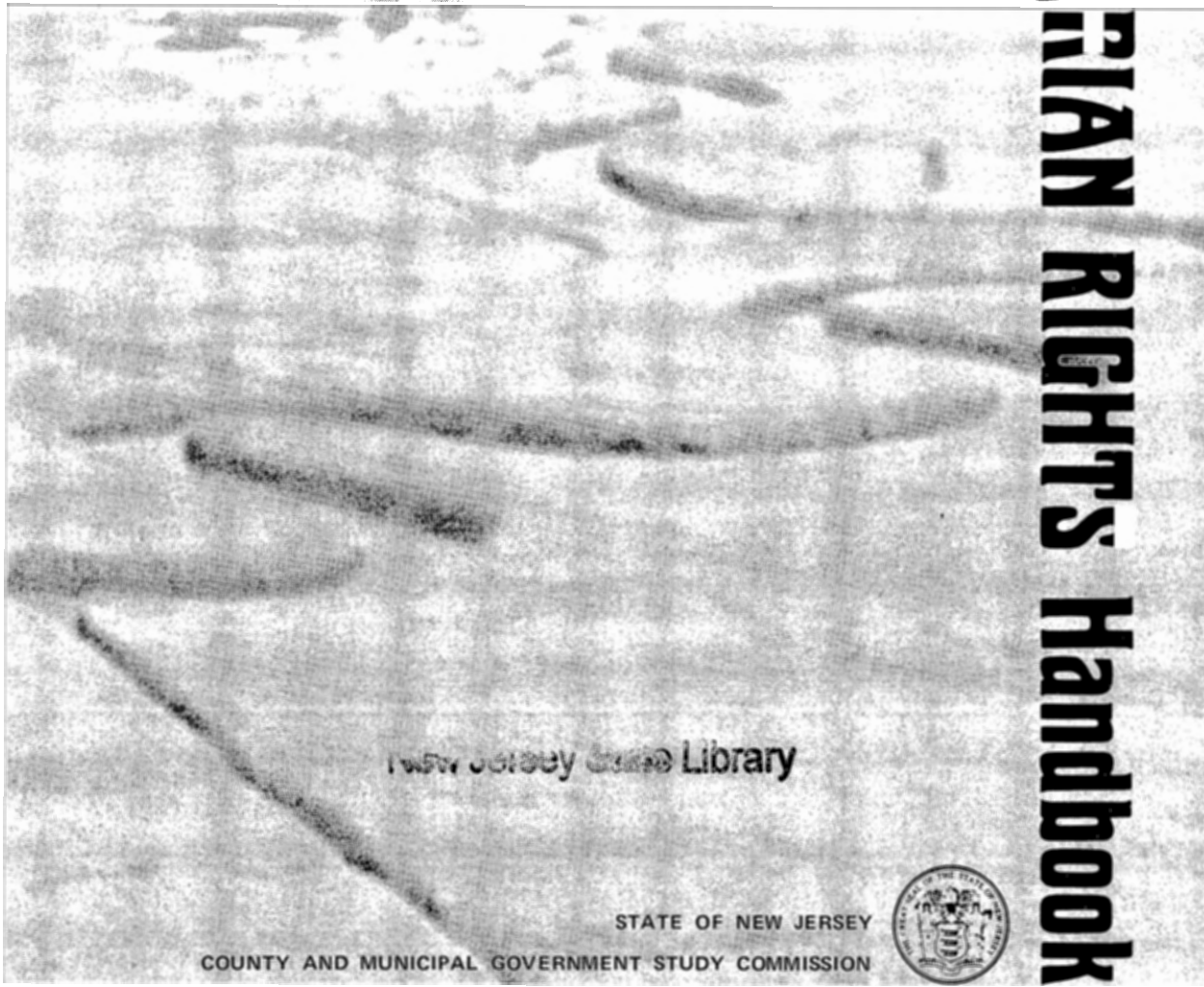


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# The New Jersey RENA FIAN RIGHTS Handbook



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Other Publications:

New Jersey Riparian Rights Handbook, March, 1979, Second Edition, November, 1979

Handbook of Legal References for the Optional County Law, December, 1978

Handbook for County Charter Study Commissioners, November, 1973

Semi-Annual Survey of Municipal Law

County Law News (semi-annual)

# The New Jersey **ALTERNATIVE** **ALLEGITS** **Handbook**

PREPARED FOR THE COMMISSION BY  
LEWIS P. GOLDSHORE, ESQ., COUNSEL

SECOND EDITION  
NOVEMBER, 1979

STATE OF NEW JERSEY  
COUNTY AND MUNICIPAL GOVERNMENT STUDY COMMISSION



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Thomas Koellhoffer.

## FOREWORD

The research for the preparation of this handbook was commenced in 1976, while the author was a Deputy Attorney General and engaged in a study of the State's riparian land management system. The initial draft of the handbook which was circulated for comment in 1976 has been updated to reflect subsequent developments. In addition, a number of modifications have been incorporated in the text of this Second Edition to reflect recent events.

The author wishes to acknowledge the assistance provided to him by the members of the Department of Law and Public Safety, the Department of Environmental Protection, and the Natural Resource Council. In particular, the author is indebted to Morton Goldfein, Esquire, a former Deputy Attorney General, Joel L. Schlesinger, a member of the Natural Resource Council, and Juliet Hirsch, a former member of the staff of the County and Municipal Government Study Commission, for their assistance and encouragement in completing this handbook.

**Any opinions set forth in the publication are solely those of the author and do not necessarily represent the position of any official agency.**

Lewis Goldshore, Esquire  
Counsel  
County & Municipal Government  
Study Commission  
November, 1979

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## INTRODUCTION

Riparian rights have a long and somewhat checkered history in New Jersey. It is a subject that for too long has been difficult for most people to understand because of developing and shifting administrative policy, technical jargon and unnecessarily complicated statutes. The result is that riparian land management is understood by very few of those that it most directly affects. In fact, there is an absence of general agreement concerning the meaning of essential terms. For the purpose of this handbook, the term **riparian rights** will be used, as it is commonly in this context, to describe the rights of landowners abutting on tide-flowed lands, rather than those of landowners situated adjacent to any watercourse.

Initially, it is important to appreciate the complexity of the issues addressed by those governmental officials required to make decisions concerning riparian applications. It should be noted that the focus of this handbook is directed to the process of conveying property interests in tide-flowed lands; however, related but distinguishable rules and considerations apply to the subsequent development of such property. Every action that involves the disposition and development of land in the public domain by its nature mandates a thoughtful weighing of costs and benefits. Decisions involving riparian land are especially difficult because of the unique nature of the land and the obligations imposed by the public trust doctrine and the trust for the support of free public schools. It is thus apparent that no handbook can definitively resolve all of the issues that may arise in this area. Mathematical formulae would have limited utility for riparian land decisions where sound discretion and critical analysis of all the pertinent data are required. Recognizing these limitations, it is the intent of this publication to attempt to explain and clarify the current status of the riparian land system to those who regularly come in contact with it. This includes the staff of the Department of Environmental Protection (DEP), members of the Natural Resource Council, local governmental officials and members of the general public. Municipal and county governments have a special interest in the riparian lands because of their potential value for economic and recreational development.

For organization purposes, the handbook has been divided into nine sections. Section 1, **Glossary of Terms**, provides definitions for important terms. Section 2, **The Fund for the Support of Free Public Schools**, clarifies the relationship between the School Fund and the riparian land management system. The nature and effect of the **Public Trust Doctrine** is explored in Section 3. The **Ecological Considerations** inherent in riparian land decisions are discussed in Section 4. Section 5, **Riparian Statutes**, traces the development of legislative attempts concerning riparian lands and describes the principal sections of existing law. **Riparian Cases**, Section 6, summarizes and discusses important judicial rulings. The **Title Studies and Surveys** are explored in Section 7; **Appraisals** are the subject of Section 8; and Section 9 concerns **Procedures**. Copies of the Riparian Statutes, relevant administrative rules, application forms for riparian grant/lease, permit and license, as well as other materials are provided in the **Appendix**.

## SECTION 1. GLOSSARY OF TERMS

Several words and terms commonly used in the discussion of riparian rights are not normally encountered in general usage. Many are real estate or legal, especially water law, terms. A number of the frequently used terms are defined in this section. The definitions were derived from a number of sources including: *Black's Law Dictionary*, *Corpus Juris Secundum*, *Webster's International Dictionary*, and New Jersey case law.

### **Accretion**

The process of gradual and imperceptible addition of solid material, called alluvion, thus extending the shore line out by deposits made by contiguous water.

### **Alluvion**

That increase of earth on a shore or bank of a stream or sea, by the force of the water, as by a current or by waves, which is so gradual that it is impossible to determine how much is added at each moment of time.

### **Appraisal**

An estimate and opinion of value. It usually consists of a written statement of (a) the market value or value for loan purposes, or value as defined by the appraiser, of (b) an adequately described parcel of property as of (c) a specified date. It is a conclusion which results from the analysis of facts.

### **Avulsion**

A sudden and perceptible loss or addition to land by the action of water or otherwise.

### **Base Map**

A map having sufficient points of reference, such as state, county, or township lines and other selected physical features, to allow the plotting of other data.

### **Brook**

Synonym of "creek", a small stream less than a river.

### **Bulkhead**

A retaining wall created along the water behind which solid fill is placed, thus extending the upland out to the bulkhead line.

### **Bulkhead Line**

A line along navigable water beyond, that is, offshore of, which no solid fill is permitted.

### **CAFRA**

The *Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.*, provides for State planning and regulation of siting of major facilities in the statutorily defined coastal area.

**Consideration**

The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. In real estate practice, usually the actual price at which property is transferred.

**Current**

The part of any body of water that has a more or less steady flow in a definite direction.

**Datum**

A reference point, line or plane used as a basis of measurements.

**Datum Plane**

A surface used as a reference from which heights or depths are reckoned.

**Department of Environmental Protection**

The Department of Environmental Protection, or DEP, was established by *N.J.S.A. 13:1D-1 et seq.*, and directed to formulate comprehensive policies for the conservation of the State's natural resources, the promotion of environmental protection and the prevention of pollution. It succeeded to the lands and resource management functions that had been formerly assigned to the Department of Conservation and Economic Development, and the pollution control functions of the Department of Health.

**Erosion**

The wearing away of the land surface by running water, wind, or other geological agents.

**Estuary**

That part of the mouth or lower course of a river flowing into the sea which is subject to tide; especially an enlargement of a river channel towards its mouth in which the movement of the tide is very prominent.

**Fair Market Value**

Price which, in all probability, would voluntarily be agreed upon in fair negotiations between an owner willing, but not forced, to sell and a buyer willing, but not forced, to buy. It is the price which is generally said to determine the fair amount of compensation to be paid to the owner.

**Fee Simple: Fee Simple Absolute**

An absolute fee, interest in land, the owner of which is entitled to the entire property, with unconditional power of disposition.

**Front Foot**

A land measure being one foot in width along the frontage of a property.

**Grant**

An instrument which conveys some estate or interest in the lands which it embraces. A riparian grant conveys an estate, usually a fee simple, in State owned riparian lands.

**Hackensack Meadowlands Development Commission**

A seven member agency established by statute, *N.J.S.A. 13:17-1 et seq.*, with broad land use and development authority concerning the 21,000 acre Hackensack Meadowlands District.

**Laches**

Inexcusable delay in asserting a right. The New Jersey case law indicates that the doctrines of laches and estoppel do not apply against the State in the same way as they do with regard to private parties.

**Land Reclamation**

Making land capable of more intensive use by changing its character, environment, or both, through operations such as drainage, provision of water, or otherwise.

**Leaching**

Removal of material from soil by taking it into solution. This condition is especially prevalent at landfill sites where pollutants may leach into the ground and surface waters.

**Lease**

An agreement which gives rise to a relationship of landlord and tenant. A lease is spoken of as a hiring of land, or a sale of the possession, occupation and profits of land for a term.

**License**

Permission or authority to perform a particular act or series of acts on lands of another without possessing any estate or interest therein; the privilege to occupy under the owner.

**Littoral**

Pertaining to the shore, particularly of the seas and oceans.

**Littoral Drift**

The movement of water along the shoreline which results in the transport of grains of sand. The direction and force of littoral drift is a product of currents and winds.

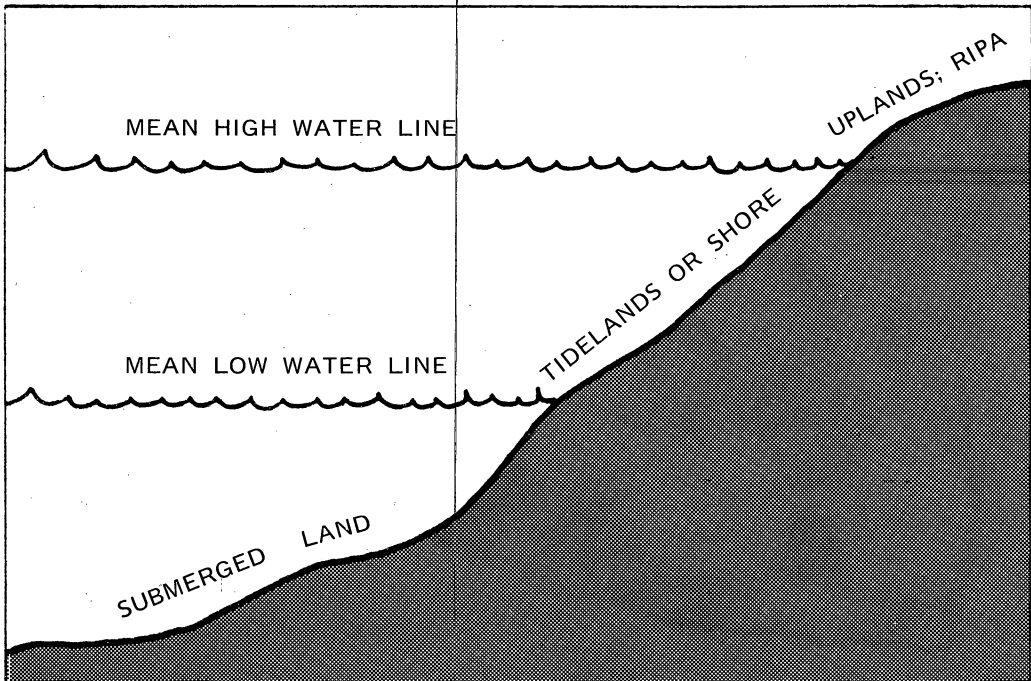
**Marketable Title**

A title not subject to such reasonable doubt as would create a just apprehension of invalidity in the mind of a reasonable, prudent, and intelligent person. Title that a person of reasonable prudence and intelligence, guided by competent legal advice, would be willing to take and pay fair value for.

### Mean High Water Line or Mark

The line formed by the intersection of the tidal plane of mean high tide with the shore. The mean, sometimes called **ordinary**, high tide is defined as the median between the spring and the neap tides. The average to be used should be, if possible, the average of all the high tides over a period of 18.6 years. In New Jersey the State owns all lands, now or formerly, below the mean high water line which have not been alienated.

The following diagram depicts the mean high water line.



### Metes and Bounds

A method of describing the boundaries of land by directions and distances from a known point of reference.

### Ninety Day Law

In general, this statute, *N.J.S.A. 13:1D-29 et seq.*, requires that the DEP approve or disapprove applications for five specified types of construction permits within 90 days of the receipt of a completed application. The permits include plans for the development of waterfront upon tidal waterways pursuant to *N.J.S.A. 12:5-3*, a permit for a regulated activity pursuant to the *Wetlands Act*, and a permit issued

pursuant to the *Coastal Area Facility Review Act*. A flow chart depicting the wetlands and waterfront (riparian) development permit application process is provided in the *Appendix*, A-114.

**Permit**

A writing, issued by a person in authority, empowering the holder thereof to do some act not forbidden by law, but not allowed without such authorization.

**Phragmites Communis (Reed Grass)**

This ubiquitous plant is found in coastal areas, almost exclusively above the elevation of high tide. It grows to a height of 6 - 10 feet, and is often found in filled areas.

**Pierhead Line**

A line beyond which no structure may extend into tidal waters.

**Pre-Emptive Right or Right of Pre-Emption**

A right in a riparian owner to a preference in the acquisition of lands under tide-waters adjoining his upland, in the event that the State decides to convey them at all. The pre-emptive right is afforded limited recognition in the New Jersey statutes.

**Purpresture**

An inclosure by a private party of a part of some property which belongs to and ought to be open and free to the enjoyment of the public at large.

**Quitclaim Deed**

A deed of conveyance operating by way of release; that is, intended to pass any title, interest or claim which the grantor may have in the premises, but not professing that such title is valid, and not containing any warrant or covenant for title.

**Reliction**

The gradual withdrawal of the water from the land by the lowering of its surface level from any cause. Used interchangeably with the term **dereliction**.

**Return**

The line between the mean high water line and the seaward extension of a permitted structure, such as a bulkhead.

**Rip Rap**

A foundation of stones or rocks loosely placed together without order in deep water to prevent scour on the sides of bulkheads and similar construction.

**Ripa**

Land bordering on the mean high water line; upland, if it extends to and has contact with tidewater.

**Riparian Grant**

The grant of the lands below the mean high water line; initiating at the mainland and limited in outward extent by exterior lines.

**Riparian Proprietor**

An owner of land, bounded generally upon a stream of water. Used frequently to indicate the owner of the land adjoining the shore of tide waters above the ordinary flow of the tide.

**Riparian Rights**

The rights of the owners of lands on the banks of watercourses, relating to the water, its use, and ownership of soil under the stream. For the purposes of this handbook, the term is used to describe only those rights of landowners abutting on tide-flowed lands.

**River**

A natural stream of water, of greater volume than a creek or riverlet, flowing in a more or less permanent bed or channel, between defined banks or walls, with a current which may either be continuous in one direction or affected by the ebb and flow of the tide.

**Royalty**

In real estate usage, it is the money paid to an owner of realty for the right of depleting the property of its natural resource, such as oil, gas, minerals, stone, builders' sand and gravel, and timber.

**School Fund**

Fund for the support of free public schools. See Section 2.

**Soil Map**

A map designed to portray the distribution and location of soil types, phases, and complexes as well as other selected cultural and physical features.

**Spartina Alteriflora; Saltmarsh Cord Grass**

A common saltmarsh grass, rich in nutrients, whose roots are washed by the tides twice daily. It grows to a maximum height of four (4) feet.

**Spartina Patens; Salt Hay; Cord Grass**

A common saltmarsh grass found on slightly higher ground than spartina alterniflora. It grows to a maximum height of one foot and is washed by higher than average tides.

**State Owned Riparian Lands**

Those lands now or formerly flowed by the mean high water line and owned by the State of New Jersey.

**Stream**

A watercourse having a source and terminus, banks and channel through which waters flow at least periodically. It usually empties into lakes, other streams or the ocean, but it does not lose its character as a watercourse even though it may break up and disappear.

### **Submerged Lands**

Those lands situated below the mean low water line. Sometimes used to describe all of the lands covered by the mean high water line.

### **Survey**

The process of scientifically ascertaining the quantity and/or location of a piece of land; it may include physical features affecting it, such as grades, contours, and structures. A statement of the courses, distances and quantity of land.

### **Tide**

The periodic rise and fall of the surface waters of the oceans and of the waters connected with them, caused by the gravitational pull of the moon and sun. In each lunar day of 24 hours and 51 minutes there are two high tides and two low tides.

### **Tidelands**

Those lands situated between the mean high water line and the mean low water line.

### **Usufructuary**

One who has the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the property, utility and advantage which it may produce, provided it be without altering the substance of the thing.

### **Waterway**

A synonym of watercourse. A watercourse is a channel or canal for the conveyance of water which may be natural or artificial in its formation. The watercourse usually flows in a particular direction though it need not flow continuously. Since it flows in a channel, it must have a bed or banks, and must be more than a mere surface drainage over the entire face of the tract of land.

### **Wetlands**

The *Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.*, authorizes the DEP to regulate the use of **coastal wetlands**. These consist of low lands subject to tidal action whose surface is at or below an elevation of 1 foot above local extreme high water and which are capable of supporting certain listed types of vegetation. It should be noted that the statute expressly exempts the area within the jurisdiction of the Hackensack Meadowlands Development Commission.

## SECTION 2. THE FUND FOR THE SUPPORT OF PUBLIC SCHOOLS

It is essential that those persons interested in riparian land management appreciate the role of the Fund for the Support of Free Public Schools. The permanent School Fund, as it is commonly known, was originally established to prevent certain State assets from being dissipated by the Legislature and to provide a painless way to finance the State's support of education. The fund, which consists almost entirely of the proceeds of State riparian land transactions, currently includes assets in excess of \$34 million with a yearly income of approximately \$2.1 million. While these amounts are significant, they represent only a very small portion of the State's total annual obligation for the support of free public schools.

### A. Historical Perspective

The Legislature established the School Fund in 1817 and trustees were designated the following year. Constitutional protection was afforded to the Fund by the *Constitution of 1844, Art. IV, sec. 7, para. 6*, which recognized the existence of the School Fund, provided that it was to be perpetual in nature, and prohibited the Legislature from using the property dedicated to it for any purposes other than the support of free public schools. In 1871, and again in 1894, statutes were adopted appropriating and irrevocably assigning to the Fund all monies thereafter received from the sales and rentals of State owned tidelands.

The Fund for the Support of Free Public Schools was retained when the Constitution of 1947 was adopted. See *N.J. Const. (1947), Art. VIII, sec. 4, para. 2*. The modern provision requires that the Fund be securely invested, remain a perpetual fund, and that the portion of the income not applied to increase the Fund's capital be annually appropriated exclusively for the support of free public schools. The text of the constitutional provision provides in pertinent part:

*Article VIII, section 4, paragraph 2:*

#### **Perpetual fund for support of free public schools; use of fund; income.**

2. The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent, except as hereinafter provided, for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever.

## B. Current Statutory Provisions

The impact of the statutory provisions concerning the Fund for the Support of Free Public Schools must also be considered. See *N.J.S.A. 18A:56-1 et seq.* Three sections, contained in *Title 18A (Education)*, are directly related to riparian lands management.

### **18A:56-5. State lands under water and revenue from sales thereof.**

All lands belonging to this state now or formerly lying under water are dedicated to the support of public schools. All moneys hereafter received from the sales of such lands shall be paid to the board of trustees, and shall constitute a part of the permanent school fund of the state.

### **18A:56-6. Leases of lands under water; principal or income.**

All leases of lands so dedicated to the support of public schools shall be held by the board of trustees as a part of the principal of the school fund, and the income arising from such leases shall be a part of the income of the school fund.

When these sections are read together with the constitutional provision, they create an irrevocable dedication of the proceeds derived from the sales and leases of State riparian lands to the School Fund. The following provision, *N.J.S.A. 18A:56-7*, permits the expenses of administering riparian lands to be deducted from the moneys received for riparian conveyances.

### **18A:56-7. Deducting expenses of administering lands under water.**

The sum appropriated for the expenses incurred in the administration of the lands so dedicated to the support of public schools shall be first deducted by the director of the division of budget and accounting in the department of the treasury from moneys derived from the sales, grants, leases, and rentals of such lands.

However, it should be noted that this deduction of administrative expenses is not automatic. The constitution requires that an appropriation statute be adopted to authorize the expenditures of State moneys for this purpose. *N.J. Const. (1947), Art. VIII, sec. 2, para. 2.*

The Legislature, commencing in fiscal year 1973, has provided appropriations for delineation and title determination of the State's interest in riparian lands from the proceeds of these land transactions. The appropriation for fiscal year 1973 was a sum not to exceed \$200,000; for fiscal year 1974 a sum not to exceed \$200,000; for fiscal year 1975 a sum not to exceed \$1,100,000; for fiscal year 1978 a sum not to exceed \$650,000, from the current receipts of riparian transactions; for fiscal year 1979 the budget authorized a sum not to exceed \$650,000, from the current receipts of riparian transactions; and for fiscal year 1980, a sum not to exceed \$450,000; however, under certain circumstances, this sum may be increased to \$1,720,000, from the current riparian receipts. While substantial sums have been actually expended for these purposes, because of a number of factors they have been considerably less than the aggregate of the authorized appropriations.

While all of the appropriated funds have not been expended, the process has been costly and time consuming and will require several years to complete. For further discussion of the mapping project, see section 7.

The statutes also provide that the School Fund is to be managed by a six member board of trustees. The members are the Governor, the Attorney General, the Secretary of State, the State Comptroller, now known as the Director of the Division of Budget and Accounting, Department of the Treasury, the State Treasurer, and the Commissioner of Education. *N.J.S.A. 18A:56-1*. The Secretary of State is designated as the board's secretary and is directed to maintain records of its proceedings. *N.J.S.A. 18A:56-2*. The State Treasurer is required to annually prepare a financial statement and account of the assets of the Fund which is presented to the board of trustees and the Legislature. *N.J.S.A. 18A:56-3 and -4*. Additional statutory provisions concern the financial management of the School Fund, and provide that the Fund be utilized as financial support for local bonds issued for school purposes by guaranteeing the payment of principal and interest in the event of default by the issuing agency. *N.J.S.A. 18A:56-16*.

### C. Case Law

Over the years the courts have had a number of opportunities to construe the provisions concerning the School Fund. While most of the case law is rather old, it provides some guidance to those interested in riparian lands management. For example, as a result of judicial interpretation, it is clear that the dedication of the proceeds of the sales of riparian lands to the benefit of the permanent School Fund and the designation of trustees for the fund does not obligate the State to convert the properties into income producing assets. *Am. Dock and Imp. Co. v. Trustees of Public Schools, 35 N.J. Eq. 181 (E. & A. 1882)*. The division of authority between the Riparian Commissioners, predecessors of the Natural Resource Council, and the trustees of the School Fund has also been addressed by the case law:

"The trustees have no control over the state's lands under water...

The trustees [of the School Fund] have no authority to decide what lands under water shall or shall not be sold, or to fix the price or dictate the terms and conditions on which sales shall be made, nor power to rescind contracts of sale made by the riparian commissioners [predecessors to the Natural Resource Council], which they may deem prejudicial to the school fund. The powers and duties of the trustees in relation to the school fund are purely executive and ministerial--to invest the fund and appropriate its income annually to the support of the public schools." *Am. Dock and Imp. Co., supra, 35 N.J. Eq. at 263*.

[Note: The observation concerning the limited powers of the trustees, or other interested persons, to set aside conveyances prejudicial to the Fund may be too broad, in light of modern legal concepts.]

The courts have also imposed limitations on the State's authority to dispose of

its riparian lands because of the constitutional provision and the statutory dedication. In *Henderson v. Atlantic City*, 64 N.J. Eq. 583 (Chan. 1903), a statute that attempted to convey State owned riparian lands to a municipality for park purposes, clearly a legitimate public purpose, at a nominal consideration was held to be invalid. The constitutional requirement that the State receive fair market value for all riparian conveyances including those to local governments, despite legislative indications to the contrary, was also addressed in two formal opinions of the Attorney General. See *Formal Opinion - 1960*, No. 18, park grants to local governments pursuant to N.J.S.A. 12:3-33 et seq. must be for constitutionally sufficient consideration; *Formal Opinion - 1978*, No. 8\*, concluded that N.J.S.A. 12:3-37.1, a 1975 law that purported to allow the State to lease riparian lands for municipal park purposes at a nominal consideration may not be literally applied since the State is required to receive the fair market value of the interest conveyed. It should be noted, however, that the School Fund provision does not bar a conveyance of a limited interest in State lands for the fair market value of such less than fee simple interest. In another case concerning the School Fund the Supreme Court held that as a result of the applicable constitutional and statutory provisions, the State could not lose its title by failing to take action to remove unauthorized occupants from State owned lands. *O'Neill v. State Hwy. Dept.*, 50 N.J. 307, 321-322 (1967).

#### D. Current Status of the School Fund

The School Fund is managed by the Division of Investment, Department of the Treasury. The Division provided the following information concerning the current status of the School Fund:

Status of School Fund, As of June 30, 1979	(All Amounts Have Been Rounded To Nearest Dollar)
<b>Assets</b>	
1) United States Government Bonds	\$12,093,353
2) Municipal Bonds	494,167
3) Industrial Bonds	3,345,662
4) Public Utility Bonds	10,265,790
5) Transportation Bonds	353,445
6) Others**	4,666,698
7) Common Stock	2,206,598
8) Convertible Bonds	<u>1,295,505</u>
<b>TOTAL</b>	<b>\$34,721,218</b>
 <b>Total Income - Fiscal Year 1979</b>	
1) Net Investment	\$ 2,019,016
2) Net Gain - Sale of Securities	<u>87,509</u>
<b>TOTAL</b>	<b><u>\$ 2,106,525</u></b>

\* A compilation of published Attorneys' General opinions concerning riparian rights is contained in the Appendix, A-92.

\*\* e.g., Cash Management Fund, Time Certificates of Deposit, Farmers Home Administration Notes, Preferred Stock.

## SECTION 3. THE PUBLIC TRUST DOCTRINE

### A. Introduction

Another issue that affects riparian land decisions is the public trust doctrine. In recent years it has been the subject of considerable discussion and debate. There are those who have contended that the doctrine prohibits all conveyances of the State's underwater holdings to private persons. This position has not been accepted by the New Jersey courts. It is clear, however, that the public trust doctrine does place limitations on the State's right to utilize and alienate its tide-flowed lands. The court opinions have set forth broad standards to guide the decision-makers. The difficult task of applying the standards to individual factual settings is the responsibility of the Natural Resource Council and the other State officials involved in the review of proposed riparian transactions. The purpose of this section is to summarize and clarify the current status of the public trust doctrine and its impact on decisions concerning riparian lands.

The nature of the State's ownership of lands can be distinguished from its dominion regarding ordinary replaceable assets. The unique value of tidelands properties to the environment and economy of the State require the exercise of the highest degree of care in their management. The courts have held that the State's title to these lands is as trustee for the public, and that their utilization and alienation are subject to the limitations imposed by the public trust doctrine.

There is no succinct enumeration of the State's, or of the Natural Resource Council's, duties and obligations as public trustee to be found in the New Jersey statutory law. It is clear, however, that the public trust doctrine was recognized by state courts as early as 1821. *Arnold v. Mundy*, 6 N.J.L. 1 (Sup. Ct. 1821). The importance of the doctrine and its development have been explored in several recent law review articles. See Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Michigan Law Review 471 (1970); Note, *The Public Trust in Tidal Areas: A Sometimes Submerged Traditional Doctrine*, 79 Yale Law Journal 762 (1970); and Note, Jaffee, *State Citizen Rights Respecting Greatwater Resource Allocation: From Rome to New Jersey*, 25 Rutgers Law Review 571 (1971). Guidance as to its modern implications for decision making requires a review of excerpts from a landmark United States Supreme Court decision and a number of New Jersey Supreme Court opinions.

### B. U.S. Supreme Court Enunciation of the Public Trust Doctrine

#### Statement of Public Trust Principle

An excellent description of the public trust principle is found in the leading case of *Illinois Central Railroad Company v. People of State of Illinois*, 146 U.S. 387, 435 (1892):

"It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several states, belong to the respective States within which they are found,

with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control the regulation of commerce with foreign nations and among the States."

#### **Original Purpose of the Doctrine**

The original purpose of the doctrine was also discussed in *Illinois Central*:

"[The title to the submerged land] ...is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks and piers therein, for which purpose the State may grant parcels of the submerged lands; and, so long as their disposition is made for such purpose, no valid objection can be made to the grants. It is grants of parcels of lands under navigable waters, that may afford foundation for wharves, piers, docks and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interest in the lands and water remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the State." *Illinois Central, supra at 452.*

#### **Disposal or Alienation of Trust Lands**

Once the trust principle is acknowledged, the issue of disposal or alienation of these public assets needs to be resolved. The United States Supreme Court indicated that a State may not completely abdicate its obligations with respect to these lands:

"The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining." *Illinois Central, supra at 453.*

#### **C. New Jersey Supreme Court Description of the Public Trust Doctrine**

The New Jersey Supreme Court has also had occasion to address the nature of the public trust doctrine and its application in this State. The most comprehensive judicial statements of the current import of the public trust doctrine are set forth in two opinions written by former Justice Frederick W. Hall. He traced the history and development of the doctrine in *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 61 N.J. 296 (1972), a case in which the Court held that an

oceanfront municipality may not charge nonresidents higher fees than residents for the use of its beach area because of the public trust doctrine. The following quotations have been extracted from the Court's opinion:

### **Derivation and Purpose of the Doctrine**

"That broad [public trust] doctrine derives from the ancient principle of English law that land covered by tidal waters belonged to the sovereign, but for the common use of all the people. Such lands passed to the respective states as a result of the American Revolution..."

"The original purpose of the doctrine was to preserve for the use of all the public natural water resources for navigation and commerce, waterways being the principal transportation arteries of early days, and for fishing, an important source of food."

### **Recognition of Doctrine in New Jersey**

"There is not the slightest doubt that New Jersey has always recognized the trust doctrine. The basic case is *Arnold v. Mundy*, 6 N.J.L. 1 (*Sup. Ct. 1821*), where Chief Justice Kirkpatrick spoke as follows:"

"Every thing susceptible of property is considered as belonging to the nation that possesses the country, and as forming the entire mass of its wealth. But the nation does not possess all those things in the same manner. By very far the greater part of them are divided among the individuals of the nation, and become **private property**. Those things not divided among the individuals still belong to the nation, and are called **public property**. Of these, again, some are reserved for the necessities of the state, and are used for the public benefit, and those are called **the domain of the crown or of the republic**; others remain common to all the citizens, who take of them and use them, each according to his necessities, and according to the laws which regulate their use, and are called **common property**. Of this latter kind, according to the writers upon the law of nature and of nations, and upon the civil law, are the air, the running water, the sea, the fish, and the wild beasts. But inasmuch as the things which constitute this **common property** are things in which a sort of transient usufructuary possession, only, can be had; and inasmuch as the title to them and to the soil by which they are supported, and to which they are appurtenant, cannot well, according to the common law notion of title, be vested in all the people; therefore, the wisdom of that law has placed it in the hands of the sovereign power, to be held, protected, and regulated for the common use and benefit. But still, though this title, strictly speaking, is in the sovereign, yet the use is common to all the people..."

"And I am further of opinion, that, upon the Revolution, all these royal rights became vested in **the people** of New Jersey as the sovereign of the country, and are now in their hands; and that they, having themselves, both the legal title and the usufruct, may make such disposition of them, and

such regulation concerning them, as they may think fit; that this power of disposition and regulation must be exercised by them in their sovereign capacity; that the legislature is their rightful representative in this respect, and therefore, that the legislature, in the exercise of this power, may lawfully erect ports, harbours, basins, docks, and wharves on the coasts of the sea and in the arms thereof, and in the navigable rivers; that they may bank off those waters and reclaim the land upon the shores; that they may build dams, locks, and bridges for the improvement of the navigation and the ease of passage; that they may clear and improve fishing places, to increase the product of the fishery; that they may create, enlarge, and improve oyster beds, by planting oysters therein in order to procure a more ample supply; that they may do these things, themselves, at the public expense, or they may authorize others to do it by their own labour, and at their own expense, giving them reasonable tolls, rents, profits, or exclusive and temporary enjoyments; but still this power, which may be thus exercised by the sovereignty of the state, is nothing more than what is called the *jus regium*, the right of regulating, improving, and securing for the common benefit of every individual citizen. The sovereign power itself, therefore, cannot, consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right. It would be a grievance which never could be long borne by a free people' .

"Similar expressions are found throughout our decisions down through the years..."

#### **Alienation and Public Access to Public Trust Lands**

"It is safe to say, however, that the scope and limitations of the doctrine in this state have never been defined with any great degree of precision. That it represents a deeply inherent right of the citizenry cannot be disputed. Two aspects should be particularly mentioned, one only tangentially involved in this case and the latter directly pertinent. The former relates to the lawful extent of the power of the legislature to alienate trust lands to private parties; the latter to the inclusion within the doctrine of public accessibility to and use of such lands for recreation and health, including bathing, boating and associated activities. Both are of prime importance in this day and age. Remaining tidal water resources still in the ownership of the State are becoming very scarce, demands upon them by reason of increased population, industrial development and their popularity for recreational uses and open space are much heavier, and their importance to the public welfare has become much more apparent...All of these factors mandate more precise attention to the doctrine."

"...The matter of legislative alienation in this state should, nonetheless, be briefly adverted to since it has a tangential bearing. As the earlier quota-

tions indicate, it has always been assumed that the State may convey or grant rights in some tidal lands to private persons where the use to be made thereof is consistent with and in furtherance of the purposes of the doctrine, *e. g.*, the improvement of commerce and navigation redounding to the benefit of the public. However, our cases rather early began to broadly say that the State's power to vacate or abridge public rights in tidal lands is absolute and unlimited, and our statutes dealing with state conveyances of such lands contain few, if any, limitations thereon..."

The observation to be made is that the statements in our cases of an unlimited power in the legislature to convey such trust lands to private persons may well be too broad. It may be that some such prior conveyances constituted an improper alienation of trust property or at least that they are impliedly impressed with certain obligations on the grantee to use the conveyed lands only consistently with the public rights therein. For example, the conveyance of tide-flowed lands bordered by an ocean dry sand area in private ownership to the owner thereof may well be subject to the right of the public to use the ocean waters. And, whether or not there was any such conveyance of tidal land, the problem of a means of public access to that land and the ocean exists....

We have no difficulty in finding that, in this latter half of the twentieth century, the public rights in tidal lands are not limited to the ancient prerogatives of navigation and fishing, but extend as well to recreational uses, including bathing, swimming and other shore activities. The public trust doctrine, like all common law principles, should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit. *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 61 N.J. 296, 303-309 (1972).

See also *VanNess v. Borough of Deal*, 78 N.J. 174 (1978) (in which the State Supreme Court relied on *Avon, supra*, and held that all municipally owned sand area adjacent to tidal waters must be open to all on equal terms and without preference).

In a second opinion written by Justice Hall, the application of the public trust doctrine to a potential transfer of State owned riparian lands for the meadows sports complex was discussed. *N.J. Sports and Exposition Authority v. McCrane*, 61 N.J. 1, at 55 (1972) (concurring and dissenting opinion of Hall, J.).

From the following excerpt it may be possible to distill some general guidelines to assist the Natural Resource Council in its deliberations:

"The doctrine, at least in this state, does not prohibit all use and alienation by the state of such lands, but conveyances must be subject to use conditions depending on the nature of the particular land involved. Such conveyances have always been subject to the ancient public rights of navigation and fishery. Today it seems to me, speaking quite broadly, that these public rights should include as well recreational uses where appropriate, such as

bathing, surfing, launching small boats and walking on the land below the mean high-water line when the tide permits. Water-related uses ought to be permitted where the land lends itself thereto. Examples would be docks and piers along a harbor or tidal estuary. Important public uses such as the site for abutments for a bridge seem likewise within the purpose of the trust. Compliance with the trust becomes a more difficult problem where vast areas of tide-flowed meadowlands are involved and especially where such tidelands are physically closely connected with privately owned non-tidal land. Uses are generally limited to two choices--filling in the meadow for the erection of structures for the ultimate economic benefit of the people or leaving it in its natural state for ecological and limited recreational purposes. *I presume here a balance may be struck allowing for some of each, with the portion allocated to the former being determined by the extent of the public need for the preservation of the natural state. This decision calls for the utmost in expert knowledge and objective, good faith consideration.* 61 N.J. at 67-68 (emphasis added).

#### **Relationship Between Public Trust Doctrine and School Fund**

In a later portion of his opinion in the *Sports Authority* case, Justice Hall discussed an aspect of the relationship between the public trust doctrine and the Fund for the Support of Free Public Schools. He rejected the contention that the State's obligation as trustee for the public is satisfied merely when compensation for the riparian lands is paid into the School Fund:

"The mere fact that compensation will be paid and monies received by the state deposited, as required by statute (*N.J.S.A. 13:1B-13.13*), in the constitutionally protected Fund for the Support of Free Public Schools (*Const. Art. VIII, sec. IV, par. 2*), does not in and of itself establish compliance with the trust requirements. All monies received by the State from any source must be used for a public purpose and dedication to the school fund adds nothing....**The point is that the true requirements of the doctrine must be met in agency determinations as to the location, type and character of the Authority's various projects in relation to tide-flowed land owned by the State and, indeed, in decisions of the Meadowlands Commission as to development plans for the whole area...** 61 N.J. at 68, 69 (emphasis added).

#### **Additional Limitations on Alienation of Public Trust Lands**

A relatively recent State Supreme Court expression concerning the public trust doctrine is set forth in a footnote in the opinion in *LeCompte v. State*, 65 N.J. 447 (1974):

"The present case is obviously not an appropriate vehicle to consider further the question as to what restrictions and limitations, if any, are placed

upon the State's freedom to alienate tidelands by virtue of this doctrine. We look forward to an early opportunity to consider this important issue comprehensively. *65 N.J. at 450-451, footnote 1.*

In light of prior statements on the subject it appears that the Supreme Court might be willing in future cases to expressly set forth additional limitations on the State's right to convey tide-flowed lands.

#### **D. Summary**

In summary, a number of general observations can be made concerning the public trust doctrine:

- 1. The public trust doctrine is recognized in New Jersey and applies to the State's ownership and management of tide-flowed land.**
- 2. The original purpose of the doctrine was the protection of the public rights in tidal lands. These rights extend beyond the traditional purposes of navigation and fishing and apply to recreational uses, including bathing, swimming and other shore activities.**
- 3. The public trust doctrine does not prohibit all use and alienation of State owned riparian land. However, judicial statements that have implied that the State's power to vacate or abridge public rights in tidal lands is absolutely unlimited may well have been too broad.**
- 4. The State, as trustee, is subject to restrictions and limitations in the utilization and alienation of these lands. The precise nature of these conditions has not yet been the subject of complete judicial pronouncement.**
- 5. The importance of remaining tidal resources to the public welfare has been recognized.**
- 6. Uses consistent with the trust include recreational uses where appropriate, such as bathing, surfing, launching small boats and walking on the land below the mean high water line when the tide permits. Water-related uses, including docks and piers along a harbor or tidal estuary, may be permitted when the land lends itself to such utilization.**
- 7. Determining compliance with the trust is especially difficult in vast areas of tide-flowed meadowlands proximate to privately owned non-tidal land. A balance should be struck between allowing filling in the meadowland or other tide-flowed lands to further private economic development, and preserving it in its natural state for ecological and limited recreational purposes. This balance is not satisfied by a simple weighing of the economic benefits which might result from the conveyance against the ecological benefits which result from the preserving of the land in its unfilled condition. Rather, the portion permitted to be conveyed and filled must be determined by the extent of the public need for the preservation of**

the natural state, and the effect of the proposed conveyance on the remaining tide-flowed resources and the public's access thereto.

8. Conveyances of riparian land which would result in substantial environmental damage would clearly contravene the public trust doctrine.
9. The doctrine would appear to be violated by riparian conveyances of lands along waterways which are, or may be, devoted primarily to recreation or preservation uses, unless it can be demonstrated that such action is definitively in the public interest.
10. Tideland decisions require the utmost in expert knowledge and objective, good faith consideration.

## SECTION 4. ECOLOGICAL CONSIDERATIONS

The protection of the public trust in State owned riparian lands requires an understanding of the ecological significance of the property in question. The environmental value of each parcel of such property varies depending on the conditions present at the particular site. Thus, the ecological significance of virgin meadowlands can be contrasted with that of lands that were filled and developed many years ago.

New lands that are subject to tidal action are an important part of the estuarine ecosystem. The decisions of the Natural Resource Council concerning the alienation of these properties and their ultimate development affect the quality of this fragile ecosystem. While lines can be drawn dividing public from private ownership, in the natural world these boundaries have little significance. Lands situated above and below the high water lines comprise a single ecosystem. Stress or disruption in one area results in adverse consequences in other places. A substantial amount of literature has been written describing the estuarine processes in detail. The following basic information was extracted from *Environmental Quality*, President's Council on Environmental Quality (First Annual Report, transmitted to Congress August 1970), p. 175-177.

### **"The Coastal Environment**

In the land and water areas of the American coasts lie some of the most fertile parts of the environment. The coastal zones, which include beaches, estuaries, tidal flats, bays, marshlands, lagoons, and sounds, with their adjacent lands, comprise areas of great biological diversity and productivity. The coastal zone includes urban, suburban, rural and natural areas and faces all the problems of each. It is, however, a unique system which has important national significance and is subject to intense and conflicting manmade pressures.

Its surface is relatively small - - only 15 percent of the U.S. land area. But 33 percent of the Nation's people are concentrated on the coasts, four-fifths of them in urban areas. While the national population increased 46 percent from 1930 to 1960, the population in coastal counties increased by 78 percent.

**Life at the edge** - - Because of the natural mixing of fresh and salt waters, the estuarine environment produces a wide variety of living organisms, from microscopic species to large numbers of fish and shellfish, birds, and mammals. Many species, such as clams and oysters, spend their entire life cycles in the estuaries. Others, particularly shrimp, migrate from the sea to estuarine nursery areas. In these rich waters, they grow to sub-adult size before returning to the sea to complete their life cycles. The anadromous species, such as salmon and striped bass, pass through the estuaries to their spawning grounds farther upstream, and the young return through the estuaries to the ocean. At least two-thirds of the animal populations in the oceans

spend an essential portion of their life cycle in estuarine waters or are dependent on species that do. Innumerable waterfowl and shorebirds depend on the plant and animal organisms of the coastal zone for their food. Many winter and nest in these waters.

The base for all animal life in estuaries is the abundant variety of plant growth, from mangroves to eelgrass and algae. They are supported by the mixing and flushing action of the tides and the organic nutrients which collect to produce the rich bottoms and wetlands. While estuarine zones are physically varied, they all share the slow mixing action of the seaward flow of fresh water with the landward tides of the sea. Because of the concentration of people within the coastal zone, the estuaries receive large volumes of all kinds of waste, which are thereby trapped and concentrated. When estuarine waters are polluted, vast numbers of important fish and shellfish are affected as well as the numerous birds, reptiles, and other wildlife which are part of this food chain.

**The conflicts** - - Competition for the use of the limited coastal zone is intense. Shipping activities are increasing, with larger vessels needing deeper channels. Mining and oil drilling in coastal waters grows daily. Urban areas expanding throughout the coastal zone continue to enlarge their influence over these waters. Industrial and residential development compete to fill wetlands for building sites. Airport and highway construction follows and further directs growth patterns in the coastal zone. Recreation--from enjoyment of the surf and beaches to fishing, hunting, and pleasure boating--becomes more congested as available areas diminish. Since over 90 percent of U.S. fishery yields come from coastal waters, the dependence of the commercial fisheries industry on a stable estuarine system is obvious.

Although some uses of coastal areas are undoubtedly necessary, many are not. Much industry, housing, and transportation could be sited elsewhere.

**Dredging and filling** -- Besides water pollution, the major adverse effect on the coastal lands and waters stems from physical alteration of submerged and adjacent land and habitat -- particularly the shallow marshes and wetlands. The major alterations of wet and submerged coastal lands comes from draining, dredging, and filling. Cumulatively these actions can entail the disappearance of the essential food base for practically all organisms in these waters.

The consequences of dredging and filling, because they often represent a series of incremental activities, do not usually become apparent until much of the permanent damage is done. Some 2 million to 3 million waterfowl used to nest and feed in San Francisco Bay before a large part of it was gradually filled. Their numbers are now down to less than 600,000. The State of California, with support from citizens and communities in the Bay area, has now formed the Bay Conservation and Development Commission to provide regional control over that irreplaceable estuary.

To the developer with little appreciation of the biological importance of estuaries, wetlands represent attractive waterfront acreage in particular demand by industrial and commercial concerns and home buyers. Relatively inexpensive to dredge, fill, and bulkhead for building sites, shallow wetlands attract many industries which are not dependent on waterfront sites but which find an economic advantage in developing these low-priced lands. Too often local governments acquiesce, anticipating the increased tax revenues. Consequently, natural coastal areas are being nibbled away. The long range economic and ecological costs of these processes are borne not just by the particular local community but by the people of the State and the region, and no less by the rest of the Nation.

**The vacation industry** -- A growing part of the development pattern spreading throughout the coastal zone is the growth of vacation homes. The Department of the Interior has estimated that over 68 percent of the recreational property values along the coasts and Great Lakes are accounted for by shore-front homes. They occupy over 90 percent of the recreational lands on developed coasts.

Only 16 percent of the land that can be classed as recreation shoreline is in public ownership, and not all of that is accessible to the public, particularly the many miles of Department of Defense holdings.

Another source of fundamental information concerning the ecological value of the State's estuarine zone can be found in the *Basis and Background of New Jersey Wetlands Order*. A copy of this document is provided in the *Appendix*. See also the *Coastal Resource and Development Policies* set forth in *State of New Jersey, Coastal Management Program, Bay and Ocean Segment, Final Environmental Impact Statement (August 1978)*, designed to guide public decisions concerning significant development in that portion of the State's coastal zone; adopted as administrative rules, *N.J.A.C. 7:7E-1.1 et seq.*

An appreciation of the underlying ecological considerations will assist in formulating policy and resolving issues. However, it will not relieve the decision-maker of the burden of using judgment and reaching a balance between competing societal needs. In a slightly different but related context former Justice Hall observed:

"The task of the Agency [the Hackensack Meadowlands Development Commission] in carrying out this objective is Herculean and almost Solomon-like, but we cannot assume it is impossible; its accomplishment does call, however, for the highest degree of public responsibility, because destruction of the natural state cannot be later undone. *N.J. Sports and Exposition Authority v. McCrane*, 61 N.J. 1, 64 (1972) (concurring and dissenting opinion of Hall, J.).

The obligations of the Natural Resource Council and the other public officials involved in riparian land management are no less demanding.

## SECTION 5. RIPARIAN AND OTHER RELATED STATUTES

The Legislature has adopted a number of statutes that concern the management and disposition of State owned riparian lands. Persons interested in the riparian land management system should have an understanding of these provisions. A copy of the text of relevant statutes is provided in the *Appendix*.

### A. Historical Perspective

Since the colonial period, there has been a demand by private persons, particularly water-front owners, for the right to utilize State owned riparian lands. Riparian conveyances were requested for various purposes including water-front development, agriculture, flood control, and access to deep water for navigation. Traditionally, these uses were considered to be beneficial since they enhanced commercial and economic development interests. The early statutes were designed to facilitate these objectives, and broad discretion, with minimal guidelines, was vested in the responsible State officials. The historical development of the riparian statutes and the methods utilized to convey the State's interest is contained in the following excerpt from the Appellate Division's decision in *River Development Corp. v. Liberty Corp.*, 45 N.J. Super. 445 (Ch. Div. 1957), aff'd 51 N.J. Super. 447 (App. Div. 1958), aff'd 29 N.J. 239 (1959):

"In colonial days title to tide-flowed lands below high water mark within the limits of New Jersey were in the English Crown. Following the Revolution, title was deemed vested in the State. These tide-flowed lands were held under the guardianship of the Legislature and were subject to express grant by statute of a freehold or lesser estate to any grantee, whether or not owner of the adjacent uplands.

Although under the English law an upland owner had no right to improve the lands between high and low water fronting his property (to do so constituted a purpresture), there arose in this State the custom that a riparian owner, by reclaiming or improving that portion of the shore between the high and low water marks in front of his property, became the absolute owner thereof. This practice seems to have had the tacit acquiescence of the Legislature and became part of what has been termed **local common law** or **local custom**. The privilege of reclaiming tide-lands held by upland owners was sometimes provided by special acts of the Legislature giving a particular corporation the authority to build and maintain a dike or wharf in front of its uplands, beyond the low water mark but not to extend outward so as to interfere with navigation. During the mid-1800's there were many such special legislative grants of licenses to reclaim or fill in. Such privilege was also included in special acts chartering many companies.

The first express legislative recognition of what had been adopted by the courts as the local common law or local custom was the *Wharf Act of 1851*, codifying that law by vesting an upland owner with the express right to "build docks or wharves upon the shore, in front of his lands, and in any other way

to improve the same and, when so built upon or improved, to appropriate the same to his own exclusive use." The owner could build docks, wharves and piers beyond the limits of ordinary low water, but not so as to interfere with public navigation, upon license obtained for that purpose from the county freeholder board; the license was to be recorded and the improvement carried out within five years from its date. The license was not assignable except with and as appurtenant to the uplands. Section 8 provided that nothing in the act was to prevent the State, before any improvement was actually made, from appropriating the submerged lands for public use.

The growing industrial and commercial economy of New Jersey focused attention on the value of subaqueous land in the navigable waters of our State. By *L. 1864, c. 391*, the Legislature provided for the appointment of commissioners to survey the lands lying under the waters of New York Bay, the Hudson River, the Kill von Kull, Newark Bay, Arthur's Kill, Raritan Bay and the lands lying under the waters of the Delaware River opposite Philadelphia County, to ascertain the State's rights in the same and the value thereof, and to fix and establish exterior lines. They were directed, among other things, to recommend to the Legislature "such plans and provisions for the improvement, use, renting or leasing of the said lands under water as they shall deem necessary for and most conducive to the interest of the state," and to prepare and submit maps exhibiting the exterior lines fixed. The commissioners filed their report under date of February 1, 1865, which, however, was confined to the northern waterways and did not touch the Delaware.

It was not until 1869 that the Legislature, by *L. 1869, c. 383* (a supplement to *L. 1864, c. 391*, and commonly called the *General Riparian Act*); approved the bulkhead and pier lines fixed by the commissioners in the tidewaters of the Hudson, New York Bay and Kill von Kull. Section 3 expressly repealed the *Wharf Act of 1851* insofar as it applied to the tidewaters of the Hudson River, New York Bay and Kill von Kull, and carried the important proviso that nothing in the act should in any wise repeal or impair any grant of land under water or right to reclaim made directly by legislative act, or grant or license to fill up, occupy and possess subaqueous lands fronting property owned by a corporation, grantee or licensee under the *Wharf Act of 1851*, or any grant or license to erect docks, wharves and piers opposite and adjoining such lands under the 1851 law. *Chapter 383* also set up a method of disposing of state-owned lands under water by sale or by lease with an option to purchase. Significantly, the board entrusted with administering the act was not vested with power to grant any estate other than a fee or leasehold.

In 1891 the Legislature passed *Chapter 124* repealing the *Wharf Act of 1851* for the whole State, and forbidding filling in below high water throughout the State except with the grant or permission of the commissioners." *River Development Corp., supra 51 N.J. Super. at 460-462* (citations omitted).

For a detailed discussion of the early history of riparian ownership and control over the navigable waters of New Jersey, see Boyer, *The Waterways of New Jersey* (1915).

## B. Summary of Historical Developments

To summarize, the Legislature has utilized various methods to alienate the State's interest in tidelands. These have included: (1) the common law privilege confirmed by the *Wharf Act of 1851*, repealed in its entirety in 1891, to reclaim to the low water line; (2) legislative licenses; (3) grant or lease under special acts; and (4) conveyance of the fee or a leasehold interest with an option to take the fee as provided by the *General Riparian Act (1869)*. While the power of the Legislature to provide for the conveyance of these lands is broad, it is not unlimited, as is further explored in the School Fund and the Public Trust Doctrine Sections. See Sections 2 and 3.

## C. The Tidelands Agency

The complexity of deciding individual applications for riparian grants was recognized by the Legislature in 1869. In that year it adopted the *General Riparian Act* and delegated the responsibility to initially review and approve applications for State tidelands grants to an administrative agency, the Riparian Commissioners. The authority of the Commissioners was subject to the further approval of other State officials.

As a result of a series of reorganizations over the years, the authority originally vested in the Riparian Commissioners was assigned to successor agencies. In 1915, the powers of the Commissioners were allocated to the Department of Commerce and Navigation, and assigned to the Board of Commerce and Navigation. These agencies were abolished in 1945, and their responsibilities were transferred to the Department of Conservation and the Navigation Council therein. Three years later the responsible administrative agencies for riparian land review were known as the Department of Conservation and Economic Development and the Planning and Development Council. Subsequently, in 1961, the name of the Council was changed to the Resource Development Council. When the Department of Environmental Protection was established in 1970, the initial review functions concerning riparian transactions were assigned to the current tidelands agency, the Natural Resource Council, which was statutorily assigned to the Division of Marine Services.\*

## D. Current Riparian Statutes

The current riparian statutes are compiled in *Titles 12 and 13* of the New Jersey Statutes Annotated. Most of the relevant provisions are assigned to Chapter 3, *Riparian Lands, of Title 12*. For discussion purposes these statutes can be divided into three categories: the general riparian statutes, the provisions concerning the composition and duties of the Natural Resource Council, and the meadowlands provisions.

\* The name of the Division was changed, pending legislative approval, to the Division of Coastal Resources by Commissioner's, Administrative Order Number 17, June 22, 1979. Any references in the Handbook to the Division of Marine Services should be construed to apply to the Division of Coastal Resources.

## General Riparian Statutes

These sections provide that any riparian owner may apply to the Natural Resource Council for a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands. In the event that riparian lands have previously been filled, the owner may apply for a grant to clear title to the property. The Council may approve such application with due regard to the interests of navigation and upon such compensation as it shall determine. *N.J.S.A. 12:3-10*. The Council may also approve a riparian lease or grant to a person other than a riparian owner, if the riparian owner is given six months notice of intention to take such riparian grant or lease and fails to apply for and complete it. *N.J.S.A. 12:3-23*.<sup>\*</sup> riparian owner is not required where lands are being conveyed to a state or municipal agency for a public park, street or highway. *N.J.S.A. 12:3-33*.

Licenses to dig, dredge, or remove any deposits of sand or other materials from State lands under tidewater may be issued by the Natural Resource Council, with the approval of the Governor. *N.J.S.A. 12:3-22*. In addition, all plans for the development of any water-front upon any navigable water or stream must first be approved by the Division of Coastal Resources. The construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable or other similar or dissimilar action are developments which require the prior approval of the Division. *N.J.S.A. 12:5-3*. A person aggrieved by the Division's action concerning a water-front development permit may appeal such decision to the Natural Resource Council. *N.J.A.C. \*\* 7:1C-19*.

## The Natural Resource Council

The Natural Resource Council is assigned to the Division of Coastal Resources in the Department of Environmental Protection. It consists of 12 members, appointed for four year terms by the Governor, with the advice and consent of the Senate. *N.J.S.A. 13:1B-10*. The Natural Resource Council is the initial agency for the review of applications for riparian grants and leases. These instruments cannot be issued unless they have been approved by at least a majority of the Council and signed by its chairman. The Council is vested with broad discretion concerning applications for riparian conveyances, and there is no express requirement that the agency specify its reasons for denying an application. In the event that the Council approves a conveyance, such action is subject to the further approval of the Commissioner of Environmental Protection and the Governor. *N.J.S.A. 13:1B-13*. The Attorney General and the Secretary of State sign the document as attesting witnesses. In addition, the Secretary of State affixes the Great Seal of the State of New Jersey on all grants and leases. *N.J.S.A. 12:3-7, 12:3-10*.

\* It appears that the six month notice period referred to in *N.J.S.A. 12:3-23* does not begin to run until notice is provided to the riparian or shore-owner subsequent to the council's approval of the proposed grant or lease. See also *N.J.S.A. 12:309* (specifying the procedure for extinguishing pre-emptive rights of riparian owners).

\*\* *N.J.A.C.* refers to the New Jersey Administrative Code, the compilation of the administrative rules adopted by State agencies. The particular rules involved herein were adopted pursuant to the *Ninety Day Law*. *N.J.S.A. 13:1D-29 et seq.*

## Meadowlands Provisions

In 1969, special provisions were adopted that required the State to determine its interest in meadowlands. These areas are defined to include lands, now or formerly consisting chiefly of salt water swamps, meadows or marshes. *N.J.S.A. 13:1B-13.1*. The Natural Resource Council is directed to conduct title studies and surveys of the meadowlands throughout the State and to determine and certify those lands which it finds to be State owned. *N.J.S.A. 13:1B-13.2*. Upon completion of each study and survey, the Council is directed to publish maps that portray the results of its studies and indicate those lands designated as State owned lands. *N.J.S.A. 13:1B-13.4*. See Section 7 for a discussion of the title studies and surveys. In addition, the Council is authorized to grant or lease the State's interest in meadowlands if it determines such action is in the public interest. Such determination must include a consideration of the environmental impact of the proposed use of the property. *N.J.S.A. 13:1B-13.9*.

### E. Other Related Statutes

A number of other statutes are related to riparian land management. These include:

- *The Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.* This statute was designed to protect the State's coastal wetlands from ecologically harmful development. It directed the Commissioner of the Department of Environmental Protection, in accordance with detailed elevation and vegetative criteria, to map and inventory the wetlands. After mapping and notifying affected landowners, the Commissioner was empowered to adopt regulations to control the filling or other alteration of the wetlands. Thereafter, the landowners are required to obtain permits from the DEP prior to undertaking any developments or alterations.
- *The Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.* The purpose of this law, adopted in 1973, was to protect the State's coastal area through the regulation of specified types of new development. A coastal area was delineated, and a permit system for the review of proposed development was adopted. It also required the DEP to undertake a sophisticated planning program to reconcile protection and development objectives. The planning program has been completed for the statutorily delineated coastal area. See State of New Jersey, *Coastal Management Program, Bay and Ocean Segment, Final Environmental Impact Statement* (August, 1978).
- *The Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 et seq.* The statute was intended to provide for the orderly and environmentally sound development of the meadowlands. The statute established the Hackensack Meadowlands Development Commission and directed that it prepare and adopt a master plan for the region. Substantial areas within the Hackensack Meadowlands District are State owned riparian lands, and the title to other properties is clouded by a possible claim of State interest. In addition, because of their proximity to urban areas these lands are very valuable for commercial development.

- *Ninety Day Law for Department of Environmental Protection Construction Permits, N.J.S.A. 13:1D-29 et seq.* This statute requires that the DEP approve, condition or disapprove certain applications for construction permits within 90 days of the receipt of a completed application. Permits for water-front development pursuant to *N.J.S.A. 12:5-3*, permits for a regulated activity pursuant to the *Wetlands Act*, and permits required by the *Coastal Area Facility Review Act*, generally qualify for the special processing treatment specified by this statute.

## SECTION 6. RIPARIAN CASES

Several issues concerning riparian land management not expressly addressed or resolved in the statutes are discussed in court decisions. A summary of the most important riparian case law decisions is contained in this section. A number of additional cases are discussed in other sections of the handbook.

- **The New Jersey Supreme Court's Landmark Riparian Lands Decision**  
*O'Neill v. State Highway Department, 50 N.J. 307 (1967)*

This landmark case involved a dispute concerning the ownership of lands situated along the Hackensack River. The State claimed that the lands were State owned tidelands. In its decision, the Court restated and established a number of important legal principles concerning riparian lands:

"The State owns in fee simple all lands that are flowed by the tide up to the high-water line or mark. The high-water line or mark is the line formed by the intersection of the tidal plane of mean high tide with the shore."  
*50 N.J. at 323.*

In establishing this line or mark, "...the average to be used should be, if possible, the average of all the high tides over a period of 18.6 years."  
*50 N.J. at 323-324.*

"The State cannot acquire interior land by [its construction of] such artificial works as ditching which enables the tide to ebb and flow on lands otherwise beyond it. And so too the riparian owner cannot, today, enlarge his holdings by excluding the tide."  
*50 N.J. at 324.*

The burden of persuasion should be upon the party who challenges the existing scene to satisfy the trier of the facts that the tideland status of the property was changed by artificial measures.

- **Notice to Riparian Owner Not Required When State Highway Agency Applies for Riparian Land for Highway Purposes; Rules of Erosion and Avulsion** -- *Leonard v. State Highway Department of N.J., 29 N.J. Super. 188 (App. Div. 1954)*

In this case it was held that the statutes did not require that the State Highway Department, now known as the Department of Transportation, provide notice to a riparian owner when it applies for a riparian grant. The rules concerning erosion and their effect on riparian ownership were also discussed by the Court. Where there is erosion by natural means and flooding of a tidal waterway, the riparian owner loses his title to the State. This loss of title does not occur in the event of avulsion, which is a sudden and perceptible change.

- **Meadow Banks; Title to Land Where Landowner Fails to Exclude Tidelands** -- *Ward Sand and Materials Co. v. Palmer, 51 N.J. 51 (1968)*

Here the landowner claimed title to lands on which meadow banks had been constructed and the tide excluded in accordance with the *Wharf Act of 1851*. See

discussion in Section 5, *Riparian and Other Related Statutes*. The meadow banks fell into disrepair and the lands were for many years subject to tidal action. The Court held that the landowner had lost title to the State of the re-flowed lands because of failure to exclude the tide within a reasonable period.

- **Rules of Erosion and Accretion** -- *Borough of Wildwood Crest v. Masciarella*, 51 N.J. 352 (1968)

In this case there was accretion and a title dispute as to which party was the owner of the accreted lands. The Court ruled that: "The high water mark may shift from time to time through erosion and accretion and persons who own or purchase tide-flowed lands are well aware of this. Where there is erosion, they lose title to the State; where there is accretion, they gain title at the expense of the State." 51 N.J. at 357.

- **Artificial Avulsion Rule** -- *Garrett v. State*, 118 N.J. Super. 594 (Ch. Div. 1972)

A portion of a landowner's property was at one time in the bed of a tidal creek. The flow of water in the creek was cut off as a result of a State riparian grant to a railroad. The landowner claimed ownership to the now dry land. The action of the railroad in filling the creek was held to be an *artificial avulsion* and did not divest the State of title. Additional support for this position was found in the constitutional and statutory dedication of the State owned riparian lands to the School Fund. See section 2. *The Fund for the Support of Public Schools*.

- **Necessity of Payment and Delivery for Transfer of Title to Riparian Lands** -- *Taylor v. Sullivan*, 119 N.J. Super. 426 (App. Div. 1972), certif. denied 62 N.J. 70 (1972)

This case involved a riparian grant for lands adjoining an island. The grant had been approved by the appropriate State officials but not delivered because the applicant, who planned to construct a residential development, had failed to tender the established consideration. New officials took office and they determined that the proposed grant was unacceptable for environmental reasons. They advised the applicant that the prior approvals were cancelled.

The Appellate Division upheld this action and found that "...the designated officers exercise the proprietor's absolute discretion, subject only to the limitations stated in the controlling statutes, to convey or not, and on such terms as the [Natural Resource] Council may choose." The statutes were interpreted to permit the State's representatives to cancel the proposed conveyance up until the time that payment for the proposed conveyance was accepted.

- **Consideration for a Riparian Grant** -- *LeCompte v. State*, 128 N.J. Super. 552 (App. Div. 1974), certif. denied 66 N.J. 321 (1974).

The consideration for a proposed riparian grant was re-evaluated and increased by the Natural Resource Council. The grantee objected to the increase and brought this action. The court found that the Council's action was justified. It reasoned that the riparian owner did not own the property for which he sought

the riparian grant, and that the State must obtain the fair market value for such conveyance. The consideration for the grant should be evaluated on the basis of fair market value of the property at the time of conveyance.

- **Consideration May Include a Charge for Prior Occupation of Riparian Lands** -- *LeCompte v. State*, 125 N.J. Super. 352 (App. Div. 1973), rev'd 65 N.J. 447 (1974)

As is frequently the case, the landowner has made application after the State discovered that he had already encroached upon the State lands in question. The Natural Resource Council approved the proposed grant but imposed a **use and occupancy assessment**. The landowner claimed that this assessment was not authorized by statute.

The court in resolving the issue noted that it was important to consider that the State was under no obligation to convey its riparian lands and might, if it saw fit, simply retain title. Further, if the State determined to convey, it had broad power in determining the consideration. The Court **held** that the State may fix a total purchase price encompassing the reasonable value of the riparian lands together with a sum deemed proper consideration for the use and occupancy of the property during the period of the trespass or purpresture. The later charge was thus seen as no more than an ingredient of the purchase price.

- **Condemnation and Consequential Damages** -- *N.J. Turnpike Authority v. O'Neill*, 133 N.J. Super. 445 (App. Div. 1975), certif; denied 68 N.J. 482 (1975)

This was a condemnation case in which the landowner had received an award as compensation for the parcel taken, and consequential damages to the property remaining in the landowner's ownership. The appellate court noted that the beds of two tidal creeks constituted riparian lands owned by the State and effectively divided the landowner's property into three separated and noncontiguous parcels. Under such circumstances, the court held that there was no lawful basis for an award of consequential damages. The landowners could not show that there was a reasonable probability that they would acquire ownership of the creek beds in the reasonably near future and the court vacated the award of consequential damages. The court ordered that at the new trial, the parcel taken be valued as a separate, independent parcel, and not as an integral part of the remaining parcels owned by the landowners.

- **Authority of Natural Resource Council to Issue Revocable License** -- *Atlantic City Electric Co. v. Bardin*, 145 N.J. Super. 438 (App. Div. 1976)

This case involved a challenge to the Natural Resource Council's power to issue a revocable license for the installation of a submarine cable on State owned riparian lands. The plaintiff also claimed that there were no legislative standards to guide the administrative agency, that the proposed fees for cable installation were unreasonable, and that the agency had failed to comply with the requirements of the *Administrative Procedure Act* in the adoption of a fee schedule. The

Appellate Division found that the Legislature had intended the Council to have broad discretion in the exercise of the proprietary function of managing State-owned riparian lands and that the agency had the power to issue and fix the consideration for revocable licenses.

- **Reversal of Permit Denial in a Substantially Developed Area Where Grant Had Previously Been Issued** -- *Kupper v. Bureau of Navigation, Council of Natural Resources, etc., N.J. Superior Court, Appellate Division, Do. No. A-737-71, decided April 9, 1976, unreported decision.*

In this case the Appellate Division considered the appeal of an owner of a riparian grant whose application for a water-front development permit was denied by the Natural Resource Council. The proposed improvement involved a request to construct a bulkhead in a substantially developed residential area. The appellate court reviewed the administrative record and could find no compelling environmental reasons to deny the plaintiff the use of riparian lands that had been the subject of prior State grant. The court observed:

While we are sympathetic with the efforts of the Department of Environmental Protection to preserve the ecological balance in any area of the State, we must also be equally sympathetic to the rights of individual property owners who would be deprived of the economic use of their land solely because of some whimsical conclusion with respect to the environment. We are satisfied both from the record which is before us and our view of the premises which illuminates that record, that the permit here involves a *de minimis* effect on the immediately surrounding environment.

- **Permit Denial Affirmed Where Decision Rested on Substantial Evidence** -- *In re Port Jersey Corporation, N.J. Superior Court, Appellate Division, Do. No. A-1288-76, decided April 17, 1978, unreported decision.*

This appeal also involved a challenge to a decision of the Natural Resource Council denying a water-front development permit. In this case the applicant sought to construct a fuel oil and chemical storage facility. In contrast to *Kupper, supra*, the court found that the Council had carefully considered the merits of the application and that there was substantial support in the evidence for the determination. In reaching this decision, the court noted that the Natural Resource Council and the Division of Marine Services, DEP, were required to weigh broad considerations of conservation and land use.

- **Inadequacy of Consideration; Governor Cannot be Compelled to Approve Grant** -- *B.P. Oil, Inc. v. State, 153 N.J. Super. 389 (Law Div. 1977)*

The State was found to have no obligation to convey riparian lands where the Attorney General determined that the price established by the Natural Resource Council was inadequate. The court also ruled the Governor's approval of the grant could not be compelled.

- **Mapping Procedure for Determining Title to Meadowlands** -- *Newark v. Natural Resource Council, DEP*, 133 N.J. Super. 245 (Law Div. 1975), *aff'd* 148 N.J. Super. 297 (App. Div. 1977), *supplemented* 152 N.J. Super. 458 (App. Div. 1977)

Following the Supreme Court's decision in the *O'Neill* case, *supra*, the Legislature directed the Natural Resource Council to map and inventory the State's interest in meadowlands. *N.J.S.A. 13:1B-13.1 et seq.* See section 7, discussing the mapping project. This case, often referred to as the City of Newark case, involved a challenge to the State's mapping procedure of title to meadowlands.

In 1973, the Natural Resource Council approved and published certain maps of the Hackensack Meadowlands that characterized the meadowlands as either **upland** (areas above mean high water), or **riparian** (areas now or formerly below high water), or **hatched** (areas of filled meadow adjacent to virgin meadow). The hatched designation was used to indicate a probable claim that the filled area was probably once tide-flowed to approximately the same extent, percentage-wise, as were the adjacent unfilled meadows.

The issue addressed in this appeal was whether the hatching procedure conformed with the statutory requirement that the maps "....clearly indicate those lands designated by the council as State-owned lands." *N.J.S.A. 13:1B-13.4*. The court found that the equivocal nature of the hatched designation was statutorily deficient, and ordered the State to prepare new maps that clearly indicated those areas subject to a State claim of ownership and those areas subject to no claim. Thereafter, new maps were prepared and on August 23, 1978, Judge Theodore W. Trautwein, New Jersey Superior Court, Law Division, Bergen County, released proposed findings of fact and conclusions of law in which he indicated that these maps, and the underlying techniques utilized by the State in their preparation, conformed with the statutory requirements. These findings and conclusions were found to be fully warranted and were adopted by the Appellate Division on May 24, 1979. (Dkt. No. A-3311-72). On September 18, 1979, the State Supreme Court granted certification and will hear the case in the future. The mapping procedures are discussed in the following section.

## SECTION 7. TITLE STUDIES AND SURVEYS: THE MAPPING PROJECT

The effective management of the State's interest in tide-flowed lands requires that all concerned parties have a clear understanding of the extent of the public's holdings. It is also essential that the boundary line dividing State and private ownership be clearly delineated. To realize these objectives accurate surveys and maps must be prepared.

The State has had a long history of involvement in attempting to ascertain its interest in lands lying under tidewater. This was reflected in an 1864 enactment in which the Legislature directed the Riparian Commissioners to survey the State's riparian claim in certain boundary waterways. *N.J.S.A. 12:3-1*. Despite the undertaking of this effort, serious uncertainty concerning the State's ownership, particularly in meadowland areas, persisted throughout the years. In 1967, the Supreme Court commented on the effects of this situation in its landmark riparian law decision, *O'Neill v. State Highway Department, 50 N.J. 307, 316 (1967)*: "...vast areas of valuable land are now idled by the tidelands controversy, and still other property, already improved, lies in its shadow, there is an economic blight which should be dissipated in the public interest." The passage of twelve years since the *O'Neill, supra* decision, has made the need to ascertain the extent of the State's claim no less pressing, for the public interests and for those of private landowners whose titles might be subject to a cloud.

The actual delineating of those lands now or formerly flowed by mean high water is a complex and expensive process, particularly in areas where there have been extensive artificial changes. This was recognized by the Supreme Court in *O'Neill, supra, 50 N.J. at 320*:

"As a matter of good housekeeping, the appropriate officers of the State should do what is feasible to catalogue the State's far-flung holdings, but we cannot be indifferent to the difficulties involved, especially in ascertaining all the tidelands to which the State has clear or colorable title."

In a second decision, *Transcontinental Gas Pipeline Corp. v. Department of Conservation, etc., 43 N.J. 135, 145 (1964)*, the Court observed that the task of title determination "...would be a monumental and costly undertaking." Experience has demonstrated the accuracy of these predictions.

### The Mapping Statute

In 1969, in response to the *O'Neill* decision, legislation was adopted that directed the Natural Resource Council to conduct title studies and surveys of the state's meadowlands, which were defined to include those lands now or formerly consisting chiefly of salt water swamps, meadows, or marshes. *N.J.S.A. 13:1B-13.1*. The statute specified that in determining which lands were State-owned, the Council was to consider the following factors:

"...the mean high water line as established by the United States Coast and

Geodetic Survey [predecessor of the National Ocean Survey, NOS], the nature of the vegetation thereon, artificial changes in land or water elevation, and such other historical or scientific data which, in the opinion of the council, are relevant in determining whether a parcel is now or was formerly flowed by mean high tide." *N.J.S.A. 13:1B-13.3*

Following the completion of the study and survey, the Council was instructed to publish a map portraying the results and clearly indicating those lands designated as State-owned lands. *N.J.S.A. 13:1B-13.4*. In the event that a person was aggrieved by this designation, the statute provided him with an opportunity to present information on his behalf to the Council, prior to commencing a legal action. *N.J.S.A. 13:1B-13.5*.

### Implementing the Statute

The mapping statute specified that the initial title study and survey was to be of the area within the Hackensack Meadowlands, and the Natural Resource Council was given six months to complete the assignment. *N.J.S.A. 13:1B-13.2*. In response to this direction, the Council on January 14, 1970 published a two part map, entitled *Part I* and *Part II* of the *Block and Lot Subdivisions in the Hackensack Meadowlands*, commonly known as the **gray and white map**. The area in gray indicated lands in which the State had some degree of ownership interest, and the area in white depicted those lands in which the State had no interest. This map was essentially an enlargement of a topographic map prepared in 1890. It was subjected to legal challenge in the case of *State v. Council in the Division of Resource Development*, New Jersey Superior Court, Law Division, Bergen County, Docket Number L-12561-68, decided September 8, 1971, unpublished opinion; where the court found that the map had not been prepared in conformance with the statutory requirements contained in *N.J.S.A. 13:1B-13.3* and ordered that it be suppressed.

As a result of this legal decision it became necessary to develop a more precise method for ascertaining the extent of the State's interest in meadowlands. In its search for an acceptable approach the Department of Environmental Protection considered conventional surveying and tide gauging techniques. The DEP determined that it could not rely solely on engineering methods because of cost and time factors, as well as the practical difficulties of applying them in tidal marshes.

The DEP ultimately developed a mapping program that combined physical, biological, historical and aerial photographic data. High quality aerial photomaps were produced for the Hackensack and Newark-Elizabeth meadows. A series of overlays were prepared from historical information, consisting of old maps, surveys, title and other records and aerial photographs, to reconstruct the location of the former mean high tide line. In addition, a series of color infra-red aerial photographs were taken and analyzed to determine the location of certain species of vegetation, e.g., *Spartina Alterniflora*. The presence of specific types of vegetation which grow in tidal environments was correlated to the location of the mean high

water line by utilizing photo-interpretative techniques. Where this vegetation was not present the more conventional methods were employed. The data was reviewed, analyzed and interpreted, and the results were portrayed on final claims overlays imposed on base maps that conformed with national map accuracy standards as published by the federal government.

The Natural Resource Council held public hearings concerning the base maps and claims overlays, and on June 13, 1973, October 10, 1973, December 12, 1973, February 20, 1974 and June 12, 1974, it approved 37 panels of the new maps embracing approximately 20,000 acres in the Hackensack Meadowlands (36 panels) and the Newark-Elizabeth meadows (one panel). The validity of these maps and mapping techniques was challenged in *City of Newark, et al v. Natural Resource Council, DEP*, New Jersey Superior Court, Appellate Division, Docket Number A-3311-72. The appellate court remanded the matter to the Law Division of the Superior Court, Bergen County, for the purpose of creating an administrative record susceptible of review, and for proposed findings of fact and conclusions of law on the part of the trial judge. On August 23, 1978, Judge Theodore W. Trautwein, the judge to whom the matter had been remanded, released his proposed findings of fact and conclusions of law. He found that the maps and the mapping techniques satisfied the requirements set forth in the mapping statute.

Thereafter, on May 24, 1979, the Appellate Division adopted Judge Trautwein's findings and conclusions and ruled that they were fully warranted by the record. The appellate court noted that its decision merely affirmed that the Natural Resource Council's maps reasonably conformed with the legislative directives concerning their preparation. Significantly, the court observed: "[i]t is also apparent that the conventional method of land surveying is wholly unreliable and inappropriate for the purpose of identifying whether lands are now or were formerly flowed by mean high tide as a basis for the State's claims of ownership." It also emphasized that the decision was not intended to be definitive with respect to the State's claim as against other parties who might claim ownership. Such disputes would have to be determined on the basis of evidence produced in quiet title actions. Both parties filed petitions for certification to the Supreme Court. On September 18, 1979, certification was granted and the Supreme Court will hear the case in the future.

## SECTION 8. APPRAISALS

### A. Appropriate Consideration

Once a decision has been made that a conveyance of a parcel of State riparian land is in the public interest, the next issue that must be addressed is the determination of the appropriate consideration for the transfer. This price is established in the first instance by the Natural Resource Council. Thereafter, the proposed transaction, including the price, is subject to review and approval by the Commissioner of Environmental Protection and the Governor. *N.J.S.A. 13:1B-13*.

The general riparian statutes do not provide detailed guidelines or standards to assist the Council in establishing proper consideration. The issue has been the subject of some discussion in the case law where it has been indicated that "...the State has broad power in determining the consideration for a grant of riparian lands." *LeCompte v. State, 65 N.J. 447, 452 (1974)*. The Council's discretion, however, is limited to the extent that the lands which are to be conveyed are trust assets of the School Fund. See section 2 for a discussion of the Fund. Significantly, the Appellate Division in the second *LeCompte* case ruled that in determining the consideration for a riparian grant the proper standard should be fair market value at the time of conveyance. *LeCompte v. State, 128 N.J. Super. 552, 562 (App. Div. 1974)*, certif. denied *66 N.J. 321 (1974)*. Where conveyances pursuant to the meadowlands statutes are contemplated, the Council is also directed to determine current fair market value, and is further instructed to consider the actions of the claimant, the person holding or occupying riparian lands under color of title, who in good faith made improvements or paid taxes, or both, on the lands in question. *N.J.S.A. 13:1B-13.9*.

### B. Appraisals

In establishing consideration for a proposed riparian conveyance, the Natural Resource Council requires expert advice as to value. Where the property to be conveyed is to be used for industrial, commercial or substantial residential development, a full appraisal report needs to be prepared. It is likely that under these circumstances an independent fee appraiser will be retained and that the costs will be assessed to the applicant. Where the proposed riparian instrument is intended to authorize development of a single lot for residential purposes or the construction of a small bulkhead, a full appraisal report may not be needed. In those situations, the recommended consideration may be derived by a staff analysis of market sales statistics and relevant tax assessment data, and set forth in a statement or report concerning the value of the proposed conveyance.

It is essential that the nature and the limitations of an appraisal of State owned riparian lands be understood. Appraisals need not be accepted at face value. As the following excerpt from an appraisal textbook indicates, the Council must apply judgement in reviewing appraisal reports and in ultimately determining the recommended consideration for a riparian conveyance.

"An appraisal of value is an estimate. It is an opinion. An appraisal of the value may be interpreted broadly as the answer to a question under specifically stated conditions and circumstances. This estimate of value requires professional expertise, as well as an understanding of the application of certain methods and techniques...

The reliability of an appraisal of the value depends upon the basic competence and integrity of the appraiser, and upon the soundness and skill with which he processes pertinent data." **American Institute of Real Estate Appraisers**, *The Appraisal of Real Estate*, p. 3 (1974).

Special problems have been recognized when the property to be appraised is tide-flowed land. The experts agree that fixing a value for such property is more difficult and requires greater skills than ordinary appraisal assignments.

"When appraising this type of property the appraiser is confronted with many problems which are magnified by the fact that there is little judicial or appraisal authority to serve as a guide. These lands are rarely sold on the open market due to the very limited number of parcels held in fee simple. Even submerged land leaseholds are not bought and sold by the average real estate investor or speculator. They are, however, usually acquired by users who have a definite need for the property. **Utility value** therefore becomes an important criterion and is considered to be synonymous with market value." Cunningham, *The Appraisal of Riparian Rights*, *The Appraisal Journal*, April 1973, 190-191.

The concept of **utility value** or **enhancement value**, referred to in the excerpt from *The Appraisal Journal*, is particularly helpful in determining the fair market value of State owned riparian lands. It requires an analysis of the increment of value added to the upland by its assemblage with the tide-flowed parcel. In order to assign the proper weight to this factor and conduct this **before and after** evaluation, the Council and the appraiser must consider the intended use of the property.

Additional uncertainties as to value are present when the extent of the State's interest is unclear. This is frequently the case in meadowlands and other areas where there have been extensive artificial improvement. In these situations it is probable that the conveyance sought would be a quit-claim, that is, a deed releasing any title that the State may have in the subject property. Under these circumstances the Council in fixing the price must assess the strength of the State's claim and the likelihood of success if the title issue is litigated. The establishment of a fair consideration, for all parties concerned in these instances is especially difficult, and requires a close working relationship between the appraiser, the Council staff and the legal counsel provided by the Office of the Attorney General.

### C. The Appraisal Report

Appraisal reports submitted to the Council should consist of an identification of the property and site photographs. They should also include a complete description of the property: land, improvements, zoning, assessed valuation, and a

delineation of title for the last twenty-five years; such title information should be provided to the appraiser by the responsible attorney. A detailed discussion of the appraisal methods utilized for determining fair market value\* should be part of the report, including an analysis of the utility or enhancement value of the parcel to be conveyed. Further, the appraiser should include a discussion of such other information utilized in reaching his conclusion as will assist the Council in making its determination.

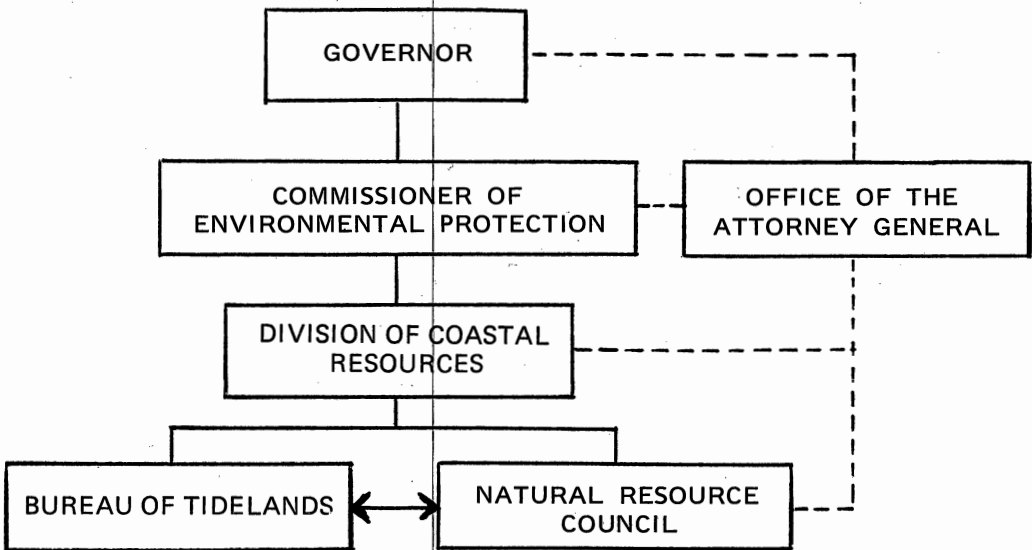
\* It should be noted that the utilization of the **fair market value** concept is somewhat imprecise in this context. Generally, the concept presumes the existence of comparable sales and a ready market for the property. Because of their nature and applicable statutory provisions, this is rarely, if ever, the case with respect to tide-flowed land. Therefore, a more accurate concept might be **fair value or fair price to all parties concerned**.

## SECTION 9. PROCEDURES

### A. Organization

The Bureau of Tidelands, (formerly the Office of Riparian Lands Management), in the Division of Coastal Resources, Department of Environmental Protection is the State agency which is most directly involved in riparian lands management. The Bureau's staff is divided into three units: grant unit, permit unit and enforcement unit. The Bureau is responsible for the initial review and processing of all applications for riparian conveyances, permits and licenses, and, in addition, serves as staff to the Natural Resource Council.

The Natural Resource Council is contained within the Division of Coastal Resources. Its principal statutory functions are to review and approve applications for riparian grants, leases and commercial dredging licenses. The Council may hear appeals from decisions of the Division of Coastal Resources concerning water-front development permits. *N.J.A.C. 7:1C-1.9*. It also has special duties concerning meadowlands title studies and development. *N.J.S.A. 13:1B-13.1 et seq.*; see section 7 for discussion of the mapping project. The following organizational chart illustrates the allocation of responsibility.



### B. Processing of Applications

Applications for riparian grants, leases, licenses and permits are prepared on forms provided by the Bureau of Tidelands. Copies of the forms in use at the time of the publication of this handbook are provided in the Appendix. Applications must be accompanied by the appropriate filing fee; \$25 for riparian grants and riparian licenses; see *N.J.A.C. 7:1C-1.5* for water-front development permit fees. In addition to these fees, preparation fees for grants, leases and licenses have been improved in accordance with the following schedule:

**Grant and Lease Preparation Fees-based upon total consideration:**

<b>Consideration</b>	<b>Fee</b>
\$ 1 to 10,000 .....	\$100
10,001 to 15,000 .....	150
15,001 to 20,000 .....	200
20,001 to 25,000 .....	250
25,001 to 30,000 .....	300
30,001 to 35,000 .....	350
35,001 to 40,000 .....	400
40,001 to 45,000 .....	450
45,001 to 50,000 .....	500
50,001 and upward .....	550

**License Preparation Fees -- based upon total consideration:**

<b>Consideration</b>	<b>Fee</b>
1 to 5,000 .....	\$ 50
5,001 to 10,000 .....	100
10,001 to 15,000 .....	150
15,001 to 20,000 .....	200
20,001 to 25,000 .....	250
25,001 to 30,000 .....	300
30,001 to 35,000 .....	350
35,001 to 40,000 .....	400
40,001 to 45,000 .....	450
45,001 to 50,000 .....	500
50,001 and upward .....	550

Once a complete application is received, its receipt is acknowledged and a file number is assigned. The application is then processed for clearances. A memorandum describing the proposed project, a location map and survey map are circulated within the Department of Environmental Protection and to other State agencies for comments. Following their receipt, the DEP, in accordance with the *ninety day law, N.J.S.A. 13:1D-29 et seq.*, may approve and issue a water-front development permit. Riparian grants, leases and licenses, on the other hand, require the approval of the Natural Resource Council.

Prior to the approval of a riparian conveyance, an appraisal or statement concerning value is required. See section 8 for a discussion of this subject. In appropriate situations, the Bureau of Tidelands defers the preparation of this information until the Natural Resource Council has approved the application in concept. Thereafter, the necessary information relating to price is assembled and the proposal is resubmitted to the Council.

After processing steps are completed, the application is placed on the Natural

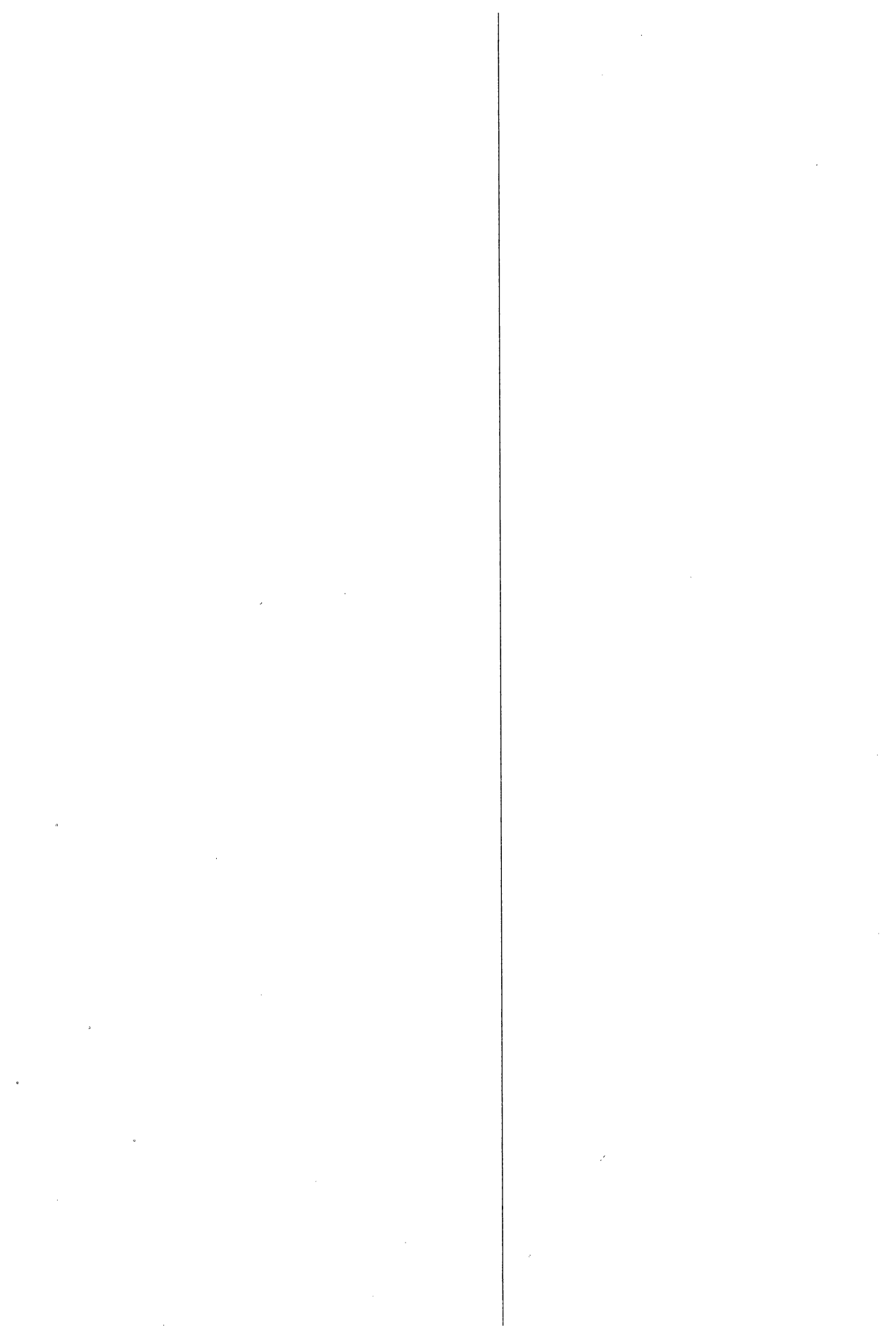
Resource Council schedule of cases. The proposed conveyance is reviewed at a Council meeting and, if approved by the Council, is subject to the further approval of the Commissioner of Environmental Protection and the Governor.

Subsequent to their issuance, riparian grants and leases are recorded in the liber books of the Bureau of Tidelands, and their locations are plotted on the appropriate Atlas sheet to indicate the transfer. These books constitute a permanent and complete record of the State's riparian conveyances.

### **CONCLUSION**

This handbook was designed to provide a ready source of general information concerning riparian rights, and to assist interested persons in improving their understanding of the riparian lands management system. However, it is essential that the inherent limitations of a publication of this type be recognized. The handbook was not intended to resolve all of the issues that may arise in this complex area. Even where a general rule appears to be relevant, it is likely that its application to a specific factual setting will require additional investigation and analysis.

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APPENDIX I

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CHAPTER 3

RIPARIAN LANDS

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\* Several of the statutes that appear in this Appendix are reprinted from the *New Jersey Statutes Annotated* with the permission of the West Publishing Company. The text of the statutes is current as of November, 1979. The materials reprinted herein are provided for informational purposes only, and interested persons should refer directly to the primary sources.

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## ARTICLE 1. LEASES, GRANTS AND CONVEYANCES

### A. IN GENERAL

#### **12:3-1. Commissioners to make survey and report as to riparian lands, etc.**

P.L.1864, c. 391, p. 681 (Rev.1877, pp. 981, 982, §§ 1 to 6; C. S. pp. 4383, 4384, §§ 1 to 7), entitled "An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixty-four, saved from repeal. [This act provides for the appointment of a board of commissioners to cause to be made surveys of the lands lying under the waters of the bay of New York, of the Hudson river and the lands adjacent thereto, the Kill von Kull, Newark bay, Arthur Kill, Raritan bay and the Delaware river opposite to the county of Philadelphia, not theretofore granted by the state; to ascertain the state's rights in the same and the value thereof; to fix the exterior line beyond which no permanent obstruction should be permitted and to report to the legislature and recommend a plan for the improvement, use, renting or leasing of said lands with maps of said lands showing the said exterior line, the lines of existing piers, etc., and any grants of such lands not then occupied, with other appropriate information.]

#### **12:3-2. Establishment of exterior bulkhead and pier lines in tidewaters of Hudson river, New York bay and Kill von Kull**

The bulkhead line or lines of solid filling and pier lines in the tidewaters of the Hudson river, New York bay and Kill von Kull, lying between Enyard's dock, on the Kill von Kull, and the New York state line, so far as they have been recommended and reported to the legislature by the commissioners appointed under the act entitled "An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixty-four (L.1864, c. 391, p. 681), by report bearing date February first, one thousand eight hundred and sixty-five, are hereby adopted and declared to be fixed and established as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines so fixed, established and adopted are shown upon the manuscript maps, accompanying said report, and filed in the office of the secretary of state, except as said lines have been or may hereafter be changed pursuant to section 12:3-13 of this title and except said lines drawn on said maps over or upon

lands within the boundaries of the grant made to the Morris Canal and Banking Company by the act entitled "A further supplement to the act entitled 'An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers,' passed December thirty-first, eighteen hundred and twenty-four," approved March fourteenth, one thousand eight hundred and sixty-seven (L.1867, c. 133, p. 251).

### **12:3-3. Filling in beyond bulkhead lines; erection of piers**

It shall not be lawful to fill in with earth, stones or other solid material, in the tidewaters of the Hudson river, New York bay and Kill von Kull, beyond the bulkhead line or lines of solid filling by section 12:3-2 of this title adopted, fixed and established, laid down and exhibited on the aforesaid maps; and it shall not be lawful to erect or maintain any pier or other structure exterior to the said bulkhead line or lines of solid filling in any place or places where no exterior line for piers is reported or indicated by said maps, on the Hudson river, New York bay and Kill von Kull and when an exterior line for piers is recommended and shown by said report and maps, no erection or structure of any kind shall be erected, allowed or maintained beyond or exterior to the aforesaid bulkhead line or lines of solid filling, except piers which shall not exceed one hundred feet in width respectively, and which shall in no case extend beyond the line indicated for piers on said maps accompanying said report; and no piers shall be constructed in said tidewaters, when such exterior pier lines are adopted, fixed and established, at less intervals between such piers than seventy-five feet, except at places occupied and used for ferries, or to be so occupied or used, when the spaces between the piers may be less; nor shall any such pier be constructed in any other manner than on piles or on blocks and bridges; and if on blocks and bridges, such blocks and bridges shall not occupy more than one-half of the length of the pier, and they shall be so constructed as to permit a free flow or passage of water under and through them, without any other interruption or obstruction than the pile or blocks necessary to support said piers.

### **12:3-4. Repeal of Wharf Act of 1851; reclaiming or building upon lands under tidewaters; consent of department; prior grants and licenses**

The repeal of the act entitled "An act to authorize the owners of lands under tidewaters to build wharves in front of the same," approved March eighteenth, one thousand eight hundred and fifty-one (L.1851, p. 335), as to the tidewaters of this State below the line of mean high tide, by section three of the act entitled

“Supplement to an act entitled ‘An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,’ approved April eleventh, eighteen hundred and sixty-four,” approved March thirty-first, one thousand eight hundred and sixty-nine (L.1869, c. 383, p. 1017), as amended by the act approved March twentieth, one thousand eight hundred and ninety-one (L.1891, c. 124, p. 216), shall not be construed to restore any supposed rights, usage or local common law, founded upon the tacit consent of the State or otherwise to fill in any land under water below mean high tide.

Without the grant or permission of the Department of Conservation and Economic Development no person or corporation shall fill in, build upon or make any erection on or reclaim any of the lands under the tidewaters of this State; and in case any person or corporation so offending shall be guilty of purpresture, which shall be abated at the cost and expense of such person or corporation, on application of the Attorney-General, under judgment of the Superior Court or by indictment in the county in which the same may be, or opposite to or adjoining which said purpresture may be; *provided, however*, that neither this section nor any provision contained in sections 12:3-2 to 12:3-9 of this Title, shall in anywise repeal or impair any grant of land under water, or right to reclaim made directly by legislative act, or grant or license, power or authority, so made or given, to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be owned by the corporation, or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns, or to repeal or impair any grant or license, power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned, or authorized to be owned by the corporation, or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns made prior to July first, one thousand eight hundred and ninety-one, or given directly by legislative acts, whether said acts are or are not repealable, and as to any revocable license given by the board of chosen freeholders of a county prior to July first, one thousand eight hundred and ninety-one, to build docks, wharves or piers, or to fill in or reclaim any lands under water in this State, the same shall be irrevocable so far as the land under water has been or shall be lawfully reclaimed or built upon under any such license issued prior to July first, one thousand eight hundred and ninety-one, provided such reclamation or building under such license shall be completed prior to January first, one thousand eight hundred and ninety-two; but as to the future such revocable license, if the said lands covered by the license have not been wholly or in part lawfully reclaimed or built upon, is hereby re-

voked, and no occupation or reclamation of land under water without such legislative act or revocable license shall divest the title of the State, or confer any rights upon the party who has reclaimed or who is in possession of the same.

**12:3-5. Conveyances or leases to grantee or licensee under legislative act: amount of rental or purchase price; conversion of lease into conveyance; rights of grantee or licensee**

In case any person or corporation who by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land mentioned in the proviso to the third section of an act entitled "Supplement to an act entitled 'An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March thirty-first, one thousand eight hundred and sixty-nine (§ 12:3-4 of this Title), whether under water now or not, and the benefit of an express covenant, that the State will not make or give any grant or license power, or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly certified copy of such legislative act to the Planning and Development Council in the Department of Conservation and Economic Development, and in case of a representative or assignee also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the Planning and Development Council, and Commissioner of Conservation and Economic Development with the Governor and Attorney-General for the time being, to be shown by the Governor signing the grant, and the Attorney-General attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the State, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the State

an annual rental of such reasonable sum as the Planning and Development Council may fix with the approval of the Commissioner of Conservation and Economic Development for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her, or their paying to the State such reasonable sum as the Planning and Development Council may fix with the approval of the Commissioner of Conservation and Economic Development for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance; *provided*, that no corporation to whom any such grant, license, power or authority was given by legislative act as aforesaid, in which provision was made for the payment of money to the Treasurer of the State for each and every foot of the shore embraced and contained in the act; nor the assigns of such corporation shall be entitled to the benefits of this section; *and provided further*, that the board shall in no case grant lands under water beyond the exterior lines hereby established, or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on said river and bay that may hereafter be established by legislative authority; in case any person or corporation taking a lease under this section, shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be made upon payment of such reasonable sum for every such lineal foot, as the Planning and Development Council may fix, with the approval of the Commissioner of Conservation and Economic Development, the conveyance or lease of the board under this section or sections 12:3-2 to 12:3-9 of this Title, shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line, the tidewater by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland from time to time made shall adjoin the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation, and their heirs and assigns, the rights to the perquisites of wharfage, and other like profits, tolls and charges.

**12:3-6. Payment of or security for purchase money or rentals for lands below high-water mark**

No grant hereafter made, extending beyond the line of high-

water mark, shall be in force or operation as to so much thereof as extends below said line of high-water mark, until the grantee or grantees shall have paid into the treasury of the state such compensation or rentals, or secured to the state such payment or rentals for the estate in the lands lying below the said line of mean high-water mark, contained in and conveyed by such grant or lease as provided in section 12:3-7 of this title.

### **12:3-7. Grant of riparian land not improved; notice to riparian owner**

If any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved, under any grant or license protected by the provisions of sections 12:3-2 to 12:3-9 of this title, it shall be lawful for the board, together with the governor and attorney general of the state, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix such price, reasonable compensation, or annual rentals for so much of said lands as lie below high-water mark, as are to be included in the grant or lease for which such application shall be made, and to certify the boundaries, and the price, compensation or annual rentals to be paid for the same, under their hands, which shall be filed in the office of the secretary of state; and upon the payment of such price or compensation or annual rentals, or securing the same to be paid to the treasurer of this state, by such applicant, it shall be lawful for such applicant to apply to the commissioners for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if to a corporation, the land under water so described in said certificate; and the board shall, in the name of the state, and under the great seal of the state, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the governor and attested by the attorney general and secretary of state, and shall be prepared under the direction of the attorney general, to whom the grantee shall pay the expense of such preparation, and upon the delivery of such conveyance, the grantee may reclaim, improve, and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of sections 12:3-2 and 12:3-3 of this title, and such lands shall thereupon vest in said applicant; provided, that no grant or license shall be granted to any other than a riparian proprietor, until six calendar months after the riparian proprietors shall have been personally notified in writing by the appli-

cant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secured to be paid, the price that the board shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officer doing the duties incumbent upon president, secretary, treasurer or director, and in case of a nonresident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson county, and in a daily newspaper published in New York city.

**12:3-7.1. Inability to give required notice; notice by publication; effect**

In the event an applicant for a grant or lease of riparian lands cannot comply with the provisions of Revised Statutes 12:3-7 or Revised Statutes 12:3-23, requiring 6 months notice to the riparian or shore owner of an application for a grant or lease because of the applicant's inability to determine the location of the present or former mean high water line, such applicant shall file with the Department of Conservation and Economic Development a notice of his intention to apply for a riparian grant or lease, describing therein the lands desired, together with an affidavit of an engineer or surveyor licensed in this State, setting forth the reasons why the location of the mean high water line cannot be determined, and requesting permission of the Commissioner of the Department of Conservation and Economic Development to publish the notice of intention to make an application in form prescribed by the commissioner once a month for 6 successive months, prior to the filing of the application, in a newspaper published and circulated in the county or counties wherein the lands are situate. Upon receipt of such notice of intention the commissioner shall investigate the facts set forth therein and may grant the requested permission for publication; and may also, as a condition thereof, require such additional notice as he shall deem appropriate to inform adjacent property owners of the applicant's intention to seek a riparian grant or lease.

Upon the execution of the grant or lease after the notice as provided herein, all privileges or claims of pre-emption of riparian owners to the lands therein described shall forever cease and terminate.

**12:3-8. Trespass on lands of state under water; proceedings by attorney general; expenses**

The department may commence a civil action in the name of

the State of New Jersey against persons and corporations trespassing upon or occupying the lands of the State under water, or which were heretofore under water, and the Attorney-General of the State is hereby required to commence and prosecute such actions as may be instituted or directed by the department; and his expenses and disbursements, and the expenses and disbursements of such assistants as may be appointed by the Governor, and their reasonable charges and counsel fees shall be taxed by the court and paid by the State Treasurer, upon presentation of the bill so taxed.

**12:3-9. Grant to person other than riparian owner; procedure**

In any case where a grant of the lands of the State under water is made by the department to any person other than the riparian owner the State's grantee shall not fill up or improve said lands under water until the rights and interest of the riparian owner in said lands under water (if any he has) shall be extinguished, as follows: The department shall fix the amount to be paid to said riparian owner for his rights and interest therein (if any he has), and said riparian owner shall have the right, within twenty days after he has been notified of said amount, to accept said sum in full extinguishment of all his rights, or if he is dissatisfied with said award he may apply to the Superior Court for a struck jury to try the question in such place as may be designated by said court, and said jury may increase or diminish the amount to be paid the said riparian owner, and their verdict shall be final as to said amount, and on the payment or tender by the State's grantee to the riparian owner of the amount fixed by said jury all the rights and interests of said riparian owner in the lands of the State under water in front of his land shall be extinguished; the costs of the trial shall be paid as follows: If the verdict of the jury is greater than the award of the board then the State shall pay the costs of the trial, if the verdict is the same as the award or less than the award of the department then the riparian owner shall pay the costs.

**12:3-10. Lease or conveyance to riparian owner on application to board**

Any riparian owner on tidewaters in this State who is desirous to obtain a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands, may apply to the board, which may make such lease, grant or conveyance

with due regard to the interests of navigation, upon such compensation therefor, to be paid to the State of New Jersey, as shall be determined by the board, which lease, conveyance or grant shall be executed as directed in sections 12:3-2 to 12:3-5 of this Title, and shall vest all the rights of the State in said lands in said lessee or grantee.

The board in its discretion, upon application in writing from any riparian owner, may cancel and annul any lease, grant or conveyance heretofore made to such riparian owner, and thereupon such lands, and rights therein, so leased, granted or conveyed shall revert to the State.

### **12:3-11. Waters excluded**

Section 12:3-10 of this title shall not interfere with sections 12:3-2 to 12:3-9 of this title as to the waters of the Hudson river, New York bay or Kill von Kull, easterly of Enyard's dock.

### **12:3-12. Covenants, clauses and conditions in grants or leases whether land under water or not**

The board with the concurrence of the governor and attorney general, in all cases of application for grants or leases of land now, or at the time of the application, or at the time of the lease or grant, under tidewater; and in all cases of application for grants or leases of lands which are not now, or shall not at the time of the application, or at the time of the lease or grant be under tidewater, and in all cases of applications for leases or grants for all or any of such lands may, notwithstanding the first proviso in section 12:3-5 of this title, or any other clause or matter contained in sections 12:3-2 to 12:3-9 of this title, grant or lease, or lease first with a covenant to grant, and grant afterwards, for such principal sum that the interest thereof at seven per cent will produce the rental, such lands, or any part thereof lying between what was, at any time heretofore, the original high-water line and the exterior lines established or to be established, and grant or lease in all cases in which, in their discretion, they shall think such grant or lease should be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within said section 12:3-5 of this title, and enter into the same covenants in the name of the state, in all cases of grants or leases where they deem such covenants proper, as are authorized in grants or leases under said section 12:3-5 and insert such other covenants, clauses and conditions in said grants or leases as they shall think proper to require from

the grantee or lessee, or ought to be made by the state; provided, that nothing herein contained shall authorize grants or leases in front of a riparian owner to any other than such riparian owner, except upon the proceedings and conditions provided in sections 12:3-2 to 12:3-9 of this title; and provided also, that the applications for grants or leases, and the certificates of said commissioners, governor and attorney general, may in the cases hereby provided for, vary from the provisions of said sections 12:3-2 to 12:3-9 in such manner as to conform to this section, and any party who has already asked for or accepted a lease or conveyance may apply for and have the benefits of this section, notwithstanding such former application or former acceptance of a lease or conveyance.

**12:3-13. Changes in pier lines or lines of solid filling; map and survey; basins**

The board may change, fix and establish any other lines than those now fixed and established for pier lines, or lines for solid filling in the waters of the bay of New York or the Hudson river, or make any changes in any basin now fixed and established, or lay out and fix and establish any new basin or basins in the waters of the bay of New York or the Hudson river, and when so fixed and established, the board shall file a map and surveys in the office of the secretary of state, showing what lines have been fixed and established by it for the exterior lines for solid filling and pier lines, as well as for any changes in basins or new basins fixed, laid out and established by it under this section.

**12:3-14. Encroachment prohibited**

From and after the filing of said map and surveys in the office of the secretary of state, no encroachment of any kind shall be permitted to be made beyond said lines so fixed and established for solid filling or pier lines, or in or upon any basin or basins so laid out and established.

**12:3-15. Lease or sale of basins; dedication as public basins**

The board may make, for a satisfactory consideration, any lease or sale to the owners of the lands fronting on the said basin, of the right to have the exclusive use of the said basin or basins, for the purpose of wharfage and docking, and to charge a reasonable sum for the use of the same on the line of bulkhead

owned by them respectively; and that from and after the filing of said map and survey, the same shall remain as a public basin or basins, and they are hereby dedicated for that purpose.

**12:3-16. Fixing of purchase price or rentals for lands below high-water mark or formerly under tidewater; lease or conveyance**

It shall be lawful for the board, together with the governor, to fix and determine within the limits prescribed by law, the price or purchase money or annual rental to be paid by any applicant for so much of lands below high-water mark, or lands formerly under tidewater belonging to this state, as may be described in any application therefor duly made according to law, and the board, with the approval of the governor, shall, in the name and under the great seal of the state, grant or lease said lands to such applicant accordingly, and all such conveyances or leases shall be prepared by the board or its agents at the cost and expense of the grantee or lessee therein and shall be subscribed by the governor and the board and attested by the secretary of state.

**12:3-17. Extension of surveys over tidewaters**

The board shall, at the request of shore owners, extend its surveys over the tidewaters of this state and prepare and file maps thereof in the office of the secretary of state showing what lines have been fixed and established for the exterior lines for solid filling and pier lines.

**12:3-18. Right of way separating riparian owner's lands from tidewater; effect on leases and grants**

When lands have been or shall be taken or granted for a right of way and such right of way has been or shall be so located on land of a riparian owner as to occupy the same along or on the shore line, thereby separating the upland of the riparian owner adjoining that used for the right of way from tidewater, such owner of the land so subject to such right of way shall be held to be a riparian owner for the purpose of receiving any grant or lease heretofore or hereafter made of the lands of the state under water, or for the purpose of receiving any notice under sections 12:3-2 to 12:3-17 of this title; provided, that nothing in this section shall affect the rights of the state to the lands lying under water.

**12:3-19. Establishment of bulkhead and pier lines around islands in tidewaters**

The board, with the approval of the governor and after consultation with the board of engineers acting under the authority of the secretary of war, shall, from time to time, fix and establish, around or in front of all islands, reefs and shoals situate in the tidal waters of this state, exterior lines in said waters, beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be made or maintained, and also the interior lines for solid filling in said waters, beyond which no permanent obstruction shall be made or maintained other than wharves and piers and erections thereon for commercial uses; provided, however, that no exterior line around or in front of any such island, reef or shoal shall be fixed and established in front of any riparian grant which was made prior to February tenth, one thousand eight hundred and ninety-one, unless such exterior line shall be fixed and established, after consultation with said board of engineers, at such distance as will, in the judgment of the board of commerce and navigation, leave sufficient waterway in front of said grants for navigation, and when the board shall have so fixed and established said lines after consultation as aforesaid, it shall file a survey and map thereof in the office of the secretary of state, showing the lines for piers and solid filling so fixed and established.

**12:3-20. Sale or lease of riparian lands around islands, reefs or shoals**

The board, together with the governor, may sell or let to any applicant therefor any of the lands under water and below mean high-water mark, embraced within the lines fixed and established pursuant to section 12:3-19 of this title, upon such terms as to purchase money or rental, and under such conditions and restrictions as to time and manner of payment, the duration and renewal of any lease, the occupation and use of the land sold or leased, and such other conditions and restrictions as the interest of the state may require, and as may be fixed and determined by the board together with the governor.

**12:3-21. Removal of sand and other material without license; penalty; exception**

No person or corporation shall dig, dredge or remove any deposits of sand or other material from the lands of the State lying under tidal waters without a license so to do first obtained

as provided in section 12:3-22 of this Title, and any person or corporation who shall so unlawfully dig, dredge or remove any deposit of sand or other material as aforesaid shall forfeit and pay for each and every such offense the sum of one hundred dollars (\$100.00), to be prosecuted for and recovered by a civil action by any person or persons in any court of competent jurisdiction with costs of suit, the one-half the amount so recovered to be for the use of the State, and the other half to the use of the person or persons who shall sue for and prosecute the same to effect; *provided, however*, that nothing in this section contained shall prevent the owner of any grant or lease from the State, or the assignee or lessee thereof, from digging, dredging, removing, and taking sand and other material within the lines of, or in front of, such grant or lease, for the purpose of improving lands granted or leased to them, or their grantors or lessors, by the State, nor prevent such owner, assignee or lessee from digging or dredging a channel or channels to the main channels, and removing and taking the material therefrom.

**12:3-22. License to remove sand or other materials from lands under tidewaters**

The board, with the approval of the governor, may, under such terms and restrictions as to duration, compensation to be paid and such other conditions and restrictions as the interests of the state may require, license by an instrument in writing, executed in the same manner as grants of land under water are required to be executed, any person or corporation to dig, dredge or remove any deposits of sand or other material from lands of the state under tidewaters.

**12:3-23. Lease or grant to persons other than riparian owners; notice to riparian owners**

The board, with the approval of the governor, may lease or grant the lands of the state below mean high-water mark and immediately adjoining the shore, to any applicant or applicants therefor other than the riparian or shore-owner or owners, provided the riparian or shore-owner or owners shall have received six months' previous notice of the intention to take said lease or grant such notice given by the applicant or applicants therefor, and the riparian or shore-owner or owners shall have failed or neglected within said period of six months to apply for and complete such lease or grant; the notice herein required shall be in writing and shall describe the lands for which such lease or grant is desired, and it shall be served upon the riparian or

shore-owner or owners personally; and in the case of a minor it shall be served upon the guardian; in case of a corporation upon any officer performing the duties of president, secretary, treasurer or director, and in the case of a nonresident owner the notice may be by publication for four weeks successively at least once a week in a newspaper or newspapers published in the county or counties wherein the lands are situate, and in case of such publication, a copy of such notice shall be mailed to such nonresident owner (or in case such nonresident owner be a corporation, then to the president of such corporation, directed to him at his post-office address, if the same can be ascertained, with the postage prepaid); but nothing contained in sections 12:3-21 to 12:3-25 of this title shall be construed as repealing, altering, abridging, or in any manner limiting the provisions and power conferred upon the riparian commissioners and governor by sections 12:3-19 and 12:3-20 of this title.

**12:3-24. Sale or lease of lands below high-water mark; lease convertible into grant not required**

The board, together with the governor, shall not be required to give leases for lands of the state under water, convertible into grants upon payment of the principal sum mentioned therein, but may sell or let any of the lands of the state below mean high-water mark upon such terms as to purchase money or rental, and under such conditions and restrictions as to time and manner of payment, the duration and renewal of any lease, the occupation and use of the lands sold or leased, and such other conditions and restrictions as the interest of the state may require, as may be fixed and determined by the board, together with the governor.

**12:3-25. Renewals of leases; provision for determining annual rentals**

The department, together with the Governor, may, in any lease of lands of the State below mean high-water mark, provide for a renewal or renewals of the lease for a subsequent term or terms to be expressed in the lease, and therein provide that the annual rentals to be paid for each renewal shall, in case the amount cannot be agreed upon, be fixed and determined before the commencement of the renewal term by three arbitrators, one to be appointed by the State, one by the then lessee, and the third by their joint agreement, or should they fail to agree, then by the Superior Court.

**12:3-26. Laying pipes under tidal waters; consent of governor and board required**

It shall be unlawful for any person or corporation to lay any pipe or pipes on any of the lands of the state lying under tidal waters without the consent or permission of the governor and the board first had and obtained in writing; provided, that nothing in this section contained shall be construed to apply to lands under the waters of the Atlantic ocean.

**12:3-27. Enlarging or reducing tidewater basins; reclamation; leases and grants; limitations**

Whenever the state has, prior to March fourth, one thousand nine hundred and eighteen, dedicated any lands under water to public use as a tidewater basin, it shall be lawful for the board, on the application of the owners of all of the lands abutting thereon, to either enlarge or reduce the area of said basin or change the boundaries thereof, and said owners of lands adjoining and abutting upon said tidewater basin are hereby authorized to fill up and reclaim the same to such extent as the board in writing may confirm, and the board is hereby authorized and empowered upon the payment of an adequate consideration therefor, to grant or lease in the manner provided by law to the owners of lands adjoining and abutting upon said tidewater basin, the state's rights in any portion of said basin so filled up and reclaimed; provided, however, that no reclamation by any person of said lands and no grant or lease thereof by the board shall be valid unless all of the owners of lands fronting and abutting on said basin shall consent in writing thereto.

Nothing in this section shall authorize the entire closing of any such basin or its reduction in width to less than two hundred feet; nor shall this section apply to any lands of the Morris Canal and Banking Company, or operate to relieve said company from any obligation imposed upon it by law.

**12:3-28. Construction or alteration of bridges over tidal waters; approval of board; repeal by subsequent act**

Whenever a state board or agency has been or may hereafter be authorized or directed by any law of this state to build a bridge or other structure, or to alter or change any existing bridge or other structure on or over any lands of this state flowed by the tidal waters thereof, such board or agency, before proceeding with the work, shall first submit to and obtain the

approval of such plans or work by and from the board of commerce and navigation.

This section shall not be taken to be or have been repealed by any act passed subsequent to April first, one thousand nine hundred and twenty-seven, authorizing the building of bridges or structures, or the alteration or changing of existing bridges or other structures by any state board or agency as aforesaid unless such subsequent act authorizing the same contains an express repealer of this section.

**12:3-29** Terms and conditions required in lease or grant

Every lease, grant or conveyance by the board of commerce and navigation of lands lying under the waters of the Hudson river adjacent to or in front of the Palisades, or adjacent to or in front of the strip of land between the base of the Palisades and the lands under water, shall contain such terms, conditions, restrictions and limitations as will, so far as possible, forever thereafter preserve unbroken the uniformity and continuity of the Palisades, and prevent the lands leased, granted or conveyed from being used or devoted to injurious or destructive work or operations against the Palisades, or in connection with or for the encouragement, aid or promotion of such work or operations.

**12:3-30.** Work or operations for buildings and commercial purposes

No terms, conditions, restrictions or limitations shall be inserted in any such lease, grant or conveyance which shall prevent or interfere with any work or operations, whether by blasting and removing rock or otherwise, on any part of land lying between the base of the vertical line of the Palisades and the high-water mark on the Hudson river, for the purpose of preparing the ground for the construction of buildings or for commercial purposes.

**12:3-31.** "Palisades" defined

As used in sections 12:3-29 and 12:3-30 of this title, "Palisades" means that portion of the west shore of the Hudson river, lying between the high-water line and the top or edge of the steep cliffs or the crest of the slope in places where the steep cliffs are absent, from the road leading from the old Fort Lee dock or landing to Fort Lee in Bergen county on the south to the northerly boundary line of the state of New Jersey. The ripari-

an lands lying under the water of the Hudson river to the southward of the said road, leading from the Fort Lee dock or landing to Fort Lee in Bergen county, shall not be subject to the provisions of said sections.

**12:3-32. Certain leases, grants and conveyances not affected**

No lease, grant or conveyance made prior to March eleventh, one thousand nine hundred and twenty-two, of lands lying under the waters of the Hudson river southward of said road leading from the Fort Lee dock or landing to Fort Lee in Bergen county, shall be held invalid because not containing the terms, conditions and restrictions prescribed in section 12:3-29 of this title.

Nothing in sections 12:3-29 to 12:3-31 of this title shall affect or impair any lease or grant made prior to March eighteenth, one thousand eight hundred and ninety-eight.

**12:3-33. Grant of riparian lands for public park, place, street or highway**

Whenever a public park, place, street or highway has been or shall hereafter be laid out or provided for, either by or on behalf of the state or any municipal or other subdivision thereof, along, over, including or fronting upon any of the lands of the state now or formerly under tidewater, or whenever a public park, place, street or highway shall extend to such lands, the board of commerce and navigation, upon application of the proper authority of the state, or the municipal or other subdivision thereof, may grant to such proper authority the lands of the state now or formerly under tidewater, within the limits of or in front of said public park, place, street or highway.

**12:3-34. Conditions in grant**

The grant shall contain a provision that any land so granted shall be maintained as a public park, place, street or highway, or dock for public use, resort and recreation, and that no structures shall be erected on the land so granted inconsistent with such public use.

**12:3-35. Authority of bridge companies to construct bridges over lands granted**

When a grant shall be made to the proper authority of the

state, or a municipal or other subdivision thereof, of lands of the state now or formerly under tidewater fronting on or within the extended lines of any street or highway heretofore or hereafter laid out or provided for, and said authority shall have or may hereafter grant or lease the lands so granted, or the right to use the lands for the purpose of constructing a bridge over or along the same, to a corporation organized under sections 48:5-13 to 48:5-25 of the title Public Utilities, the board of commerce and navigation may insert an express provision in the grant that the lands may be used for such purpose.

**12:3-36. Revocable lease or permit for nominal consideration; grant to new grantee; condition**

If the proper authority of the state, or a municipal or other subdivision thereof, applying for a grant of lands under section 12:3-33 of this title, shall be unable or unwilling to pay the price fixed by the board for such lands, the board may grant to such authority a revocable lease of or permit to use the lands for a public park, place, street or highway or dock purpose for a nominal consideration until such time as the board shall decide to make a grant in fee of the lands to such proper authority, or to other grantees, for such consideration as the board may determine to be adequate compensation for such lands.

The revocable lease or permit may contain a provision that if the same shall be revoked and the lands in question granted to a grantee other than such proper authority, the new grantee shall pay, as a condition of his grant, the cost of any improvement that may have been constructed upon the lands which were the subject of the revocable lease or permit.

**12:3-37. Prior acts relating to leases and grants of riparian lands to municipalities for streets, highways, parks and other public purposes**

The following acts are saved from repeal:

a. L.1889, c. 199, p. 322 (C.S. p. 4393, § 31), entitled "A further supplement to 'An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty-four, and the several supplements thereto," approved April nineteenth, one thousand eight hundred and eighty-nine.

b. L.1901, c. 28, p. 54 (C.S. p. 4393, §§ 32, 33), entitled "A supplement to an act entitled 'A further supplement to "An act

to ascertain the rights of the state and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixty-four, and the several supplements thereto,' and which said supplement was approved April nineteenth, eighteen hundred and eighty-nine," approved March seventh, one thousand nine hundred and one.

c. L.1903, c. 202, p. 387 (C.S. p. 4397, §§ 41 to 43), entitled "A further supplement to 'An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty-four," approved April eighth, one thousand nine hundred and three.

d. L.1914, c. 136, p. 237 (1924 Suppl. § 178-46a), entitled "A further supplement to 'An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty-four," approved April eighth, one thousand nine hundred and fourteen.

e. L.1914, c. 228, p. 474 (1924 Suppl. § \*136-2240A (1)), entitled "An act to authorize the riparian commissioners of the state of New Jersey to grant lands of the state now or formerly under tidewater to municipalities for street and park purposes, and impose terms upon such municipalities as conditions of such grant," approved April seventeenth, one thousand nine hundred and fourteen.

f. L.1915, c. 398, p. 760 (1924 Suppl. §§ 178-46b, 178-46c), entitled "A further supplement to 'An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty-four," approved April twenty-third, one thousand nine hundred and fifteen.

g. L.1920, c. 283, p. 509 (1924 Suppl. § \*42-16), entitled "A supplement to an act entitled 'An act creating a department to be known as the board of commerce and navigation, and vesting therein all the powers and duties now devolved by law, upon the board of riparian commissioners, the department of inland waterways, the inspectors of power vessels, and the New Jersey harbor commission,' approved April eighth, one thousand nine hundred and fifteen," passed April twenty-first, one thousand nine hundred and twenty.

[The above acts authorize the board of commerce and navigation to grant, lease or rent lands under water to municipalities, and under the act saved from repeal in paragraph "g" above, to

the state highway commission or to counties, for streets, highways, parks, docks, wharves and other public purposes; regulate the consideration for such grants and leases and specify the conditions to be set forth therein.]

**12:3-37.1. Counties, municipalities and other instrumentalities of state; lease or permission to use for park and recreational purposes**

The State is authorized to lease or otherwise permit county or municipal or other instrumentality of the State use of riparian lands owned by the State and situate within the county or other instrumentality of the State or within or contiguous to said municipality, when said lease or use is approved by the Department of Environmental Protection, without consideration or at nominal consideration, and to be maintained and used exclusively for park and recreational purposes. Said lease or use agreement shall contain a limitation that if the riparian lands are not maintained and used in accordance with the provisions of this act, such lease or use agreement shall be of no further force and effect.

**12:3-38. Investigation by board on petition of riparian owner**

The board of commerce and navigation may, upon petition of any riparian owner, investigate the facts relative to any lease or grant of riparian lands purporting to have theretofore been made under authority of any legislative act for the purpose of determining whether or not it is equitable and just that a confirmatory lease or grant shall be made to ratify and confirm to the petitioner the title to lands under water adjacent to the ripa of the petitioner and within the area of lands covered by a prior lease or grant through which the petitioner claims title to the lands under water for which a confirmatory lease or grant is required.

**12:3-39. Execution of confirmatory lease or grant; consideration; effect**

If the board finds that it is equitable and just that such a confirmatory lease or grant be executed in consideration of the moneys theretofore paid to the state on account of the lease or grant, or upon payment of such further consideration as may be equitable and just, a proper confirmatory lease or grant shall be

executed and delivered to the petitioner, his heirs, successors or assigns. Any confirmatory lease or grant made in compliance with sections 12:3-38 to 12:3-44 of this title shall be conclusive and final as to its equity or justness and thenceforth shall be binding upon the state.

### **12:3-40. Grant of additional lands; consideration**

The board may consider, under a petition filed under section 12:3-38 of this title, the granting of additional lands under water adjacent to the lands to be covered by any confirmatory lease or grant, provided the petitioner shall have made application for the grant of additional lands in accordance with the requirements of the statutes in force at the date of the petition, to the end that a lease or grant may include not only the lands, title to which is being confirmed, but also additional lands adjacent thereto.

The expressed consideration for such lease or grant shall be the sum total of any additional sum to be paid for the confirmation of previous leases or grants and of the sum agreed to be paid for the new area.

### **12:3-41. Character of lands affected**

The lands to be affected by sections 12:3-38 to 12:3-40 of this title shall be lands which are now or were formerly under the tidewaters of this state. Any lease or grant of new areas or by way of confirmation may be based upon the original natural high-water line as of the date of the lease or grant being confirmed or as of the date of the new and confirmatory grant.

### **12:3-42. Facts to be considered by board in determining whether confirmatory lease or grant should be granted**

The board may, in reaching its conclusion that it is equitable and just to confirm in a present riparian owner title to lands now or formerly under tidal waters which he has acquired through any previous lease or grant of the state, determine that it is equitable and just if it determines that:

a. The consideration paid for the original lease or grant was at the date of its execution full and adequate consideration for the lands so leased or granted;

b. The lands leased or granted lie in front of the ripa on which the lease or grant was based because the lands under wa-

ter in the vicinity of the lands under consideration have been equitably apportioned to the riparian owners by any agency authorized by law to make grants of land under tidal waters in the name of the state and the lands under consideration are within the area of the lands under water so apportioned to the lands owned by the petitioner, and provide reasonable access to riparian owners to deep water beyond bulkhead and pierhead lines;

c. The lands leased or granted lie in front of the riparian lands of the petitioner because the lands so leased or granted constitute an equitable allotment or apportionment of the lands under water to the riparian lands to which they are attached, even though the boundaries defining the limits of the lands granted are irregular and do not constitute straight side lines running parallel to each other and extending from the shore to the bulkhead or pierhead lines, and provide reasonable access to riparian owners to deep water beyond bulkhead and pierhead lines; and

d. The owner of all estates, rights and privileges under the lease or grant to be confirmed to the extent of the lands under water to be defined in a confirmatory lease or grant is the petitioning owner of riparian lands to be benefited on the date the petition is filed, or at the date of the finding of the board that it is equitable and just that a confirmatory lease or grant shall be executed.

### **12:3-43. When grant may be executed to petitioner**

Any lease or grant which shall be authorized under a petition filed in accordance with section 12:3-38 of this title may be in fact executed to the petitioner, or his heirs, devisees or assigns, provided that the grantee named in the lease or grant is the owner of the ripa at the date of the lease or grant.

### **12:3-44. Who entitled to confirmatory lease or grant**

Any person owning riparian lands shall be deemed to be entitled to the benefits of sections 12:3-38 to 12:3-43 of this title.

### **12:3-45. Erroneous grant to other than riparian owner; valid unless riparian owner acts**

Whenever:

a. The board of commerce and navigation has granted or shall hereafter grant any lands of the state flowed by tidewater to any person erroneously claiming to be and not being the ri-

riparian owner, by reason whereof the grant shall be void as therein provided; and

b. The state has or shall have received the stipulated consideration for such supposed grant; and

c. The grantee named therein, or his heirs or assigns has or shall have recorded the grant in the county or counties where the land described therein shall or may be located; and

d. Such grantee, his heirs or assigns has or shall have gone into occupation of the lands described in the supposed grant and the lands if any between the same and the original high-water line by bulkheading or filling in, or erecting structures thereon, or otherwise improving the same in such manner as to give visible notice of such occupation; and

e. Such occupation has or shall have continued for a period of five years after the recording of the supposed grant—

Every pre-emptive and other right conferred by any legislative act upon the riparian owner to apply for and obtain a grant from the state of the lands so occupied shall cease and determine, unless the riparian owner shall, before the expiration of such period of five years of occupation, apply in writing to the board for a grant of the lands so occupied; and pay or give security for the price fixed or that shall be fixed therefor, which price shall include the reasonable value of the improvements upon the lands.

### **12:3-46. Grant to named grantee in default of application and payment by riparian owner**

In default of such application and payment of or security for the price of the lands by the riparian owner within the period of five years of occupation of the lands, the board, on application of the person named in the supposed grant, or of his heirs and assigns, shall grant and convey absolutely in fee to the applicant, his heirs or assigns forever, all right and title of the state in and to the lands so occupied and without condition that the grant shall be void if the grantee is not the riparian owner.

### **12:3-47. Additional consideration for further grant**

If the board shall determine that the original consideration paid to the state for the supposed grant was not the reasonable, fair and adequate value of the lands so occupied, as of the date of the supposed grant, the applicant shall pay to the state such additional consideration for a further grant as the board shall determine to be necessary, in order that the total consideration

received by the state for the lands shall be reasonable, fair and adequate as of the date of the original supposed grant.

**12:3-48. List of riparian leases in arrears**

The state treasurer shall, on or before the first Tuesday in January in each year, make out a list of all riparian leases held by the state on which rentals are in arrears and unpaid for the space of one year, and transmit the same to the board of commerce and navigation.

**12:3-49. Re-entry under covenant by board on behalf of state when rent unpaid**

Where a riparian lease, the rentals of which are unpaid for the space of one year, contains a covenant or condition that upon nonpayment of the yearly rent or sum reserved at the time or times fixed for the payment thereof, the state may re-enter and possess the lands described in the lease, the board may enter upon said lands, and in the name and on behalf of the state, take possession thereof.

**12:3-50. Manner of re-entry**

Such entry shall be made by the board or any member thereof, by going on the land and announcing in the presence of one or more witnesses that all rights under the lease are forfeited to the state.

**12:3-51. Notice**

Before the entry is made the board shall give notice:

- a. By publication at least once a week for six weeks in a newspaper published in the county in which the land covered by the lease is situate; or
- b. By serving a copy of the notice personally on the lessee, his heirs, executors, administrators, successors or assigns.

**12:3-52. Contents of notice**

The notice so to be published or served shall set forth:

- a. The name of the person to whom the lease was granted;
- b. The name of the person holding the lease by devise, grant, assignment or otherwise, if known to the board; and

c. A statement that if the rentals unpaid are not paid on or before the expiration of said six weeks, all rights under the lease shall determine, become void and forfeited to the state.

**12:3-53. Report by board to state treasurer**

After such notice shall have been published or served and entry made on the land described in the lease, the board shall report to the state treasurer the fact of such publication or service and entry on the land, and:

a. In case the notice shall have been published, annex a copy of the publication to the report; and,

b. In case the notice shall have been served personally, annex to the report an affidavit by the person serving the notice, proving the truth thereof.

**12:3-54. State treasurer to transmit original lease to board; new lease or grant**

Upon receipt of the report of the board, the state treasurer shall transmit forthwith to the board the original lease of the land on which entry shall have been made. Thereupon the board may, in the manner prescribed by law, again lease or grant the land as fully as if the original lease had never been made.

**12:3-55. Certificate of re-entry and repossession; recording; fee**

Upon making entry and taking possession of any lands described in any such lease, the board shall execute its certificate certifying to the re-entry and repossession and describing the lands re-entered and repossessed.

The certificate shall be executed and acknowledged as deeds are required to be acknowledged, and shall be recorded in the records of the county wherein such lands are located as deeds are required to be recorded.

The same fee shall be paid for recording the certificate as is required for recording deeds.

**12:3-56. Rights of state as to unpaid rentals not affected**

All rights, at law or in equity, which had accrued to the state for the rentals in arrears and unpaid up to the expiration of the

time fixed in the notice mentioned in sections 12:3-51 and 12:3-52 of this title shall not abate but shall remain in force and effect.

**12:3-57. State treasurer released from responsibility under original lease**

The state treasurer, upon returning to the board the original lease of the land upon which re-entry has been made, shall be released from all responsibility arising from the lease.

**ARTICLE 3. MOORING OR FASTENING BOATS UPON RIPARIAN LANDS**

**12:3-58. Declared a nuisance**

The mooring, grounding or otherwise attaching or fastening of a boat, barge or raft to or upon the riparian lands of the state and permitting the same to remain so for a period of ten days shall constitute a nuisance.

**12:3-59. Misdemeanor**

Any person who shall willfully moor, ground or otherwise attach or fasten, or authorize, cause or permit to be moored, grounded or otherwise attached or fastened, any boat, barge or raft to or upon the riparian lands of the state, for a period of more than ten days consecutively, shall be guilty of a misdemeanor.

**12:3-60. Proceeding by board for removal of boat, barge or raft; lien for costs of removal**

In addition to any proceedings which may be had under sections 12:3-58 and 12:3-59 of this title, the board of commerce and navigation may remove or cause to be removed any such boat, barge or raft in the following manner:

a. The board may cause a written notice, signed by the chief engineer of the board, to be posted upon such boat, barge or raft stating that unless the same is removed from the riparian lands of the state within forty-eight hours from the time of the posting of the notice, the board will cause it to be removed and will make the cost of the removal out of the value of the boat, barge or raft; and

b. In case the boat, barge or raft to which the notice shall have been affixed is not removed within said forty-eight hours, the board shall cause it to be removed, and the cost of the removal shall be a lien upon the boat, barge or raft which lien shall be enforced by a sale as provided in section 12:3-61 of this title.

**12:3-61. Enforcement of lien by sale; notice; fees and costs; disposition of proceeds**

Upon the removal by the department of a boat, barge or raft in accordance with section 12:3-60 of this Title, it shall enforce the lien thereby given for the cost of the removal by sale of the boat, barge or raft.

Written notice of the lien and of the amount thereof, and of the sale, shall be given by posting a copy thereof, signed by the commissioner or chief engineer of the department, upon the boat, barge or raft and in three public places, at least fifteen days before the date of the sale.

If the amount of the lien and accrued costs is not satisfied before the day fixed for sale, the boat, barge or raft shall be sold to the highest bidder. Out of the proceeds shall be deducted the cost of the sale, which shall consist of the amount of the cost of the removal of the boat, barge or raft, together with a fee of ten dollars (\$10.00) for the preparation and posting of notices and ten dollars (\$10.00) for selling and execution of the certificate of sale. The balance, if any, shall be paid to the Clerk of the Superior Court to be held by him for the benefit of the owner of the boat, barge or raft. Such balance shall be paid out only upon the order of the Superior Court.

**12:3-62. Expenses paid by state treasurer; reimbursement**

The cost and expense of removing any such boat, barge or raft shall be paid by the state treasurer upon the certificate of the board. The proceeds of any sale up to the amount of the cost of removal, together with the fees provided for, shall be paid to the state treasurer for the use of the state.

**12:3-63. Lands devoted to park purposes excepted**

Nothing in this article shall apply to riparian lands of the state devoted by the state to public park purposes.

ARTICLE 4. ACQUISITION OF RIPARIAN LANDS BY STATE; LEASE FOR COMMERCIAL ENTERPRISES

**12:3-64. Acquisition by department; jurisdiction; entry before making compensation; use of lands acquired**

The Department of Conservation and Economic Development may acquire title, in fee simple, in the name of the State, by gift, devise or purchase or by condemnation in the manner provided in chapter one of the Title Eminent Domain (20:1-1 et seq.) to any lands in the State, including riparian lands, of such area and extent which, in the discretion of the department, may be deemed necessary and advisable. All lands so acquired shall be subject to the jurisdiction and control of the department.

The department may enter upon and take property in advance of making compensation therefor where for any reason it cannot acquire the property by agreement with the owner.

Upon the department exercising the right of condemnation and entering upon and taking land in advance of making compensation therefor it shall proceed to have the compensation fixed and paid to the owner, as provided in said chapter one of the Title Eminent Domain.

Lands thus acquired shall be used for the improvement or development of any waterway, stream, river or creek or any waterfront or oceanfront property or to give access to any lands of the State.

**12:3-65. Lease or grant of lands acquired; maximum period; restrictions**

The use and occupation of any lands so acquired, together with all the improvements thereon, may be leased or granted by the board to any person, upon such terms and covenants and for such periods of time not exceeding sixty years, as may be required and directed by the board.

The grant or lease of riparian lands shall be permitted only in conjunction with the grant or lease of the adjacent lands under tidewater and only to the same party or parties and for the same period of time.

**12:3-66. Lease or grant to former owner; improvements by lessee or grantee**

The board may, as a consideration for the transfer of title of

any riparian lands to the state, enter into an agreement with the owner thereof to lease and grant, after transfer of title to the state, the use and occupation of the riparian lands as well as the adjacent lands under tidewater, to such owner or any party designated by him, whereby the lands, both riparian and under tidewater, shall be improved and developed at the expense of the grantee or lessee, in such manner, under such plans and specifications, at such minimum cost and within such time as may be required by the board.

**12:3-67. Operation of commercial enterprise by lessee or grantee**

The board shall also require that after such improvements have been made and constructed, the lessee or grantee shall, under the supervision and jurisdiction of the board, maintain and operate, during the life of the lease or grant upon said premises, such enterprise, commercial operation, business or venture as the improvements are designed for, at the sole cost and expense of the lessee or grantee.

**12:3-68. Annual percentage of income in lieu of rent reserved in cash**

In lieu of rent reserved in cash for the grant or lease of said riparian lands and lands under tidewater, the board may require as rental, for the full term of the grant or lease, an annual percentage of not less than thirty-three and one-third per cent of the income the lessee or grantee received from the use and occupation of the premises and the business or enterprise conducted thereon. The income shall be calculated and adjusted in such manner as the board shall determine and all of such requirements shall be set forth in detail in the grant or lease.

**12:3-69. Moneys received by board from leases and grants**

All moneys received by the board under the provisions of this article shall be subject to the provisions of law applicable to the receipts from grants or leases of land under tidewater.

**12:3-70. Improvements and fixtures and title and goodwill of enterprise to revert to state**

At the expiration of the term of the grant or lease the title to all improvements, railways, buildings, docks, wharves, bulk-

heads, machinery, stock and equipment and all chattels comprising the fixtures located upon such land and premises and then in the operation and maintenance of the enterprise, business or venture conducted on the premises, together with the title and goodwill of the business or enterprise, shall vest in the state. The grant or lease shall contain in detail the mode and manner and subject matter of the transfer to the state.

### **12:3-71. Laws applicable**

All grants or leases under the provisions of this article shall be subject to the provisions of existing laws so far as the same are not inconsistent with the terms of this article.

- b. Water-Front and Harbor Statutes, *N.J.S.A. 12:5-1 et seq.*

## **CHAPTER 5**

### **WATER-FRONT AND HARBOR FACILITIES**

Sec.

- 12:5-1. Annual report on condition of water-front or harbor facilities; recommendations.
- 12:5-2. Preventing encroachment on water front.
- 12:5-3. Submission to board of plans for water-front development.
- 12:5-4. Public hearings on plans; alterations in plans. [repealed]
- 12:5-5. Procedure when water front is under control of local governing body.
- 12:5-6. Improvement without approval; nuisance; abatement.
- 12:5-7. Municipal developments begun prior to April 8, 1914.
- 12:5-8. Preparation of plans by board upon request of county or municipality; charges.<sup>1</sup>
- 12:5-9. Harbor of refuge in Sandy Hook bay.
- 12:5-10. Marine improvements on lands conveyed to State by municipalities.
- 12:5-11. Appropriation for State's share of marine improvement.

#### **12:5-1. Annual report on condition of water-front or harbor facilities; recommendations**

The board of commerce and navigation shall investigate and report annually to the legislature the condition of water-front and harbor facilities and any other matter incident to the movement of commerce upon all navigable rivers and waters within this state or bounding thereon. The board shall also recommend to the legislature and to the various municipalities interested therein such measures as may, in the judgment of the board, be necessary or advisable for the preservation of proper navigation or its improvement or the improvement of commerce upon such waters.

**12:5-2. Preventing encroachment on water front**

The Department of Environmental Protection may, by appropriate action in any court, prevent the encroachment or trespass upon the water front of any of the navigable waters of this State or bounding thereon, or upon the riparian lands of this State, and compel the removal of any such encroachment or trespass, and restrain, prevent and remove any construction, erection or accretion injurious to the flow of any such waters, which may be detrimental to the proper navigation thereof and the maintenance and improvement of commerce thereon.

**12:5-3. Submission to board of plans for water-front development**

All plans for the development of any water-front upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water-front development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided.

**12:5-4. Repealed by L.1975, c. 232, § 11**

**12:5-5. Procedure when water front is under control of local governing body**

Where such water front is under the control of a local board, commission or other governing body created by legislative act, having power to improve or develop the water front or exercising such authority, so that a permit or license must be granted by it before any improvement or development may be commenced, plans proposed by it or submitted to it shall be filed with the board of commerce and navigation.

The board may, within ten days after the receipt by it of such plans, file notice of objections to the carrying out of the improvement or development, or to the granting of a permit or li-

cense by such local governing body. The filing of the notice shall act as a stay in the carrying out of the plans or in the granting of such permit or license until a public hearing shall have been held by the local governing body sitting jointly with the board. At the hearing the board may state its objections to the plans and recommend such changes as it may deem necessary.

The local governing body together with the board shall approve or disapprove the plans, or grant or refuse to grant the permit or license as seems necessary or desirable.

**12:5-6. Improvement without approval; nuisance; abatement**

Any development or improvement enumerated in section 12:5-3 of this title or included within a proper interpretation thereof, which is commenced or executed without first obtaining approval as provided in section 12:5-4<sup>1</sup> or section 12:5-5 of this title, shall be deemed to be a purpresture and a public nuisance and shall be abated in the name of the state in such action as shall be appropriate for that purpose.

**12:5-7. Municipal developments begun prior to April 8, 1914**

Sections 12:5-3 to 12:5-6 of this title shall not apply to or affect any development for docks, shipping and transportation facilities inaugurated by a municipality and under construction in whole or in part prior to April eighth, one thousand nine hundred and fourteen, provided the municipality had, prior to said date, filed with the secretary of state a map showing the lands proposed to be taken for such municipal development.

**12:5-8. Preparation of plans by board upon request of county or municipality; charges**

Upon the request of a county, municipality or other political subdivision of this state, the board shall prepare and submit a proper plan for the development and improvement of the water front of such political subdivision upon any navigable stream or waters of this state or bounding thereon, the navigation of the waters incident thereto, and the regulation and improvement of the traffic of commerce incident thereto.

For the preparation and submission of the plans the board may make such charge against the municipality requesting the

same as is equal to the actual cost thereof and the political subdivision requesting them is hereby authorized to pay the same from any funds in its treasury.

**12:5-9. Harbor of refuge in Sandy Hook bay**

In addition to the powers conferred by the provisions of the act to which this act is a supplement, the Board of Commerce and Navigation is hereby authorized and empowered to co-operate with the Federal government, the county of Monmouth, and the borough of Atlantic Highlands in providing and maintaining a harbor of refuge in Sandy Hook bay near the borough of Atlantic Highlands.

**12:5-10. Marine improvements on lands conveyed to State by municipalities**

Whenever a municipality of this State has or shall have conveyed lands to the State upon the condition that the State shall improve such lands by constructing thereon docks, basins or other marine accommodations of the Marina type for boats and vessels, the cost of each such marine improvement shall be borne equally by the State and the municipality making such conveyance.

**12:5-11. Appropriation for State's share of marine improvement**

In the case of any such conveyance heretofore made, there is hereby appropriated from the General Funds of the State, such sum as may be included in any general or supplemental appropriation act, for payment of the State's share for the said marine improvement of the lands so heretofore conveyed to the State.

**c. Statutes Concerning the Establishment and Powers of the Natural Resource Council, N.J.S.A. 13:1D-3 et al.**

**13:1D-3. Division of marine services; natural resource council**

a. The Division of Resource Development, together with all of its functions, powers and duties is continued as the Division of Marine Services in the Department of Environmental Protection.

b. The Resource Development Council, together with all of its functions, powers and duties, is continued as the Natural Resource Council in the Department of Environmental Protection. This act shall not affect the terms of office of the present members of the council. The members of the council shall continue to be appointed as provided by existing law.

### **13:1B-10. Resource Development Council; membership**

There shall be within the Division of Resource Development, a Resource Development Council which shall consist of 12 members. Each member of the council shall be appointed by the Governor, with the advice and consent of the Senate, for a term of 4 years and shall serve until his successor has been appointed and has qualified, except that of the first appointments hereunder, 3 shall be for a term of 1 year, 3 for 2 years, 3 for 3 years and 3 for 4 years.

Each Governor shall designate 1 of the members of the council as chairman of such council. Any member of the council so designated shall serve as such chairman at the pleasure of the Governor designating him and until his successor has been designated. The chairman of the council shall be its presiding officer.

Any vacancies in the membership of said council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only. Any member of the council may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

The members of the council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

### **13:1B-11. Advice on policies**

The Natural Resource Council shall, subject to the approval of the commissioner:

a. Advise on comprehensive policies with respect to land conservation, use or acquisition in cooperation with the Division of Environmental Quality.

b. Formulate comprehensive policies for the prevention and control of beach erosion.

**13:1B-12. Additional powers and duties of Resource Development Council**

In addition to its powers and duties otherwise provided in section 11 hereof,<sup>1</sup> the Resource Development Council shall:

a. Consult with and advise the commissioner and the director of the Division of Resource Development with respect to the work of such division.

b. Study the activities of the Division of Resource Development and hold hearings with respect thereto as it may deem necessary or desirable.

c. Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions.

d. Meadowland Riparian Instruments, *N.J.S.A. 13:1B-13 et seq.*

**B. MEADOWLAND RIPARIAN INSTRUMENTS**

**13:1B-13. Riparian leases and grants; approval**

No riparian leases or grants shall hereafter be allowed except when approved by at least a majority of the Resource Development Council and signed by the chairman of the council; and no such leases or grants shall hereafter in any case be allowed except when approved and signed by the Governor and the Commissioner of Conservation and Economic Development.

**13:1B-13.1. Definitions**

As used in sections 86 through 102, inclusive, of this act.<sup>1</sup>

(a) "Meadowlands" means those lands, now or formerly consisting chiefly of salt water swamps, meadows, or marshes;

(b) "Improved meadowlands" means such meadowlands as have been reclaimed by fill or other material thereon, and may include the erection of structure.

(c) "Virgin meadowlands" means such meadowlands that are still in their natural state and upon which no diking, fill or structures have been placed.

(d) "Council" means the Resource Development Council of the Department of Conservation and Economic Development.

### **13:1B-13.2. Title studies and surveys; certification of state owned lands**

The council is hereby directed to undertake title studies and surveys of meadowlands throughout the State and to determine and certify those lands which it finds are State owned lands.

In undertaking its studies and surveys the council shall divide its work into such a number of surveys as it shall determine is advisable and it shall establish the priority in which such surveys shall be undertaken. As its first survey, and within 6 months of the effective date of this act, the council shall undertake, and complete, a study of the Hackensack meadowlands. During the period of time between the initiation of a project and the publication of the map and study delineating the State-owned lands within the survey area, the council shall make no conveyances, leases or transfers of any riparian land within the survey area.

These studies and surveys shall be performed on behalf of the council by the Navigation Bureau of the Department of Conservation and Economic Development.

### **13:1B-13.3. Consideration of mean high water line**

In making a thorough study of all such lands to determine which are State-owned lands and in making its determination the council shall take into account the mean high water line as established by the United States Coast and Geodetic Survey, the nature of the vegetation thereon, artificial changes in land or water elevation, and such other historical or scientific data which, in the opinion of the council, are relevant in determining whether a parcel of land is now or was formerly flowed by mean high tide.

### **13:1B-13.4. Publication of map; filing; distribution**

Upon completion of each separate study and survey, the council shall publish a map portraying the results of its study and clearly indicating those lands designated by the council as State-owned lands. Copies of each such map and study shall be filed with the Secretary of State and sent to the clerk of each county and to the governing body of each municipality whose political boundaries include lands shown on the map. Such maps and studies shall be available for public inspection.

The council shall also cause to be published at least once in a newspaper circulating in each county whose political boundaries include lands designated as State-owned lands a list of those parcels designated in whole or in part as State-owned lands.

**13:1B-13.5. Action by persons aggrieved**

(a) Any person aggrieved by a designation by the council that certain parcels are State-owned lands may file with the council pertinent information, maps, studies or other matters documenting his claim of title. Within 90 days the council shall determine either to issue a statement or quitclaim deed indicating that the State has no interest or releases its claim in the property or shall reaffirm that all or part of said property is or may be State-owned.

**13:1B-13.6. Progress reports to governor and legislature**

The council shall make progress reports to the Governor and Legislature at least annually and shall complete its studies and title surveys and make its determinations as to interest of the State in meadowlands throughout the State on or before December 31, 1980.

**13:1B-13.7. Conveyance or lease of state's interest; application**

(a) Any claimant of the meadowlands who shall desire to obtain a conveyance or lease of the State's interest in such land may apply to the council submitting with his application, a survey of the property showing its metes and bounds, an affidavit of title, a copy of the instrument of title under which he claims the land, a statement of the purpose for, and the manner in which, the claimant proposes to use or further improve the property and such other information as the council shall require.

(b) Any department, agency or instrumentality of the State, county, municipality, or any person, not a claimant, may apply to the council for a conveyance or lease of the State's interest in the meadowlands, said application shall contain a survey of the property showing its metes and bounds, a copy of the latest purported title which has been duly recorded in the county recording office in which the land is located, a statement of the purpose for, and the manner in which the applicant proposes to utilize or further improve the property, an affidavit of the applicant that he has sent notification of his application to the person or persons named in such instrument of title and to the person named as the owners in the tax records of the municipality in which the lands are located, and such other information as the council may require. No title or lease shall be issued pursuant to this subsection until any claimant to all, or part of, the property applied for has been given notice of the application and 3

months thereafter, in which to apply for a conveyance or lease of said lands.

(c) Any claimant owning meadowlands and applying only for a meadowlands grant or quitclaim instrument may apply for and receive a meadowland's riparian instrument for such lands without regard to the requirement of notices to riparian proprietors contained in R.S. 12:3-7 and R.S. 12:3-7.1.

### **13:1B-13.8. Recommendations on application**

Within 10 days of receipt of any application for a conveyance or lease, or any extension thereof, the council or its staff shall send a copy of the application and all material submitted therewith to the Hackensack Meadowlands Development Commission, if said application pertains to lands within the district; the Department of Transportation; the Department of Community Affairs; and the Department of Environmental Protection and other interested governmental agencies. The council shall take no action on such application until receipt of the recommendations of said commission and departments and agencies regarding the application or for 45 days, whichever occurs first. Any such recommendation shall be considered by the council and the authorized State officials in determining the terms, conditions and consideration for the conveyance or lease, and a copy thereof shall be forwarded to the Governor.

### **13:1B-13.9. Approval of application; fixing of consideration; conveyance by deed of bargain and sale or quitclaim deed**

The council shall, subject to the provisions of applicable law, approve an application for lease, conveyance, license or permit, if after investigation and a review of the recommendations submitted to it pursuant to section 94,<sup>1</sup> it is satisfied that the lease, conveyance, license or permit will be in the public interest. In determining whether a lease, conveyance, license or permit is in the public interest, the council shall consider the environmental impact of the use proposed to be made of the property in question. The council shall further determine the fair market value of the property at the time of the lease, conveyance, license or permit and shall fix the proper consideration to be charged for the lease, conveyance, license or permit of the lands owned by the State or quitclaim of any claim asserted by the State. In determining such consideration the council shall take into account the actions of a claimant under color of title who in good faith made improvements or paid taxes, or both, on the lands in ques-

tion. Upon receipt of the payment of the consideration for a conveyance, the council and the appropriate State officers in accordance with the riparian statutes, shall convey the premises by deed of bargain and sale or quitclaim deed under the seal of the State. The council and the appropriate State officers shall require such terms and conditions in the conveyance instrument as it deems necessary and appropriate.

**13:1B-13.10. Investigation of applications for and approval of lease, license or permit; terms and conditions; acquisition of state's interest**

The council shall investigate any application for a lease, license or permit in the meadowlands and if the council is satisfied that such a lease, license or permit will be in the public interest, or if the council approves the giving of a lease, license or permit in lieu of the conveyance applied for, the annual rental for the leasehold interest or the fee for the license or permit, shall be fixed based upon the fair market value of the land owned by the State or the value of any interest the State may have in said premises at the time of the lease, license or permit, upon such terms and conditions as the council may deem appropriate. In determining such annual rental the Council shall take into account the actions of a claimant under color of title who in good faith made improvements or paid taxes, or both, on the lands in question.

The lessee shall have the option of acquiring, if the council approves, a conveyance of the State's interest at any time during the term of the lease or any extension. In fixing the consideration for said conveyance, the council and the appropriate State officers shall determine the fair market value of the property and the State's interest therein at the start of the lease and shall give a reasonable credit for the rental paid by the lessee during the term of the lease or any extension thereof.

**13:1B-13.11. Application for or acceptance of lease not deemed recognition of state's claim of paramount title**

The application for or acceptance of a lease shall not be deemed a recognition of the State's claim of paramount title by the claimant, nor shall the claimant be deemed to have waived his right to apply for an adjudication of title to the Superior Court. An application for any conveyance may also be made

after the claimant has failed to establish the primacy of his title before the Superior Court.

**13:1B-13.12. Termination of lease; vacation of premises; reimbursement for original costs of reclamation and permanent structures**

Upon the expiration of the lease, or any renewal thereof, the lessee shall cease his activity and vacate the parcel; provided, however, that he shall be entitled to be reimbursed by the council for the provable original cost of any reclamation performed on the parcel prior to the effective date of this act or with the approval of the council, and also for the value of any permanent structures erected on the parcel prior to the effective date of this act or with the approval of the council. The amount of reimbursement for permanent structures shall be based on the provable original cost, unamortized, at the time of expiration of the lease.

**13:1B-13.13. Disposition of net proceeds from sale, lease or transfer of state's interest in meadowlands**

The net proceeds from the sale, lease or transfer of the State's interest in the meadowlands shall be paid to the Fund for the Support of Free Public Schools established by the Constitution, Article VIII, Section IV, after deducting from the net proceeds any expenditures of the Hackensack Meadowlands Development Commission for reclaiming land within the district. The amount of said deduction for reclamation shall be paid to the Hackensack Meadowland Development Commission.

**13:1B-13.14. Approval of conveyances, leases, permits and licenses; validation of instruments**

Except as expressly provided by this act, the council shall approve conveyances, leases, permits and licenses for meadowlands in the same manner and subject to the same provisions, terms, conditions and requirements as are applicable by law to all riparian instruments. Any instrument conveying or releasing the State's interest in the meadowlands executed by the council prior to this act is valid and binding notwithstanding any inconsistency with the provisions of this act.

- e. **Statutes Concerning Fund for Support of Free Public Schools, N.J.S.A. 18A:56A-1 et seq.**

## CHAPTER 56

### FUND FOR SUPPORT OF FREE PUBLIC SCHOOLS

#### Sec.

- 18A:56-1. "Trustees for support of public schools"; how constituted.
- 18A:56-2. Secretary of board; records.
- 18A:56-3. Statement of fund by state treasurer to board.
- 18A:56-4. Account to legislature of management of fund.
- 18A:56-5. State lands under water and revenue from sales thereof.
- 18A:56-6. Leases of lands under water; principal or income.
- 18A:56-7. Deducting expenses of administering lands under water.
- 18A:56-8. Investments.
- 18A:56-9. Changing municipal bonds owned by trustees from coupon to registered.
- 18A:56-10. Stamp of ownership on coupon bonds.
- 18A:56-11. Investment in bonds secured by mortgages.
- 18A:56-12. Mortgage foreclosure proceedings.
- 18A:56-13. Purchase of lands by board on foreclosure.
- 18A:56-14. Sale of real estate held or acquired.
- 18A:56-15. Income of funds; use of; payment of premiums on bonds.
- 18A:56-16. Certification of anticipated default; purchase of bonds and payment of interest by trustees.

#### **18A:56-1. "Trustees for support of public schools"; how constituted**

The governor, the attorney general, the secretary of state, the state comptroller, the state treasurer and the commissioner of education, shall constitute a board of trustees of the fund for the support of public schools arising from appropriations made by law, or which may arise from gift, grant, bequest, or devise, in the division of investment of the department of the treasury.

The board shall be known as "the trustees for the support of public schools." No compensation shall be paid to the trustees for any services under this chapter.

#### Historical Note

Source: R.S. 18:10-1.

Prior Laws: L.1903 (2d Sp.Sess.), c. 1, §§ 166, 170, pp. 62, 63 [C.S. pp. 4778, 4779, §§ 166, 170]. L.1911, c. 231, § 6, p. 510 [1924 Suppl. § 185-21d], suppl. to L.1903 (2d Sp.Sess.), c. 1, p. 5.

#### Constitutional Provisions

Art. 8, § 4, par. 2, provides: "The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and

remain a perpetual fund; and it shall not be competent, except as hereinafter provided, for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever. The bonds of any school district of this state, issued according to law, shall be proper and secure investments for the said fund and, in addition, said fund, including the income therefrom and any other moneys duly appropriated to the support of free public schools may be used in such manner as the Legislature may provide by law to secure the payment of the principal of or interest on bonds or notes issued for school purposes by counties, municipalities or school districts or for the payment or purchase of any such bonds or notes or any claims for interest thereon."

**18A:56-2. Secretary of board; records**

The secretary of state shall be the secretary of the board of trustees. He shall record in a book to be kept for that purpose the proceedings of the board and the accounts to be furnished by the state treasurer as directed in this chapter.

**18A:56-3. Statement of fund by state treasurer to board**

The state treasurer shall make annually to the board of trustees on the first day of the annual meeting of the legislature, and at such other times as the board shall require, a statement of the school fund, containing an account of the securities belonging thereto with the dates of investment, their values, and the interest arising from each class of securities, together with an account of the moneys in the treasury belonging to the fund.

**18A:56-4. Account to legislature of management of fund**

An account of the management of the fund shall be laid before the legislature with the annual statements of the state treasurer's accounts.

No compensation shall be paid to the treasurer for any services under this chapter.

**18A:56-5. State lands under water and revenue from sales thereof**

All lands belonging to this state now or formerly lying under water are dedicated to the support of public schools. All moneys hereafter received from the sales of such lands shall be paid to the board of trustees, and shall constitute a part of the permanent school fund of the state.

**18A:56-6. Leases of lands under water; principal or income**

All leases of lands so dedicated to the support of public schools shall be held by the board of trustees as a part of the principal of the school fund, and the income arising from such leases shall be a part of the income of the school fund.

**18A:56-7. Deducting expenses of administering lands under water**

The sum appropriated for the expenses incurred in the administration of the lands so dedicated to the support of public schools shall be first deducted by the director of the division of budget and accounting in the department of the treasury from moneys derived from the sales, grants, leases, and rentals of such lands.

**18A:56-8. Investments**

Moneys belonging to the school fund shall be invested by the division of investment in the department of the treasury in the bonds of the several school districts of this state, or in the bonds of the United States, this state, or any county or municipality of this state. No investment shall be made in the bonds of any municipality the total indebtedness of which, including the school debt, shall exceed 30% of the assessed valuation of all the real and personal property therein; but in ascertaining the total indebtedness credit shall be allowed only for such moneys or property as shall be in the sinking fund. No investment shall be made in the bonds of any county the total indebtedness of which shall exceed in the aggregate 15% of the total assessable valuation of all taxable property therein.

Interest on such bonds shall be a part of the income of the school fund.

**18A:56-9. Changing municipal bonds owned by trustees from coupon to registered**

The trustees for the support of public schools may arrange with any municipality to change any bonds owned by said trustees from coupon to registered bonds, and the municipality which issued the bonds may detach from the bonds the coupons thereon and cancel the same, and stamp upon the bonds the registration thereof, and make the necessary agreement for the payment of the interest thereon.

**18A:56-10. Stamp of ownership on coupon bonds**

Every coupon bond acquired by the board of trustees shall have stamped thereon and upon each coupon, immediately upon the receipt thereof, the following words: "This is the property of the trustees for the support of public schools."

**18A:56-11. Investment in bonds secured by mortgages**

No part of the principal or interest of the fund shall be invested in bonds secured by mortgage on lands except as herein-after provided in the case of purchase money mortgages.

**18A:56-12. Mortgage foreclosure proceedings**

The board of trustees shall cause actions to foreclose to be commenced without delay whenever the interest on bonds secured by mortgage held by the board as part of the school fund shall remain unpaid for six months. The board may discontinue the actions upon the payment of accrued interest and the costs of such actions.

**18A:56-14. Sale of real estate held or acquired**

All real estate held by the trustees for the support of public schools and all real estate that may be acquired by them under foreclosure proceedings shall be sold, either at private or public sale, at such times and at such prices as will, in the judgment of the board of trustees, be for the best interest of the state. The board may advertise such properties, either at private or public sale, in such manner as it shall determine. The proceeds of the sale shall be paid into the school fund, and shall be invested as other moneys of the fund are invested. The board may lend to the purchaser of any such real estate, one half of the amount of purchase money, the loan to be secured by bond and mortgage on the premises so purchased.

**18A:56-15. Income of funds; use of; payment of premiums on bonds**

The income of the school fund shall be paid into the general fund of the state treasury, and shall be used for the support of public schools, the payment of salaries of county superintendents and the payment of accrued interest on bonds purchased for the fund, the payment of interest on, and the purchase of, bonds issued locally for school purposes to the extent and within the lim-

its provided by law, and for no other use or purpose whatsoever. The payment of premiums on bonds purchased shall be made out of the investment account.

**18A:56-16. Certification of anticipated default; purchase of bonds and payment of interest by trustees**

In the event that a school district or a municipality anticipates that it will be unable to meet the payment of principal or interest on any of its bonds issued for school purposes after December 4, 1958, it shall certify such inability to the commissioner and the director of the division of local finance at least 10 days prior to the date any such payment is due. If the commissioner and director shall approve said certification, they shall immediately certify the same to the trustees of the fund for the support of public schools. Upon the receipt thereof, or in the event any such district or municipality fails to certify its anticipated inability to meet any such payments, upon notice and verification of such inability, the trustees shall, within the limits of moneys available in the fund, use said funds including the income therefrom to purchase any such bonds at a price equivalent to the face amount thereof or pay to the holder of any such bond the interest due or to become due thereon, as the case may be, and such purchases and payments of interest may continue so long as the district or municipality remains unable to make such payments. Upon making any such payment of interest, the trustees of the fund shall be subrogated to all rights of the bondholder against the issuer in respect to the collection of such interest and if such interest is represented by a coupon such coupon shall be delivered to the trustees of the fund. No such purchase or interest payment herein provided shall be made unless the sums available to said district as state building aid shall be insufficient for such purpose.

The state treasurer shall act as agent of the trustees of the fund in making any such payments or purchases, and he shall prescribe, in consultation with the commissioner, such rules and regulations as may be necessary and proper to effectuate the purposes of this chapter.

f. **The Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.**

AN ACT to provide for the review of certain facilities in the coastal area and making an appropriation therefor.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C. 13:19-1 **Short title.**

1. This act shall be known and may be cited as the "Coastal Area Facility Review Act."

C. 13:19-2 **Declaration of policy.**

2. The Legislature finds and declares that New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing facility activity impacts that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State; and that, therefore, it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.

It is further declared that the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless the State assists, in accordance with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of facilities within the coastal area, on the delicately balanced environment of that area.

The Legislature further recognizes the legitimate economic aspirations of the inhabitants of the coastal area and wishes to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides ade-

quate environmental safeguards for the construction of any facilities in the coastal area.

**C. 13:19-3 Definitions.**

3. For the purposes of this act, unless the context clearly requires a different meaning, the following words shall have the following meanings:

a. "Commissioner" means the State Commissioner of Environmental Protection.

b. "Department" means the State Department of Environmental Protection.

c. "Facility" includes any of the facilities designed or utilized for the following purposes:

(1) Electric power generation—

Oil, gas, or coal fired or any combination thereof.

Nuclear facilities.

(2) Food and food byproducts—

Beer, whiskey and wine production.

Fish processing, including the production of fish meal and fish oil.

Slaughtering, blanching, cooking, curing, and pickling of meats and poultry.

Trimming, culling, juicing, and blanching of fruits and vegetables.

Animal matter rendering plants.

Operations directly related to the production of leather or furs such as, but not limited to, unhairing, soaking, deliming, baiting, and tanning.

Curing and pickling of fruits and vegetables.

Pasteurization, homogenization, condensation, and evaporation of milk and cream to produce cheeses, sour milk, and related products.

Coffee bean and cocoa bean roasting.

(3) Incineration wastes—

Municipal wastes (larger than or equal to 50 tons per day).

Automobile body (20 automobiles per hour or larger).

(4) Paper production—

Pulp mills.

Paper mills.

Paperboard mills.

Building paper mills.

Building board mills.

(5) Public facilities and housing—

Sanitary landfills.

Waste treatment plants (sanitary sewage).

Road, airport, or highway construction.

New housing developments of 25 or more dwelling units or equivalent.

Expansion of existing developments by the addition of 25 or more dwelling units or equivalent.

(6) Agri-chemical production—

Pesticides manufacture and formulation operations or either thereof.

Superphosphate animal feed supplement manufacture.

Production of normal superphosphate.

Production of triple superphosphate.

Production of diammonium phosphate.

(7) Inorganic acids and salts manufacture—

Hydrofluoric acid and common salts.

Hydrochloric acid and common salts.

Nitric acid and common salts.

Sulfuric acid and common salts.

Phosphoric acid and common salts.

Chromic acid, including chromate and dichromate salts.

(8) Mineral products—

Asphalt batching and roofing operations including the preparation of bituminous concrete and concrete.

Cement production, including Portland, natural, masonry, and pozzolan cements.

Coal cleaning.

Clay, clay mining, and fly-ash sintering.

Calcium carbide production.

Stone, rock, gravel, and sand quarrying and processing.

Frit and glass production.

Fiberglass production.

Slag, rock and glass wool production (mineral wool).

Lime production, including quarrying.

Gypsum production, including quarrying.

Perlite manufacturing, including quarrying.

Asbestos fiber production.

(9) Chemical processes—

Ammonia manufacture.

Chlorine manufacture.

Caustic soda production.

Carbon black and charcoal production, including channel, furnace, and thermal processes.

Varnish, paint, lacquer, enamel, organic solvent, and inorganic or organic pigment manufacturing or formulating.

Synthetic resins or plastics manufacture including, but not limited to, alkyd resins, polyethylene, fluorocarbons, polypropylene, and polyvinylchloride.

Sodium carbonate manufacture.

Synthetic fibers production including, but not limited to, semi-synthetics such as viscose, rayon, and acetate, and true synthetics such as, but not limited to, nylon, orlon, and dacron, and the dyeing

of these semi and true synthetics.

Synthetic rubber manufacture, including but not limited to, butadiene and styrene copolymers, and the reclamation of synthetic or natural rubbers.

The production of high and low explosives such as, but not limited to, TNT and nitrocellulose.

Soap and detergent manufacturing, including but not limited to, those synthetic detergents prepared from fatty alcohols or linear alkylate.

Elemental sulfur recovery plants not on the premises where petroleum refining occurs.

Used motor or other oil or related petroleum product reclamation operations.

Petroleum refining, including but not limited to, distillation, cracking, reforming, treating, blending, polymerization, isomerization, alkylation, and elemental sulfur recovery operations.

Organic dye and dye intermediate manufacturing.

Hydrogen cyanide or cyanide salts manufacture or use.

Glue manufacturing operations.

Manufacturing, fabricating, or processing medicinal and pharmaceutical products including the grading, grinding, or milling of botanicals.

#### (10) Storage—

Bulk storage, handling, and transfer facilities for crude oil, gas and finished petroleum products not on the premises where petroleum refining occurs.

Bulk storage, handling, transfer and manufacturing facilities of gas manufactured from inorganic and organic materials including coal gas, coke oven gas, water gas, producer, and oil gases.

#### (11) Metallurgical processes—

Production of aluminum oxide and aluminum metal and all common alloys, such as those with copper, magnesium, and silicon.

Production of titanium metal, salts, and oxides.

Metallurgical coke, petroleum coke, and byproduct coke manufacturing.

Copper, lead, zinc, and magnesium smelting and processing.

Ferroalloys manufacture such as, but not limited to, those combined with silicon, calcium, manganese and chrome.

Integrated steel and iron mill operations including, but not limited to, open hearth, basic oxygen, electric furnace, sinter plant, and rolling, drawing, and extruding operations.

Melting, smelting, refining, and alloying of scrap or other substances to produce brass and bronze ingots.

Gray iron foundry operations.

Steel foundry operations.

Beryllium metal or alloy production, including rolling, drawing and extruding operations.

Operations involving silver, arsenic, cadmium, copper, mercury, lead, nickel, chromium, and zinc including, but not limited to, production, recovery from scrap or salvage, alloy production, salt formation, electroplating, anodizing, and metallo-organics compound products preparation.

Stripping of oxides from and the cleaning of metals prior to plating, anodizing, or painting.

(12) Miscellaneous—

Operations involving the scouring, desizing, cleaning, bleaching, and dyeing of wool.

Wood preserving processes which use coal or petroleum based products such as, but not limited to, coal tars and/or creosotes.

Manufacture, use, or distillation of phenols, cresols, or coal tar materials.

Manufacture of lead acid storage batteries and/or storage batteries produced from other heavy metals, such as nickel or cadmium.

Installation of above or underground pipelines designed to transport petroleum, natural gas, and sanitary sewage.

Operations involving the dyeing, bleaching, coating, impregnating, or glazing of paper.

Dyeing, bleaching, and printing of textiles other than wool. Chemical finishing for water repelling, fire resistance, and mildew proofing, including preshrinking, coating and impregnating.

Sawmill and planing mill operations.

Marine terminal and cargo handling facilities.

d. "Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals and governmental agencies.

e. "Governmental agencies" means the Government of the United States, the State of New Jersey, or any other states, their political subdivisions, agencies, or instrumentalities thereof, and interstate agencies.

C. 13:19-4 "Coastal area" defined.

4. The "coastal area" shall consist of all that certain area lying between the line as hereinafter described and the line formed by the State's seaward (Raritan Bay and Atlantic ocean) territorial jurisdiction on the east thereof, the State's bayward (Delaware Bay) territorial jurisdiction on the south and southwest thereof, and the State's riverward (Delaware River) territorial jurisdiction on the west thereto. Beginning at the confluence of Cheesapeake Creek with the Raritan Bay; thence southwesterly along the center line of Cheesapeake Creek to its intersection with the Garden

State Parkway; thence southeasterly along the Garden State Parkway to Exit 117 at State Highway 36; thence northeasterly along State Highway 36 to the intersection of Middle Road (County 516); thence easterly along Middle Road to the intersection of Palmer Avenue (County 7); thence northeasterly on Main Street to the intersection of State Highway 36; thence easterly on State Highway 36 to the intersection of Navesink Avenue; thence southerly on Navesink Avenue to the intersection of Monmouth Avenue at Navesink; thence westerly on Monmouth Avenue to its intersection with Browns Dock Road; thence southerly on Browns Dock

Road to its intersection with Cooper Road; thence southwestwardly on Cooper Road to the intersection of State Highway 35; thence southerly on State Highway 35 to its intersection with State Highway 71; thence southeasterly on State Highway 71 to its crossing of the Central Railroad of New Jersey tracks; thence southerly along the Central Railroad of New Jersey tracks to its intersection of 6th Avenue (County 2); thence westerly on 6th Avenue (County 2) to the intersection of State Highway 33; thence westerly along State Highway 33 to the crossing of State Highway 18; thence southerly on State Highway 18 to its intersection of Marconi Road; thence southeasterly on Marconi Road to Adrienne Road, continuing south on Adrienne Road to Belmar Boulevard; thence easterly on Belmar Boulevard and 16th Avenue to the intersection of State Highway 71; thence southerly on State Highway 71 to the intersection of State Highway 35; thence northwesterly along State Highway 35 to State Highway 34 at the Brielle Circle; thence northwesterly along State Highway 34 to the Garden State Parkway at Exit 96; thence southwestwardly along the Garden State Parkway to the intersection of the Monmouth, Ocean County boundary; thence westerly along said boundary to the intersection of the Central Railroad of New Jersey tracks; thence southwestwardly along the tracks of the Central Railroad of New Jersey to its junction with the tracks of the Pennsylvania Railroad near Whiting; thence easterly along the tracks of the Pennsylvania Railroad to its intersection with the Garden State Parkway near South Toms River; thence southerly along the Garden State Parkway to its intersection with County Road 539 at Garden State Parkway exit 58; thence northerly along County Road 539 to its intersection with Martha-Stafford Forge Road; thence westerly along Martha-Stafford Forge Road to its intersection with Spur 563; thence northerly along Spur 563 to its intersection with County Road 563; thence southerly along County Road 563 to its intersection with County Road 542 at Green Bank; thence northwesterly along County Road 542 to its intersection with Weekstown-Pleasant Mills Road; thence southeasterly along Weekstown-Pleasant Mills Road to its intersection with County Road 563 at Weekstown; thence south-

easterly along County Road 563 to its intersection with Clarks Landing Road leading to Port Republic; thence easterly along Clarks Landing Road to its intersection with the Garden State Parkway; thence southerly along the Garden State Parkway to its intersection with Alt. 559, and thence northwesterly along Alt. 559 to its intersection with County Road 559 at Gravelly Run; thence northwesterly along County Road 559 to its intersection with U. S. 40 and S. R. 50 at Mays Landing; thence westerly along combined U. S. 40 and S. R. 50 to its intersection with S. R. 50; thence southerly on S. R. 50 to its intersection with Buck Hill Road near Buck Hill; thence westerly along Buck Hill (River Road) Road to its intersection with S. R. 49; thence southeasterly along S. R. 49 to its intersection with S. R. 50; thence southeasterly along S. R. 50 to its intersection with County Road 585; thence southwestward along County Road 585 to its intersection with S. R. 47 at Dennisville; thence northwesterly along S. R. 47 to its intersection with State Road 49 at Millville; thence through Millville along State Road 49 to its intersection with County Road 555; thence southerly along County Road 555 to its intersection with County Road 27; thence southerly along County Road 27 to its intersection with County Road 70; thence southerly on County Road 70 to the Center of Mauricetown; thence through Mauricetown westerly on County Road 548 to its intersection with the tracks of the Central Railroad of New Jersey; thence northwesterly on the tracks of the Central Railroad of New Jersey to its intersection with County Road 98; thence easterly along County Road 98 to the intersection with County Road 38; thence northerly along County Road 38 to its intersection with S. R. 49 east of Bridgeton; thence westerly along S. R. 49 through Bridgeton to its intersection with County Road 5 (Roadstown Road); thence westerly along County Road 5 (Roadstown Road) to Roadstown; thence northwesterly along the Roadstown Road to County Road 47; thence southwestward along County Road 47 to its intersection with County Road 19; thence along County Road 19 northwesterly to Gum Tree Corner; thence northwesterly along County Road 19 from Gum Tree Corner across Stowe Creek to its intersection with Salem County Road 59 (Hancock's Bridge Road); thence northwesterly along County Road 59 to its intersection with County Road 51 at Coopers Branch; thence northeasterly along County Road 51 to its intersection with S. R. 49 at Quinton; thence northwesterly along S. R. 49 to its intersection with County Road 50; thence southwestward along County Road 50 to its intersection with County Road 58; thence southerly on County Road 58 to its intersection with County Road 24; thence westerly along County Road 24 to its intersection with County Road 65; thence northerly along County Road 65 (Walnut Street) to its intersection with County

Road 4; thence westerly along County Road 4 and northerly along County Road 4 and thence easterly along County Road 4 to its intersection with State Road 49; thence northerly along State Road 49 (Front Street) to its intersection with County Road 57; thence easterly along County Road 57 to its intersection with State Road 45; thence northerly along State Road 45 to its intersection with County Road 540 at Pointers; thence northerly and northwesterly along County Road 540 (Deepwater-Slapes Corner Road) to its intersection with the New Jersey Turnpike; thence westerly along the New Jersey Turnpike to its intersection with County Road 33; thence southerly along County Road 33 to its intersection with State Road 49; thence southeasterly along S. R. 49 to its intersection with County Road 26; thence northwesterly along County Road 26 to the Killcohook National Wildlife Refuge; thence northwesterly along this northeasterly boundary to the limits of the State's territorial jurisdiction on the Delaware River; provided, however, that the coastal area shall not include all that certain area in Cape May County lying within a line beginning at the intersection of S. R. 47 and County Road 54; thence westerly on County Road 54; to the intersection of County Road 3; thence southeasterly on County Road 3 through the intersection of County Road 3 with County Road 13 to the intersection with County Road 47; thence easterly and northerly along County Road 47 to its intersection with State Road 9; thence northerly along State Road 9 to its intersection with State Road 47; thence westerly along State Road 47 to its intersection with County Road 54.

**C. 13:19-5 Permit to construct facility.**

5. No person shall construct or cause to be constructed a facility in the coastal area until he has applied for and received a permit issued by the commissioner; however, the provisions of this act shall not apply to facilities for which on-site construction, including site preparation, was in process on or prior to the effective date of this act.

**C. 13:19-6 Application for permit.**

6. Any person proposing to construct or cause to be constructed a facility in the coastal area shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. The application shall include an environmental impact statement as described in this act.

**C. 13:19-7 Contents of environmental impact statement.**

7. The environmental impact statement shall provide the information needed to evaluate the effects of a proposed project upon the environment of the coastal area.

The statement shall include:

- a. An inventory of existing environmental conditions at the

project site and in the surrounding region which shall describe air quality, water quality, water supply, hydrology, geology, soils, topography, vegetation, wildlife, aquatic organisms, ecology, demography, land use, aesthetics, history, and archeology; for housing, the inventory shall describe water quality, water supply, hydrology, geology, soils and topography;

b. A project description which shall specify what is to be done and how it is to be done, during construction and operation;

c. A listing of all licenses, permits or other approvals as required by law and the status of each;

d. An assessment of the probable impact of the project upon all topics described in a.;

e. A listing of adverse environmental impacts which cannot be avoided;

f. Steps to be taken to minimize adverse environmental impacts during construction and operation, both at the project site and in the surrounding region;

g. Alternatives to all or any part of the project with reasons for their acceptability or nonacceptability;

h. A reference list of pertinent published information relating to the project, the project site, and the surrounding region.

**C. 13:19-8 Declaration of completeness of application.**

8. a. Within 30 days following receipt of an application, the commissioner shall notify the applicant in writing regarding its completeness. The commissioner may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The commissioner, within 15 days following the receipt of additional information to correct deficiencies, shall notify the applicant of the completeness of the amended application. The application shall not be considered to be filed until it has been declared complete by the commissioner.

b. The commissioner, within 15 days of declaring the application complete for filing, shall set a date for the hearing. The date for the hearing shall be set not later than 60 days after the application is declared complete for filing.

**C. 13:19-9 Hearing.**

9. a. The commissioner, or a member of the department designated by him, shall hold a hearing to afford interested parties standing and the opportunity to present, orally or in writing, both their position concerning the application and any data they may have developed in reference to the environmental effects of the proposed facility.

b. The commissioner, within 15 days after the hearing, may require an applicant to submit any additional information necessary for the complete review of the application.

**C. 13:19-10 Review of applications; required findings.**

10. The commissioner shall review filed applications, including the environmental impact statement and all information presented at public hearings. He shall issue a permit only if he finds that the proposed facility:

a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.

b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.

c. Provides for the handling and disposal of litter, trash, and refuse in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.

d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.

e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.

f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.

g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing scenic and aesthetic attributes at the site and within the surrounding region.

**C. 13:19-11 Grounds for denial of permit application; conditional permit; approval of nuclear electricity generating facility.**

11. Notwithstanding the applicant's compliance with the criteria listed in section 10 of this act, if the commissioner finds that the proposed facility would violate or tend to violate the purpose and intent of this act as specified in section 2, or if the commissioner finds that the proposed facility would materially contribute to an already serious and unacceptable level of environmental degradation or resource exhaustion, he may deny the permit application, or he may issue a permit subject to such conditions as he finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment. In addition, the construction and operation of a nuclear electricity generating facility shall not be approved by the commissioner unless he shall find that the proposed method for disposal of radioactive waste material to be produced or generated by such facility will be safe, conforms to standards

established by the Atomic Energy Commission and will effectively remove danger to life and the environment from such waste material.

**C. 13:19-12 Notification to applicant.**

12. The commissioner shall notify the applicant within 60 days after the hearing as to the granting or denial of a permit. The reasons for granting or denying the permit shall be stated. In the event the commissioner requires additional information as provided for in section 9, he shall notify the applicant of his decision within 90 days following the receipt of the information.

**C. 13:19-13 Coastal Area Review Board; creation, membership, voting, powers.**

13. There is hereby created the Coastal Area Review Board, in but not of the Department of Environmental Protection, which shall consist of three voting members who shall be the Commissioner of Environmental Protection or his designated representative, the Commissioner of Labor and Industry or his designated representative and the Commissioner of Community Affairs or his designated representative. No vote on a permit request shall be taken unless all voting members are present.

The Coastal Area Review Board shall have the power to hear appeals from decisions of the commissioner pursuant to section 12. The board may affirm or reverse the decision of the commissioner with respect to applicability of any provision of this act to a proposed use; it may modify any permit granted by the commissioner, grant a permit denied by him, deny a permit granted by him, or confirm his grant of a permit. The board shall review filed applications, including the environmental impact statement and all information presented at public hearings and any other information the commissioner makes available to the board prior to the affirmation or reversal of a decision of the commissioner.

**C. 13:19-14 Continuance in force of issued permit.**

14. In the event of rental, lease, sale or other conveyances by an applicant to whom a permit is issued, such permit, with any conditions, shall be continued in force and shall apply to the new tenant, lessee, owner, or assignee so long as there is no change in the nature of the facility set forth in the original application.

**C. 13:19-15 Effect of denial of application.**

15. The denial of an application shall in no way adversely affect the future submittal of a new application.

**C. 13:19-16 Environmental inventory; alternate environmental management strategies; environmental design for coastal area.**

16. The commissioner shall, within 2 years of the taking effect of this act, prepare an environmental inventory of the environmental resources of the coastal area and of the existing facilities

and land use developments within the coastal area and an estimate of the capability of the various area within the coastal area to absorb and react to man-made stresses. The commissioner shall, within 3 years of the taking effect of this act, develop from this environmental inventory alternate long-term environmental management strategies which take into account the paramount need for preserving environmental values and the legitimate need for economic and residential growth within the coastal area. The commissioner shall, within 4 years of the taking effect of this act, select from the alternate environmental management strategies an environmental design for the coastal area. The environmental design shall be the approved environmental management strategy for the coastal area and shall include a delineation of various areas appropriate for the development of residential and industrial facilities of various types, depending on the sensitivity and fragility of the adjacent environment to the existence of such facilities. The environmental inventory, the alternate long-term environmental management strategies and the environmental design for the coastal area shall be presented to the Governor and the Legislature within the time frame indicated herein.

**C. 13:19-17 Rules and regulations.**

17. The department is hereby authorized to adopt, amend and repeal rules and regulations to effectuate the purposes of this act.

**C. 13:19-18 Injunctive relief; penalties.**

18. If any person violates any of the provisions of this act, rule, regulation or order promulgated or issued pursuant to the provisions of this act, the department may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations and said court may proceed in a summary manner. Any person who violates any of the provisions of this act, rule, regulation or order promulgated or issued pursuant to this act shall be liable to a penalty of not more than \$3,000.00 to be collected in a summary proceeding or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under the circumstances.

**C. 13:19-19 Applicability of act.**

19. The provisions of this act shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including municipal zoning authority. The provisions of this act

shall not apply to those portions of the coastal areas regulated pursuant to enforceable orders under the Wetlands Act, C. 13:9A-1 et seq., section 16 however shall apply to the entire area within the boundaries described herein.

**C. 13:19-20 Construction of act.**

20. This act shall be liberally construed to effectuate the purpose and intent thereof.

**C. 13:19-21 Partial invalidity.**

21. If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**g. The Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.**

**CHAPTER 272**

AN ACT concerning the protection of natural resources in coastal wetlands, providing for the designation by the Commissioner of Environmental Protection of certain coastal wetlands after public hearing, and requiring permits from the commissioner prior to the dredging, removing, filling or otherwise altering or polluting coastal wetlands.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

**C. 13:9A-1 Legislature's findings and declaration of policy; inventory and mapping of tidal wetlands; filing of maps.**

1. a. The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for  $\frac{2}{3}$  of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting thereof, all to the extent and in the manner provided herein.

**b.** The Commissioner of Environmental Protection shall, within 2 years of the effective date of this act, make an inventory and maps of all tidal wetlands within the State. The boundaries of such wetlands shall generally define the areas that are at or below high water and shall be shown on suitable maps, which may be reproductions or aerial photographs. Each such map shall be filed in the office of the county recording officer of the county or counties in which the wetlands indicated thereon are located. Each wetland map shall bear a certificate of the commissioner to the effect that it is made and filed pursuant to this act. To be entitled to filing no wetlands map need meet the requirements of R. S. 47:1-6.

**C. 13:9A-2 Authority to regulate alteration of coastal wetlands; definition.**

2. The Commissioner may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. For the purposes of this act the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware river, Raritan bay, Barnegat bay, Sandy Hook bay, Shewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: Salt meadow grass (*Spartine patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), Sea Lavendar (*Limonium carolinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus paludosus* var. *atlanticus*), sand-spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), hightide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloe odorata*). The term "coastal wetlands" shall not include any land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to the provisions of P. L. 1968, chapter 404, sections 1 through 84 (C. 13:17-1 through C. 13:17-86).

**C. 13:9A-3 Adoption, change or repeal of order; hearing, notice; recording, indexing and filing of order; mailing.**

3. The commissioner shall, before adopting, amending, modi-

fyng or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to each owner having a recorded interest in such wetlands by mail at least 21 days prior thereto addressed to his address as shown in the municipal tax office records and by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which such coastal wetlands are located.

Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected, including reference to the filed wetlands map or maps on which the same are shown and a list of the owners of record of such lands, to be recorded in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment, and shall mail a copy of such order and plan to each owner of record of such lands affected thereby.

**C. 13:9A-4 "Regulated activity" defined; permit; application; contents; inspection; effect of work to be considered.**

4. a. For purposes of this section "regulated activity" includes but is not limited to draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. "Regulated activity" shall not include continuance of commercial production of salt hay or other agricultural crops or activities conducted under section 7 of this act.

b. No regulated activity shall be conducted upon any wetland without a permit.

c. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of rights in or adjacent to the wetland of whom the applicant has notice. All applications, with any maps and documents relating thereto, shall be open for inspection at the office of the Department of Environmental Protection.

d. In granting, denying or limiting any permit the commissioner shall consider the effect of the proposed work with

reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in section 1. a. of this act.

**C. 13:9A-5 Restraint of violations.**

5. The Superior Court shall have jurisdiction to restrain violations of orders issued pursuant to this act.

**C. 13:9A-6 Filing of complaint; determination of issue exclusive.**

6. Any person having a recorded interest in land affected by any such order or permit, may, within 90 days after receiving notice thereof, file a complaint in the Superior Court to determine whether such order or permit so restricts or otherwise affects the use of his property as to deprive him of the practical use thereof and is therefore an unreasonable exercise of the police power because the order or permit constitutes the equivalent of a taking without compensation. If the court finds the order or permit to be an unreasonable exercise of the police power, the court shall enter a finding that such order or permit shall not apply to the land of the plaintiff; provided, however, that such finding shall not affect any other land than that of the plaintiff. Any party to the suit may cause a copy of such finding to be recorded forthwith in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment.

The method provided in this section for the determination of the issue shall be exclusive, and such issue shall not be determined in any other proceeding.

**C. 13:9A-7 Certain powers and duties not to be restricted.**

7. No action by the commissioner under this act shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the State Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the State Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of the Revised Statutes.

**C. 13:9A-8 Riparian rights or obligations not affected.**

8. Nothing in this act or any permit issued hereunder shall affect the rights of the State in, or the obligations of a riparian owner with respect to, riparian lands.

**C. 13:9A-9 Liability in event of violations; penalty.**

9. Any person who violates any order by the commissioner, or violates any of the provisions of this act, shall be liable to the State for the cost of restoration of the affected wetland to

its condition prior to such violation insofar as that is possible, and shall be punished by a fine of not more than \$1,000.00, to be collected in accordance with the provisions of the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.).

**C. 13:9A-10 Short title.**

10. This act may be cited as "The Wetlands Act of 1970."

**h. The Ninety Day Law, N.J.S.A. 13:1D-29 et seq.**

CHAPTER 232

AN ACT concerning the application for construction permits to the Department of Environmental Protection, supplementing the "Department of Environmental Protection Act of 1970" (P. L. 1970, c. 33, C. 13:1D-1 et seq.), amending sections R. S. 12:5-2, 12:5-3, 58:1-26 and 58:1-27, and repealing section R. S. 12:5-4.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

**C. 13:1D-29 Definitions.**

1. (New section) For the purposes of this act, unless the context clearly requires a different meaning, the following terms shall have the following meanings:

a. "Commissioner" means the State Commissioner of Environmental Protection.

b. "Construction permit" means and shall include:

1. Approval of plans for the development of any waterfront upon any tidal waterway pursuant to R. S. 12:5-3.

2. A permit for a regulated activity pursuant to "The Wetlands Act of 1970," P. L. 1970, c. 272 (C. 13:9A-1 et seq.).

3. A permit issued pursuant to the "Coastal Area Facility Review Act," P. L. 1973, c. 185 (C. 13:19-1 et seq.).

4. Approval of a structure within the natural and ordinary high-water mark of any stream pursuant to R. S. 58:1-26.

5. Approval of plans and specifications for the construction changes, improvements, extensions or alterations to any sewer system pursuant to R. S. 58:11-10.

"Construction permit" shall not, however, include any approval of or permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels.

c. "Department" means the Department of Environmental Protection.

**C. 13:1D-30 Application for construction permits; review; request for additional information.**

2. (New section) The department shall promptly review all applications for construction permits. The department shall within 20 working days following the filing of an application for a construction permit, except a permit issued pursuant to the Coastal Area Facility Review Act, P. L. 1973, c. 185 (C. 13:19-1 et seq.), request that the applicant submit additional information to assist it in its review if it deems that such information is necessary. In the event that such information is requested, the application will be construed to be complete when the additional information is received by the department.

**C. 13:1D-31 Application for construction permit; approval, conditioning or disapproval; time period.**

3. (New section) The department shall approve, condition or disapprove an application for a construction permit within 90 days following the date that the application is complete, except that this time period may be extended for a 30-day period by the mutual consent of the applicant and the department, provided that the department request the applicant for such an extension at least 15 days prior to the expiration date for the approval, conditioning or disapproval of such an application.

**C. 13:1D-32 Failure to take action within time period; application deemed approved.**

4. (New section) In the event that the department fails to take action on an application for a construction permit within the 90-day period specified herein, then the application shall be deemed to have been approved; provided, however, that the time periods specified in section 12 of P. L. 1973, c. 185 (C. 13:19-12) shall apply to applications for construction permits pursuant to the Coastal Area Facility Review Act, P. L. 1973, c. 185 (C. 13:19-1 et seq.).

**C. 13:1D-33 Rules and regulations; fees; environmental services fund.**

5. (New section) The commissioner shall adopt, amend and repeal rules and regulations to implement the provisions of this act. The commissioner shall in accordance with a fee schedule adopted as a rule or regulation establish and charge reasonable fees for the filing and review of any application for a construction permit. The fees imposed hereunder, except as may otherwise be provided by law, shall be deposited in a fund to be known as the "Environmental Services Fund," kept separate and apart from all other State receipts and appropriated only as provided herein. There shall be appropriated annually to the department revenue from such fund sufficient to defray in full the costs incurred in the processing and review of applications for construction permits.

**C. 13:1D-34 Monthly bulletin.**

6. (New section) The commissioner shall publicly distribute, at least monthly, a bulletin, listing the pending applications for construction permits and the status of the review of those applications, including decisions thereon.

## APPENDIX II

### II. ADMINISTRATIVE RULES

#### a. Ninety-Day Construction Permits, *N.J.A.C. 7:1C-1.1 et seq.*

### CHAPTER 1C

## NINETY-DAY CONSTRUCTION PERMITS

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#### SUBCHAPTER 1. GENERAL PROVISIONS

##### Authority

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 13:1D-1 et seq. and P.L. 1975, c.232, and were filed on November 18, 1975, as R.1975 d.347 to become effective on December 22, 1975. See: 7 N.J.R. 548(a). Revisions to this subchapter were filed and became effective on October 18, 1977, as R.1977 d.390. See: 8 N.J.R. 505(c), 9 N.J.R. 513(c).

#### 7:1C-1.1 Purpose

These rules and regulations implement P.L. 1975, chapter 232, to secure timely decision by the Department of Environmental Protection on construction permit applications as defined therein, to assure adequate public notice of procedures thereunder, to continue effective administration of the substantive provisions of other laws, and to revise certain procedures involving the Water Policy and Supply Council and the Natural Resource Council. These regulations do not supersede or preempt specific rules and regulations establishing procedures for the individual construction permit programs administered by appropriate agencies within the department, unless the context so requires or specific provisions so prescribe.

#### 7:1C-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means P.L. 1975, chapter 232.

“Applicant” means any person requesting a construction permit who has submitted an application to the department.

“Application” means DEP application form CP-1 and the appropriate agency supplement.

“Appropriate agency” means:

1. The Division of Marine Services for:

i. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3 (riparian permit):

ii. Permits for a regulated activity under the Wetlands Act of 1970, P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.); and

iii. Permits issued pursuant to the Coastal Area Facility Review Act, P.L. 1973, c. 185 (N.J.S.A. 13:19-1 et seq.).

2. The Division of Water Resources for:

i. Stream encroachment permits under N.J.S.A. 58:1-26; and

ii. Permits for sanitary sewer facilities under N.J.S.A. 58:11-10.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection.

“Construction cost” means the projected cost, not including financing or insurance charges, of that portion of a project which is subject to review for a construction permit.

“Construction permit” means:

1. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3;

2. A permit for a regulated activity pursuant to The Wetlands Act of 1970, P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.);

3. A permit issued pursuant to the Coastal Area Facility Review Act (CAFRA), P.L. 1973, c. 185 (N.J.S.A. 13:19-1 et seq.);

4. Approval of any structure within the natural and ordinary high-water mark of any stream pursuant to N.J.S.A. 58:1-26 (stream encroachment);

5. Approval of plans and specifications for the construction, changes, improvements, extensions or alterations to any sewer system, excluding wastewater sewerage projects which are eligible for Federal funding under P.L. 92-500 and sewage treatment facilities, pursuant to N.J.S.A. 58:11-10.

Note: “Construction permit” does not include any approval of or permit for an electric generating facility or for a petroleum processing or storage facility, including a liquified natural gas facility, with a storage capacity of over 50,000 barrels.

“Department” means the New Jersey Department of Environmental Protection.

“DEP Weekly Bulletin” means a weekly official publication of the Department of Environmental Protection.

“Person” means corporations, companies, associations societies, firms, partnerships, and joint stock companies, as well as individuals, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

“Structure” means any assembly of materials above or below the surface

of land or water, including but not limited to buildings, fences, dams, pilings, breakwaters, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, pipes, pipelines, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

As amended, R.1977 d.200, eff. June 3, 1977.

See: 9 N.J.R. 321(a).

### **7:1C-1.3 Pre-application procedure and requirements**

(a) As a means of expediting permit review, potential applicants are encouraged to request an optional pre-application conference with the appropriate agency. At the voluntary pre-application conference, a potential applicant may present a conceptual description of the proposed project, discuss his proposed project informally with the appropriate agency, and obtain guidance on the permit process; however, the conference is not a forum for preliminary approval or rejection of proposed project. However, if the appropriate agency determines that the proposed project is exempt from the permit requirement, the agency shall issue a written statement of such finding which shall be binding in the agency.

(b) Prior to submitting an application to the department, the applicant shall notify at least the following local agencies of intent to file an application by mailing them a completed DEP form CP-1, and shall obtain an acknowledgement of receipt of notification by certified mail, return receipt requested:

1. Municipal clerk;
2. Municipal environmental commission, if any;
3. County environmental commission, if there is no municipal environmental commission;
4. Municipal planning board.

Note: The foregoing requirements may be postponed or modified by the appropriate agency in cases of emergency as the public interest dictates.

(c) Applicants for minor stream encroachment projects are exempt from the provisions of subsection (b) of this section.

(d) Applicants for waterfront development (riparian) permits for minor maintenance and/or repair projects shall be exempted from the requirement of subsection (b) of this section upon written request for such exemption where:

1. The proposed maintenance and/or repairs are confined to existing structures and/or facilities without any deviation from or enlargement of original approvals;
2. The existing structures and/or facilities shall have been previously authorized by permit; and
3. The present state of disrepair existed for less than two years from application date.

#### **7:1C-1.4 Application for construction permit**

(a) To apply for a permit, the applicant shall prepare and submit a formal application to the appropriate agency.

1. The application shall consist of a complete and acknowledged DEP construction permit application form CP-1, the fee required by section 5 of this subchapter, and other materials of a format and content as specified by rules or otherwise for individual permit programs.

2. Any inaccurate material which could affect the outcome of a permit decision, or falsification of information submitted shall be cause for rejection of the application at any time during the review procedure, or voiding a permit approved before the misinformation was discovered.

#### **7:1C-1.5 Fees**

(a) Except as provided in subsection (g) of this section, fees shall be charged for the review of any application for a construction permit in accordance with the following schedule.

1. Waterfront development (N.J.S.A. 12:5-3), (riparian permits):

i. The fee shall be one half of one per cent ( $\frac{1}{2}$  of 1 per cent) of the construction cost, or a minimum of \$100.00;

ii. The fee for permits for minor maintenance, and/or repair or replacement of lawful existing structures shall be one half of one per cent ( $\frac{1}{2}$  of 1 per cent) of the construction cost, or a minimum of \$25.00.

2. Wetlands permits (N.J.S.A. 13:9A-1 et seq.):

i. The fee for a type A permit (N.J.A.C. 7:7A-3.2) shall be one half of one per cent ( $\frac{1}{2}$  of 1 per cent) of the construction costs, or a minimum of \$100.00;

ii. The fee for a type B permit (N.J.A.C. 7:7A-4.2) shall be one half of one per cent ( $\frac{1}{2}$  of 1 per cent) of the construction costs, or a minimum of \$300.00.

3. CAFRA permits (N.J.S.A. 13:19-1):

i. The fee for residential facilities shall be \$500.00, plus \$10.00 per dwelling unit;

ii. The fee for nonresidential and mixed-use facilities shall be \$1,000, plus \$10.00 per acre to be developed.

4. Stream encroachment (N.J.S.A. 58:1-26):

i. As used in this subsection, the following terms shall have the following meanings unless the context clearly indicate otherwise:

(1) "Drainage area" means the total area contributing runoff to a specified point, expressed in acres or square miles;

(2) "Minor stream encroachment project" means an encroachment project that does not adversely change the water-carrying capacity of the floodway, does not increase erosion or sedimentation in the stream and does not require substantial channel modification or relocation. These shall include but are not limited to major desnagging and stream clearing, minor dredging projects, dug ponds without structures, sewer headwalls, outlet works, sewer outlet diffusers, minor water intake facilities, channel excavation projects where all material is removed from the flood plain or graded and stabilized in a manner acceptable to the department, minor regrading, utilities that are constructed

within 100 feet of the top of the channel bank, each channel crossing of utility, minor bank reestablishment and/or protection projects limited to 100 feet, residential footbridges, bridge deck replacements, recreation and habitat management structures of the Division of Fish, Game and Shellfisheries, farming practices (including ditches) approved by the Soil Conservation Service, and projects whose major purpose is mosquito control pursuant to N.J.S.A. 26:9-1 et seq. Governmental agencies may combine their minor projects for a calendar year and submit them as one project, which will be considered a minor project.

ii. For minor projects, the fee shall be \$50.00, except that no fee shall be charged for such project in a drainage area of less than 320 acres which has been approved by the appropriate municipal or county engineer, or a professional engineer for State agency projects, and the certification of such approval has been submitted to and acknowledged by the department.

iii. Fees:

(1) No fee shall be charged for major projects located in a drainage area of less than 150 acres which has been approved by the appropriate municipal or county engineer, or a professional engineer for State agency projects, and the certification of such approval has been submitted to and acknowledged by the department.

(2) For other major projects the fee shall be \$500.00 for each structure in or along the channel, or portion of the channel thereof up to 1000 feet. This fee shall include but not be limited to the following types of projects: bridges, culverts, small dams, concrete lining, major riprap and gabion protection, channel modification, channel realignment, channel relocation and all retaining walls. The fee for major projects such as culverts or bridges shall include channel work for a distance of 300 feet upstream and downstream.

(3) For major projects outside the channel but within the 100-year flood, the fee shall be \$500.00 for each project.

5. Sanitary sewer facility permits (N.J.S.A. 58:11-10): The fee for sanitary sewer facility permits shall be one half of one per cent ( $\frac{1}{2}$  of 1 per cent) of the construction costs up to \$100,000, plus one fourth of one per cent ( $\frac{1}{4}$  of 1 per cent) of the construction costs in excess of \$100,000. A minimum fee of \$100.00 shall be charged.

(b) Each extension of time requested must be accompanied with a \$25.00 nonrefundable fee. Each extension, if granted, will be for a maximum period of one year. No permit will be extended beyond a total of five years from the original date of permit.

(c) Each request for an approval of a modification in detail of the approved project must be accompanied with a fee equal to 25 per cent of the total permit fee charged to that portion of the project to be modified.

(d) The department may also charge additional fees to engage such essential expertise as may be necessary for the processing and review of large scale and complex projects. The applicant will be consulted before imposition of such fees.

(e) Where a public hearing is conducted, the cost thereof, including but not limited to court reporter attendance fees, transcript costs, hearing officer fees, hearing room rental, shall be borne by the applicant unless otherwise determined by the department for good cause shown.

(f) All fees shall be paid by check, made payable to the "Treasurer State of New Jersey — Environmental Services Fund" and shall accompany the application.

(g) The maximum fee for waterfront development, wetlands, and CAFRA permit application shall be \$5,000, except for unusually large scale or complex projects where the appropriate agency determines, after consultation with the applicant, that additional fees are necessary for a proper review of the application.

As amended, R.1976 d.76, eff. March 10, 1976.  
See: 8 N.J.R. 180(a).

#### **7:1C-1.6 DEP Weekly Bulletin**

(a) The department shall each week publish in the "DEP Weekly Bulletin" a report of the receipt of each new application and each agency action on applications currently before it. This publication will be distributed free of charge to all municipalities, counties, and other interested persons. Publication in the "DEP Weekly Bulletin" constitutes constructive notice to all interested persons of department actions or construction permits.

- (b) The application status report shall include, but is not limited to:
1. The applicant's name;
  2. The agency project number;
  3. The nature of the project;
  4. The date and description of significant agency action on the project.

#### **7:1C-1.7 Review of application**

(a) Within a maximum of 20 working days of receipt of the application, the appropriate agency shall:

1. Accept the application for filing, assign an agency project number, and proceed to review on the merits; or
2. Assign an agency project number, accept the application for filing, but request in writing that the applicant submit within a specific period of time, additional information to assist in its review. In such cases, the application will not be considered complete until all the additional information has been received and deemed acceptable for review; or
3. Return the application without filing, explaining why it is unacceptable for review, and return the filing fee upon notification that the applicant does not intend to reapply.
4. Following the assignment of the agency project number, the initial application status report will be published in the "DEP Weekly Bulletin".
5. The department shall consider written initial comments, from public agencies and other interested persons, received within five working days of the publication of the initial project status report in the "DEP Weekly Bulletin".

(b) The appropriate agency shall hold the public hearing required by the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and may schedule public hearing for other construction permit programs within the time limits prescribed by these regulations.

(c) An application for a waterfront development permit is not complete unless and until the applicant has in his possession a legal document setting forth the person's right to use or occupy the riparian land, including but not limited to grants, leases or licenses.

#### **7:1C-1.8 Decision on permit application**

(a) The department shall approve, condition, or disapprove an application for a construction permit, other than a CAFRA permit, within 90 days after the application has been accepted for filing, except when additional information has been requested. In the latter case, the department shall make a decision on the permit within 90 days after such additional information has been accepted.

(b) In the case of permit application under N.J.S.A. 13:19-1 et seq., the department shall act on the application within 60 days of the hearing held pursuant to N.J.S.A. 13:19-9, unless additional information was required at the hearing, in which case the department shall act on the application within 90 days of receipt of the additional information.

(c) Where a project requires more than one type construction permit, an approval of one permit shall be conditioned on the applicant obtaining approval on the remaining necessary permits.

(d) If the department fails to act within this time period, the application shall be deemed to have been approved, to the extent that the application does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions applicable to such permits. The department shall promptly publish in the "DEP Weekly Bulletin" a notice that the application has been deemed approved.

(e) This time period may be extended for a 30-day period by the mutual consent of the applicant and the appropriate agency, provided that the applicant or the appropriate agency requests from the other such an extension at least 15 days prior to the expiration date for the approval, conditioning, or disapproval of such an application.

(f) The effect of disapproval is as follows.

1. A disapproval without prejudice is a disapproval of the application. However, a subsequent application by the same applicant for the same project on the same site may be submitted within one year of the date of disapproval without additional fees.

2. A disapproval with prejudice is a disapproval of the application.

#### **7:1C-1.9 Appeals**

(a) An appeal from an action of the Division of Water Resources pursuant to N.J.S.A. 58:1-26 shall be to the Water Policy and Supply Council in accordance with the procedures of this section.

(b) An appeal from an action of the Division of Marine Services pursuant to N.J.S.A. 12:5-3 shall be to the Natural Resource Council in accordance with the procedures of this section.

(c) An interested person who considers himself aggrieved by an action of either of the above-mentioned agencies shall within 10 days of publication of notice of the decision in the "DEP Weekly Bulletin" request a hearing by addressing a written request for such hearing to the Secretary of the Water

Policy and Supply Council, P.O. Box 2809, Trenton, New Jersey 08625, or the Secretary of the Natural Resource Council, P.O. Box 1889, Trenton, New Jersey 08625.

(d) The written notice of request for hearing on appeal shall include:

1. The appropriate agency project number;
2. Details of how the decision aggrieves the appellant; and
3. Where the appeal is taken by someone other than the applicant,

evidence that a copy of the written request for hearing an appeal has been mailed to the applicant.

(e) Where a timely appeal has been taken, the permit shall be stayed pending the decision of the appropriate appellate body.

(f) Where a request for a hearing on appeal has been granted, the decision on appeal must be rendered no later than 60 days after the acceptance of the request.

#### **7:1C-1.10 Other State statutes, rules and regulations**

The powers, duties and functions vested in the department under the provisions of the act or these regulations shall not be construed to limit in any manner the powers, duties and function vested therein under any other provisions of law, except as specifically set forth in these regulations.

#### **7:1C-1.11 Severability**

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

#### **7:1C-1.12 Implementation of these rules and regulations**

The rules and regulations set forth herein shall apply to all construction permit applications submitted to the department on or after December 22, 1975.

#### **b. Riparian Grants and Leases, N.J.A.C. 7:7-1.1 et seq.**

### **CHAPTER 7**

## **BUREAU OF MARINE LANDS MANAGEMENT**

#### **Authority**

Unless otherwise expressly noted, all provisions of this Chapter 7 were adopted by the Department of Environmental Protection pursuant to authority delegated at N.J.S.A. 12:7-1 et seq.

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## SUBCHAPTER 1. RIPARIAN GRANTS AND LEASES

### **7:7-1.1 Scope**

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Bureau of Marine Lands Management and shall govern the use of all riparian lands under the jurisdiction of the Department of Environmental Protection.

### **7:7-1.2 Construction**

(a) These rules shall be liberally construed to permit the Department, the Bureau of Marine Lands Management and its various agencies to discharge its statutory functions.

(b) The Commissioner or the Director of the Division of Marine Services may, upon notice to all parties, in the public interest, relax the application of these rules.

### **7:7-1.3 Practice where rules do not govern**

(a) The Commissioner may rescind, amend or expand these rules from time to time, and such new rules shall be filed with the Secretary of State as provided by law.

(b) The Commissioner, the Director of the Division of Marine Services or any agency chief shall exercise his discretion in respect of any other matters not governed by these rules.

### APPENDIX III

#### III. APPLICATION FORMS FOR RIPARIAN GRANT/LEASE, PERMIT AND LICENSE

The forms contained in Appendix III provide only the text of Riparian application forms and are not intended to be used in the application process. Current application forms may be obtained from the Department of Environmental Protection, Division of Coastal Resources, Bureau of Tidelands, Post Office Box 1889, Trenton, N. J. 08625.

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS

P.O. Box 1889

Trenton, New Jersey 08625

**DIRECTIONS TO BE FOLLOWED IN FILING RIPARIAN APPLICATIONS FOR GRANTS, LEASES OR OTHER CONVEYANCES OF LAND NOW OR FORMERLY UNDER TIDEWATER OWNED BY THE STATE OF NEW JERSEY. NOTICE IS HEREBY GIVEN TO APPLICANT THAT THE STATE IS UNDER NO OBLIGATION TO MAKE A GRANT OR LEASE OR OTHER CONVEYANCE AND FURTHER THAT NO WORK OF ANY KIND ON THE STATE'S PROPERTY MAY BE PERFORMED UNLESS AND UNTIL SAID GRANT OR LEASE IS DELIVERED AND ALSO ONLY IF THE APPLICANT HAS APPLIED FOR AND OBTAINED A PERMIT TO PERFORM SAID WORK. NOTICE IS FURTHER GIVEN THAT THE STATE IS UNDER NO OBLIGATION TO ISSUE A PERMIT NOTWITHSTANDING THE PRIOR ISSUANCE OF A GRANT OR LEASE. THE ISSUANCE OF A PERMIT BEING WITHIN THE SOLE AND ABSOLUTE DISCRETION OF THE STATE.**

**FIRST:** Furnish a description by metes and bounds of the upland owned by the applicant in front of which the lands applied for are situated.

**ANNEX TO THE TWO (2) RIPARIAN APPLICATIONS A DUPLICATE TRACING AND EIGHT (8) PRINTS FROM AN ACTUAL SURVEY OF SAID LANDS** showing actual conditions at the time of application and made and certified by a **LICENSED LAND SURVEYOR** whose signature and seal shall be affixed thereto; the map shall give the names of the owners of the lands immediately adjoining and within 500 feet in either direction along the high water line and shall also indicate the location of the mean high water line, and the depth at mean low water and width at mean high water of the waterway. If pierhead and bulkhead lines have been established by the Federal authorities, the map shall then show the relation of the property lines to said pierhead and bulkhead lines.

The map shall indicate the elevation of mean high water together with a statement as to the specific U.S.C. & G.S. monument used in the establishment of said elevation. There shall also be a diagram on the plan to indicate the local range of tide and the differential between mean high water and mean sea level datum as adjusted.

The map must indicate the scale thereof and the meridian adopted.

*All drawings attached to the riparian applications must be blueprints or whiteprints.*

*General location of property, to be shown as an insert in the corner of the survey plan, may be taken from a U.S. Coast and Geodetic Survey Chart, noting number of chart used.*

*SECOND: Specify whether the lands now or formerly under tidewater applied for are now or are hereafter to be used for commercial or other purposes, whether they have been improved in whole or in part, or are authorized to be improved under any grant or license protected by the provision of the supplement of the Riparian Act of March 31, 1869; also, if any oyster land, fishery or privilege therefore is embraced within the limits of the lands applied for. Indicate with particularity, the plans for improvement of the lands applied for.*

*THIRD: Indicate on the riparian applications the type of conveyance sought. Final determination of the terms and conditions of any conveyance, if issued, is solely within the discretion of the State.*

*FOURTH: All applications must be accompanied by a CERTIFIED COPY OF THE DEED by which the applicant claims title to any uplands, as further evidence that the applicant has not sold, assigned, transferred or in any way disposed of any of the rights to the lands described in the deed and is still the owner of the upland property at the time of filing the application.*

*The applicant shall also furnish a CERTIFICATE OF TITLE supplied by a title guaranty company or a New Jersey attorney-at-law and such other information as may be required by representatives of the State.*

*FIFTH: State whether applicant is individual, partnership or corporation, and furnish the legal name and domicile of applicant. Furnish name of controlling stockholders and principal executive officers if a corporate applicant. If partnership submit trade name certifications, if any, and articles of partnership.*

*SIXTH: If an applicant desires to designate a person other than the applicant to sign the riparian application, then such designation shall be made by the applicant in writing.*

*SEVENTH: All riparian applications transmitted should be accompanied by cashier's or certified check in the amount of \$25.00 made payable to the STATE OF NEW JERSEY-BUREAU OF TIDELANDS covering the non-refundable filing fee of said application. Such sum will remain as a credit to the applicant and deductible from the fee for preparation of the instrument.*

*EIGHTH: ENVIRONMENTAL IMPACT - Applicants are required to supply information regarding their requests in accordance with application forms furnished by the Division of Coastal Resources, Department of Environmental Protection. All information shall be supplied in writing or by means of documentation. The applicant is required to provide full information regarding the environmental and ecological effects of the work encompassed by his application. In the case of grants, applicants must give a full and complete description of the work they plan to do on the submerged lands for which application is being made.*

*THE APPLICATION SHOULD DEMONSTRATE HOW HIS PROJECT WILL SERVE THE PUBLIC INTEREST, AND STATE WHETHER OR NOT IT WILL CAUSE OR TEND TO CAUSE DELETERIOUS ENVIRONMENTAL EFFECTS. STATEMENTS AS TO THE DEGREE OF PUBLIC INTEREST ADVANCED BY THE PROJECT AND THE EFFECT OF THE PROJECT ON THE ENVIRONMENT ARE SUBJECT TO INDEPENDENT EVALUATION AND ANALYSIS BY THE STATE.*

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS

**NOTICE TO AGENTS OF APPLICANTS**

*During conferences with most applicants who have proceeded with waterfront construction or dredging without first obtaining a permit from the Division of Coastal Resources, it has been discovered that in many instances engineers have told applicants that they may proceed with actual work after the application has been filed with the Division of Coastal Resources, but permit has not been issued.*

*Engineers or other persons have no authority to advise applicants in the manner stated above and such advice to applicants must cease immediately.*

*No construction work of any nature shall be undertaken without first obtaining permission from the State of New Jersey through the Division of Coastal Resources.*

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS  
P.O. BOX 1889  
TRENTON, NEW JERSEY 08625

**GENERAL NOTICE**

*The excerpt quoted below is transmitted to you for your information.*

*"45:8-45 Certificate and seal of licensed engineer, surveyor or architect on plans and specifications on public work."*

*"No department, institution, commission, board or body of the State Government, or any political sub-division thereof, being the depository or having the custody of any plan or specification involving professional engineering shall receive or file any such plan or specification unless there is affixed thereto the seal of the professional engineer licensed pursuant to the provisions of this chapter, or the seal of a registered architect thereon nor receive or file any plan involving land surveying unless there is affixed thereto the seal of a land surveyor licensed pursuant to this chapter."*

*Please be governed accordingly.*

*Plans returned attached.*

*Please comply with law.*

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS

*Additional directions to be followed in filing riparian applications for grant, lease, or other conveyance of lands now or formerly under tide-water, when applicant is a corporation.*

**CORPORATIONS:**

*Please indicate the following with respect to the Corporation:*

NAME \_\_\_\_\_

ADDRESS OF PRINCIPAL OFFICE \_\_\_\_\_

REGISTERED AGENT & ADDRESS \_\_\_\_\_

STATE OF INCORPORATION \_\_\_\_\_

*If other than New Jersey, is corporation authorized to do business in New Jersey, and if so, when was authorization obtained?* \_\_\_\_\_

*Is Corporation now is good standing?* \_\_\_\_\_

NAME AND HOME ADDRESS OF PRESIDENT \_\_\_\_\_

NAME AND HOME ADDRESS OF SECRETARY \_\_\_\_\_

NAME AND HOME ADDRESSES OF PRINCIPAL STOCKHOLDERS \_\_\_\_\_

*Date last Annual Report was filed with Secretary of State in Trenton* \_\_\_\_\_

*Are there any Franchise Taxes due the Corporation Tax Bureau?* \_\_\_\_\_

*If delinquencies exist, please state last year tax was paid* \_\_\_\_\_

*It is required that applicant establish that it is in good standing, has filed the requisite annual reports and paid all taxes to date.*

*The above mentioned information is required before the application shall be deemed complete. However, the State may require additional information in considering any application.*

APPLICATION OF UPLAND OWNER ON TIDAL WATER  
FOR A LEASE OR GRANT OF RIPARIAN LAND

To the Division of Coastal Resources in the Department of Environmental Protection successor to the Division of Navigation in the Department of Conservation and Economic Development:

THE APPLICATION OF

Address:

in the State of \_\_\_\_\_ respectfully shows that said applicant is the owner in fee simple and in possession of lands adjoining, but above the high-water mark of the tidal waters of \_\_\_\_\_ as shown on the accompanying survey map dated \_\_\_\_\_

The applicant \_\_\_\_\_ the riparian owner of lands adjoining the lands now or formerly under tidewater herein applied for and further shows that said applicant desirous of obtaining a grant or lease of such lands now or formerly under the tidewater of \_\_\_\_\_ lying adjacent to and in front of the premises shown on the survey map above described.

Applicant recognizes that the State is under no obligation to make the grant or lease desired and that issuance of same is within the sole and absolute discretion of the State.

Applicant further recognizes that the action of the Natural Resource Council is subject to the approval of the Commissioner of the Department of Environmental Protection, the Attorney General and Governor, and that no grant is valid unless and until actually delivered.

You are therefore requested to consider this application and if you in your discretion decide to issue a grant or lease, to fix the fair consideration or annual rental for the conveyance and to designate the lands now or formerly under tidewater that may properly be included in the conveyance and to fix such other terms and considerations of said conveyance as may be deemed appropriate.

IN WITNESS WHEREOF, the said

hereunto set

hand and seal this

day

of

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS  
P.O. BOX 1889  
TRENTON, NEW JERSEY 08625

**RULES APPLICABLE FOR PERMIT APPLICATIONS**

1. All applications for permits where a riparian grant or conveyance has been made by the State but not to the applicant must be accompanied by a full and duly certified copy of the deed or other lease upon which it is intended to construct and/or dredge. All permits are revocable at the discretion of the State. No permits will be issued on lands where applicant has not first received a riparian grant or lease or license. As further evidence, affidavit that applicant has not sold, assigned, transferred or in any way disposed of any of the riparian rights as described in filed deed and is still the owner of the riparian rights at the time of filing the application for permit, and abstract of title to said riparian rights owned by the applicant must be furnished. A certificate of title, however, supplied by a title guaranty company, an attorney or the County Clerk may be accepted in lieu thereof. In case the applicant is not the owner of the riparian rights the above proof of title must be filed by the owner along with owner's written permission to applicant to perform the work applied for.

2. The application must be in duplicate, signed by the property owner.

3. Plans must be submitted in at least 15 copies (with one tracing cloth copy), in accordance with applicable law and regulations, including those of the U.S. Army Corps of Engineers Office, except as to location with reference to property lines. For dredging operations, the place for deposit of dredged material must be specified, including the manner of disposition and approvals.

4. General location of work, which may be an accurate cloth tracing from a map of the Coast Survey or Geological Survey, noting on drawing the number of the chart used. This may be an insert in the corner of the locality plan, which latter must be on scale sufficiently large to furnish data for study of the subject under consideration.

5. Location with reference to lines of upland property, roads, sewer lines, utility, riparian conveyances and mean high water. The outline of work to be in red.

6. Construction, giving general dimensions, with sizes and spacing of piers, timbers, beams, penetration of piles.

7. North points should be in the same direction for all plans on the same sheet, and if possible, should be directed toward the top of the sheet.

8. Elevations and soundings are to be referred to mean low water.

9. Sizes of plans must be 8 x 10½ inches, single sheet, or folded to that size once from 8 x 21 inches or 19½ x 16 inches. In exceptional cases sheets not larger than 27 x 24 inches may be sent. As many sheets as are necessary may be allowed. Margins of one inch for binder are to be left on the top and left-hand side.

10. The signature and seal of a New Jersey Licensed Engineer must be affixed in accordance with Laws of New Jersey.

11. The number of copies required is fifteen; usually blue or black and white prints on linen or sepia tracing with one print therefrom. Clear photographic reproductions of a printed plan will be accepted.

12. Applicant must furnish an affidavit setting forth the actual cost of the work to be done, or if unknown, an estimate of such cost. The State reserves the right to request audit to confirm cost of project. If all or a portion of the labor or material costs are donated or received free of any monetary charge, the applicant will estimate the value of such materials and services received in computing the total cost of the project.

### 13. ENVIRONMENTAL IMPACT –

*Applicants are required to supply information regarding their requests in accordance with application forms furnished by the Division of Coastal Resources, Department of Environmental Protection. All information shall be supplied in writing or by means of documentation. The applicant is required to provide full information regarding the environmental and ecological effects of the work encompassed by his application. In the case of grants, applicants must give a full and complete description of the work they plan to do on the submerged lands for which application is being made.*

**THE APPLICANT SHOULD DEMONSTRATE HOW HIS PROJECT WILL SERVE THE PUBLIC INTEREST AND STATE WHETHER OR NOT IT WILL CAUSE OR TEND TO CAUSE DELETERIOUS ENVIRONMENTAL EFFECTS. STATEMENTS AS TO THE DEGREE OF PUBLIC INTEREST ADVANCED BY THE PROJECT AND THE EFFECT OF THE PROJECT ON THE ENVIRONMENT ARE SUBJECT TO INDEPENDENT EVALUATION AND ANALYSIS BY THE STATE.**

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS

FEE SCHEDULE

*Pursuant to Rules and Regulations of the Provisions of Laws of 1975, Chapter 232, Sections 5.1, 5.1.1, 5.2, 5.3 and 5.6, the following fees are charged for a construction permit. [See N.J.A.C. 7:1C-1.5]*

*One half of one percent ( $\frac{1}{2}$  of 1%) of the construction cost, or a minimum of one hundred dollars (\$100.00).*

*The fee for permits for minor maintenance, and/or repair or replacement of lawful existing structures shall be one half of one percent ( $\frac{1}{2}$  of 1%) of the construction cost or a minimum of twenty-five dollars (\$25.00).*

*Each extension of time requested must be accompanied with a twenty-five dollar (\$25.00) non-refundable fee. Each extension, if granted, will only be for a maximum period of one year. No permit will be extended beyond a total of five years from the original date of permit.*

*Each request for an approval of a modification in detail of the approved project must be accompanied with a fee equal to twenty-five percent (25%) of the total permit fee charged to that portion of the project to be modified.*

*All fees shall be paid by check, made payable to the "Treasurer, State of N.J. - Environmental Services Fund" and shall accompany the application.*

## ENVIRONMENTAL QUESTIONNAIRE

To assist in the processing of your application for a riparian (waterfront development) permit, the following information is requested:

1. Season of the year in which proposed work is expected to be undertaken.  
\_\_\_\_\_
2. Period of time required to complete the proposed work. Both actual work time and duration of the project are required (i.e., three weeks of work time over a two-month period).  
\_\_\_\_\_
3. Information characteristics of neighborhood (i.e., high, medium or low density; residential, commercial or industrial).  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Types of adjacent marine structures and approximate distance from the project site.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Distance to noise sensitive areas (i.e., schools, hospitals, etc.)  
\_\_\_\_\_  
\_\_\_\_\_
6. Types of construction equipment to be used during construction and number of each type (i.e., bulldozers, trucks, cranes, etc.)  
\_\_\_\_\_  
\_\_\_\_\_
7. Specific location of spoil disposal site. If work is to be done by a contractor, the specific site information must be submitted.  
\_\_\_\_\_
8. Age of man-made canal (if appropriate).  
\_\_\_\_\_
9. Photographs of the project site are requested.

\_\_\_\_\_  
Applicant or Agent

CERTIFICATE OF TITLE

Department of Environmental Protection  
Division of Coastal Resources  
Bureau of Tidelands  
P. O. Box 1889  
Trenton, New Jersey 08625

Gentlemen:

I hereby certify that according to the records in the County Clerk's  
Office of \_\_\_\_\_ County of \_\_\_\_\_  
\_\_\_\_\_, New Jersey

\_\_\_\_\_ the owner of record in fee simple of  
the following described premises, by deed dated \_\_\_\_\_  
and recorded in Deed Book \_\_\_\_\_ at page \_\_\_\_\_ and that  
disposed of \_\_\_\_\_ rights in said lands so far as the records  
of said County reveal:

IN WITNESS WHEREOF, I have hereunto placed my hand and seal  
the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

(THIS FORM IS TO BE SIGNED BY EITHER A N. J. ATTORNEY AT LAW OR  
A REPRESENTATIVE OF A TITLE GUARANTEE COMPANY)

AGENT'S AUTHORIZATION TO ACT FOR APPLICANT

TO: Department of Environmental Protection  
Division of Coastal Resources  
Bureau of Tidelands  
P. O. Box 1889  
Trenton, New Jersey 08625

Gentlemen:

I hereby authorize:

(Name) \_\_\_\_\_

(Street) \_\_\_\_\_

(Municipality) \_\_\_\_\_

to act as my agent or representative in all matters pertaining to my application for  
a grant, lease or waterfront development permit of State Lands, now or formerly  
under tidewater.

**NOTICE TO AGENTS OR APPLICANTS**

*When filing application for State riparian permit a simultaneous application should be made to the U.S. District Engineer. The application to the Corps is submitted in letter form, attaching plan.*

*For location south of Manasquan Inlet the Corps application should be sent to:*

*U. S. District Engineer  
Philadelphia District  
U. S. Customs House  
2nd & Chestnut Streets  
Philadelphia, Pa. 19106*

*For location north of Manasquan Inlet the Corps application should be sent to:*

*U. S. District Engineer  
New York District  
26 Federal Plaza  
New York, N. Y. 10007*

*The Corps of Engineers require a Water Quality Certificate. It is suggested that application for this certificate be requested in letter form with plan, from:*

*Department of Environmental Protection  
Division of Water Resources  
P. O. Box 2809  
Trenton, N. J. 08625*

FORM CP-1

APPLICATION FORM FOR PERMIT

OFFICE USE ONLY

State of New Jersey  
Department of Environmental Protection  
(See Instructions for Appropriate Address)

Agency Project No. \_\_\_\_\_  
Date Assigned \_\_\_\_\_  
Application Fee \$ \_\_\_\_\_  
Date Supplemental  
Information Filed \_\_\_\_\_

PLEASE PRINT OR TYPE

1. Applicant \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address \_\_\_\_\_

Permanent Legal Address

Municipality \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

2. Type of Permit Applied for: (Check only one block - Separate application form and fee is required for each permit.)

Attached is a complete \_\_\_\_\_ permit application.

Check One

All Other  
Permits

Status or Project  
Number

- Sanitary Sewer Facility \_\_\_\_\_
- Stream Encroachment \_\_\_\_\_
- Riparian \_\_\_\_\_
- Wetlands \_\_\_\_\_
- Coastal Area Facility (CAFRA) \_\_\_\_\_
- Other State Permits \_\_\_\_\_

3. Location of Work:

Street \_\_\_\_\_

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_

Municipality \_\_\_\_\_ County \_\_\_\_\_

Stream or Waterway (if applicable) \_\_\_\_\_

4. Fee: (Basis for Fee submitted - See Sect. 5. of Rules and Regulations)  
Indicate how calculated.

\$ \_\_\_\_\_

5. Has an application for this site been submitted before? YES NO

6. If yes, (A) enter previous Agency Project Number \_\_\_\_\_

(B) previous decision. \_\_\_\_\_

7. I have included certifications of public notifications. YES NO

8. Engineer's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Municipality \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

9. Brief Description of Proposed Project and the Intended Use: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. I hereby authorize:  
Name \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Street \_\_\_\_\_  
Municipality \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

to act as my agent or representative in all matters pertaining to my application.  
I hereby certify that the information furnished on this application and the attachments are true and have been offered in order to induce the Department to issue the permit which is the subject of same. I am aware that false swearing is a crime in this State and Subject to prosecution.

(10/76)

APPLICATION FOR REVOCABLE PERMIT

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL RESOURCES  
BUREAU OF TIDELANDS  
P. O. BOX 1889  
TRENTON, NEW JERSEY 08625

DATE \_\_\_\_\_

FILE NO. \_\_\_\_\_

Gentlemen:

Application is hereby made for issuance of a revocable permit to carry out the following work.

1. APPLICANT:

(NAME) \_\_\_\_\_

(ADDRESS) \_\_\_\_\_

(BUSINESS) \_\_\_\_\_

2. LOCATION OF WORK:

(MUNICIPALITY) \_\_\_\_\_

3. GENERAL DESCRIPTION OF WORK CONTEMPLATED: \_\_\_\_\_

4. INTENDED USE OF THE STRUCTURES, IF ANY \_\_\_\_\_

5. MISCELLANEOUS DATA:

a. How work is to be done (contract, etc.) \_\_\_\_\_

b. Certified Estimated Cost (subject to audit & confirmation) \_\_\_\_\_

c. Date when work is contemplated to be started or contract advertised \_\_\_\_\_

d. Length of time to complete work \_\_\_\_\_

e. Names and addresses of owners of adjoining property, if any, on each side within 500 feet. \_\_\_\_\_

ENVIRONMENTAL IMPACT

Applicants are required to supply information regarding their requests in accordance with application forms furnished by the Division of Coastal Resources,

Department of Environmental Protection. All information shall be supplied in writing or by means of documentation. The applicant is required to provide full information regarding the environmental and ecological effects of the work encompassed by his application. In case of grants, applicants must give a full and complete description of the work they plan to do on the submerged lands for which application is being made.

APPLICANT SHOULD DEMONSTRATE HOW HIS PROJECT WILL SERVE THE PUBLIC INTEREST, AND STATE WHETHER OR NOT IT WILL CAUSE OR TEND TO CAUSE DELETERIOUS ENVIRONMENTAL EFFECTS. STATEMENTS AS TO THE DEGREE OF PUBLIC INTEREST ADVANCED BY THE PROJECT AND THE EFFECT OF THE PROJECT ON THE ENVIRONMENT ARE SUBJECT TO INDEPENDENT EVALUATION AND ANALYSIS BY THE STATE.

6. GENERAL REMARKS:

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Applicant understands that the State may demand from applicant information in addition to that set forth herein and may make whatever investigation the State deems appropriate in considering this application. Applicant further understands that neither proper submission of the information herein, nor submission of all additional information demanded by the State in any way entitles applicant to a permit.

There are submitted herewith, in addition to the above information, six (6) copies of specifications and detailed plans, showing location of the proposed construction for which a permit is herewith requested with reference to property lines together with a statement of environmental impact. It is understood that any permit is revocable by the State and is subject to compliance with applicable laws and regulations. Applicant recognizes that issuance of a permit is within the sole and absolute discretion of the State.

Respectfully yours,

DMS 001

APPLICATION FOR LICENSE OR EASEMENT

STATE OF NEW JERSEY

DATE \_\_\_\_\_

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL RESOURCES.

FILE NO. \_\_\_\_\_

P.O. BOX 1889

TRENTON, NEW JERSEY 08625

Gentlemen:

Application is hereby made, in accordance with Title 13, Chapter 1B, Section 7, of the Revised Statutes of New Jersey, for a revocable license to use and occupy State's lands under water; subject to such terms and conditions contained therein or as may be imposed by law.

APPLICANT

(NAME) \_\_\_\_\_

(ADDRESS) \_\_\_\_\_

(BUSINESS) \_\_\_\_\_

WHERE LICENSE IS LOCATED

(City or Municipality) \_\_\_\_\_

(County) \_\_\_\_\_

(Name of Waterway) \_\_\_\_\_

INTENDED LAND USE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAME AND ADDRESSES OF UPLAND OR ADJOINING OWNERS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ENVIRONMENTAL IMPACT

Applicants are required to supply information regarding their requests in accordance with application forms furnished by the Division of Coastal Resources, Department of Environmental Protection. All information shall be supplied in

writing or by means of documentation. The applicant is required to provide full information regarding the environmental and ecological effects of the work encompassed by his application. In case of grants, applicants must give a full and complete description of the work they plan to do on the submerged lands for which application is being made.

THE APPLICANT SHOULD DEMONSTRATE HOW HIS PROJECT WILL SERVE THE PUBLIC INTEREST, AND STATE WHETHER OR NOT IT WILL CAUSE OR TEND TO CAUSE DELETERIOUS ENVIRONMENTAL EFFECTS. STATEMENTS AS TO THE DEGREE OF PUBLIC INTEREST ADVANCED BY THE PROJECT AND THE EFFECT OF THE PROJECT ON THE ENVIRONMENT ARE SUBJECT TO INDEPENDENT EVALUATION AND ANALYSIS BY THE STATE.

GENERAL REMARKS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE: IN MAKING THIS APPLICATION, APPLICANT UNDERSTANDS THAT NO WORK SHALL BE PERFORMED BY THE APPLICANT UNLESS AND UNTIL THE LICENSE IS DELIVERED, AND ALSO ONLY IF THE APPLICANT HAS APPLIED FOR AND OBTAINED A PERMIT TO PERFORM SAID WORK, THE ISSUANCE OF A PERMIT BEING SUBJECT TO AN INDEPENDENT DETERMINATION BY THE STATE.

## APPENDIX IV

### IV. ATTORNEYS' GENERAL OPINIONS CONCERNING RIPARIAN RIGHTS

#### a. Introduction

The Attorney General is the sole legal counsel and legal representative for all State governmental agencies, including the Department of Environmental Protection and the Natural Resource Council. In this capacity, he provides advice and interprets statutes and legal documents for such agencies. *N.J.S.A. 52:17A-4, 52:17B-5.*

Over the years, the Office of the Attorney General has provided legal advice pertaining to a number of riparian rights issues. The opinions reflected the conclusions of the Attorney General in office at the time, and do not necessarily represent the position of the present officeholder. In addition, while the opinions are instructive regarding executive or administrative interpretation, they are not treated as conclusive by a reviewing court. With these reservations, the following list of the relevant published Attorneys' General opinions is provided. Copies of the text of these opinions may be obtained in the State Library, Trenton, New Jersey. It should be noted that in addition to these published opinions, the Office of the Attorney General has furnished a considerable number of opinions that have not been published and are therefore not generally available to researchers or other interested persons.

#### b. Chronological List of Relevant Published Opinions

*1949. Formal Opinion, No. 41.*

Scope of powers of former Department of Conservation and Economic Development concerning riparian approvals. See also Formal Opinion (1955), No. 45 and Formal Opinion (1956), No. 6.

*1949. Formal Opinion, No. 59.*

State permit for construction of structure oceanward over riparian rights was required but State did not assume responsibility for activities that may occur on such structure.

*1949. Formal Opinion, No. 106.*

Riparian grants and leases must be signed by members of former Planning and Development Council. Current statute, *N.J.S.A. 13:1B-13*, requires that only the chairman sign the instrument.

*1950. Formal Opinion, No. 75.*

A waterfront development permit pursuant to *N.J.S.A. 12:5-3* is required prior to dredging in any of the waters of the State for the development of any waterfront upon any navigable water or stream.

1951. *Formal Opinion, No. 1.*  
Explores riparian rights issues where landowner constructs a lagoon on upland.
1951. *Formal Opinion, No. 9.*  
A permit pursuant to *N.J.S.A. 12:5-3* was required before a landowner could place pilings in sand below high-water mark in front of his property.
1951. *Formal Opinion, No. 15.*  
Legislative grant in 1852 to landowners predecessor in title did not authorize present owner with the right to fill in and reclaim lands under the tide-waters without State approval.
1953. *Formal Opinion, No. 39.*  
Riparian grant for public park or street must be for "fair value" of the interest conveyed.
1953. *Formal Opinion, No. 56.*  
Rights of priority to obtain riparian grant between abutting property owners and municipality for public street purposes.
1954. *Formal Opinion, No. 3.*  
Authority to approve riparian grants and dredging permits below the low water mark in the Delaware River within the so-called twelve-mile Delaware Circle.
1954. *Memorandum Opinion, P-16.*  
Proprietors of the Eastern Division of New Jersey deed of island flowed by tidewater was void since proprietors did not have title to the tidal waters.
1955. *Formal Opinion, No. 26.*  
Objection to proposed riparian grant by person claiming title under Indian deed may be disregarded.
1955. *Memorandum Opinion, P-19.*  
Notice to upland owner was not required where riparian grant was to municipality for use as a public park.
1956. *Formal Opinion, No. 13.*  
Revenue from licenses for submerged lands should be applied to School Fund Income Account.
1956. *Formal Opinion, No. 22.*  
Definition of New Jersey's boundary in the Delaware Bay and the Delaware River.

1956. *Memorandum Opinion, P-30.*

Additional compensation required for construction of lagoons was reasonable exercise of discretion.

1956. *Memorandum Opinion, P-35.*

Director of former Division of Planning and Development has authority to conduct surveys and establish pierhead and bulkhead lines.

1957. *Memorandum Opinion, P-25.*

State has title to former islands now submerged under tidewaters of Atlantic Ocean to a seaward limit of three miles.

1960. *Formal Opinion, No. 17.*

Riparian grants for lands housing natural oyster beds may be made to abutting owners only for the purpose of facilitating the applicant's efforts to reach navigable water.

1960. *Formal Opinion, No. 18.*

Riparian grant for site of a school building must be supported by constitutionally sufficient consideration.

1960. *Memorandum Opinion, P-8.*

Notice to an abutting upland owner is effective against his grantees and devisees.

1963. *Formal Opinion, No. 4.*

Discussion of priority between municipality applying for riparian grant pursuant to *N.J.S.A. 12:3-33* and abutting upland landowner.

Note: Between 1963 and 1978, no relevant opinions were published.

1978. *Formal Opinion, No. 8.*

Riparian conveyance to municipality must be supported by adequate consideration for the interest conveyed.

alters and retards tidal ebb and flow. Deep ditches dug across small streams interrupt water flow and, in effect, drain the WETLAND.

Heavy mowing machinery creates depressions, saline waters fill depressions, and bare ground and reduced marsh productivity result.

Some high vigor *Spartina alterniflora* is present along streams and ditches, but *Spartina alterniflora* (low vigor) and large quantities of *Spartina patens* interspersed with *Iva*, *Distichlis spicata*, *Juncus gerardi*, *Baccharis halimifolia*, and *Panicum virgatum* indicate an *accelerated* loss of productive WETLAND.

Traditional WETLAND ditching has lowered the local water table, caused extensive erosion, brought about general changes in water currents and distribution, and pressure at the head of small ditches has caused flooding around *Spartina patens* islands normally above high water. Weedy plant growth is encouraged (*Baccharis* and *Iva*), crustacean numbers are reduced, and, as *Spartina patens* encroaches on a once fertile marsh, mosquito populations increase (*Spartina patens* marshes are a most suitable breeding habitat for the mosquito).

**3.3** Orders promulgated by the Commissioner will apply to those Salem County WETLANDS shown on four (4) photomaps filed in the office of the Salem County recording officer. Filed maps enclose a six (6.0) square mile slightly rectangular area. The location of that area is shown, generally, on an attached photomap index. The outlined area is bounded on the southwest by Pleasant Point and on the southeast by the Salem River and Cobb Island. The northwestern corner of the rectangle lies to the east of Pennsville, and the northeastern corner is fixed east of Pine Island Meadow and west and north of Marshalltown. Filed photomaps may be inspected in the office of the Salem County recording officer.

**3.4** The area bounded by the four (4) filed Salem County photomaps is a fresh-brackish (C, B, and B1 types) WETLAND. *Phragmites communis* (common reed) is prevalent; it is often found on diked or man-disturbed lands.

**3.4.1** Duck and geese impoundments exist in what was once WETLAND. Impounded lands have been stripped of significant vegetation and are no longer tidally influenced.

**3.4.2** A diked area exists in the Beaver Dam vicinity. It has been filled with Delaware River dredge spoil. *Phragmites communis* is present. The area is no longer tidal nor is it a WETLAND. The nutrient productivity which this portion of WETLAND could have contributed to the Delaware estuary, had it remained undisturbed, has been lost.

**3.4.3** Some diked areas have been built of muck and dredge spoil and are severely eroded. Erosion has contributed substantial sediment to Salem Creek which may be responsible for observed heavy shoaling. Sediment, in addition to causing shoaling, reduces a stream's ability to assimilate oxygen-demanding wastes, blankets fish nests and food organisms, and masks out light needed by aquatic plants to consummate efficient photosynthetic processes. Other living organisms depend on plants for their reproduction, growth, and well-being. Man, ultimately, is subservient to these flora and fauna.

**3.4.4** Many Salem River tidal streams have been diked to block tidal flow. Blocking creates new dry lands for truck crops and provides water for irrigation. An estimated 3600 acres of once tidal WETLAND has been affected by these reclamation procedures.

As noted above, agricultural impoundments are beneficial to a few. Agricultural impoundments impact, also, on the many: WETLAND productivity decreases and is, in part, destroyed; decreased productivity is brought about by unfavorable or unexpected changes in local WETLAND ecosystems as they respond to manmade environmental modifications. Decreased WETLAND productivity may be mirrored in reduced Delaware estuary fertility; reduced species diversity decreases sport and commercial fish, clam, oyster, and mussel yields.

**3.4.5** Muskrat impoundments have been noted (3,880 acres estimated in Salem County). They are of substantial economic benefit to landowners and trappers, but such impoundments have not only destroyed and decreased marsh productivity but also have contributed to lessened fertility in the Delaware Bay estuary. Many muskrat impoundments now support stands of common reed which were covered once with short low-water cordgrasses; also, experience has shown that heavy to moderate mosquito breeding habitats occur in and near diked muskrat impoundments.

**3.4.6** In addition to those plant species inventoried on the four (4) filed photomaps, other plant species grow in these WETLANDS: *Juncus effuses*, *Rumex verticillatus*, *Iris versicolor*, *Eleocharis*, *Scripus cyperinus*, and *Scripus robustus* have been observed (*Scripus* and *Typha* species help maintain muskrat populations). All of the above occur in small stands and were not included on the photomap inventory. *Scripus robustus* and *Eleocharis* are named in "The Wetlands Act of 1970".

#### **4.0 WETLANDS – A PHYSICAL BARRIER**

**4.1** The sea can be either friendly or hostile. It may, on any one day, be calm and beautiful or terrifying and destructive. High waters, winds, and waves can damage or destroy property in WETLAND or upland and can, with time, cause substantial mainland erosion.

**4.2** The force (energy) of the sea is often underestimated; a four-foot high ten-second wave contains 33 foot-tons of energy, and an eight-foot wave of the same period generates 131 foot-tons of energy. Waves transmit a portion of their energy to any fixed barrier (homes or other structures) placed so as to arrest wave motion. If barriers are weak, structures will be either severely damaged or completely destroyed.

**4.3** WETLANDS, physically, act as a buffer between the sea and land; they help protect man. They absorb a portion of wind and storm wave energies, and they provide large storage areas for flood and storm waters. These functions, in turn, reduce mainland erosion rates and lessen social and economic hardships caused by upland flooding and high winds.

**4.4** WETLANDS are dynamic and everchanging. Storms and winds may rip their turf and, for a time, alter natural drainage and contour; but the marsh is resilient –

it survives and adjusts to new combinations of physical forces.

**4.5** Filling WETLANDS reduces their capacity to store storm or flood waters. Non-storable storm waters infringe on neighboring marshes or uplands and have the potential to cause extensive damage which otherwise would not have occurred.

**4.6** Development in WETLANDS are particularly vulnerable to wave and water damage because of their proximity to the sea. Ocean County storm record observations taken in the general vicinity of Mystic Islands, west of Tuckerton, show that Mystic Islands is subject to periodic flooding (Mystic Islands is between 2.1 and 2.5 feet above mean sea level\*):

<u>DATE</u>	<u>YEAR</u>	<u>WATER HEIGHTS ABOVE MEAN SEA LEVEL (FT.)</u>
1/26	1932	8.1
9/16	1935	7.3
11/17	1935	8.5
9/30	1943	7.2
10/20	1943	7.7
9/14	1944	11.6 (hurricane)
11/25	1952	9.95
11/7	1953	8.1
1/23	1966	7.0 (At Radio Road Bridge)

\* Excerpted from a topographic survey submitted by the Mystic Island surveyor.

**4.7** In March, 1962 "Tuckerton Beach and Mystic Islands, located to the west of Beach Haven, were flooded by high tides in Great Bay, and sustained major damages. These communities are relatively new developments, and are comprised almost exclusively of vacation homes. A total of 617 homes in Tuckerton Beach and 154 in Mystic Islands suffered flood damage."

**4.8** The material in quotes was copied verbatim from page 4-10 Post Flood Report (Corps of Engineers) – March 1962 Storm. These data and the Ocean County information prove that WETLANDS flooding and major damage to WETLAND-located structures actually occur.

**4.9** Those who live in structures built on WETLANDS are gambling; major floods will continue to happen, and subsequent property damage costs will be proportional to the severity of the flooding. (No one can guarantee a tranquil and non-hazardous WETLAND environment).

**4.10** Proposed WETLAND "ORDERS" are, in part, designed to protect the public safety and preserve and enhance public welfare. With WETLANDS flooding data a matter of the public record, it would be indefensible for the Department of Environmental Protection to make public less stringent ORDERS.

## **5.0 WETLANDS AND WATERFOWL**

**5.1** Waterfowl migrating along the Atlantic Flyway depend on WETLANDS for their food. Ducks and geese feed in the WETLANDS, and waterfowl productivity would be seriously depleted if WETLANDS and their vegetative cover were destroyed or seriously encroached upon by man. During heavy wintertime freezes, certain sections of the WETLANDS are inaccessible to fowl, and they must forage for food wherever it can be found. Encroachment lessens their chance for survival.

**5.2** The WETLANDS are ecosystems. Each plant species or species association is not individualistic or self-sustaining; species interact and are interdependent. WETLANDS are in delicate balance. Man can easily destroy that balance and trigger changes which infringe on and decimate fish and waterfowl populations. Man moves from the city to the sea to enjoy the good things in life; ultimately, he destroys the very things he has spent good money to enjoy.

**5.3** Proposed WETLAND "ORDERS" provide for setbacks in areas along WETLAND, water-land interfaces. The promulgation of this order would help maintain marsh edge integrity, prevent erosion, allow natural circulation patterns to transport nutrients efficiently between the sea and land, and provide fish and fowl with foods needed to support and increase their numbers.

## **6.0 WETLANDS – SHORE AND SONG BIRDS**

**6.1** Productive WETLANDS not only maintain waterfowl but also support large numbers of birds and bird species. Plants and animals provide birds with food, and many of those foods come from WETLANDS. (Productive marshes can yield, in addition to plants, millions of snails, amphipods, insects, and worms per acre.)

**6.2** Grackles and Swallows feed in and near WETLANDS. The Tree Swallow, in late August, eats marsh insects and by feeding performs a valuable function to man. Marsh wren and certain sparrow species breed on and live in WETLANDS.

**6.3** Shore birds such as the Laughing Gull, Herring Gull, Terns, Willets, Oyster Catchers, and Clapper Rails breed in the WETLANDS and depend on this resource for food. (Clapper Rails arrive in New Jersey WETLANDS in late April; they winter in the marshes of South Carolina and Northern Florida).

**6.4** The skimmer nests on sand heaps and beach islands in and adjacent to WETLANDS. This bird feeds in creeks, ponds, bays and ocean inlets; it depends on WETLANDS productivity.

**6.5** Wading birds make use of the marsh but nest in adjacent uplands. These species include the Herons, Egrets, Bittern and Ibis.

## **7.0 WETLANDS AND PESTICIDES**

**7.1** Pesticides are used in WETLANDS to control mosquito populations. Pesticides have been misused: Department studies show that persistent pesticides and their metabolites – DDT, DDE, AND DDD – are present in WETLANDS vegetation. Through biological magnification, these "hard" pesticides have become concentrated in fish, fur-bearing animals, waterfowl, crabs and birds.

**7.2** Persistent pesticides use can result in long-term detrimental environmental effects. Evidence exists to indicate that certain insecticides have caused immediate and long-term fish and wildlife mortality.

**7.3** The proposed "ORDERS" prohibit the use of hard pesticides in WETLANDS and *all* pesticides where there are significant stands of cordgrass, *Scirpus* (three-square), wildrice and cattail. These areas are flooded twice daily by the tides. Flooding prevents mosquito production and makes such regions of high value to fish, shellfish, and wildlife. (Certain cordgrass areas are of high estuarine system value; they support substantial snail, fiddler crab and ribbed mussel populations).

**7.4** The Department takes the position that chemicals should be applied in WETLANDS only when *absolutely* necessary. If non-persistent pesticides are applied to the marsh, the following guidelines may be used to minimize unwanted and unwarranted environmental impacts and maximize control effectiveness, at lower public cost:

- (1) Determine the *proper* pesticide to be used.
- (2) Determine the correct dosage rate and adhere to it.
- (3) Locate all heavy breeding centers — (saltmeadow grass, disturbed areas covered by common reed and temporary and seasonal pools).
- (4) Apply the proper pesticide at the right dosage *only* to the heavy breeding areas at the right time (adulticide use, for example, should coincide with the period during which large broods of mosquitoes are emerging from the WETLANDS; spraying at other times is ineffective and costly.)

## **8.0 WETLANDS — THEIR PRODUCTIVITY AND BENEFIT TO MAN**

**8.1** Department of Interior statistics for 1967 indicate that New Jersey's commercial coastal fisheries landed 117 million pounds having a dockside value of \$10 million. About 3,000 fishermen were employed either full or part time on boats and on the shore. Approximately 2,000 other persons were employed fulltime in seafood wholesaling and in processing plants. The value of processed products has been estimated to be near \$30 million.

About two-thirds of the commercial fish catch on the Atlantic Coast is believed to be WETLANDS (estuarine)-dependent (McHugh 1966). Department of Environmental Protection studies in the Great Bay — Mullica River estuary tend to confirm that many finfish species, at some stage in their life cycle, utilize estuarine waters. At Cape Horn, Great Bay, thirty-one species of fish were taken over a year's time; the bay anchovy was most abundant, silversides were second, and other seined species included the silver perch, northern pipefish, northern puffer, winter flounder, red hake and black bass. The fisheries yield from the U.S. Atlantic Continental Shelf has been estimated to be equivalent to about 535 pounds per acre of estuary (Stroud). Loss of estuarine habitat could cause an annual 535 pound loss of fisheries products to those dependent on high sustained yields for their economic well-being.

**8.2** Reliable sports fishing statistics for the New Jersey Coast are not available. Recent estimate, however, indicate that nearly one million sportsmen fish in coast-

al waters each year and catch at least 10 million pounds of fish. Creek census results in the Great Bay-Mullica River estuary show that nearly one million fish are taken each year by sports fishermen. The contribution to the State's economy by these sportsmen is substantial even though quantitative data are unavailable. Boat and motor sales, charters, rentals, licenses, fishing equipment, bait, travel, motel, marina costs, and food expenditures for these services and supplies are all related to the attractiveness of the tidal WETLANDS and bays.

**8.3** In addition to commercial and sports fishing, estuaries (WETLANDS) are used for other multipurpose activities. Studies conducted by the Department of Environmental Protection indicate that about 129,000 man-days of use was made of the Great Bay-Mullica River estuarine zone in one year. Those uses included fishing, boating, shell fishing, bathing, hunting, water skiing, and the harder-to-document kinds of activities such as sightseeing and scientific research. All of these uses are important to man — they contribute to the enhancement of the quality of life as well as to his economic and social well-being.

## **9.0 PROPOSED ORDERS — RATIONALE AND SUMMARY**

**9.1** The concept of balance is central to the proposed orders. The orders recognize that destruction eliminates choice. Therefore, they are designed so that all possible effects of any project on the wetlands' environment are taken into account before the project is allowed to proceed. The balance sought to be injected is not so much a balance between developed and undeveloped pieces of wetland, for nowhere do the criteria exist to strike an accurate balance in this way. The balance these orders seek to attain is a mental or internalized balance in which the adverse effects of development are weighed before the fact, rather than after.

**9.2** The orders are divided into 9 sections. Section 1 describes the areas affected by the orders in the Counties of Ocean and Salem. Section 2 defines important terms which occur in the orders. Sections 3 and 4 form the core of the proposed orders and establish a regulatory system for proposed activities in the wetlands.

**9.2.1** Two categories of regulated activities are established by Sections 3 and 4. Section 3 creates Type A regulated activities. These are small projects for which an abbreviated form of application and review procedure has been established. To qualify as a Type A activity the project must be either new construction the total cost of which is less than \$5000 or the repair, renovation, or maintenance of existing structures of facilities in a manner which will not increase the amount of wetlands covered at a cost of less than \$5000. An application for a permit for a Type A activity does not require the submission of an environmental impact statement. In order to be approved, the applicant must demonstrate that he has notified the local government of the area in which the wetlands are located of his proposed activity, and must also demonstrate that the project:

**9.2.1.1** Requires water access or is water oriented as a central purpose of the basic function of the activity.

**9.2.1.2** Has no prudent or feasible alternative on a non-wetland site.

**9.2.1.3** Will result in minimum feasible alteration or impairment of natural tidal circulation.

**9.2.1.4** Will result in minimum feasible alteration or impairment of the natural contour or the natural vegetation of the wetlands.

**9.2.2** If the Commissioner finds that the project meets the criteria in 9.2.1 he may issue a permit for the activity. No hearing is required, although the Commissioner may convene one if he deems it necessary. If a permit is issued, the recipient must file it in the office of the County recording officer, and post a copy on the site where the work is being done. The application fee for the Type A permit is \$25. The permit is valid for one year from the date of issue, and may be extended by the Commissioner at his discretion after an application in writing requesting such extension.

**9.2.3** Type A activities will include most of the work done by individual property owners on small pieces of property, including such work as the excavation of small mooring slips, repair of sea walls, maintenance of existing roads, construction of piers, docks, and boat shelters and the establishment of duckblinds and wildlife shelters.

**9.2.4** In contrast with these limited undertakings on small pieces of property, Type B activities include larger projects. In keeping with the greater environmental impact of larger activities, the permit application and review procedure is more rigorous than those required by Category A.

**9.2.4.1** The application procedure for the Type B permit is much the same as for Type A, except that a detailed environmental impact statement is required for Type B as is a hearing, held by the Commissioner or an officer of the Department appointed by him, for each application. The application fee is \$25 per acre affected. The environmental impact statement will become a document available to the public, and the hearing will be opened to all interested parties.

**9.2.4.2** The environmental impact statement is required so that the Department and interested citizens will be able to assess the effect of any proposed project on the environment before the project is begun, rather than be confronted with environmental damage if an activity is carried on prior to assessing its probable environmental effects. The impact statement will describe and analyze alternatives to the proposed action which would reduce environmental damage, as well as consider the effects of the project on the activity site and adjacent and non-contiguous wetlands.

**9.2.4.3** In order to be approved, the applicant must demonstrate that his project meets not only the same criteria set for Type A permits but also additional criteria as set forth in the accompanying WETLANDS ORDERS.

**9.2.4.4** If an application is approved after a hearing, the applicant must record the permit in the office of the county recording officer and post a copy of the permit prominently on the site. The permit will be valid for one year

from the date of issue, but it may be extended by the Commissioner upon written application to him.

**9.3** Section 5 of the proposed orders establishes a set of prohibited activities. These activities are extremely harmful to wetlands, and their impact usually cannot be lessened by remedial action. The prohibited activities are dumping refuse or garbage in wetlands, discharging sewage or industrial wastes in wetlands, applying pesticides to areas containing significant stands of biologically important grasses (except where required by a public health emergency), applying persistent pesticides to any area of the marsh, or driving vehicles over wetlands.

**9.4** Sections 6 and 7 of the proposed orders govern the relationship between the orders and other statutes and to local ordinances. The orders do not supercede local ordinances which impose standards more restrictive than those in the orders.

**9.5** The final section of the order establishes exceptions to the activities regulated in the orders. The orders will not apply in the event of a declared public health emergency, nor do they govern the continuance of salt hay farming or other agricultural activities on lands which were being used for those purposes as of the effective date of the act. Finally, the orders do not apply to normal, non-commercial owner enjoyment activities of privately owned wetlands.

## **10.0 CONCLUSIONS**

**10.1** Wetlands are ecosystems and are integral to larger estuarine zone ecosystems. Wetlands support plant species and species communities which are in dynamic but delicate balance. The biophysical environment determines that balance. This complex environment is subject to and is shaped by those natural, physical, chemical, and geological principles governing the tides, ocean currents, coastline slope, climate, river flows, and sedimentation patterns. The object of the proposed order is to control man's impact on this complex environment and on the wetlands themselves so that these vital lands can continue to serve man and nature.

**10.2** Principal sections of this "BASIS" have shown that WETLANDS have multiple beneficial uses: They act as a buffer against flood, wind, and wave damage; they serve as a waterfowl, bird, and wildlife habitat; and, they provide essential nutrients which make the estuary a rich and very productive area. (Estuaries provide the food serving as the base of the food chain for the larvae stages of many marine forms during this critical part of their life cycles.)

**10.3** A great deal of other significant information about WETLANDS is known. The processes described below may be critical to the long-term well-being and safety of man:

(1) WETLANDS play a most significant geological role as sediment accretors (Niering). Geologists have indicated that sediments which do not form marsh complexes go instead into channels, harbors, or tidal creeks and accentuate silting problems (Sanders and Ellis). Marsh build-up processes occur over 4000 year spans (Redfield); man destroys WETLANDS in one day.

(2) WETLANDS play an important role in the cycling of nitrogen in natural ecosystems (Delwiche). Nitrogen oxides may accumulate in our waters, and nitrate concentrations above 45 milligrams per liter renders those waters unfit for human consumption (U.S.P.H.S.). Such waters, when drunk, can cause methemoglobinemia which usually results in brain damage. WETLANDS are an essential ecosystem; they denitrify toxic nitrogen-oxygen compounds and can act as efficient guardians of the public health (Nickerson).

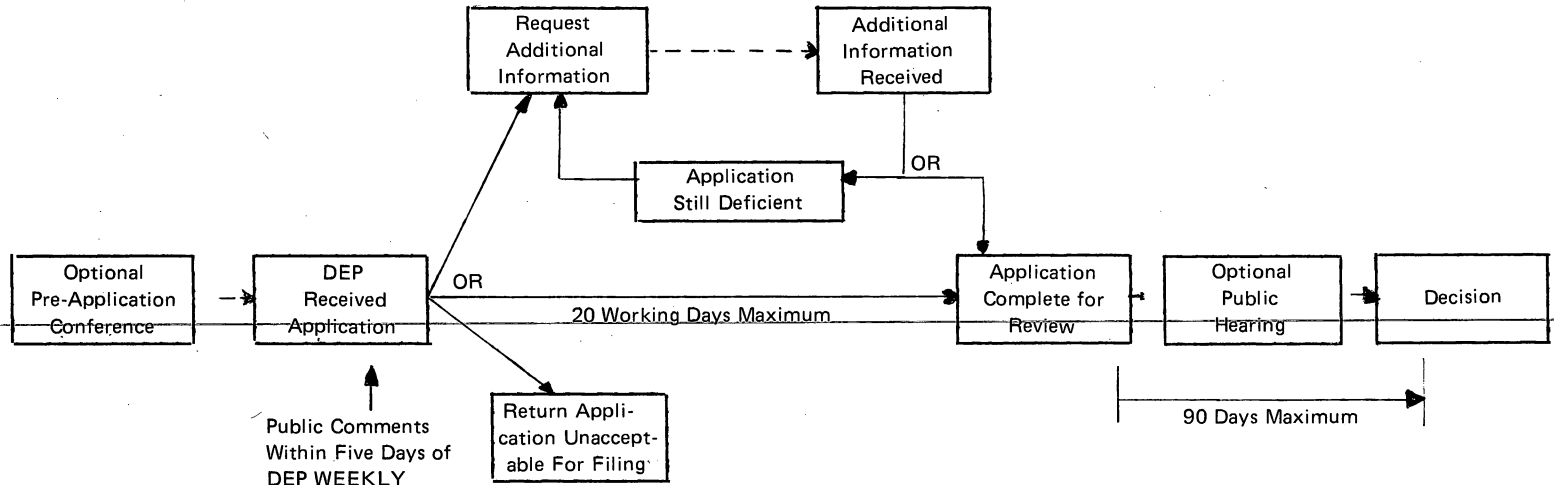
(3) WETLANDS improve water quality by reoxygenating the water and absorbing nitrates and phosphates (McCormick and Patrick); also, marsh vegetation reduces organic load. Tinicum marsh vegetation studies indicated a daily reduction of approximately 7.7 tons of BOD, 4.9 tons of P - PO<sub>4</sub> and 4.3 tons N - NH<sub>3</sub> (McCormick). WETLANDS help prevent serious public health problems.

**10.4** The WETLANDS ecosystem is delicately balanced. Seemingly minor physical alterations could stress this delicately balanced system and cause severe damage to the kinds and abundance of plant and animal species inhabiting the WETLANDS. In addition, significant alteration could affect ultimately the health, welfare, and safety of man. All of the facts are not yet known. The Department's proposed "WETLANDS ORDERS" have been, therefore conservatively drawn. The ORDERS are based on known scientific fact and sound ecological practice; they leave an adequate margin of safety for protection from miscalculation and extreme natural variation, they take into account known beneficial and detrimental effects, and they allow for multiple WETLANDS use.

b. Flow Chart:

WETLANDS AND WATERFRONT (RIPARIAN) DEVELOPMENT PERMIT APPLICATION PROCESSES

A-114



Public Comments  
Within Five Days of  
DEP WEEKLY  
BULLETIN  
Notice.

NOTE:

A WATERFRONT DEVELOPMENT PERMIT APPLICATION IS NOT DECLARED COMPLETE FOR REVIEW WITHOUT A LAWFUL RIPARIAN OCCUPATIONAL OR USE INSTRUMENT SUCH AS A RIPARIAN GRANT, LEASE, OR LICENSE.

----- INDICATES THAT THE TIME-TABLE IS SET BY THE APPLICANT.

