LEGISLATION IN NEW YORK STATE

In an effort to stem the tide of wetlands destruction, various attempts have been made by the Environmental Conservation Department and others to exert some control over activities in wetlands.

Until passage of the Tidal Wetlands Act in 1973, New York State's regulatory jurisdiction over activities in tidal waters and wetlands was severely restricted. The Stream Protection Act of 1966 (now Section 15-0505 of the Environmental Conservation Law) required permits for all excavating or filling in or adjacent to navigable waters of the State, including contiguous estuaries, marshes and wetlands. However, according to O'Connor

Table 1. Declining acreage of salt marsh-meadows, Nassau and Suffolk Counties.*

County	1954	1959	1964	1968
Nassau County	14,130	11,911	9,495	9,462
Suffolk County	<u>20,590</u>	<u>19,208</u>	<u>17,008</u>	<u>12,930</u>
Total	34,720	31,119	26,503	23,392

* From Office of Planning Services (1972).

(1973), a reference to the State Navigation Law (Section 2, Subdivision 4) effectively nullified the Act on Long Island as Nassau and Suffolk Counties were thereby specifically excluded from the requirement.

Some protection was offered under Section 15-0503 which gave the Department the authority to review docks and dams without the Navigation Law restriction. In addition, the State had (and still has) input to the issuance of U.S. Army Corps of Engineers permits through the requirement of state water quality certification.

On the Federal level, the Corps of Engineers has regulatory responsibility over navigation channels and harbors. The basis for this responsibility to regulate the disposal of dredged or fill material is the Federal Water Pollution Control Act Amendments of 1972. Section 404 of that Act charges the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material in the waters of the United States. Initially, the Corps of Engineers limited its regulatory authority under Section 404 to waters which are presently used, were used in the past, or could be used by reasonable improvements to transport interstate commerce.

Limiting the Corps' authority under Section 404 to navigable waters of the United States was successfully challenged in the U.S. District Court for the District of Columbia. On March 27, 1975,

the Court directed the Corps of Engineers to extend its responsibility to regulate the discharge of dredged or fill material under Section 404 to all waters of the United States (including the territorial seas) and to revise its regulation accordingly. A proposed draft regulation was published in the Federal Register on May 6, 1975, for comment, and an interim final regulation was published on July 25, 1975, and became effective on that date.

Although annual attempts were made to remove the crippling Navigation Law reference from the Stream Protection Act, various lobbies always succeeded in defeating each such proposal. Ironically, Article 15, was finally amended effective September 1, 1975, deleting the reference to the Navigation Law. At present, with the Tidal Wetlands Act, the State in effect is given double coverage although specific provisions vary. For example, no consideration is given to adjacent areas in Article 15 while jurisdiction under Article 25 extends 300-feet landward of the upper limits of tidal waters or marshes. In addition, Article 15 addresses itself only to protection of waterways and marshes while Article 25 seeks to locate and classify wetlands as well as regulate them.

One law which had a noticeable effect upon wetlands preservation was former Section 11-2307 of the Environmental Conservation Law, commonly referred to as the New York State Long Island Wetlands

Act. This law and a similar Federal bill, U.S. Public Law 90-454, together provide for sharing the cost of managing, administering and developing of wetlands between Federal, state and local authorities.

Among the tangible results of this particular legislation has been the preservation of 10,500 acres in the Town of Hempstead, 550 acres in the Town of Islip, 5,000 acres in the Town of Oyster Bay and 300 acres in the Town of Brookhaven. All of the wetlands involved are owned by the local municipalities, and therefore would not be considered the most vulnerable to destruction. However, government at all levels is subject to many pressures and given the proper economic and political conditions, "unattractive" marshes could have been bartered away for higher priority programs.

To preclude this possibility, four towns with substantial wetlands holdings entered into cooperative agreements with the then New York State Conservation Department. State funds from the general fund were matched with monies from the townships and expended for wetlands improvement.

The Town of Oyster Bay was the first to take advantage of the Act by dedicating 500 acres in 1960. This land known as the Tobay Wildlife Sanctuary (changed in 1964 to John F. Kennedy Memorial Sanctuary) has hosted thousands of visitors. Also, it has served as a wintering area for waterfowl and provided a nesting ground for waterfowl and upland birds. Among the improvements completed under the Act are a system of trails and observation blinds, a paved access road and parking lot, culverts and water control structures, visitor booth, and observation tower. In addition, practices directly beneficial to wildlife such as the construction of fresh water ponds, boundary posting, tree/shrub plantings and other general habitat improvements have been completed.

An additional 4,500 acres of marsh

on the south shore of Nassau County was dedicated by the Town of Oyster Bay in 1967. This land in addition to being preserved as wildlife habitat is open to public hunting, fishing and boating and assures recreational opportunity for countless numbers of people in the future.

The Town of Islip dedicated a total of 550 acres on Captree and Sexton Islands in 1961. Since that time, the State has reopened a tidal creek that had been closed by improperly contained spoil from previous dredging operations, planted and fertilized 14,000 culms of dune grass to help stabilize the sand and constructed four fresh water ponds to provide nesting habitat for waterfowl and shore birds. Trees and shrubs beneficial to wildlife have also been planted on these islands.

In 1963 the Town of Hempstead dedicated 2,500 acres under the Act and in 1965 the area under agreement was increased to 10,500 acres.

The State has since assisted the Hempstead Town Department of Conservation and Waterways in the reclamation of former marsh areas that have been destroyed by the deposition of spoil from previous dredging operations and paid for a fishing pier on Reynolds Channel.

In addition, 300 acres of Mount Sinai Harbor was dedicated by the Town of Brookhaven to ensure the preservation of remaining natural areas in a harbor where dredging created vast damage. The Department of Environmental Conservation has been administering a management program over some of these areas since 1959.

While the Long Island Wetlands Act did much to enhance wetlands which were already at least partially secure, it did nothing to preserve privately-owned wetlands which in Suffolk County amount to a substantial 40% or 4,336 acres (Office of Planning Services, 1972).

Recognizing this deficiency, new legislation was proposed by various conservation lobbies, individuals and

governmental agencies soon after the loophole in the 1966 Stream Protection Act was noticed. Repeated attempts at passage failed, however, in the face of strong opposition from developers and local governments jealously guarding home rule.

Finally on June 22, 1973, the Legislature approved a bill submitted by the New York State Attorney General which became Chapter 790 of the Laws of New York to become effective September 1, 1973. The Law was inserted into the Environmental Conservation Law as Article 25 and was called the "Tidal Wetlands Act." A summary of its major provisions may be useful to the reader.

Effective September 1, 1973, the Long Island Wetlands Act (Section 11-2307) was repealed and its provisions were included in the new Tidal Wetlands Act (Article 25) as Section 25-0301.

THE TIDAL WETLANDS ACT OF 1973

Major Provisions

In the finding-of-fact preceding the Law itself, the Legislature declared that ". . . tidal wetlands constitute one of the most vital and productive areas of our natural world . . ." and that they must be preserved. The values of marshes include marine food production, wildlife habitat, flood and storm control, recreation, treating pollution, sedimentation, education and research, and finally open space and aesthetic appreciation.

The Act is divided into six major titles. Title 1 states that the short title of the Law shall be the "Tidal Wetlands Act." The next section, the declaration of policy, states the intention of the Act to preserve and protect wetlands giving ". . . due consideration to the reasonable economic and social development of the State." Included among the definitions of the next section are the various types of marshes and the vegetation which characteristically grows

upon them.

Title 2 calls for an inventory of all the State's remaining wetlands. In addition to generally describing how this is to be accomplished, Title 2 mandates a public hearing procedure so that any interested parties may question the inclusion or exclusion of a particular parcel. Should a person be aggrieved by any decision reached, he may seek judicial review under Article 78 of the Civil Practice Law. While the inventory is being compiled, a moratorium on wetlands development is prescribed. During this period, relief from the strict interpretation of the moratorium on wetlands alteration may be sought. In order to obtain a moratorium permit, however, the applicant must demonstrate, 1) that he will suffer a financial hardship if the moratorium permit is not issued and, 2) that the proposed alteration of the state of the tidal wetlands is not contrary to either the policy of the State to protect wetlands giving due consideration to the economic and social development of the State, or the provisions of the Act. If the applicant's proposed project meets these criteria, a moratorium permit may be issued. The permit procedure during this period is reviewed in depth in later sections to determine whether its provisions are actually being met. The regulations pertaining to this section, Part 660, Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Tidal Wetlands - Moratorium Permits must also be consulted when reviewing present procedures under the Act. These rules and regulations as well as the Act itself may be found in their entirety in the appendix.

Title 3, Section 25-0301 includes provisions for cooperative agreements between local governments and the State for the enhancement of wetlands. This section is the successor to the former Long Island Wetlands Act and perpetuates the policies of that law. The second

section of Title 3 requires the adoption of land-use regulations governing the uses of inventoried wetlands after the moratorium period. Placing regulations upon wetlands is deemed a restriction upon the property and assessments are to be adjusted accordingly.

Title 4, Sections 25-0401 to 25-0405 outline regulated activities on inventoried wetlands, establish a permit procedure and criteria which must be met in granting permits, allow judicial review of decisions, and establish a payment schedule for extractions from or filling in wetlands. Applicants requesting permission to dredge, excavate, or remove any natural substance from publicly-owned tidal wetlands are required to pay a non-nominal sum to the government body having jurisdiction over the area. Likewise, applicants seeking to place fill, dump, or deposit any substance upon a publicly-owned wetland must pay the governmental owner a non-nominal sum for that privilege.

Title 5 concerning violations and enforcement has been repealed and replaced by 71-2501 to 71-2507 while the final Title 6 covers miscellaneous provisions such as severability and the continuation of the State's power of eminent domain.

*Procedures During the
Moratorium Period*

At present (Spring, 1976) the moratorium period with its attendant rules and regulations remains in effect. During this period, the aerial photographs taken of all the State's tidal wetlands are being compiled and in some cases, verified by ground surveys. On each of the photographs, coastal areas are delineated and placed in one of seven categories: high marsh or salt meadow; intertidal marsh; coastal shoals, bars and mudflats; formerly connected tidal wetlands; dredge spoil; and littoral zone. The inventory, which was expected to be completed in 1975, remains incomplete due in part to technical

disputes between the contractor who interpreted aerial photography, Earth Satellite Corporation of Washington, D.C., and the Department (Taormina, personal communication).

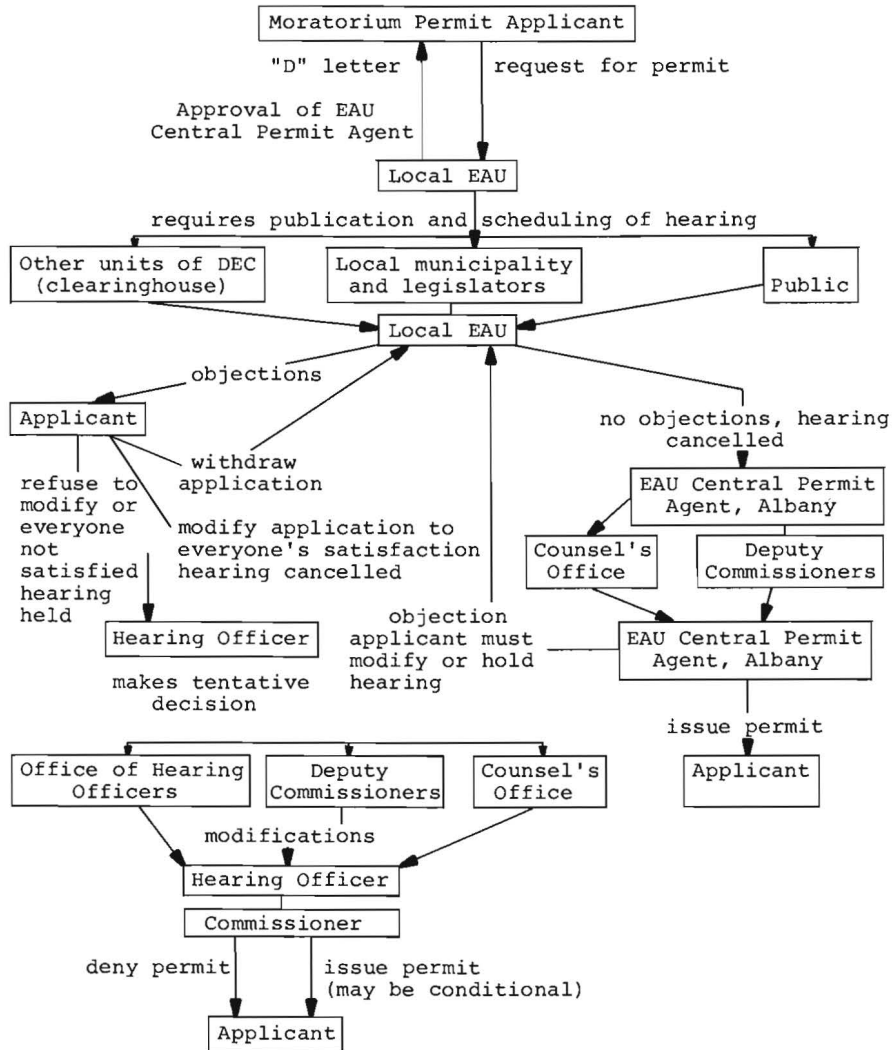
Presently, the final land-use regulations are being formulated and will become Part 661 of the Official Compilation. Hearings on these regulations are now scheduled for June, 1976. After adoption of the rules, another series of public hearings will be scheduled to consider acceptance of the maps themselves. The public will be invited to argue for or against the inclusion or exclusion of specific areas. Upon completion of the hearings, tentatively scheduled for August, 1976, the inventory will be finalized. At this point, the land-use regulations will become effective. It is proposed that the land-use regulations will describe compatible uses for each of the categories of inventoried coastal areas. The Department will then review projects to determine their compatibility and will process permits accordingly.

Until such time as the inventory is complete, it is the responsibility of the Department to maintain wetlands in their present state or permit development compatible with the statute, specifically Section 25-0202. Its methods and success or failure in meeting these standards will now be evaluated. Although tidal wetlands in any area of the State are subject to the Act, this paper is concerned with Nassau and Suffolk Counties, Region I of the Department of Environmental Conservation.

Before any evaluation can be made of the handling of permit applications to date, it would be helpful to review the procedure used in processing moratorium petitions. Figure 1 describes in outline form the possible routes an application may follow.

Shortly after the receipt of an application, an on-site inspection is made by personnel from the Environmental

Figure 1. Processing of moratorium permit applications.



Note: EAU = Environmental Analysis Unit

Analysis Unit. The inspector may then recommend one of two courses of action. If in his opinion, the proposed alteration is of an innocuous nature or is actually in an adjacent area to wetlands which is not necessary to preserve in order to effectuate the policies and provisions of the Act, he may recommend issuance of a letter of determination of non-applicability (called a "D" letter) to his superior, the local tidal wetlands

permit administrator. If the local permit administrator agrees with this determination, he must obtain the further approval of his superior, the central tidal wetlands permit administrator in Albany. If the latter concurs, the local permit agent forwards the letter to the applicant.

Each "D" letter issued contains an accurate description of the project and its location along with any restrictions on the proposed activity felt necessary

by the regional staff.

The issuance of "D" letters was instituted primarily to handle the many situations involving land which fell within the purview of the law but which could not have an adverse effect on wetlands. Even though the law applies to all shorelines, in most locations, such as the high bluff areas on the north shore and the ocean side of barrier beaches on the south shore, there are no tidal wetlands to preserve. Similarly, the Manhattan shoreline is almost totally bulkheaded and dredged to a depth which long ago eliminated any tidal wetlands which may have been present there originally.

In Section 660.1(c) of the Rules and Regulations, jurisdiction was granted over areas adjacent to wetlands themselves extending for a distance of "300 feet in any direction landward from the boundary of the tidal wetland or to an elevation of 10 feet above mean sea level, whichever is closer to such boundary." Three-hundred feet was arbitrarily chosen as a sufficient zone of control beyond which alterations would not be likely to affect tidal wetlands. Similarly, the 10 foot elevation limitation was chosen to remove bluff situations from jurisdiction since no tidal wetlands are likely to exist at such heights.

In particular cases, the Commissioner may extend jurisdiction beyond the usual areas if he determines that activities on the lands in question may cause an alteration to tidal wetlands. In only one instance has jurisdiction been extended beyond the normal 300 foot zone by a Commissioner's determination.¹

If an activity was in existence within the 300 foot line prior to September 1, 1973 no application has been required. There are too many such cases to make individual treatment practical. These activities included marinas, restaurants, commercial and industrial docks, tank farms, aggregate and solid

waste transfer stations and sewage treatment plants. Any changes made to pre-existing conditions, however, do require a tidal wetland application.

Other activities for which "D" letters have been issued are: 1) home construction in adjacent area, 2) repair or replace existing bulkheading in the same location, 3) redriving of piles which have been displaced over a winter, 4) repair to existing docks.

The authority for issuance of these letters abides in Section 660.3(c) of the rules and regulations. The mechanics of issuing "D" letters have changed as the program evolved.

Initially, the local agent would forward his recommendation in writing to the central agent in Albany. In 99% of the cases, the latter would concur and forward the letter to the applicant. As this procedure involved delays due to mailing and handling and was largely a rubber stamp operation, the system was streamlined to allow the local agent to issue the letters directly.

In October, 1975, several conservation groups complained to Commissioner Ogden Reid that the "D" letter system was being abused and was thereby allowing wetlands destruction. After a brief period during which all "D" letters were held in abeyance, a modified procedure was adopted whereby a deputy commissioner would review and approve "D" letters before their release. This responsibility was subsequently delegated once again to the central permit agent who authorized release by the local agent. This is the procedure in effect at the time of this writing. The processing time varies but is usually 1-3 weeks after receipt of the application, considerably less time than is required to obtain a permit.

Obviously, much is left to the discretion of the local agent in this "short form" procedure. As there is no requirement for public input, it has become one of the most objectionable features of

Tidal Wetlands administration to conservation groups and others who feel their participation is being precluded. However, the final sentence of Section 660.3(c) states "A person may petition the Commissioner for review of such determination." In the course of the program, this has occurred three times. After review by Albany, the decisions of the regional staff were upheld in all three instances.

As will be seen in later sections, the vast majority of "D" letters have been issued for home construction in the 300 foot area adjacent to tidal wetlands.

Should the project not be found to warrant a "D" letter, it must be processed for a moratorium permit. A requirement for acceptance is the demonstration of a hardship as set forth in both Section 25-0202(2) and 660.3(a). As defined in Section 660.1(h), a hardship is

". . . a condition unique and peculiar to the particular situation of the petitioner, which tends to impose a serious financial burden on the petitioner. Such condition shall not have been one created as a result of a voluntary act of the petitioner. The fact that an increase or decrease in the value of real property may result from the moratorium shall not be evidence of hardship."

Upon acceptance of the claim that a hardship exists, the petition is scheduled for a public hearing. Notice of the public hearing is given in two newspapers having distribution in the area of the proposed project. Normally, hearing notices are published three weeks in advance of the hearing date. Written notice is also sent to the chief officers and legislators of the municipality in which the project is located. Should there be any objections to the project by either outside parties-in-interest or the Department itself, the hearing is held.

Should there be no objections, or if the applicant is willing to make modifications to satisfy major objections, the hearing may be cancelled and a permit issued.

Assuming a hearing is held, the applicant bears the burden of proof that the proposed alteration is not contrary to the policy and provisions of the Act (Section 660.5).

After presentation of his case, the applicant may be cross-examined by parties-in-interest and/or the Department. Following this, the parties-in-interest present their reasons for opposition to or support of the project. They likewise may then be cross-examined. Finally, the Department testifies either for or against, or simply describes the area and the expected impact.

Upon completion of all testimony and receipt of the stenographic record (for which the applicant must pay as private recording services are used), the case is considered by a hearing officer who makes his written recommendations to the Commissioner. After review by several units in Albany, a decision is rendered either granting, denying, or modifying the applicant's request. Several modifications of this procedure are shown in the flow chart, Figure 1.

Should any person, objector or applicant, find the decision unacceptable, he may seek judicial review pursuant to Article 78 of the Civil Practice Law as set forth in Section 25-0202(3).

Having set forth the procedures, the actions of the Department will be examined on a township by township basis.

¹In TW 13034-0062, Presidential Sands Point, jurisdiction was extended to 1,000 feet from the landward edge of the tidal wetlands to permit the Department to review the road drainage system from the crest of a hill which slopes into the marsh.

REVIEW OF APPLICATIONS
AND TREATMENT

Table 2 describes categories of projects and the number of "D" letters issued for each. Government agency (State, county, town, village) and utility applications have been listed separately.

Table 3 describes categories of projects and the number of permits issued for each. Government agencies and utilities are again treated separately.

Table 4 summarizes the results of hearings scheduled.

1. *Hempstead*

Most of the remaining tidal wetlands within this Township belong to governmental subdivisions, the Township itself holding the largest segment (O'Connor and Terry, 1972). Most of the holdings are also subject to cooperative agreements between the Town and the State making them fairly secure (see previous discussion of Long Island Wetlands Act). The vast government wetlands holdings are reflected in the relatively great number of projects for which permits and "D" letters have been granted to governmental agencies. Of this group, only one resulted in wetland loss while another resulted in the creation of new wetlands yielding no net change. Most of the applications were for routine projects such as maintenance dredging and bulkhead/sea wall maintenance or repair.

Two activities by an electrical utility did not result in wetland loss.

In the private sector, a total of 34 permits and 52 "D" letters were granted. The single largest grouping was "D" letters issued for home construction or addition. In all instances, these involved previously bulkheaded and filled lots which had remained vacant. Perusal of inspection reports and personal inspections by the author revealed either the absence of wetland vegetation or only vestigial stands. Five permits were

granted for individual home construction. In all of these instances, large wetland tracts were located in close proximity to the proposed construction although the wetlands themselves were not directly involved.

The next largest category and the one which resulted in the greatest loss of "wetlands" is bulkhead/sea wall construction or repair. Approximately 1 1/4 acres were lost by permitted projects while an undetermined, negligible amount was lost through "D" letter projects. In all instances, wetlands lost were of the "fringe marsh" variety, which may be described as relatively narrow (2'-10') bands located at or near the intertidal zone exhibiting low species diversity and generally dominated by the salt marsh cordgrass, *Spartina alterniflora*. Fringe marshes of this type may be found on the few remaining unbulkheaded lots located upon man-made or once natural but subsequently dredged canals. The value of fringe marshes has frequently been argued among marine biologists. While they do perform some of the functions of larger wetland tracts, they also tend to slough off into adjacent deep water from wave action caused by wind and boat traffic and therefore cause navigation problems, collect floating debris, and generally offer scant protection to waterfowl and marsh birds (Johnson, testimony at public hearing for Town of Oyster Bay, 1974). Almost all of these areas have been excluded from the wetlands inventoried by O'Connor and Terry (1972). Total losses from permitted activities are approximately four acres, .05% of the total of almost 8,000 acres.

Conclusion

Hempstead Township is a long established, nearly population saturated area as indicated by its low growth rate (Bureau of the Census, 1970). Most of the mainland peninsulas extending into the northern part of the Hempstead Bay complex were originally wetlands but were filled

during the 1950's to as late as the 1960's (anonymous, undated), long before the protection offered by the Tidal Wetlands Act. The network of man-made canals used for mooring pleasure boats was largely constructed in the 1920's. Thus the main thrust of all tidal wetlands petitions to the State from this Township is of a maintenance nature based on pre-existing conditions. With a few notable exceptions, the Town's high-quality wetlands are found on undeveloped islands within the Bay. Indications are that they will remain unaltered.

A parcel of 104 acres, 75 of which are wetlands located in the Lido Beach area, was the subject of the first hearing held by the Department and, thus far, the one involving the greatest potential loss anywhere. Three applications for adjacent parcels were combined into one hearing process as their development was linked. The eventual denial of the applications has resulted in a judicial challenge to the constitutionality of the Law. This case when decided will undoubtedly have a great impact upon the future administration of the Law throughout the State.

Earlier residential development on the north side of the barrier beach in the Lido-Long Beach area has resulted in the loss of a large portion of the wetlands along Reynold's Channel. However, as undeveloped acreage still remains, the greatest pressures in the Town for shoreline home development can be expected here.

2. *Oyster Bay*

This is another of the older, well established areas on Long Island. Private wetland holdings total less than 50 acres (O'Connor and Terry, 1972), the remainder being owned by various governmental units. As with Hempstead, governmental applications account for a large percentage of the total of both "D" letters and permits and were largely for maintenance of

recreational facilities. Inspection of the files reveals that most project locations were devoid of marsh vegetation. Where marsh vegetation was present, permit conditions were imposed so that actual wetland losses totalled less than two acres.

The one utility application, for replacement of overhead electrical wires, did not impact any wetlands whatsoever.

The largest category of private applications was for repair or replacement of bulkheads. This again is an indication of the old, established nature of the Town. Relatively few permits and "D" letters were granted for home construction as little suitable, privately-owned land remains.

The area described as the "most valuable tidal marsh in Oyster Bay" by the Office of Planning Services survey (1972) is located at the northern end of Mill Neck Creek. Now owned by Nassau County, it is likely to be further enhanced by a proposed project to remove debris illegally dumped in past years.

Another project designed to preserve rather than destroy remaining wetlands was approved for the Oyster Bay Sewer District. Although only two acres of high-quality marsh are involved, their chances for preservation are enhanced by a program of slope stabilization.

Oyster Bay is unique among the towns of Nassau County in that it extends the entire width of Long Island and has coastline and wetlands on both the north and south shores. Most south shore wetlands are located upon marsh islands within South Oyster Bay which are almost entirely Town-owned and thus relatively secure from despoliation. Other wetlands are the fringe variety discussed earlier. In the few cases of south shore wetland involvement, fringe marshes are the type referred to in the inspection reports of the Department.

Two small (less than 10 homes) developments were constructed in the

Bayville area. One, involving the loss of approximately five acres of marsh, was largely complete before the effective date of the Act. Attempts to correct the situation after jurisdiction was granted met with little success although the case was brought to court (*NYS v. Unique Structures*). Sufficient conditions were imposed upon the other development to prevent any quantifiable wetland loss. Total permitted wetland loss amounted to less than two acres, .16% of the total acreage of 1,240 acres.

Conclusion

Wetland losses within the Township of Oyster Bay have been great in the past as a result of unregulated activity and intense population pressures. The situation now is relatively stable with a good chance that most remaining wetlands will be preserved in perpetuity. Some pressure for wetland residential development can be expected to occur on the north shore, especially in the Bayville area. Losses during the moratorium have been minimal.

3. North Hempstead

The smallest township in Nassau County also has the least marsh area. O'Connor and Terry (1972) catalogue a total of 131 acres within this north shore community. A proportionately small number of permits (10) and "D" letters (14) were issued. Of the two approvals given to governmental agencies, one proposal for road re-alignment would involve loss of two small low quality wetland areas totalling less than 1/2 acre. This project has not yet been implemented and may be stalled indefinitely by determined local opposition.

A permit issued for dredging of a commercial marina, involved expansion of a navigation channel and removal of less than one acre of marshland. An inspection of the area in question revealed another acre of *Spartina alterniflora* marsh

remaining. A discussion with the owner-operator indicated his original intention to remove all remaining marsh had been curtailed by the permit issued to him.

An area of wetlands omitted from both the surveys of O'Connor and Terry, and the Office of Planning Services is a moderate quality marsh on the western shore of Hempstead Harbor. The heavy usage this harbor has received from both industrial and recreational interests has taken its toll of the natural resources. The western shoreline is the site of a landfill and incinerator, public bathing beaches, sand and gravel operations, a small commercial marina, and privately-owned beaches. Over the years, many derelict sand and gravel barges have been permitted to accumulate near and upon marshes. Unfortunately, the Tidal Wetlands Act has thus far been ineffectual in obtaining their removal and they continue to be a source of ecological as well as visual pollution.

Total permitted loss of 1.5 acres amounted to 1.1% of the total wetland acreage of 131. The loss figure does not include another .25 acres lost by a violation. In this instance, fill was placed directly upon a wetland as a bed for a roadway. After payment of a \$1,000 fine and removal of most of the fill, the developer was permitted to leave a portion of the fill in place in the area of a proposed drain pipe with the understanding that it would have to be removed should permission not be granted following a public hearing. Although the application was denied, pending litigation has delayed the removal of the offending fill.

Conclusion

Only a small number of applications have been filed by private concerns. This may be due to the fact that most wetlands are located in high-income neighborhoods where individual holdings are large and the need to utilize wetlands nil. New construction in the 300 foot zone is also infrequent. Few requests for bulkhead

maintenance were made simply because little bulkheading exists (with the exception of Port Washington and vicinity).

4. *Huntington*

Relatively little activity has occurred within the jurisdiction of the Department. Governmental activity has been negligible, possibly due, at least in part, to the slow shoaling rate of the glacial harbors. Private maintenance dredging has only been requested three times. While permits were granted for these requests, two were substantially modified and reduced in scope after effective opposition was presented at hearings. Other boating-related projects involved maintenance of existing facilities and posed no threat to wetlands. Applications for home construction were few and all received "D" letters indicating a total absence of wetlands. The only observable permitted wetland loss, approximately $\frac{1}{10}$ acre in Lloyd Harbor, was 0.2% of the total wetland acreage of 577.

Conclusion

Several factors may have contributed to the low residential construction in Huntington. Much of the remaining undeveloped land (approximately 444 acres) within the Township is either owned by a governmental unit (Caumsett State Park, Crab Meadow) or is well above the 10 foot contour, placing it beyond Tidal Wetland Act jurisdiction. In addition, the privately-owned wetlands (133 acres) are largely located in high income, low density areas. The continuation of high mortgage rates, the scarcity of money for new construction and the nation's general depressed economic state plus sufficient buildable upland has slowed the demand for wetland development.

5. *Babylon*

Almost all of the high quality

marshes within this developed Township lie either on islands within Great South Bay or on the northern side of the barrier beach. Ownership of these islands is mixed. Some such as Cedar, Boxes, Ox, Carll's, Nezara's, Dock and many other small unnamed islands were purchased by the Town in 1962. Others are owned by the State or are scheduled for acquisition contingent upon the release of State funds. Portions of two islands remain privately-owned although it is extremely unlikely that they could ever be developed. To date, no applications have yet been made to develop these high-quality marshes. The Tidal Wetlands Act should be of great value in preserving what is generally regarded as a great natural resource.

While much of the waterfront property on the mainland has been developed, isolated lots and even a few larger tracts are potentially buildable. This is reflected in the records by permits granted for two developments of single family homes, and a "D" letter for condominiums. In addition, permission was granted for 24 individual homesites. Following a hearing, a permit was denied to construct a small residential development on one of the largest (4 acres) contiguous wetland tracts remaining on the mainland situated on Mud Creek. For all home construction, a total of two wetland acres was lost. These were of the "fringe" type in areas not listed in prior wetland surveys.

The great interest in pleasure boating within the Township has resulted in another sizable number of applications for dock and bulkhead construction by individuals and governmental units (44), and municipal maintenance dredging projects (4). Curiously, few private applications for maintenance dredging were made indicating either much illegally conducted activity, adequacy of municipal projects, or little need. The latter is not likely.

Many of the governmental applications

(7) stem from the fact that sewers are being installed in this area as part of the Southwest Sewer District. Laterals and mains often are routed under tidal waters, each requiring an application. Although these may sometimes pass through fringing marshes, the nature of the installation indicates that regeneration will occur within 1-2 years after back-filling assuming proper grades are restored.

Of the total wetland acreage of approximately 2,500 acres, 2 acres or .08% have been lost through permitted activities.

Conclusion

As most wetland acreage on the mainland has already been filled for development, pressure is now centering on extension of land by filling in the shallow littoral zones of Great South Bay. Although not marshlands, these areas are of great value to the overall productivity of the Bay and should be maintained. Protection is granted under the Tidal Wetlands Act and three such applications have thus far been denied.

6. Islip

In some respects, Islip can be considered similar to its neighboring township of Babylon in terms of wetlands and permit applications. Although not nearly as extensive as Babylon's, Islip does contain several marsh islands within Great South Bay. Also less extensive are the wetlands on the northern side of the barrier beach (Fire Island). Unlike Babylon, wetland acreage on the mainland is substantial, a large segment belonging to various levels of government (153 acres within Heckscher State Park, 25 acres in Hollins Memorial Town Beach and Park, and 50 acres on the Connetquot River belonging to the State).

Other wetland parcels including several large former estates are privately owned and thus potentially vulnerable.

Whether development plans are being held in abeyance by the Tidal Wetlands Act is difficult to say but, to date, no applications have been made. The estates of Scully and Webster have been deeded to the Audubon Society and are considered safe from destruction.

Unlike the western portion of the Township, the eastern end, containing sizable wetland acreage, is privately-owned and potentially vulnerable to residential development. An application of this nature in Oakdale requested permission to fill approximately three acres of mixed *Spartina-Phragmites* marsh for construction of eight homes. The denial of the permit was tested and upheld in court. The largest portion of "D" letters issued (43), was for individual home construction, primarily in the eastern half of the Township. If wetlands were present on these lots at all, construction was planned to avoid disruption of them as there were no measurable losses indicated in the records.

The needs of pleasure boating accounted for a major portion of both private and governmental applications, four being made by the Long Island State Park Commission at Heckscher State Park alone.

A large segment of the Town is to be served by the Southwest Sewer District accounting for several more governmental permits (5) for installation of laterals and mains beneath tidal waters.

Of the total estimated wetland acreage of 1,414, less than one-half acre has been lost through permitted activities.

Conclusion

The eastern portion of the Township, being the least developed, will be the site of most pressure for residential construction. The development of the large former estates will most likely result in little additional wetland damage due to the requirements of the many agencies exerting jurisdiction.

7. *Smithtown*

Wetlands within this north shore community are located in Sunken Meadow State Park, along the Nissequogue River, or within Stony Brook Harbor. As much of the coast facing Long Island Sound is either government-owned (State and Town) or high bluffs (and therefore beyond jurisdiction), the only activities involving wetlands occurred on the Nissequogue River or Stony Brook Harbor. As may be seen from Table 4, the level of activity was the lowest for any township in Nassau or Suffolk. Only two applications, both for projects on the Nissequogue River, had any potential for wetland loss. Decisions are still pending for both of these.

Home construction in the coastal areas of Smithtown has been minimal. Probable reasons for this are similar to those for other north shore townships to the west.

One area in Smithtown which does not fit this pattern is San Remo, a community of middle income homes on the Nissequogue River. Thus far, only one application has been made but pressure for residential development in this area can be expected to increase in the future.

An extremely controversial plan to dredge the mouth of Stony Brook Harbor has been held in abeyance pending resolution of local differences. Although no marshes would be directly removed by the project, the potential for altering tidal patterns and thus tidal marshes exists as the proposal involves deepening the channel substantially beyond existing depths.

Of the 67 acres of wetlands, permitted activities accounted for .1 acre or .01% loss.

Conclusion

Little direct pressure has been exerted upon wetlands in this Town. It is likely that the San Remo area will be the only site of increased residential

activity where a potential for damage exists. The creation of a deeper Stony Brook Harbor could increase pressure by boating interests for more marinas in this area containing 210 acres of high-quality marshland.

8. *Brookhaven*

The largest in area of the 10 townships of Suffolk County and larger than all Nassau County combined, Brookhaven has extensive shoreline on both the north and south shores of Long Island. The present population is large and, as a township, Brookhaven is growing at a rate faster than any other on Long Island according to the 1975 interim census taken by the Town. Reflecting this is a concomitant number of applications.

Extensive wetlands are located on the north and south shores of the mainland as well as on the northern side of the barrier beach. Of the 2,860 acres of wetlands listed by O'Connor and Terry (1972), 20% or 555 acres are privately-owned and potentially vulnerable to destruction. In an area of burgeoning growth, pressures for their development can be expected to increase.

Predictably, the greatest number of applications were for home construction, both single and multiple-home developments. Several additional applications were made for filling lots in residential areas, preliminary work for eventual home construction. According to the inspection reports of the Department, several of these lots contained some wetlands but construction was restricted to upland portions. Thus, while some loss undoubtedly has occurred during construction, this has been kept to a minimum (less than one acre). Of the three applications denied, all involved home construction on wetlands.

Utility applications were more numerous than for any other town in Suffolk due to the presence of two

Long Island Lighting Company installations, Port Jefferson and Shoreham. Although the Shoreham plant lies adjacent to 184 acres of high-quality marsh in Wading River, direct impact has been small. All of the utility applications filed thus far have concerned maintenance and have caused no wetlands loss.

Having harbors on both shores makes both commercial and pleasure boating an important consideration in Brookhaven Town. Applications relating to boating (i.e. docks, maintenance dredging, bulkheads) constituted 44% of all applications filed by private concerns and governmental units. Due to the presence of fringe marshes in some of the proposed bulkhead locations, these projects accounted for the largest wetland loss, about two acres. Permitted wetland losses amounted to .1% of total resources or three acres.

Conclusion

Much of the home construction within the Town has been centered in the Moriches-Mastic-Shirley area. Land has become available by the demise of duck farms in the vicinity. Due to concentrations of duck sludge, these wetland areas cannot be considered of highest quality but they still remain worthy of preservation.

Although Brookhaven has grown dramatically in the last 10 years, much open space remains. As more suitable land is developed, wetlands will be increasingly viewed as potential homesites. Fortunately, several of the large estates with wetlands (Wertheim, Floyd, Nicholls) have been preserved by deeding to governmental agencies or private conservation groups.

9. Riverhead

Though wetlands within the Township total only 284 acres (O'Connor and Terry, 1972), all but 2.8% is privately-owned. While the population increase has not been as dramatic here (11.2% increase from 1970-1975) as in some of the other eastern

towns, it is showing a steady increase. As most property is within the means of middle income groups, property, especially waterfront property, may well become a highly sought after commodity. For the present, however, activity as reflected by Tidal Wetland applications is at a low level. Boating related projects, private and government, were most requested and constituted 50% of the 50 applications filed. The next most common request was for home construction accounting for 5% of the total. Only two of the requests submitted involved wetlands and neither one resulted in any measurable loss.

Conclusion

As duck farm operations become less profitable, sale of the land for development becomes more attractive. One such situation has occurred in the Aquebogue area. In this instance, the condominiums planned for the site will be well back from the marsh areas. Plans are being held in abeyance pending further negotiations between the present owner and the developer.

A trend toward condominiums in marginal areas such as this is often a sensible alternative to single home development. Facilities for housing and boating can be concentrated and other more natural areas remain as open space.

10. Southampton

Although the population growth rate was not as high for Southampton as it was for neighboring Brookhaven and East Hampton, the number of Tidal Wetland Permit applications far exceeded both of these and all other towns in both counties. The threat of wetlands development is perhaps greatest here as only a negligible amount of the Town's nearly 2,000 acres are owned by government or conservation groups. Substantial tracts of high-quality wetlands are scattered throughout the Town, from the north shore of the barrier beach to the North Haven

peninsula.

While most of the waterfront property within the Township is extremely high-priced, this fact evidently has not deterred many people from seeking home-sites there, judging by the number of applications for this purpose. One-hundred and seventy-eight applications or 51% of the total number were requests for home construction. While some of these homes are constructed for year-round habitation, many others are intended for summer use only in this Town where the population triples in the summer. Although it can not be determined from the tables, a review of individual records indicated that a large number of these sites were located in Westhampton Beach in areas devoid of wetlands, including the ocean front. Thus a large number of determinations were made that no permit was necessary. By no means, however, were all requests so innocuous. Of the five petitions denied, three would have caused the destruction of several acres of wetland for home development. In addition, many of the 19 applications withdrawn posed potential threats to Westhampton's wetlands. The owners of several large parcels on the bay side of Westhampton are waiting until the completion of the Tidal Wetlands inventory at which time they intend to either force sale of the property to the State or test the constitutionality of the law.

Although in an old established community, development of remaining vacant lots in Sag Harbor would result in wetland losses if not regulated. Home construction around Upper Sag Harbor Cove has thus far been restricted to adjacent uplands. Much valuable *Spartina alterniflora* fringes the cove and has been the target for illegal filling activity.

To the north lies the North Haven peninsula described in the Office of Planning Services report as having an almost continuous marsh-meadow complex around the entire perimeter. While no

permitted losses have occurred during the moratorium, upland development is encroaching on the coves in the northwest corner. With proper control, these high-quality marshes will not become another boat basin.

Although dwarfed by the number of petitions for home construction, applications for boating-related projects were extremely numerous. In most instances, proposed construction techniques were such that surrounding marshes were minimally disrupted. A maximum loss of one acre occurred as the result of pier and/or bulkhead construction.

Maintenance of navigation channels in the many creeks and inlets of the Town accounted for the large (10) number of governmental requests for maintenance dredging. As they frequently involve minimal dredging only at creek mouths with spoil deposition upon adjacent beaches, little or no lasting adverse effects accrue upon the marshes within the estuary. Permitted wetlands losses are estimated to be two acres or .1% of the total.

Conclusion

The trend toward increased home development can be expected to continue for several years; an abundance of land and Southampton's reputation as a second home for the wealthy are the attractions.

11. Southold

Approximately 1,000 acres of wetlands are situated within this Township (O'Connor and Terry, 1972). With the exceptions of Town Creek and Jockey Creek, most are of high quality and are potentially vulnerable to destruction as they are privately owned.

The greatest attraction of the Town is as a retirement community. Much of the population increase (12.3% from 1970-1975) has been due to this steady influx of retired persons (Southold Town Clerk, personal communication). This increase has created a demand for more housing

which is apparent in the large number of petitions for home construction (99 or 47.3% of the total).

Mattituck Inlet is the only significant wetland-harbor complex on the north shore. Although greatly damaged in the past by dredging and poorly planned spoiling, no significant changes have occurred within the past four years.

Most activity is occurring on the south shore of the Township, precisely the location of most of the high-quality marsh areas.

An application to dredge an access channel into the Conklin Point area was denied. Approval of this application could have resulted in the ultimate loss of eight acres of high-quality marsh by making this restricted area accessible to boats.

While seven other governmental requests for dredging were approved, work consisted of the restoration of pre-existing conditions. No wetland losses should occur in such cases if spoils are placed in accordance with permit specifications.

An application to construct a marine science center by Suffolk County Community College was approved in the little developed Cedar Beach Creek area. Development of this sort will serve as protection from residential encroachment.

The Bayview peninsula has been an active home building area for the past several years. As there is a good deal of upland in close proximity to the water, homes have been restricted to these areas and most wetlands preserved.

Peter's Neck in Orient, the area described as the "largest and most valuable wetlands in Southold" by the Office of Planning Services survey (1972), has not been the site of any permitted activity although a County application to dredge is being held in abeyance.

When considering Southold Township, one must not overlook Fisher's Island. Although a discreet unit closer to

Connecticut than to Long Island, it is an integral part of Southold for administrative purposes. Wetlands are small and scattered throughout the island with total acreage estimated at 43 acres. There have been six petitions for projects on the island, five of which are for homes located in the Hay Harbor and West Harbor regions. While all of these are located in adjacent upland areas, incidental filling for driveways, yards, etc. resulted in the loss of approximately one-half acre of wetlands.

Another island within this Township is Robin's Island, separating Great Peconic and Little Peconic Bays. Until the present, the entire island has been owned by a series of individual owners. The present owner, however, is negotiating the sale of the island to developers who plan to erect 52 homes. Tentative plans do not call for disruption of the island's 19 acres of wetlands located primarily on the northwest corner although they have been called "an ideal site for a marina" by one of the prospective buyers.

Of the total wetlands resource within Southold Township of 1,094 acres (O'Connor and Terry, 1972), an estimated two acres have been lost through permitted activities.

Conclusion

Little significant loss has occurred during the moratorium. Continued pressures for residential development and increased access for boating have constituted a constant threat to the high-quality marshes.

12. Shelter Island

The highly irregular shore line of the Island possesses many creek-marsh systems of high quality. While some of them have been sites of intense development in the past (i.e. Smith Cove), many others remain in near-natural condition. There has been little activity to degrade the quality of the Island's waterways and

creeks since the inception of the Tidal Wetlands Act.

Only 12 requests for home construction or addition have been made. Although it cannot be determined from Tables 2 and 3, several of these are for small additions to existing homes with no expansion of sanitary facilities. Of the new homes, most are concentrated in the Dering Harbor area. In addition they are, without exception, not impinging upon the wetlands which fringe much of the harbor.

Much of the dock and bulkhead activity, the largest category of applications, has also centered on Dering Harbor. Most work has been maintenance of existing structures, many of which are elevated structures over fringing marshes. Most applications for new work have also adopted this more environmentally acceptable alternative.

The most controversial applications have been governmental requests for maintenance dredging. Applications were made to dredge West Neck Creek, Crab Creek, and Dickerson Creek, all described in the 1972 Office of Planning Services study as high-quality creeks with extensive marshes. To mitigate potentially damaging effects and yet to improve admittedly poor navigation conditions, two of these projects were revised downward in scope and more ecologically acceptable spoil sites (sandy beaches) agreed upon. The request for dredging the third site, Dickerson Creek, was withdrawn as no viable alternatives could be offered and little need for the project could be demonstrated.

Conclusion

Of the 279 acres of wetlands on the Island (O'Connor and Terry, 1972), there have been no measurable losses within the moratorium period due to permitted activities. Continued vigilance is required to keep home construction from damaging wetlands, most of which are privately owned and potentially vulnerable.

13. East Hampton

Although almost half of the 1,224 acres of wetlands within the Township are owned by various levels of government, the remainder are in private hands and potentially threatened with development.

The year-round population of East Hampton is relatively small, 13,053 in 1975 (Long Island Lighting Company data) when compared with its relatively large area of 70 square miles. In the summer, however, the population triples as tourists, vacationers and second-home owners take advantage of the several miles of beachfront and other primarily water-related activities.

By far the most common application has been for home construction (66) and the preliminary stage of filling of residential lots (15). Development has concentrated primarily on the north shore of the Township, especially in the Three Mile Harbor-Fireplace area. At the time of the Office of Planning Services survey (1972), a great deal of shoreline had already been bulkheaded, filled or otherwise altered on the eastern and southern sides of Three Mile Harbor. The encroachment mentioned at that time on the northern and western shores which still contain substantial fringes, has continued but remains in upland areas. None of the wetlands, although subdivided, have yet been the subject of an application. Also in the Three Mile Harbor area, many permits have been granted for maintenance of existing channels and marine facilities, none of which has encroached upon wetlands.

Accabonac Harbor, containing 275 acres of high-quality marshes has been another focal point for home development. While most development has been confined to adjacent upland areas, there has been some direct loss of high marsh around this estuary. A limiting factor of home development in this area is the short supply of potable ground water especially during peak summer vacation periods.

Maintenance dredging by the County has been limited to the existing channel on the southern side of the harbor, an area already extensively used for recreational boating.

While activities in the remainder of the Township have occasionally been in the proximity of wetlands, no measurable losses have occurred. Along the ocean front on the south shore, interest has been centered about either beach maintenance or storm protection. Lake Montauk, intensely utilized by commercial and recreational boating interests, has little remaining natural edge except for the south side. While some residential development has taken place in various locations around the Lake, most activity

was restricted to maintenance projects in the highly commercial northern end.

Conclusion

Assuming East Hampton, especially the Montauk area, maintains its reputation as a center for sport and commercial fishing, continued pressure for expansion of support facilities can be expected. Already, Fort Pond Bay, an open, high-quality and little developed area has been the site of a request to construct a marina. Although almost devoid of marsh vegetation, the primary concern of the Tidal Wetlands Act here should be maintenance of water quality.

The total permitted loss has been approximately three acres or .24% of all the Town's wetlands.

Table 2. Issuance of "D" letters, by township

Home construction or addition	Bulkhead, sea-wall replace/repair or above MHW	Dock replace/repair	Government or utility	Other (Non-government)
<u>Hempstead Town</u>				
34	6	6	Nass. Co. Mosq. Contr. ditch maintenance	2 maint. dredge
			LILCO coal storage	place mooring buoys
			Village of Lawrence bulkhead repair	2 filling lots
			2 Town bulkhead repair	condominium construction
			Village of Lawrence berm construction	
			Nass. Co. Parks place mooring buoys	
			2 Town wildlife sanctuary maintenance	
			Town demolish 2 shacks	
			NCDPW reslope beach	
			LISPC bicycle path	
			LISPC fill near bridge	
			NYSDEC dredging	
<u>Oyster Bay</u>				
9	17	2	LILCO replace overhead wires	road construction
			Village of Bayville park construction	3 filling lots
			Town repair parking lot	fence construction
			Town Water Dist. install pipes	storm drain construction
			Village of Bayville install water main	
			2 Town reconstruct beach pavilion	
			NCDPW replace culvert	
			Town replace culvert	
			Town replace eelgrass pens	
			Town construct 4 ponds	

Table 2. (cont.) Issuance of "D" letters, by township

Home construction or addition	Bulkhead, sea-wall replace/repair or above MHW	Dock replace/repair	Government or utility	Other (Non-government)
<u>North Hempstead Town</u>				
4	5	1	NCDPW regrade beach	maint. dredge commercial construction 2 filling lots construct marine railway
<u>Huntington Town</u>				
21	7	6	Village of Lloyd Harbor replace 2 pilings LILCO maint. dredge Town bulkhead repair	resurface parking lot extend boat ramp fill for driveway construction of stores
<u>Babylon Town</u>				
24	17	11	Village of Amityville boat ramp repair Town const. rest rooms Village of Amityville rebuild park 2 SCDEC sewer projects Town maint. dredge Village of Lindenhurst install water pipes	condominium construction maint. dredge filling lot
<u>Islip Town</u>				
43	7	1	SCDPW bulkhead repair Town buoy clam area	repair bridge 5 maint. dredge regrade beach road const. repair tennis court install septic tank filling lot install fuel tanks

Table 2. (cont.) Issuance of "D" letters, by township

Home construction or addition	Bulkhead, sea-wall replace/repair or above MHW	Dock replace/repair	Government or utility	Other (Non-government)
<u>Smithtown Town</u>				
4	3	1	Town oyster culture	filling lot on LIS swim pool const. home devel. on LIS drainage ditch backfill bulkhead
<u>Brookhaven Town</u>				
80	24	3	6 Town bulkhead repair 2 Town maint. dredge Town install drain pipes Village of Port Jefferson build park building Town road construction Village of Shoreham regrade beach Village of Patchogue replace pilings	15 maint. dredge regrade beach repair cesspool reslope cliffs on Mt. Sinai Harbor repair parking lot fill for driveway const. parking lot 2 restaurant const. road const. 9 filling lots install drainage pipe const. boat ramp 2 drainage trench const. commercial building
<u>Riverhead Town</u>				
10	7	0	2 Town repair boat launch ramp 2 Town maint. dredge	4 filling lots regrade beach const. stairs on LIS

Table 2. (cont.) Issuance of "D" letters, by township

Home construction or addition	Bulkhead, sea-wall replace/repair or above MHW	Dock replace/repair	Government or utility	Other (Non-government)
<u>Riverhead Town (cont.)</u>				
				2 maint. dredge road const.
				2 commercial const.
				const. drainage channel
<u>Southampton Town</u>				
163	56	15	SCDPW groin repair	15 maint. dredge
			Village of Westhampton Beach repair boat ramp	10 filling lots
			Town bulkhead repair	9 swim pool const.
			Town maint. dredge	tennis court const.
				2 regrade beach
				9 commercial const.
				condominium construction
				scientific exper.
<u>Southold Town</u>				
92	22	19	Suff. Co. Mosq. Contr. ditch maint.	10 maint. dredge
			Orient Mosq. District ditch maint.	2 filling lots
			SCDPW repair bulkhead	commercial const.
				2 groin repair
				repair dikes on duck farm
				swim pool const.
				road const.
				fence const.
<u>Shelter Island Town</u>				
12	5	33	2 Town maint. dredge	maint. dredge
			Town road maint.	3 filling lots
				groin repair
				pond restoration
				road const.

Table 2. (cont.) Issuance of "D" letters, by township

Home construction or addition	Bulkhead, sea-wall replace/repair or above MHW	Dock replace/repair	Government or utility	Other (Non-government)
<u>East Hampton Town</u>				
59	18	11	2 SCDPW bulkhead repair Town maint. dredge 3 Town repair dock	5 Maint. dredge 2 swim pool const. 15 filling lots 10 commercial construction

Table 3. Issuance of Tidal Wetland permits, by township

Dredging	Bulkhead, sea-wall construction or repair	Dock repair or construction	Government or utility	Other (Non-government)
<u>Hempstead Town</u>				
2	19	4	Town maint. dredge	2 filling lots
			Village of Lawrence bulkhead const.	5 home const.
			LILCO install gas turbines	residential development
			NCDPW install drain pipes	restaurant construction
			2 Town place rip-rap	
			2 Town install drain pipes	
			City of Long Beach maint. dredge	
			Town bulkhead const.	
			Village of Freeport maint. dredge	
<u>Oyster Bay Town</u>				
2	8	1	3 Town regrade beaches	2 residential develop.
			City of Glen Cove bulkhead and dredge	road const.
			2 Town drainage pipe installation	home const.
			3 Town bulkhead const.	construct tennis court
			Village of Bayville dock construction	2 filling lots
			Town maint. dredge	
			NCDPW maint. dredge	
			NCDPW road maint.	
<u>North Hempstead Town</u>				
2	2	2	NCDPW filling for road straightening	filling for building
<u>Huntington Town</u>				
2	0	3	Village of Lloyd Harbor filling	filling for home
			Town marina const.	

Table 3. (cont.) Issuance of Tidal Wetland permits, by township

Dredging	Bulkhead, sea-wall construction or repair	Dock repair or construction	Government or utility	Other (Non-government)
<u>Babylon Town</u>				
0	8	3	Town install drain pipe	2 residential developments and bulkhead const.
			4 SCDPW maint. dredge	filling for home
			2 Town bulkhead const.	road const.
			Village of Lindenhurst bulkhead maint.	
			5 SCDEC install sewers	
			Village of Amityville park const.	
			Village of Babylon install pilings	
<u>Islip Town</u>				
3	19	5	LISPC boat ramp and bulkhead const.	groin const.
			2 LISPC maint. dredge	2 filling lots
			Village of Ocean Beach install sewer diffuser	
			5 SCDEC install sewers	
			5 Town maint. dredge	
			3 SCDPW maint. dredge	
			Town bulkhead const.	
			SCDPW install rip-rap	
			Town replace pilings	
			SCDPW repair bulkhead	
			LISPC install drain pipe	
			LISPC repair docks	
<u>Smithtown Town</u>				
0	0	0	Town replace bulkhead	
			SCDPW rebuild Landing Avenue bridge	
			Town const. boat ramp	

Table 3. (cont.) Issuance of Tidal Wetland permits, by township

Dredging	Bulkhead, sea-wall construction or repair	Dock repair or construction	Government or utility	Other (Non-government)
<u>Brookhaven Town</u>				
6	16	8	NYSDEC rip-rap Old Field Point	install travel-lift
			LILCO replace dolphins	home and driveway construction
			LILCO maint. dredge	regrade cliffs on Mt. Sinai
			LILCO install rip-rap	residential development
			Town construct boat ramp	home const.
			Town dig drainage basins	
			4 Town maint. dredge	
			3 SCDPW maint. dredge	
			Town construct marina	
			U.S. Park Service create marsh from spoil	
			Town rebuild groin	
<u>Riverhead Town</u>				
1	6	2	Town replace bulkhead	2 groin const.
			N.Y. Telephone install submarine cable	filling of lot
			4 SCDPW maint. dredge	
			Town const. boat slip	
<u>Southampton Town</u>				
4	10	13	9 SCDPW maint. dredge	10 home const.
			N.Y. Telephone install submarine cable	filling old boat slip
			SCDPW filling	commercial const.
			SCDPW const. travel-lift	11 filling of lots
			Village of Sag Harbor replace pilings	groin const.
			Village of Sag Harbor rebuild bulkhead	

Table 3. (cont.) Issuance of Tidal Wetland permits, by township

Dredging	Bulkhead, sea-wall construction or repair	Dock repair or construction	Government or utility	Other (Non-government)
<u>Southold Town</u>				
5	11	10	7 SCDPW maint. dredge	8 home const.
			SCDPW construct boat ramp	3 groin const.
			Suff. Co. Building Dept. const. marine sci. ctr.	construct ferry ramp
			NYS DOT maint. dredge	const. ferry slip
<u>Shelter Island Town</u>				
2	3	2	Town road repairs	3 groin const.
			2 SCDPW maint. dredge	
<u>East Hampton Town</u>				
3	3	4	Town repair dock	5 groin const.
			SCDPW replace bulk-head	7 home const.
			2 SCDPW maint. dredge	filling of lot
				const. boat ramp

Table 4. Results of hearings scheduled, by township (to March 4, 1976)⁹

Township	Hearings cancelled (may include modifications)	Hearings held			Withdrawn ¹	
		Approved as submitted	Decision pending	Denied Modified		
Hempstead	41	3	3	6	6	8 ²
Oyster Bay	22	5 ³	2	1	4	10 ⁴
North Hempstead	3	2	0	4	3	2
Babylon	29	2	5	1	3	5
Smithtown	1	0	3	0	0	3
Brookhaven	52 ⁵	1	4	3	4	5
Southold	52	1	4	3	4	13
Southampton	58	0	4	5	4	19 ⁶
Riverhead	16	0	2	0	2	2 ⁷
East Hampton	25	2	2	0	0	3
Shelter Island	13	0	0	0	0	1
Huntington	7	4	2	1	1	6
Islip	44	0	4	1	4	3 ⁸
Bi-Township	1					
Total	364	20	35	21	35	79

¹Includes applications withdrawn before or after hearing. Reason usually failure to publish.

²Includes 1 postponed.

³Includes 1 determination that no permit was necessary after hearing held.

⁴Includes 2 postponed.

⁵Includes 1 hearing cancelled after approval by regional staff but disapproved by Albany.

⁶Includes 1 postponed.

⁷Includes 1 postponed.

⁸Includes 1 postponed.

⁹Totals may vary slightly from those given in Tables 2 and 3 as the compilation was made at a later date. In addition, some files were not available for inclusion in Tables 2 and 3.

VIOLATIONS AND COURT ACTIONS

As the law was originally written, violations of the Tidal Wetlands Act were treated in Title 5, Sections 25-0501 to 25-0503. Although violations were first classified as criminal misdemeanors, they were in fact a lesser offense termed a violation since, according to the New York State Penal Law, Section 10.00(4), a misdemeanor must have a provision for prison sentences which this Act lacked. However, the appearance of the word "misdemeanor" in the statute proved to be a mixed blessing in obtaining compliance.

As many individuals were reluctant to plead guilty to a criminal offense and possibly (at least in theory) carry a criminal record, they chose to go to court to contest the charges. As a result, some cases went to court and were subsequently lost by the prosecution which otherwise might have been satisfactorily disposed of in out-of-court settlements.

To remedy this deficiency, Title 5 was repealed and was replaced by Section 71-2501 to 71-2507 which became effective July 9, 1975. The new sections permit administrative actions by the Department itself with penalties ranging up to \$3,000

plus restoration of the area with no criminal reference. Prior to this change, all cases were referred to the Attorney General of the State of New York. If the case cannot be resolved by the Department itself, it may still be forwarded to the Attorney General for formal court proceedings where civil or criminal sanctions and restoration may be imposed.

Before reviewing the summary of cases given in Table 5, some background should be given concerning their handling and disposition.

Not all of the cases shown involve different and distinct offenses. At the time of the violation, the conservation officer may cite the company or corporation doing the work, equipment operators, owners of the property involved or any combination of these. Should the owner or operator be a governmental unit, the chief officer of that government as well as those directly involved may be held responsible.

Under the new sections, cases which are forwarded to the Attorney General's office (Bureau of Environmental Protection), are assigned to one of seven assistants and are treated either civilly or criminally. Verdicts in the criminal part can be an acquittal, conviction or an adjournment in contemplation of dismissal (ACOD). In the latter, the case is temporarily dismissed and is dropped at the end of six months if no subsequent offenses occur. Should the same defendant be charged with another offense, he is then tried on the original as well as the second offense. In the civil part, a conviction or guilty plea can result in injunctive relief of the situation, restoration, fines or any combination of these.

In Table 5, the type, location and disposition of each case referred to the Attorney General is given. As names are not important for the purposes of this paper, they have been omitted.

Table 6 summarizes the cases handled by the Department in administrative

actions.

It is not possible to accurately determine the total wetland acreage lost as a result of these unpermitted activities. In some instances, the project would have been acceptable had permission first been sought. In these cases, only fines were levied. In others, actual damage to wetlands was done in which case restoration was sought. Occasionally, where restoration was no longer feasible, the status quo was maintained. Here, irreversible wetland losses occurred. From personal inspections and records, an estimate of 10 acres within this category appears within reason. Individual losses were quite small.

Violations are detected in several ways. Most often, a neighbor or interested party will call the Department to determine if a particular project has received proper authorization. Environmental Conservation officers patrolling in the field are also instructed to investigate activities to determine if permits have been issued. Other Department personnel, especially from the Environmental Analysis Unit, routinely discover unpermitted activity in the course of normal field work.

There does not appear to be any particular pattern to violations as they have occurred throughout the extent of Nassau and Suffolk Counties. With the enactment of the new Section 71-2501, a more expeditious procedure for dealing with them has been created. In the past, delays associated with case preparation and court appearances often resulted in time lapses of over one year from initial violation to resolution. From an environmental standpoint, this was damaging as the probability of marsh regeneration varies inversely with the time fill is in place.

Under the new provision, violations have been resolved in as little as two weeks. Assuming proper fill removal techniques are employed, excellent results

can be expected for the restored marshland.

In addition to proceedings resulting from violations, there have been four challenges to decisions made by the Department to deny permits under Article 78 of the Civil Practice Law and regulations. As a result of these judicial reviews, two decisions have been upheld and two are pending. In addition to contesting the

decision, two of these suits and another involving unauthorized activity never submitted for approval raise the question of the constitutionality of the Act itself. As the law deals with regulation of land, both private and public, it is appropriate to examine this law and the "taking" or confiscation issue.

Table 5. Tidal Wetlands Act violations forwarded to the Attorney General. Bracket indicates associated cases.

	Type of Prosecution	Against	Offense	Location	Disposition
1.	criminal	owner	dredge & fill	Shelter Island	pending
2.	criminal	town	bulkhead const.	Riverhead	dropped
3.	criminal	contractor	bulkhead const.	Riverhead	\$250
4.	criminal	contractor	filling for home const.	Setauket	acquitted
5.	criminal	owner	filling for home const.	Setauket	acquitted
6.	civil	owner	filling for driveway	Westhampton Beach	injunction granted
7.	criminal	owner	filling	Southold	\$500
8.	criminal	contractor	filling	Southold	withdrawn
9.	criminal	owner	dredge & fill	Stony Brook	\$500
10.	criminal	owner	dredge & fill	E. Patchogue	acquitted
11.	criminal	contractor	dredge & fill	E. Patchogue	acquitted
12.	civil	owner-contractor	filling	Babylon	\$250 & restoration
13.	criminal	owner	bulkhead const.	Moriches	\$500
14.	criminal	owner-contractor	filling for home const.	Bayville	\$500
15.	criminal	owner-contractor	filling for home const.	Bayville	\$1000
16.	criminal	owner	dredging	Seaford	\$1000
17.	criminal	contractor	dredging	Seaford	\$500
18.	civil	owner	retaining wall const.	Mattituck	removal
19.	criminal	town	filling	Inwood	ACOD & restoration
20.	criminal	town employee	filling	Inwood	ACOD
21.	criminal	town employee	filling	Inwood	ACOD
22.	criminal	contractor	filling	Inwood	ACOD
23.	criminal	contractor	filling	Inwood	ACOD
24.	criminal	contractor	filling	Inwood	ACOD
25.	civil	town	dredging	E. Setauket	withdrawn
26.	civil	town employee	dredging	E. Setauket	withdrawn
27.	civil	contractor	dredging	E. Setauket	withdrawn
28.	criminal	town	dredging	Cold Spring Pond	pending
29.	criminal	town	dredging	Mecox Bay	pending
30.	criminal	contractor	filling	Remsenburg	acquitted (under appeal)
31.	criminal	owner	filling	Southold	withdrawn in favor civil action
32.	criminal	owner	filling	Southold	pending withdrawn in favor civil action acquittal being appealed
33.	civil	owner-contractor	filling	Fisher's Island	pending
34.	criminal	owner	filling	Bellport	withdrawn
35.	criminal	owner	filling	Bellport	withdrawn
36.	criminal	contractor	filling	Bellport	withdrawn
37.	criminal	owner	filling for road	Sands Pt.	\$1000 & restoration
38.	criminal	owner	filling	Huntington	cond. discharge & restoration
39.	criminal	contractor	filling	Huntington	cond. discharge
40.	criminal	owner	filling for home const.	Westhampton Beach	\$500
41.	civil	owner	filling	Southampton	charge dropped & restoration
42.	criminal	owner	dredging	Nissequoque	guilty plea & restoration
43.	civil	owner-contractor	filling	E. Setauket	restoration

¹Cases 15 and 16 involve the same owner-contractor at the same site on different occasions and therefore are considered separate offenses.

Table 6. Administrative actions by the Department. Bracket indicates associated cases.

Against	Offense	Location	Disposition
1. town	filling for road	Montauk	pending
2. town	dredging	Massapequa	pending
3. ¹ contractor	dredging	Southold	pending
4. contractor	dredging	Southold	pending
5. owner	dredging	Southold	\$250
6. park district	removal of sand	Mattituck	pending
7. owner-contractor	filling	Southold	restoration
8. owner-contractor	filling	Bayville	restoration
9. owner	filling for road	Center Island	dropped
10. owner	filling	Sands Pt.	pending
11. contractor	filling	Southold	pending
12. contractor	filling	Southold	pending
13. owner	filling	Southold	pending
14. owner	bulkhead const.	Moriches	pending
15. owner-contractor	filling	North Sea	pending

¹Cases 3 and 4 involve the same contractor at the same site on different occasions and therefore are considered separate offenses.

CONSTITUTIONALITY OF THE LAW

In any legislation of this type, the issue of taking as opposed to legitimate police powers is always raised. As with other legislation requiring an inventory of a natural resource, a moratorium period is mandated. The length of time involved in this survey has been held to be related to the size of the task to be accomplished. Several courts of New York, New Jersey, and other states have upheld the reasonableness of a temporary moratorium to preserve the status quo until such time as an inventory may be completed (*Hasco Electric Corp. v. Dassler*, 143 N.Y.S. 2d 240, reh. 144 N.Y.S. 2d 857 (1955), aff'd, 150 N.Y.S. 2d 552 (1956); *Meadowland Regional Dev. Agency v. Hackensack Meadowlands Development Comm.*, 119 N.J. Super. 572, 293 A. 2d 192 (1972); (*Anderson American Law of Zoning* §5.15 (1968) and others). In the *Meadowland Dev. Comm.* case, the court found a 2 year interim period plus a 2 month extension to be a reasonable period in which to satisfactorily inventory approximately 10,000 acres of wetlands. In New York State's case, it is anticipated that the mora-

torium will last approximately three years (summer 1973 - summer 1976) and that 20,000 acres in Nassau and Suffolk Counties plus acreage in other areas will have been classified.

During the moratorium, provision is made in Section 25-0202(2) for relief from the strict application of the Act through an interim permitting system. Similar provisions have been upheld in *Rubin v. McAlevey*, 54 Misc. 2d 338, 341, 282 N.Y.S. 2d 564, 568 (1967), aff'd, 29 A.D. 874, 288 N.Y.S. 2d 519 (1968) and others.

After completion of the inventory and promulgation of land use regulations, it is felt that the actions of the State are a legitimate exercise of the police power of the State to prevent a public harm rather than to serve a public benefit. This is the distinction which must be met to ensure the constitutionality of the Act (*Just v. Marinette County*, 201 N.W. 2d 761, 767 Wis., 1972). In that case the court forcefully stated that:

[T]he great forests of our state were stripped on the theory man's ownership was unlimited ***. An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a

purpose for which it was unsuited in its natural state and which injures the rights of others. ***The changing of wetlands and swamps to the damage of the general public by upsetting the natural environment and the natural relationship is not a reasonable use of that land which is protected from police power regulation. ***[N]othing this court has said or held in prior cases indicates that destroying the natural character of a swamp or a wetland so as to make that location available for human habitation is a reasonable use of that land when the new use, although of a more economical value to the owner, causes a harm to the general public. 201 N.W. 2d at 768.

Among the factors which are most important in testing the constitutionality of a regulatory statute from the standpoint of the injury suffered by the individual, are the degree of restrictiveness upon the use of the property and the diminution in value which the regulation causes. In the zoning context, New York courts have generally refused to find a taking unless the landowner can show that the regulations have left him without any beneficial use for which his property is reasonably adapted. It follows that the mere fact that the police power denies a person the most economical use of his property does not thereby entitle that person to compensation.

Diminution in property values resulting from restrictive regulation is not in itself proof of a taking. Diminutions of over 90% have been upheld and 75% diminutions often have withstood constitutional attack (Kusler, 1972).

Should the use of wetlands be restricted upon completion of the inventory, Section 25-0302(2) calls for adjustment of the property-tax valuation to reflect this limitation. Further, according to Section 25-0404,

"[I]n the event that the court may find that the determination of the Commissioner constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interest and objectives of

this Act, it may, at the election of the Commissioner, either set aside the order or require the Commissioner to acquire the tidal wetlands or such rights in them as have been taken, proceeding under the power of eminent domain."

A factor which may affect later decisions on the constitutionality of the Act is the present unavailability of funds with which to purchase wetlands deemed the most worthy of preservation. Although \$18,000,000 from the 1972 Environmental Bond Issue was ear-marked for this purpose, only one purchase has in fact been made. Additional acquisition has been delayed pursuant to a November 28, 1975 directive from the director of the State budget. The reason given for this is that the poor fiscal condition of the State mandates that monies be expended on programs of higher priority. Should this situation continue in the land-use regulation phase, court actions charging confiscation may be difficult to defend as the requirements of Section 25-0404 cannot be met.

Although there is ample case law to support the constitutionality of strict regulation of tidal wetlands, the final land-use regulations must be a carefully thought out document drawing upon the soundest principles of other statutes and associated regulations. Should this be the case, it is felt that the constitutionality of the Act will be upheld. Hearings on the land-use regulations are scheduled to be held in June, 1976.

TECHNOLOGICAL, ECONOMIC AND SOCIOLOGICAL EFFECTS

The three aspects listed in the title of this section are intimately inter-related and actually overlap. As the reasons for environmental restrictions become known and, hopefully, accepted, techniques for practical application develop to implement the changes necessary to accommodate these restrictions. This new applied technology in turn has an

economic impact both upon those supplying the new product or concept and those making use of it at the practical level.

There are many who would vehemently argue that preservation of natural resources and their unrestricted use by the public are mutually exclusive. In many cases, they are correct. The solitude of a mountain lake can be enjoyed by only a limited few if its inherent nature is to be maintained. Similarly, the natural values of many marshes have been destroyed by the influx of man and his technology. It is widely believed that large tracts of marshland such as the islands within Great South Bay should never be used for more than observation of natural processes or limited hunting by a responsible few.

Other less fragile areas, however, lend themselves well to usage, provided that the proper care is taken and any necessary adaptations made. Fringe marshes, areas of prior spoil deposition, and areas of intense residential development often may be utilized for water-related activities with minimal disruption of their natural values.

Inspection of applications and interviews with applicants and Department personnel reveal that initial projects are often modified to become less environmentally damaging. For example, instead of installing a timber bulkhead and then dredging in front of this structure to accommodate a boat, it is often possible to erect an elevated walkway over the marsh leading to a floating dock where sufficient water depths already exist to moor a boat. Assuming the walkway is of sufficient height to minimize shading, little damage to the marsh occurs while homeowner access to the waterway is maintained. An associated benefit often accrues in that the action of waves is mitigated by retention of the marsh whereas a flat bulkhead may reflect and actually concentrate wave energy. While it is not possible to quantify the exact

number of applications so modified, the number is considerable. The entire plan of one marina was modified in this manner with the result that some 500 linear feet of fringe marsh was preserved.

Another man-made structure which in the past has created as many environmental problems as it has solved is the groin (often erroneously termed a jetty). While seldom placed in the immediate vicinity of marshes, its effects upon downstream parcels, usually sandy beaches, can be devastating. In areas where erosion can be shown to be a legitimate problem, the design of the groin can be altered to permit passage of some material in the littoral drift and thereby ameliorate downstream scouring. Changes of this type have occurred in nine instances in Shelter Island, Southold, and Riverhead. One of the larger contractors responsible for the construction of many of these structures now advises potential customers that the modified design is more likely to obtain governmental approval while still accomplishing the objective of erosion control.

Another field which lends itself to modification for environmental benefit is residential construction. In order to be able to utilize a lot which is part upland-part wetland, the owners and builders are often willing to restrict development to the upland portion while leaving the wetland untouched. As noted in the application review, this re-siting occurred extensively in all but the developed townships of Oyster Bay and Hempstead. In some instances, modifications were made after discussions with the department. In others, the initial application reflected the desired location.

Developers of larger residential units such as condominiums now more frequently seek the advice of the department in the planning stages of their projects. Using sound environmental principles, a fringing marsh at a condominium site in Amityville is now protected

by railroad tie terraces rather than being covered by backfill.

Current consultations between developers and private and government environmentalists could result in saving a two acre marsh on the site of an existing duck farm now slated for condominium construction. By clustering dwelling units and marina facilities, open space and natural areas should remain relatively unaltered.

Application of environmental principles can also mitigate some of the harmful effects of maintenance dredging. Use of preferred types of equipment, restricting activity to certain periods of the year, and limiting dredging depths can result in only local, temporary disruption of existing biota.

Any argument that no environmental damage results even from modified proposals would be indefensible. However, the preservation of marginal areas through better planned projects is often a more rational approach than arguing against all changes on the basis of vague natural values.

There is no intent to imply that all applications received were the most environmentally acceptable means of obtaining an objective. On the contrary, most of the 21 applications denied represented unmodified proposals involving substantial environmental damage or degradation. In addition, many of the applications withdrawn came from individuals unwilling to accept any alterations to their original plan, who, upon learning of objections and possible denial, decided to wait for a more propitious moment. Nevertheless, a greater environmental awareness, although oft times a reluctant one, is becoming evident in many of those who find themselves subject to the provisions of the Tidal Wetlands Act.

In the best of economic times, environmental regulation may be regarded by many people as a nuisance to be endured. In worse economic times such as the

present, regulation may become the whipping boy for a plethora of problems. Pressure is growing in government as well as industry to relax standards for a while to give the economy a chance to recover. In an attempt to determine what economic effect the Tidal Wetlands Act is having, and to gauge public sentiment among a spectrum of concerned individuals, a questionnaire was prepared dealing with various aspects of the law and its administration. A copy of the letter is included in the appendix.

Letters were sent to 13 individuals representing such varied interests as dock builders, town officials, builders, environmental consultants, real estate agents, and conservation groups. Although an admittedly small sampling, most of the people contacted had an intimate knowledge of the law and its workings as a result of frequent exposure either as applicants or intervenors. Of the 13 letters sent, 8 responses were received. Without exception all were well considered indicating the importance of the subject to the respondent.

That the Act is having an economic impact was affirmed by all respondents. To the businessman, the nature of his business determined whether the impact was a positive or negative one. Obviously, environmental consultants reported an increase in business for potential applicants seeking expert advice. It was reported that, with the multitude of permits now necessary for almost any action, "naive builders and homeowners" now find it almost impossible to sort out and obtain approvals without professional assistance.

The response from dock builders was somewhat different. Although these individuals recognized the need for this legislation, they felt that it was causing unnecessary delays in non-wetland situations. These delays often cause men and equipment to lie idle until authorization is finally received. It is claimed that

this has forced the dismissal of personnel. In addition, the responses indicated that transient contractors are performing work without permits and thereby hurting the legitimate operator. Respondents go on to say that delays in processing minor projects are creating contempt for the law and undermining the credibility of the department.

A mixed response was obtained on the question of whether the Tidal Wetlands Act is having any effect upon real estate values. One respondent indicated that the effect may be two-fold. On the one hand, some owners are attempting to inflate the value of wetlands in the expectation that they will be acquired by the State. On the other, the marketability of wetlands, and thus their value, has decreased due to the inability to develop them. The latter was the most widely held belief.

Another view was obtained from the Real Property Acquisition Unit of the department. Here it was felt that, while each individual parcel possesses unique features affecting its value, on the whole the Tidal Wetlands Act has had very little influence upon the value of wetlands. The reasoning behind this conclusion was that the use of wetlands had already been severely curtailed by local zoning and regulations as well as Federal statutes. In addition, the price of wetlands is not competitive with upland due to the relatively high cost of making the property suitable for construction (draining, filling, etc.) even in the unlikely event permits could be obtained.

An associated consideration is that the owner of a wetland-upland lot usually has not been given "credit" for the wetland portion of his parcel in zoning requirements regarding lot size. This practice has been perpetuated and strengthened by the Tidal Wetlands Act in most townships.

A court resolution of the question of wetlands value is expected in the near future when the pending suit of *The Estate*

of St. Aubin v. N.Y.S. is resolved.

On the topic of the administration of the Act thus far, opinion is diverse. Dock builders, home builders, and local (town) officials indicated a general satisfaction with the system until the October decision by Commissioner Reid to severely restrict the authority of the local permit agent to issue "D" letters. On the other hand, conservation groups pointed to the same time as the beginning of an acceptable approach.

Respondents were unanimous in their criticism of the lengthy delays in rendering decisions after hearings are held. Decisions, both approvals and denials, have occasionally taken over one year from the time of hearing despite a 90 day time limitation in the department's rules and regulations (Section 660.6[e]). Show cause orders have been threatened to force timely decisions and will undoubtedly be implemented should similar delays continue after adoption of the final land-use regulations. Should a pattern of overly lengthy delays in rendering decisions be revealed in court proceedings, it could be found that these procedures amount to a *de facto* denial of permits without proper procedure. This could then be interpreted to be an unconstitutional taking and jeopardize the existence of the law itself.

All respondents agreed that the basic purpose of the Act, the preservation of wetlands, is laudable. Some, however, felt that the addition of yet another regulatory agency in an area already adequately protected by local and Federal bureaucracies resulted only in duplication of effort with little tangible benefit. The validity of this position depends upon the township being considered. While some towns maintain local conservation departments with considerable expertise which enforce, with zeal, local ordinances pertaining to wetlands, others exhibit a conspicuous lack of interest in local wetland resources. The interpretation of

Federal statutes pertaining to waterways and wetlands is presently being expanded. However, enforcement of Federal statutes, primarily under the jurisdiction of the Corps of Engineers, is limited to a relatively small number of field personnel who may not be able to adequately cover the entire Long Island region. Therefore, while State jurisdiction has created duplication in some areas, it has provided needed protection to others.

One possible remedy to this situation might be to delegate the responsibility of administering the Act to those townships which demonstrate an ability and willingness to bear this responsibility. A danger of this scheme, however, is the potential vulnerability of the local department to succumb to political pressures when considering projects. In addition, the administration of the Act might not be uniform without a centralized bureaucracy.

While some respondents felt that valuable wetlands were still being lost, it was generally conceded that the rate of this destruction has been drastically reduced. Judging from the investigations of the author, a total permitted wetland loss of approximately 20 acres has occurred since the inception of the Act. To this should be added an undetermined loss through illegal projects.

CONCLUSIONS

In evaluating the success of the statute thus far in preserving the State's wetlands, it is necessary to interpret the meaning of the law itself before reaching a conclusion.

The Tidal Wetlands Act, as are most

legislative acts, was the final product of several compromises, many of which are known only by the legislators concerned with its passage. To make the legislation acceptable to then Governor Nelson Rockefeller, who was at that time pursuing approval of the Oyster Bay-Rye Bridge through extensive wetlands, the law's declaration of policy was amended to add the phrase ". . . giving due consideration to the reasonable economic and social development of the State." In this manner, construction of a bridge through a wetland might have been justified on economic and/or social grounds. Although the Oyster Bay-Rye Bridge now appears to be a dead issue, the phrase remains as part of the policy of the law. No further guidelines are given concerning what types of projects are "reasonable," the interpretation, presumably, being left to the Department of Environmental Conservation.

Taking this caveat into account, a permitted loss of some 20 acres out of a total wetland resource in excess of 20,000 acres could probably be considered by many to be "reasonable." However, to those interpreting the moratorium as a strict prohibition against any wetland loss whatsoever, 20 acres might be an unacceptably large figure. To the latter, the moratorium phase might be considered a failure while to the former, a success. When compared to previous losses listed in Table 1, a considerable reduction in the rate of wetlands loss becomes evident. In addition, as the basic purpose of the Act becomes more widely known, projects are generally becoming more environmentally compatible. It must, therefore, be concluded that the Tidal Wetlands Act is indeed aiding in the preservation of wetlands in a most significant fashion.

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APPENDIX A.

March 4, 1976

Dear

I am writing to ask your assistance in preparing a paper for a course I am taking at SUNY at Stony Brook.

I wish to know your attitude toward the administration of the Tidal Wetlands Act during the present moratorium period. Specifically, please include such items as:

Are permit applications handled properly?

Is time involved reasonable?

Are decisions to grant 'D' letters proper?

Are decisions to grant/deny permits proper, reasonable, and consistent?

Do you feel valuable wetlands are being lost at present?

If you are a businessman whose business is involved in some way with the TWA, has there been any economic impact upon you?

In your opinion, what has been the effect of land values as a result of the Act?

Do you feel violations of the Act are treated properly and fairly?

Would you like to see any changes in the administration of the Act?

Any other points you may wish to bring out are welcomed. Be as lengthy or as brief as you wish. If you wish to remain anonymous, please do so. I ask only that you list your connection or interest in the Tidal Wetlands Act (for example; environmental consultant, dock builder, home developer, local official, conservation group, real estate agent, etc.) Should you wish to give your name, you may be credited with your position if you wish (please so state).

Although I am a New York State Department of Environmental Conservation employee who works with the Act, this survey is NOT official nor is it connected in any way to the NYSDEC. It is being conducted on my own time and at my own expense. Any opinions developed in the resultant paper will be my own.

As the due date for the paper is very near, I would appreciate your speedy yet considered response. Please return within one week whether you wish to participate or not.

Thank you for your cooperation.

Yours truly,

Roy L. Haje

APPENDIX B

Laws of New York - By Authority
Chapter 790

AN ACT to amend the environmental conservation law, in relation to the protection and preservation of the tidal wetlands and to regulate the alteration of such wetlands, and repealing certain provisions thereof relating thereto

Became a law June 22, 1973, with the approval of the Governor. Passed by a majority vote, three-fifths being present

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

Section 1. The legislature hereby finds and declares that tidal wetlands constitute one of the most vital and productive areas of our natural world, and that their protection and preservation are essential. Among the many and multiple values of such wetlands are the following:

(a) marine food production - tidal wetlands are an essential area of retention, conversion and availability of nutrients for crustaceans and shellfish; they are the nursery ground and sanctuary for many fin fish; they sustain microscopic marine organisms and vegetation which are essential in other food chains; two-thirds of the fish and shellfish are commercially harvested and two-thirds of sport fish depend on the marsh-estuarine system of the tidal wetlands at some point in their life cycle;

(b) wildlife habitat - tidal wetlands are necessary as the breeding, nesting and feeding grounds and as cover to escape predators for many forms of wildlife, waterfowl and shorebirds;

(c) flood and storm control - tidal wetlands are valuable and provide essential and irreplaceable protection in both flood and storm or hurricane weather

conditions; their hydrologic water absorption and storage capacity minimizes erosion and flooding damage; their hydraulic and hydrographic functions serve as a natural buffer protecting upland and developed areas from storm tides and waves;

(d) recreation - tidal wetlands provide hundreds of square miles and millions of days of recreation, hunting, fishing, boating, hiking, bird watching, photography and camping for many thousands of citizens of the State and visitors to the State; the location of many tidal wetlands fronting on the eastward expansion of human population in Long Island makes them "the last frontier" for certain of the State's valuable natural resources, underscoring the necessity for their preservation in parks and reserves;

(e) treating pollution - tidal wetlands serve as an invaluable and irreplaceable biological and chemical oxidation basin in which organic run-off and organic pollution are oxidized, metabolized and converted into useful nutrients; the vast quantities of oxygen necessary for this process must come from the open, living tidal marsh and its photosynthesis;

(f) sedimentation - tidal wetlands are an essential settling and filtering basin, absorbing silt and organic matter which otherwise would obstruct channels and harbors to the detriment of navigation;

(g) education and research - tidal wetlands afford a wide range of opportunity for scientific research, outdoor biophysical laboratories, and living educational classrooms; their training and education value is enormous, and they offer unbounded opportunity for the imparting of environmental values in our youth;

(h) open space and aesthetic appreciation - tidal wetlands comprise a large part of the remaining natural and unspoiled areas along the crowded coastal reaches of the State; the benefit to the

public of these natural open areas in a region of rapid population growth is significant; such wetlands offer unique open space and aesthetic qualities while at the time permitting full play to their other natural values.

The legislature further finds that vast acreage in the tidal wetlands in the State of New York has already been irreparably lost or despoiled as a result of unregulated dredging, dumping, filling, excavating, polluting, and like activities; that the remaining tidal wetlands are in imminent jeopardy of being lost or despoiled by these and other activities; that if the current rate of loss continues, most of the State's tidal wetlands will be entirely lost before the end of this century; and that presently many creeks and tidal wetlands are so polluted that shellfish harvesting is banned. Accordingly, the legislature finds that it is in the interest of the State, consistent with the reasonable economic and social development thereof, to preserve as much as possible of these remaining wetlands in their present natural state and to abate and remove the sources of their pollution.

§2. The environmental conservation law is hereby amended by inserting therein a new article, to be article twenty-five, to read as follows:

Article 25
Tidal Wetlands

- Title 1. General provisions and public policy.
2. Wetlands inventory.
 3. Program and land-use regulation for tidal wetlands.
 4. Regulated activities.
 5. Violations and enforcement.
 6. Miscellaneous provisions.

Title 1
General Provisions and Public Policy

Section 25-0101. Short title.

Section 25-0102. Declaration of policy.

25-0103. Definitions.

§25-0101. Short title.

This article shall be known as the "Tidal Wetlands Act."

§25-0102. Declaration of policy.

It is declared to be the public policy of this State to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to the reasonable economic and social development of the State.

§25-0103. Definitions.

1. "Tidal wetlands" shall mean and include the following:

(a) those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters;

(b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay (*Spartina patens* and *Distichlis spicata*) black grass (*Juncus Gerardi*), saltworts (*Salicornia ssp.*), sea lavender (*Limonium carolinianum*), tall cordgrass (*Spartina pectinata* and *Spartina cynosuroides*), hightide bush (*Iva frutescens*), cattails (*Typha angustifolia* and *Typha latifolia*), groundsel (*Baccharis halimifolia*), marsh mallow (*Hybiscus palustris*) and the intertidal zone including low marsh cordgrass (*Spartina alterniflora*).

2. "Commissioner" shall mean the commissioner of environmental conservation.

3. "Pollution" shall mean the presence in the environment of conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or marine life, wildlife, or other animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life and property throughout such tidal wetlands as may be

affected thereby.

4. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

5. "Municipality" shall mean a village, town, city or county.

Title 2
Wetlands Inventory

Section 25-0201. Inventory of tidal wetlands.

25-0202. Moratorium on alteration of tidal wetlands.

§25-0201. Inventory of tidal wetlands.

1. The commissioner shall as soon as practicable make an inventory of all tidal wetlands in the State of New York. This inventory, and any restrictive orders issued pursuant to Section 25-0302 of this act, shall comprise a part of the state-wide environmental plan as provided for in Section 3-0303 of the environmental conservation law.

2. The inventory shall set forth the boundaries of such wetlands using such photographic and cartographic standards and techniques as the commissioner may deem reasonable and appropriate in order to provide clear and accurate maps of the tidal wetlands of the State for the purpose of effectuating the policies and provisions of this act. Said boundaries shall generally delineate all tidal wetlands in the State as defined in Section 25-0101 of this act. At least sixty days prior to the commencement of the inventory the commissioner shall file with the Secretary of State a detailed description of the technical methods and requirements to be utilized in compiling the inventory, and he shall afford the public an opportunity to submit written comments thereon.

3. Upon completion of a tentative tidal wetlands boundary map for a particular area, the commissioner or his designated hearing officer shall hold a public hearing in order to afford an opportunity for any person to propose additions or deletions from such map. The commissioner shall give notice of such hearing to each owner of record of all lands designated as such wetland as shown on such maps, and also to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located, by registered mail not less than thirty days prior to the date set for such hearing. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least two newspapers having a general circulation in the area where such wetlands are located.

4. After considering the testimony given at such hearing and any other facts which may be deemed pertinent and after considering the rights of affected property owners and the policy and purposes of this act, the commissioner shall establish by order the final bounds of each such wetland. A copy of the order, together with a copy of the map depicting such final boundary lines, shall be filed in the office of the clerk of the county in which each such wetland is located. The commissioner shall simultaneously give notice of such order to each owner of all lands designated as such wetlands by mailing a copy of such order to such owner by registered mail. The commissioner shall also simultaneously give notice of such order by registered mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause a copy of such order to be published in at least two newspapers having a general circulation in the area where such wetlands are located.

5. Any person aggrieved by such order may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands are located, within thirty days after the date of the filing of the order with the clerk of the county in which such wetlands are located.

6. The commissioner shall supervise the maintenance of such boundary maps, which shall be available to the public for inspection and examination. The statewide inventory shall be readjusted from time to time as may be necessary to reflect such natural changes as have occurred through erosion, accretion, and otherwise and also to reflect such other changes as have occurred as a result of the granting of permits pursuant to Section 25-0403 of this act.

§25-0202. Moratorium on alteration of tidal wetlands.

1. No person shall alter the state of any tidal wetland or of any area immediately adjacent to such wetland as the commissioner may reasonably deem necessary to preserve in order to effectuate the policies and provisions of this act, prior to the effective date of the land-use regulations adopted by the commissioner pursuant to this act, unless a permit for such alteration shall have been obtained pursuant to Section 15-0505 of the environmental conservation law. This moratorium shall not restrict in any way any summary action taken by the commissioner under Section 71-0301 of the environmental conservation law.

2. Any person, upon a showing of hardships caused by this moratorium, may petition the commissioner for a review of the application of the moratorium to any tidal wetland or any area immediately adjacent thereto. Within thirty days of the petition being received, the commissioner shall provide the petitioner and any other person an opportunity to be heard. Notice of such hearing shall be

published in at least two newspapers having a general circulation in the area where the wetlands are located, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each municipality within whose boundary any such wetlands or portion thereof is located. If the proposed alterations of the tidal wetland are not contrary to the policy or any provision of this act, the commissioner may permit the alteration to continue during the moratorium, provided that permission may be revoked by the commissioner if its terms are violated and that the permission ends upon completion of the inventory for the area in which the affected wetlands are located, and provided further that any such hardship permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

3. Within thirty days after such permission has been granted or denied any aggrieved person may seek judicial review of such decision pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which such wetlands are situated.

Title 3

Program and Land-Use Regulation for Tidal Wetlands

Section 25-0301. Program and cooperative agreements for the protection of tidal wetlands.

25-0302. Land-use regulation of tidal wetlands.

§25-0301. Program and cooperative agreements for the protection of tidal wetlands.

1. Upon completion of the inventory with respect to tidal wetlands, the commissioner shall confer with the local government officials involved to establish a program for the protection of such tidal

wetlands.

2. The commissioner may enter into cooperative agreements with any village, town, city or county, or with any one or more of them, for the purpose of preserving, maintaining and enhancing, in accordance with the policies of this act, those tidal wetlands included within the boundaries of such villages, towns, cities and counties.

3. A cooperative agreement with any such village, town, city or county may provide for the development by personnel and facilities of the department of environmental conservation, or the payment out of funds appropriated for the purpose, of the cost of preserving, maintaining or enhancing such tidal wetlands in accordance with the policies of this act, and for the furnishing of such personnel, facilities or funds as may be agreed upon within the cooperative agreement.

4. The cooperative agreement shall provide that the tidal wetlands be preserved and maintained in their natural or enhanced state, provided, however, that a reservation in any such agreement by a village, town, city or county of the right to operate or lease for operation shellfish beds lying within the area, and a reservation of the income from such operation or lease for the village, town, city or county shall be allowed and not considered a violation of preservation and maintenance of a natural state.

5. This section shall not prevent any tidal wetlands from being designated as portions of the State's natural and historic preserves, nor shall it prevent the dedication of any such lands as State parks. The office of parks and recreation shall outline to the commissioner its plans to preserve tidal wetlands in parklands as soon as practicable.

§25-0302. Land-use regulation of tidal wetlands.

1. Upon completion of the inventory the commissioner shall adopt land-use regulations governing the uses of said

inventoried wetlands. In preparing such regulations the commissioner shall be guided by factors including, but not limited to, the public policy set forth in this act as well as the present and potential value of the particular wetland for marine food production, as a wildlife habitat, as an element of flood and storm control, and as a source of recreation, education and research. The commissioner shall determine what uses of inventoried wetlands may be compatible with any or all of the foregoing, and he shall prepare such appropriate land-use regulations as may permit only such compatible uses. These regulations shall be filed with the Secretary of State and shall take effect thirty days after such filing. A copy of such regulations shall also be simultaneously forwarded by registered mail to the chief administrative officer of such municipality within whose boundary any such wetland or portion thereof is located. No permits may be granted by any local body, nor shall any construction or activity take place at variance with these regulations.

2. The placing of any tidal wetlands under a land-use regulation which restricts its use shall be deemed a limitation on the use of such wetlands for the purposes of property tax valuation, in the same manner as if an easement or right had been acquired under the general municipal law. Assessment shall be based on present use under the restricting regulation.

Title 4
Regulated Activities

- Section 25-0401. Regulated activities.
- 25-0402. Application for permits.
- 25-0403. Granting of permits.
- 25-0404. Judicial review.
- 25-0405. Payments for extractions from or filling in wetlands.

§25-0401. Regulated activities.

1. After completion of the inventory prescribed in title 2 of this article with respect to any tidal wetland, no person may conduct any of the activities set forth in subdivision 2 of this section unless he has obtained a permit from the commissioner to do so. The permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

2. Activities subject to regulation hereunder include any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

3. The depositing or removal of the natural products of the tidal wetlands by recreational or commercial fishing, shell-fishing, aquaculture, hunting or trapping, shall be excluded from regulation hereunder, where otherwise legally permitted.

4. Activities, orders and regulations of the department of health or of units of local government with respect to matters of public health shall be excluded from regulation hereunder, except as hereinafter provided. Copies of all such public health orders and regulations affecting tidal wetlands shall be filed with the department of environmental conservation. The commissioner may require modification of such orders or regulations if he deems it necessary to implement the policy of this act.

5. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on tidal wetlands. Where any adverse impact is found, the commissioner following a public hearing, may require modification of such projects if he deems it necessary to implement the policy of this act.

6. Where the dredging or filling is in the navigable waters of the State or is for the reconstruction or repair of certain dams and docks, and where such activity also substantially affects tidal wetlands, any person undertaking such activity must seek permission under this act as well as under any other applicable law.

§25-0402. Application for permits.

1. Any person proposing to conduct or cause to be conducted an activity regulated under this act upon any inventoried tidal wetland shall file an application for a permit with the commissioner, in such form and containing such information as the commissioner may prescribe. The applicant shall have the burden of demonstrating that the proposed activity will be in complete accord with the policy and provisions of this act. Such application shall include a detailed description of the proposed work and a map showing the work thereon, together with the names of the owners of record of adjacent lands and the known claimants of water rights in or adjacent to the tidal wetlands of whom the applicant has notice. The commissioner shall cause a copy of such application to be mailed to the chief administrative officer in the municipality where the proposed work or any part of it is located.

2. No sooner than thirty days and not later than sixty days after the receipt of such application, the commissioner or his designated hearing officer shall hold a public hearing on such application at a suitable location in the county where the affected wetland is situated. All owners

of record of adjacent land, and known claimants to water rights, and the chief administrative officer of any municipality where the proposed work is located shall be notified of the hearing by mail not less than fifteen days prior to the date set for the hearing. The commissioner shall cause notice of such hearing to be published in at least two newspapers having a general circulation in the area where the affected tidal wetlands are located. All applications and maps and documents relating thereto shall be open for public inspection at the regional office of the department encompassing the county in which the place of the proposed activity is located. At such hearing any person or persons may appear and be heard.

§25-0403. Granting of permits.

1. In granting, denying or limiting any permit under this act, the commissioner shall consider the compatibility of the proposed activity with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, flood and hurricane and storm dangers, and the land-use regulations promulgated pursuant to Section 25-0302 of this act.

2. Notice that the State or any agency or subdivision thereof is in the process of acquisition of any tidal wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit under this section.

3. In granting a permit, the commissioner may impose such conditions or limitations as may be necessary to carry out the public policy set forth in this act. The commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the State compliance with the conditions and limitations set forth in the permit. The commissioner may suspend or revoke a permit if he finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The

commissioner may suspend the permit if the applicant fails to comply with the terms and conditions set forth in the application.

4. The commissioner's order granting, denying, revoking or suspending a permit shall state his findings and reasons for all actions taken pursuant to this section. The commissioner shall cause a copy of such order to be forwarded by registered mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause notice of such order to be published in at least two newspapers having a general circulation in the area where the affected wetlands are located.

§25-0404. Judicial review.

Any person aggrieved by the issuance, denial, suspension, or revocation of a permit may within thirty days from the date of the commissioner's order seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands affected are located. In the event that the court may find that the determination of the commissioner constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interest and objectives of this act it may, at the election of the commissioner, either set aside the order or require the commissioner to acquire the tidal wetlands or such rights in them as have been taken, proceeding under the power of eminent domain.

§25-0405. Payments for extractions from or filling in wetlands.

1. Any applicant for a permit to dredge, excavate, or remove soil, mud, sand, shells, gravel or other aggregate from any publicly-owned tidal wetland shall be required to pay to the public owner thereof such amount, which shall not be nominal, as the office of general services or its local equivalent body

shall determine to be the value of the aggregate extracted. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

2. Any applicant for a permit to dump, fill, or deposit any soil, stones, sand, gravel, mud, rubbish, or fill of any kind onto or in any publicly-owned tidal wetlands shall be required to pay to the owner such amount, which shall not be nominal, as the office of general services or its local equivalent shall determine. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

3. Monies paid to the state under this section shall be used by the commissioner for preservation of the tidal wetlands.

Title 5

Violations and Enforcement

Section 25-0501. Violations.

25-0502. Enforcement.

25-0503. Pollution of tidal wetlands.

§25-0501. Violations.

1. Any person who violates any provision of this act regarding regulated activity shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than five hundred dollars nor more than one thousand dollars for the first violation and not less than one thousand dollars for each subsequent violation. He shall also be liable to the State for the full cost of restoration of the affected tidal wetland to its condition prior to such violation insofar as that is possible. The court shall specify a reasonable time for the completion of the restoration which shall be done under the supervision

of the commissioner.

2. Each violation shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct offense.

§25-0502. Enforcement.

The attorney general, on his own initiative or at the request of the commissioner, shall prosecute persons who violate this act. In addition the attorney general, on his own initiative or at the request of the commissioner, shall have the right to seek equitable relief to restrain any violation or threatened violation of this act.

§25-0503. Pollution of tidal wetlands.

Where any tidal wetlands are subject to pollution, the commissioner and attorney general shall take all appropriate action to abate the pollution. In addition, the commissioner may restrict or order cessation of solid waste disposal, deep well disposal, or liquid waste disposal where such is polluting a given area of tidal wetland. Where pesticides, chemical products, or fertilizer residues are the polluting agents, the commissioner shall confer with other appropriate public officials to limit the use of such substances at their source; after appropriate consultations, the commissioner may make such rules and regulations as he deems necessary under Section 3-0301 of the environmental conservation law.

Title 6

Miscellaneous Provisions

Section 25-0601. Severability.

25-0602. Eminent domain unaffected.

§25-0601. Severability.

The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid,

such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§25-0602. Eminent domain unaffected.

The provisions of this act shall not be applicable to any lands now or hereafter appropriated by the State or any agency or department thereof under the power of eminent domain for a valid public purpose.

§3. Paragraph g of subdivision one of Section 11-2101 and Section 11-2307 of such law are hereby repealed.

§4. Paragraph h of subdivision one

of Section 11-2101 of such law is hereby relettered to be paragraph g.

§5. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

State of New York)
Department of State) ss:

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

JOHN P. LOMENZO
Secretary of State

APPENDIX C

PART 660

Title 6, Official Compilation of Codes, Rules and Regulations
of the State of New York

TIDAL WETLANDS - MORATORIUM PERMITS

EFFECTIVE DATE JULY 1, 1974

STATE OF NEW YORK
Department of Environmental Conservation

PART 660

TIDAL WETLANDS - MORATORIUM PERMITS

(Statutory authority: Environmental Conservation Law
§1-0101, §3-0301 & §25-0202)

Sec.	
660.1	Definitions
660.2	Moratorium permit required
660.3	Petition for moratorium permit; determinations of non-applicability
660.4	Publication of notice of petition
660.5	Standards for the issuance of a moratorium permit; burden of proof
660.6	Public hearing
660.7	Issuance or denial of moratorium permit
660.8	Mandatory conditions of moratorium permit
660.9	Notice of determination and record of proceedings
660.10	Extension of expiration date
660.11	Modification of permit
660.12	Revocation or suspension of moratorium permit
660.13	Joint proceedings under other laws and regulations

Section 660.1 Derinitions. The following terms when used in this Part shall have the following meanings:

(a) "Act" shall mean the Tidal Wetlands Act (Article 25 of the Environmental Conservation Law as from time to time amended).

(b) "Alter" shall mean the performing of any activity which directly or indirectly may have a significant adverse effect on the existing condition of any tidal wetland, including but not limited to any form of draining, dredging, excavation and removal, either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate; any form of dumping, filling or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish or fill of any kind; erection of any structures or construction of any roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide.

(1) "Alteration" shall have a commensurate meaning.

(2) Ordinary and necessary maintenance and repair of existing structures and areas, including but not

limited to docks, piers, wharves, pilings, dolphins and paved areas, shall not constitute an alteration where such activity does not directly or indirectly have a significant adverse effect on the existing condition of such wetland.

(3) The depositing or removal of the natural products of the tidal wetlands in the process of recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping shall not constitute an alteration where otherwise legally permitted.

(c) "Adjacent area" shall mean any lands immediately adjacent to a tidal wetland which the Commissioner may reasonably deem necessary to preserve in order to effectuate the policies and provisions of the Act.

(1) Unless the Commissioner shall otherwise determine in a particular case, such lands shall extend for a distance of 300 feet in any direction landward from the landward boundary of the tidal wetland or to an elevation of ten feet above mean sea level, whichever is closer to such boundary. In those areas in which bulkheads or revetments exist at the edge of such wetland, such 300 foot boundary shall be measured from the seaward edge of any such bulkhead or revetment.

(2) Such lands shall extend for such farther distance as the Commissioner may determine in a particular case where he finds that one or more activities on the lands in question may directly or indirectly cause an alteration to the existing state of such tidal wetland.

(3) Such lands shall not include such extensive or numerous areas as the Commissioner may determine after public hearing to be not necessary to preserve in order to effectuate the policies and provisions of the Act.

(4) Pending the determination of the Commissioner in a particular case, the most recent, as of the effective date of these regulations, topographical maps published by the United States Geological Survey, Department of the Interior, having a scale of 1:24,000, shall be rebuttable presumptive evidence of such 10 foot elevation.

(d) "Central tidal wetland permit administrator" shall mean any employee of the Department who is designated by the Commissioner to act in such capacity.

(e) "Chief administrative officer" shall mean in the case of a city or a village, the mayor thereof, in the case of a town, the supervisor thereof, and, in the case of a

county, the county executive, borough president or county legislative body, as the case may be.

(f) "Commissioner" shall mean the Commissioner of Environmental Conservation or his duly authorized representative.

(g) "Department" shall mean the Department of Environmental Conservation.

(h) "Hardship" shall mean a condition unique and peculiar to the particular situation of the petitioner, which tends to impose a serious financial burden on the petitioner. Such condition shall not have been one created as a result of a voluntary act of the petitioner. The fact that an increase or decrease in the value of real property may result from the moratorium shall not be evidence of hardship.

(i) "Local tidal wetland permit administrator" shall mean an employee of the Department designated by the Commissioner to act in such capacity within the jurisdiction of a Regional Office of the Department.*

(j) "Moratorium permit" shall mean a written permit issued by the Commissioner or the central tidal wetland permit administrator allowing the alteration of the state of any tidal wetland or any adjacent area prior to the effective date of the land-use regulations adopted by the Commissioner pursuant to the Act.

(k) "Municipality" shall mean a village, town, city, or county.

(l) "Parties in interest" shall mean

(1) any person who files a petition pursuant to Section 660.3 of this Part, files a notice of appearance and statement pursuant to Section 660.4(a)(4) of this Part or is permitted to intervene as a party in

NOTE:

*Region	I - Building 40 State University of N.Y. Stony Brook, N.Y. 11790 (516) 751-7900	(Nassau, Suffolk)
Region	II - 2 World Trade Center New York, N.Y. 10047 (212) 488-2755	(New York City)
Region	III - 21 So. Putt Corners Rd. New Paltz, N.Y. 12561 (914) 255-5453	(Rockland, Westchester)

interest pursuant to Section 660.6(c)(2) of this Part;
and

(2) any municipality or municipalities within the boundary of which the tidal wetland or adjacent area which is the subject of a petition for a moratorium permit is located.

(m) "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

(n) "Petition" shall mean a petition for a moratorium permit filed with the local tidal wetland permit administrator pursuant to Section 660.3 of this Part.

(o) "Tidal wetlands" shall mean and include the following:

(1) Those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters; provided, however, that areas formerly connected to tidal waters shall not include former tidal wetlands which prior to the effective date of the Act have been irreparably lost or despoiled as a result of dredging, dumping, filling, excavating, polluting and like activities and are no longer in their natural state.

(2) All banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay (*Spartina patens* and *Distichlis spicata*), black grass (*Juncus Gerardi*), saltworts (*Salicornia* spp.), sea lavender (*Limonium carolinianum*), tall cordgrass (*Spartina pectinata* and *Spartina cynosuroides*), hightide bush (*Iva frutescens*), Cattails (*Typha angustifolia* and *Typha latifolia*), groundsel (*Baccharis Halmilifolia*) marsh mallow (*Hybiscus palustris*); and

(3) the intertidal zone including low marsh cordgrass (*Spartina alterniflora*).

660.2 Moratorium permit required. No person shall alter the state of any tidal wetland or adjacent area prior to the effective date of the land use regulations adopted by the Commissioner pursuant to the Act unless such person has submitted a petition and has obtained a moratorium permit

for such alteration from the Department; provided, however, in connection with applications under Articles Seven and Eight of the Public Service Law, the Public Service Commission and the New York State Board on Electric Generating Siting and the Environment, respectively, will apply the provisions of this Part in determining whether to issue a certificate of public need and environmental compatibility; and provided, further, that this Part shall not apply to any alteration of the state of any tidal wetland or adjacent area

- (a) with respect to which alteration a permit, pursuant to Part 608 of this subchapter shall have been issued prior to September 1, 1973, or
- (b) which tidal wetland or adjacent area is now or hereafter appropriated by the State or any department or agency thereof under the power of eminent domain for a valid public purpose, or
- (c) if the activity is exempt from regulation under this Part pursuant to Section 25-0401(4) of the Act (relating to certain public health activities).

660.3 Petition for moratorium permit; determinations of non-applicability.

(a) A petition for a moratorium permit shall be filed by the petitioner with the local tidal wetland permit administrator on forms provided by the Department. Such petition shall set forth the purpose, character and extent of the proposed alteration of the state of the tidal wetlands or adjacent area, shall set forth with particularity the hardship of the petitioner and shall be accompanied by such maps, drawings, surveys and other information as may be required by the Department. A petition shall not be deemed to be received until the local tidal wetland permit administrator determines that all such information has been supplied in a complete and satisfactory form.

(b) A petitioner shall be required, unless waived by the Commissioner, to file with the petition an undertaking in an amount fixed by the local tidal wetland permit administrator to guarantee payment for the costs of the public hearing, including payment for a reporter and the costs of the Department for a transcript of the hearing and for physical accommodations for the holding of the hearing if not in Department facilities.

(c) The local tidal wetlands permit administrator may, on request of the petitioner or on his own motion, treat the petition as a request for a determination that the Act does not apply to the work proposed in the petition. If he

determines that the proposed work does not constitute an alteration or is on lands immediately adjacent to a tidal wetland which are not necessary to preserve in order to effectuate the policies and provisions of the Act, he shall so notify the petitioner in writing. Any person may petition the Commissioner for review of such determination.

660.4 Publication of notice of petition.

(a) The local tidal wetland permit administrator shall provide the petitioner with a "notice of petition" form which shall:

- (1) State the name of the petitioner;
- (2) Outline the location and the scope of the proposed alteration of tidal wetlands or adjacent areas and indicate the basis for the petitioner's claim of hardship;
- (3) Specify the date, time and place of the public hearing on the petition;
- (4) State that the petition and supporting documents are available for public inspection at the appropriate Regional Office of the Department;
- (5) Specify that persons wishing to be deemed parties in interest and eligible to be heard at such public hearing, if any, shall file a notice of appearance, together with a statement of the precise grounds of support of, opposition to or interest in the petition, with the local tidal wetland permit administrator by 4:45 p.m. of the fourth business day next preceding the date of the public hearing. Filing for this purpose shall require actual receipt in the office of the local tidal wetland permit administrator; and
- (6) Specify that if no notices of appearance are timely filed by any party in interest, then the public hearing may be cancelled by the local tidal wetland permit administrator.

(b) As the local tidal wetland permit administrator shall direct, the petitioner shall publish the "notice of petition" at his own expense at least once in each of at least two newspapers having a general circulation in the area where the affected tidal wetlands or adjacent areas are located.

(c) Notice of such hearing will be given by registered mail to the chief administrative officer of each municipality within whose boundaries the affected tidal wetlands or portion thereof is located.

660.5 Standards for the issuance of a moratorium permit; burden of proof.

(a) The petitioner shall establish to the satisfaction of the Commissioner that he will suffer a hardship if the moratorium permit is not issued. In the absence of satisfactory evidence of hardship, no moratorium permit may be issued.

(b) The basis for the issuance of a moratorium permit shall be a determination that the petitioner has established that the proposed alteration of the state of the tidal wetland is not contrary to

- (1) the policy of the State to preserve and protect tidal wetlands, to prevent their despoliation and destruction and to give due consideration to the reasonable economic and social development of the State; and
- (2) the provisions of the Act.

The burden of proof shall be on the petitioner to establish that the proposed alteration is not contrary to such policy or provisions. In granting, denying or limiting any moratorium permit, the Commissioner shall consider the compatibility of the proposed activity with reference to the public health and welfare, marine fisheries, shell-fisheries, wildlife, flood and hurricane and storm dangers and the legislative findings contained in Section 1 of Chapter 790 of the Laws of 1973.

660.6 Public hearing.

(a) Hearing officer.

The public hearing upon a petition for a moratorium permit shall be conducted by a hearing officer designated by the Commissioner.

(b) Public hearing within thirty days of the petition.

The public hearing upon the petition shall be held within thirty days of receipt by the local tidal wetland permit administrator of the petition for a moratorium permit, shall be conducted expeditiously and shall, in

so far as practicable, continue from day to day exclusive of holidays and weekends. In so far as practicable, the public hearing will be held in the municipality where the affected tidal wetlands are located.

(c) Parties.

(1) Parties to the public hearing upon a petition for a moratorium permit shall be the parties in interest.

(2) The hearing officer may, if in his discretion he determines it to be in the public interest, permit any person to intervene as a party in interest, notwithstanding the failure of such person to file a timely notice of appearance. With respect to any such person, the hearing officer may permit such intervention solely for the purpose of making or filing a statement, receiving copies of notices with respect to the petition, presenting evidence, cross-examining witnesses or for any or all of such purposes as he in his discretion shall deem to be in the public interest. Public interest for the purposes of this sub-paragraph shall include the presentation of all relevant views without unnecessary repetition and the avoidance of irrelevant or repetitious material in the record of the hearing.

(3) The hearing officer may also designate a spokesman for parties in interest who represent a common organization or a substantially identical interest or viewpoint and may similarly designate a single party in interest to receive notice on behalf of such parties in interest.

(4) Parties in interest shall be afforded an opportunity to present written arguments on issues of law or policy and an opportunity to present evidence on issues of fact and shall have the right of cross-examination; provided, however, that irrelevant or repetitious cross-examination may be excluded at the discretion of the hearing officer. The rules of evidence shall not apply to such a public hearing.

(d) Hearing officer's record.

The hearing officer shall be responsible for assuring that a complete record of hearing be kept. In addition to the evidence presented pursuant to paragraph (c) of this section, the record shall consist of any additional documents in the possession of the Department which are relevant to the application and are introduced into the record of the hearing. The Department may utilize its experience, technical competence, resources and specialized knowledge and any resources available to it in providing factual information for the record and the hearing officer may take notice of general, technical or scientific facts within the specialized knowledge of the Department. Parties in interest shall

be afforded an opportunity to contest the facts so noticed. Any document relied on by the Department shall be available for inspection by the parties in interest.

(e) Hearing officer's decision.

The hearing officer shall make findings of fact and his recommended determination and reasons for such recommendations and, within sixty days of receipt of the transcript of the hearing, unless extended by the central tidal wetlands permit administrator, shall forward them to the Commissioner for determination. The Commissioner will issue his determination within thirty days of receipt of such recommendations. No determination shall be made except upon the basis of the record.

(f) Reopening of hearing.

The Commissioner or the central tidal wetland permit administrator may at any time direct that the hearing be reopened where the public interest so requires.

(g) Waiver of hearing.

If no timely notice of appearance has been filed as provided in the notice of petition described in Section 660.4 of this Part and the petitioner waives any public hearing on his petition, the local tidal wetland permit administrator may dispense with a public hearing. In such event, an official file shall be compiled by the local tidal wetland permit administrator consisting of documents submitted by the petitioner and any additional documents relied on by the Department with respect to the application. The Department may also utilize its own experience, technical competence, resources and specialized knowledge and any resources available to it and may take notice of general, technical or scientific facts within the specialized knowledge of the Department. Any document made part of such official file shall be available for inspection by the petitioner and other interested persons. The local tidal wetland permit administrator may at any time request additional information from the petitioner. The official file will be referred to the central tidal wetlands permit administrator for action under Section 660.7 of this Part.

(h) Cost of hearing.

The petitioner shall pay the costs of the public hearing, including payment for a reporter and the costs of the Department for the transcript of the hearing and

for physical accommodations for the holding of the hearing if not held in Department facilities.

660.7 Issuance or denial of moratorium permit.

The moratorium permit may be issued or the petition for such permit may be denied by either the Commissioner or, where the hearing has been waived pursuant to subdivision (g) of section 660.6, the central tidal wetland permit administrator. Such permit may be issued subject to such conditions or limitations, including bonding requirements, as may be necessary to assure the preservation and protection of the tidal wetland consistent with the alteration permitted or otherwise to assure compliance with the policy and provisions of the Act.

660.8 Mandatory conditions of moratorium permit.

(a) Every moratorium permit shall require that, not less than five days before the date of construction will begin on the project for which the moratorium permit has been issued, the holder of a moratorium permit shall notify the local tidal wetland permit administrator of such date.

(b) The moratorium permit shall be conditioned upon the right of the Department to inspect such project from time to time.

(c) The moratorium permit shall expire on a date determined by the central tidal wetland permit administrator or the date of filing with the county clerk of final boundary lines for the tidal wetland or portion thereof which is the subject of such moratorium permit, whichever is earlier.

660.9 Notice of determination and record of proceedings.

(a) All actions taken by the central tidal wetland permit administrator or Commissioner denying a petition, or granting, suspending or revoking a moratorium permit shall be in writing and shall be accompanied by a written statement of his findings and the reasons for all such actions taken, and shall be sent by registered mail to the parties in interest and to the chief administrative officer of each municipality within whose boundaries the affected tidal wetlands or portion

thereof is located; provided, however, in the case of an uncontested petition for which no hearing has been held the requirement for a written statement shall be satisfied, if the petition is granted, by the issuance of a moratorium permit.

(b) The official record of the proceedings on the petition for a moratorium permit will be available for inspection by any person in the appropriate Regional Office of the Department.

660.10 Extension of expiration date. The expiration date of the moratorium permit, if prior to the date of filing with the county clerk of final boundary lines for the tidal wetland which is the subject of such moratorium permit, may be extended by the central tidal wetland permit administrator for good cause shown upon a written request to him filed not later than forty-five days prior to the expiration date and upon simultaneous notice to the parties in interest by the holder of the moratorium permit. Such request shall set forth the grounds for such extension. The holder of the moratorium permit shall be required to serve the parties in interest at his own expense with a copy of the documents evidencing the action of the central tidal wetland permit administrator with respect to such requested extension.

660.11 Modification of permit. If conditions are revealed during construction which will require minor modification of already approved plans and specifications, the moratorium permit may be amended upon written application to the central tidal wetland permit administrator who may for good cause shown permit such amendment if such modification will not be contrary to the policy or provisions of the Act; provided, however, that in cases of doubt as to the substantiality of such modification or whether or not it will be contrary to the policy or provisions of the Act, the central tidal wetlands permit administrator shall treat such application as a petition for a moratorium permit and require the holder of a moratorium permit to file a new petition under Section 660.3 of this Part.

660.12 Revocation or suspension of moratorium permit.

(a) A moratorium permit may be suspended by the Commissioner at any time upon one or more of the following grounds:

- (1) Materially false or inaccurate statements were made in the petition or supporting papers;
- (2) The holder of a moratorium permit has failed to comply with any of the conditions and limitations set forth in the moratorium permit;
- (3) The holder of a moratorium permit has exceeded the scope of the work as set forth in the petition;
- (4) Conditions are revealed during construction which will require modification of already approved plans and specifications and no amendment to the moratorium permit has been approved by the central tidal wetlands permit administrator pursuant to Section 660.11 of this Part.
- (5) Conditions are revealed following issuance of the moratorium permit which may require modification or cancellation thereof in order to achieve the policy of the Act.

(b) Notice of suspension shall be given to the holder of a moratorium permit and shall be sent to such holder by registered mail specifying the reasons therefor.

(c) A holder of a moratorium permit shall have a right to a public hearing after the suspension of a moratorium permit provided that such holder files a written request for a public hearing within thirty days of his receipt of a notice of suspension. The request for a public hearing shall set forth reasons why the moratorium permit should not be revoked.

- (1) The holder of the moratorium permit shall serve the parties in interest at his own expense with copies of the request for a public hearing.
- (2) Within fifteen days of the receipt of such a request, the Commissioner shall cause a public hearing to be held. In the event that the holder of a moratorium permit does not request an opportunity to be heard within thirty days of his receipt of the notice of suspension, the moratorium permit shall be deemed revoked.

(d) Upon review of the hearing officer's recommendation and report, the Commissioner may:

- (1) Reinstate the permit with or without changes in conditions or limitations; or
- (2) Revoke the permit.

(e) In connection with action taken pursuant to this Section, the Commissioner may order the removal or modification of any portion of a completed project which is not in conformity with the moratorium permit.

660.13 Joint proceedings under other laws and regulations.

(a) In the event that a petitioner for a moratorium permit is also required to apply for a permit, license, certificate or other approval pursuant to Part 608 or any other Part of Title 6 of the New York Codes, Rules and Regulations or any section of the Environmental Conservation Law, the Local Permit Agent, the Central Permit Agent or other official before whom such application is pending shall in so far as possible process any or all such applications in the same proceeding as the petition for a moratorium permit and in the event of any procedural inconsistencies between this Part and such other Part, he may, in so far as permitted by statute, follow the procedures of this Part for any and all such applications.

(b) The Commissioner may, by mutual agreement with any municipality within whose boundary the affected tidal wetland or portion thereof is located or any other federal, state or local body having jurisdiction over the subject matter of the petition for a moratorium permit or any work related to such subject matter, provide for joint processing of any such petition with any application for a permit or other proceeding required by such municipality or body, including provision for joint notices and hearings.



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DUE DATE