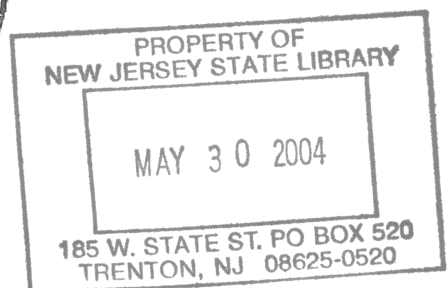
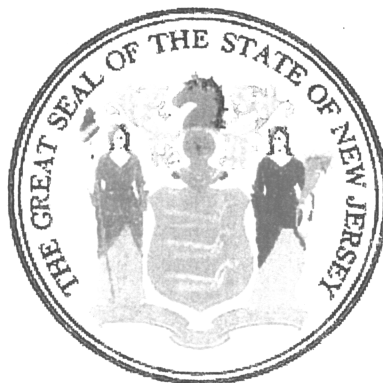


**REPORT OF THE GOVERNOR'S  
BILLBOARD POLICY & PROCEDURE REVIEW  
TASK FORCE**

**Presented to The Honorable James E. McGreevey  
Pursuant to Executive Order No. 59**



August 10, 2003

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**Billboard Policy & Procedure Review Task Force**  
Established by Executive Order No. 59  
Trenton, New Jersey

August 10, 2003

The Honorable James E. McGreevey  
Governor  
State of New Jersey  
State House  
Trenton, New Jersey 08625

Dear Governor McGreevey:

As directed by your Executive Order No. 59, signed on May 12, 2003, we are transmitting the "Report of the Governor's Billboard Policy & Procedure Review Task Force." Our report makes significant recommendations that we believe will, if implemented, secure the public trust by requiring public bidding and uniform policies and procedures for all billboards sited on public property, improve interaction with local zoning and planning agencies for all billboards sited on public and private property, and better accomplish the goals of mitigating the impact of billboards on the environment.

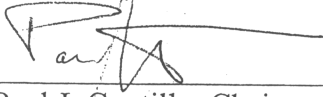
When issuing your Executive Order, you understood that the citizens of New Jersey demand that higher, uniform standards be followed by state agencies in dealing with the billboard industry; that local communities must be provided the opportunity for meaningful input regarding all billboards sited in their municipalities; and that the problem of over-saturation of billboards in New Jersey must be addressed.

We have focused on these issues during the past 90 days. We have gathered information from more than 65 State departments, agencies and authorities; solicited written and oral comments from organizations representing the outdoor advertising industry, public interest groups, environmental groups and organizations representing local government entities; and collected information from the New Jersey Department of Transportation, the current regulator of outdoor advertising in the state. We have debated the issues and formulated common-sense solutions.

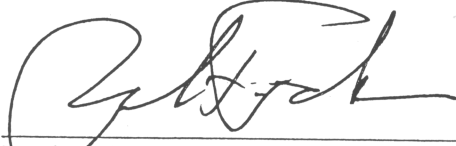
The attached report contains our recommendations for legislative, regulatory and policy changes to achieve the goals of your Executive Order. We thank you for providing us the opportunity to research, analyze and propose solutions with respect to these important issues.

We are pleased with the results of our efforts and hereby transmit this document for your consideration.

Respectfully submitted,



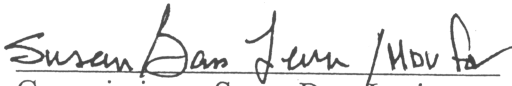
Paul J. Contillo, Chairman, Billboard  
Policy & Procedure Review Task Force



Paul Fader, Director, Authorities Unit  
Office of the Governor



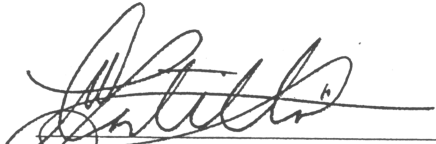
Commissioner John F. Lettiere, Jr.  
Department of Transportation



Commissioner Susan Bass/Levin  
Department of Community Affairs



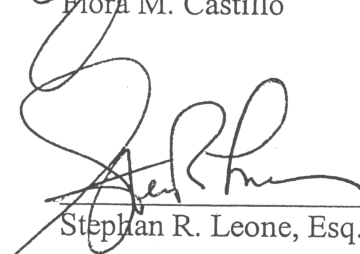
Commissioner Bradley M. Campbell  
Department of Environmental Protection



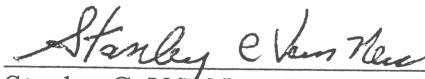
Flora M. Castillo



Michael Catania



Stephan R. Leone, Esq.



Stanley C. Van Ness, Esq.

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I. EXECUTIVE NARRATIVE

On May 12, 2003, Governor James E. McGreevey issued Executive Order No. 59 as the result of his concerns over the existing policies and procedures of State departments, authorities and independent agencies in approving the siting, construction and leasing of billboards on public property. This order imposed a 120-day moratorium on the approval of any permit application, contract, sale or lease for billboards on State owned property or property of any State department, agency or independent authority. The Executive Order also created the Billboard Policy & Procedure Review Task Force and directed the Task Force to undertake a comprehensive review of the existing policies and procedures for the sale, lease, development, construction and siting of all billboards in the State of New Jersey. The Task Force was given 90 days to report its findings to the Governor.

The Task Force solicited input from more than sixty-five State departments, agencies and authorities. The Task Force also solicited written and oral comments from organizations representing the outdoor advertising industry, public interest groups, environmental groups and organizations representing local government entities. The Task Force also worked very closely with the Department of Transportation, the department responsible for the regulation of outdoor advertising for the State.

During the course of the work of the Task Force, it has become apparent that there are some discrepancies regarding the actual number of billboards that exist along New Jersey's roads, but that the number is approximately 14,000. The number of billboards is driven by the advertising market and fluctuates with the economy and the competition among the various advertising medias. The facts show that our State is simply over-saturated with billboards and in

recent years, the number of billboards has grown. Moreover, as individual billboards come down, they are being replaced with even larger billboards that have a greater aesthetic impact on the environment and drivers along New Jersey's roads.

Like Governor McGreevey, the Task Force recognizes the value of a natural setting to enhance the quality of life in New Jersey. Also like Governor McGreevey, the Task Force recognizes the importance of protecting the public trust through good governmental practices to ensure the integrity of the process of awarding public contracts. The Task Force believes that action must be taken to counteract the aesthetic harm billboards impose and that there is a need for a shift of the State's regulatory focus to recover the balance between roadside aesthetics, commercial advertising and freedom of speech.

Accordingly, the Task Force makes the following recommendations to Governor McGreevey:

1. Support legislation adopting a cap for billboard permits on state-controlled property. It is recommended that the number of billboard permits per agency, department or authority be capped at the existing number. It is further recommended that regulations be adopted under this cap program that lead to a reduction, over time, in the total square-footage of billboards on state-controlled property.
2. Support legislation requiring all state agencies, departments and authorities to adopt uniform policies and procedures that prohibit no-bid billboard contracts. Those uniform policies and procedures shall include competitive bidding standards for the sale, lease, development and

construction of billboards on public property. This will protect the public interest by ensuring the integrity of the contract award process.

3. Support legislation which uniformly requires the full disclosure of the identity of all officers, directors, partners, stockholders (with greater than a 10% ownership interest in the company) and entities with any financial interest in billboards.

4. Require that all state agencies, departments and authorities provide notice to local planning and/or zoning boards, and that the public be provided an opportunity to comment at a local planning and/or zoning board hearing prior to the construction of new billboards on state-controlled property.

5. Condition all state permits for billboard siting and construction as follows:

- a. where the billboard is to be erected by any government entity on public property, require the opportunity for public comment and a local planning and/or zoning board hearing, and
- b. where the billboard is to be erected by a private entity or person on public property, require the opportunity for public comment and local planning and/or zoning board approval, and
- c. where the billboard is to be erected by a private entity or person on private property, require the opportunity for public comment and local planning and/or zoning board approval.

6. Require applicants for billboards on public property to obtain a Building Permit and Certificate of Occupancy from the Department of Community Affairs and make issuance of state billboard permits contingent upon receipt of the Building Permit and Certificate of Occupancy.
7. Support legislation changing existing organizational structure for the regulation of billboards by transferring primary responsibility from the New Jersey Department of Transportation to the New Jersey Department of Environmental Protection, if feasible in light of all existing, relevant agreements between the Federal Highway Administration and the New Jersey Department of Transportation.
8. Direct the New Jersey Department of Transportation (or NJDEP as recommended above) not to grant waivers for the issuance of billboard permits on public property unless such waiver is reviewed and allowed by the State House Commission.
9. Require New Jersey Department of Transportation and New Jersey Department of Environmental Protection to make recommendations for additional designations of protected roadways in scenic locations to remain billboard free.
10. Support legislation to eliminate the one-year sunset provision from P.L. 2003, c.124 which imposes a fee of 6% on the gross amounts collected by a retail seller for billboard advertising space, and dedicate the funds collected to the "Highway Beautification Fund," for use by the NJDOT, NJDCA and the NJDEP.

11. Support legislation to repeal P.L. 2001, CHAPTER 438, which law determined that steel outdoor advertising signs and their steel supporting structures are not real property for local property tax purposes. Also support legislation that will clarify that billboards and their supporting structures are taxable as real property. This will provide revenues to local governments that are aesthetically harmed by the presence of billboards within their community.

## II. PROCEDURAL HISTORY

### A. Executive Order No. 59

On May 12, 2003, Governor James E. McGreevey signed Executive Order No. 59 which created the Billboard Policy and Procedure Review Task Force (the "Task Force"), consisting of the Commissioner of Transportation, Commissioner of Community Affairs, Commissioner of Environmental Protection, Chief of the Governor's Authorities Unit and five public members, appointed by the Governor, with experience in land use issues, ethics law, environmental matters and/or public contracting and procurement procedures.

Executive Order No. 59 simultaneously imposed a 120-day moratorium on: (1) the approval of any permits for the design, construction or erection of billboards on state or authority property; and (2) the sale or lease of any existing billboards owned, operated or controlled by a state entity or authority. The Attorney General served as legal counsel to the Task Force.

The Executive Order directed the Task Force to:

1. Review all existing procedures for the siting of billboards on public and private property and to catalog the existing policies and practices of all State departments, agencies and independent authorities regarding the sale, lease, development and construction of billboards in the State of New Jersey (Executive Order No. 59 (McGreevey 2003), ¶¶ 4, 5) (hereafter "EO 59");
2. Evaluate the feasibility of reducing or eliminating new billboard construction (EO 59, ¶ 4); and

3. Issue a report which includes:
  - A. Details on the existing policies and practices of departments, agencies, and authorities (EO 59, ¶¶ 4, 5);
  - B. Recommendations on how those processes and procedures should be changed to ensure the integrity of the siting decisions and associated award of contracts (EO 59, ¶ 5);
  - C. Recommendations for uniform policies and procedures to be put in place for the sale, lease or construction of any billboards in the State of New Jersey. Uniform policies and procedures shall include: (1) notice to local public entities for comment prior to the construction of new billboards; (2) full financial disclosure of all persons or entities with any financial interest in the billboards; and (3) the elimination of no-bid contracts; (4) public notice and opportunity to comment at a public hearing prior to the issuance of any permit for a billboard. (EO 59, ¶¶ 5, 6, 7); and
  - D. Recommendations on whether the existing organizational structure used by the State in regulating and approving the placement of billboards in New Jersey should be altered in order to better accomplish the goals of mitigating the impact of billboards on the environment and of fostering interaction with local zoning and planning agencies (EO 59, ¶ 8).

A copy of Executive Order No. 59 may be found in the Appendix.

**B. The Process**

This report is the culmination of three months of work and study by the Task Force. The Task Force met on six occasions: June 5, June 17, July 11, July 29, August 4 and August 7, 2003. It prepared and submitted two surveys to State departments, agencies, and authorities. It also sought input from, met with and considered the submissions of affected constituencies including the outdoor advertising industry, environmental organizations, public interest organizations and organizations representing the interests of local government.

The initial Task Force survey was sent to more than 65 State departments, agencies, and authorities on June 3, 2003. A follow-up survey was sent to these same entities on June 18, 2003. These surveys were designed to catalog the existing policies and practices of State departments, agencies and independent authorities regarding the sale, lease, development and construction of billboards and to ascertain the number of billboards on agency/authority property. Where appropriate, follow up interviews were conducted with agency/authority staff to obtain clarification of written responses. The Task Force also solicited written comments from organizations representing the outdoor advertising industry, public interest groups, environmental organizations and organizations representing local governmental entities. Written responses were received from the following entities: Outdoor Advertising Association of NJ, Outdoor Advertising Association of America, Scenic America, Common Cause NJ, New Jersey Association of Counties and the New Jersey League of Municipalities. In addition, written responses were received from Interstate Outdoor Advertising, LP and Viacom Outdoor, Inc.

The Task Force conducted hearings on July 29, 2003 and August 4, 2003 at which those entities that submitted written responses to the Task Force were invited to: (1) clarify and/or supplement their submissions in response to the Task Force's request for written comments dated June 19, 2003; and (2) submit any additional recommendations and comments with respect to Governor McGreevey's Executive Order No. 59. Copies of the Task Force's request for written comments dated June 19, 2003 together with all written responses may be found in the Appendix.

The Task Force also worked closely with the Department of Transportation. That agency provided invaluable assistance in obtaining and analyzing information on the permitting and licensing process for all billboards located on public or private property in the State.

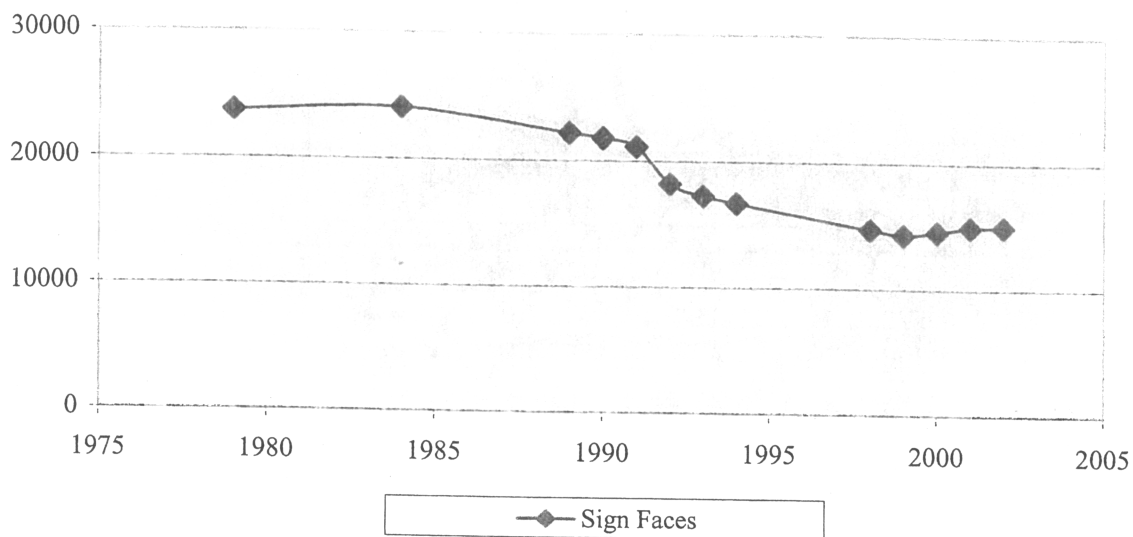
### III. FINDINGS

#### A. Billboards in New Jersey

For decades, our state has grappled with the problems caused by billboard proliferation. According to the Department of Transportation, there are now approximately 14,000 off-premise outdoor advertising signs in New Jersey. Outdoor advertising signs vary in size and location from small, 3 foot by 3 foot "U-PICK-EM" signs in the agricultural communities to the 1,000 square foot electronic billboards on the approaches to New York City. For the purposes of this report alone, all outdoor advertising signs regulated in New Jersey will be referred to as "billboards".

As of the effective date of Executive Order No. 59 (May 12, 2003), a hand count by the Department of Transportation of permit data indicated that 14,551 sign faces were permitted under 8494 permits. Data collected since 1979 indicates that the number of sign faces permitted reached a low of about 13,611 in 1999, and since then has increased approximately 6 % to the present. While the actual number of billboards has remained relatively flat throughout the 1990's, the number of billboards has begun to increase since 1999. Moreover, billboards are increasing in size, thereby exacerbating the impact of billboards in New Jersey. During the course of the work of the Task Force, it became apparent that there are discrepancies regarding the exact number of billboards in New Jersey. The task of gathering precise data was made more challenging due to the limitations of the existing information management systems.

Outdoor Advertising Signs (1979 to 2002)



The majority of billboards are owned by only a few corporations. Approximately seventy-three (73) percent of billboards in New Jersey are owned by only nine (9) private outdoor advertising companies.

### 1. Over-Saturation of Billboards in New Jersey

New Jersey is centered between major outdoor advertising markets. The outdoor advertising industry has a long history of success in New Jersey, and is still the corporate home for some of the largest outdoor advertising firms in the world.

New billboard construction in New Jersey is limited by spacing requirements to the point where only limited available space still exists. Along most roadways in New Jersey (see Figure 1), billboards have already been constructed, in accordance with the

# Outdoor Advertising Locations

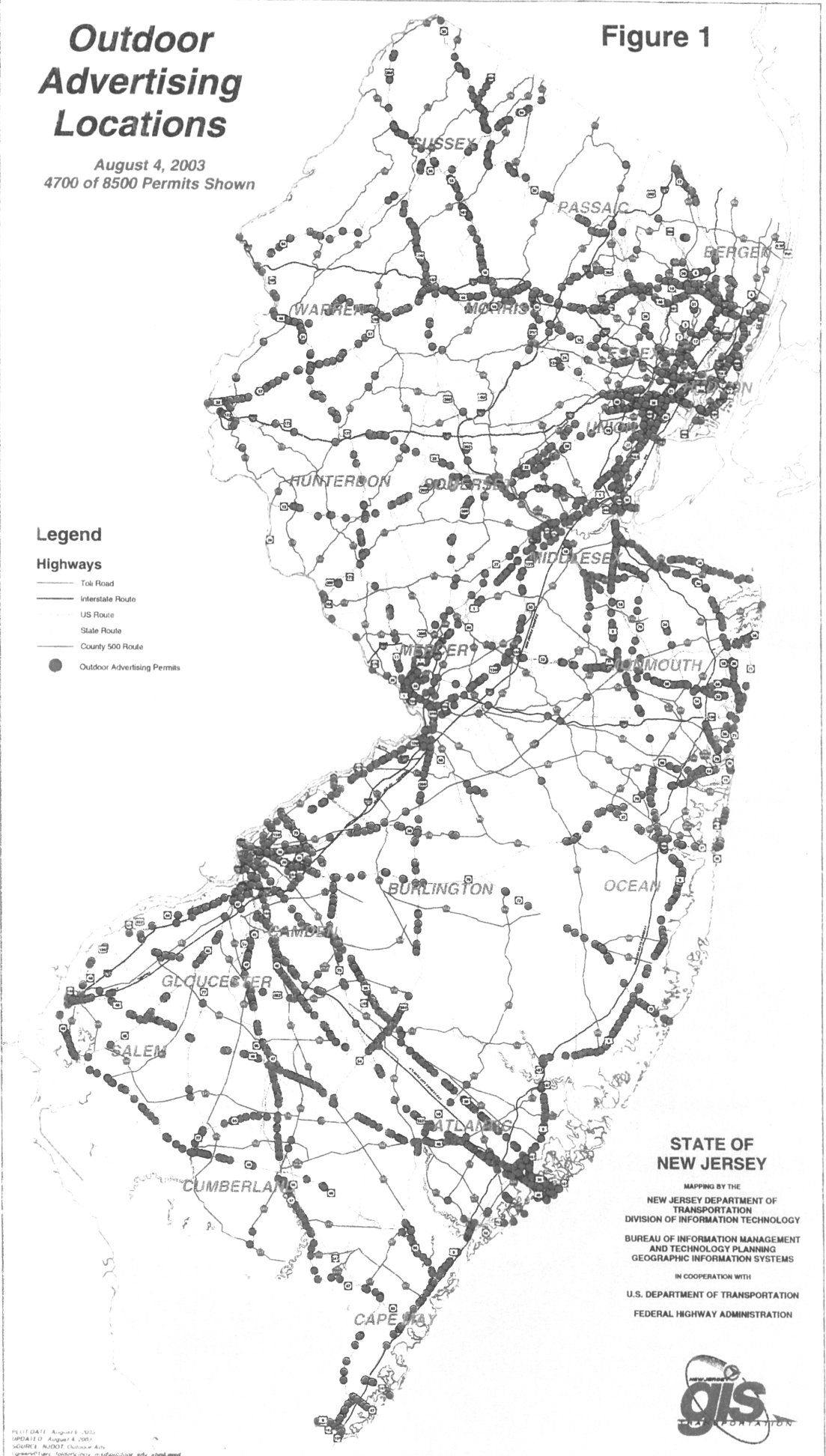
Figure 1

August 4, 2003  
4700 of 8500 Permits Shown

## Legend

### Highways

- Toll Road
- Interstate Route
- US Route
- State Route
- County 500 Route
- Outdoor Advertising Permits



STATE OF NEW JERSEY

MAPPING BY THE  
NEW JERSEY DEPARTMENT OF  
TRANSPORTATION  
DIVISION OF INFORMATION TECHNOLOGY

BUREAU OF INFORMATION MANAGEMENT  
AND TECHNOLOGY PLANNING  
GEOGRAPHIC INFORMATION SYSTEMS

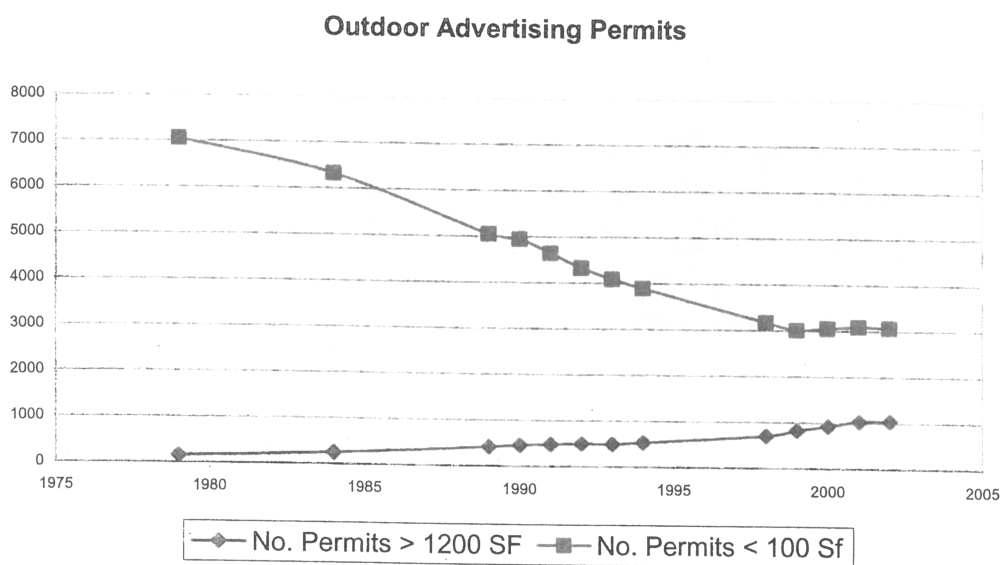
IN COOPERATION WITH  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION



PLOT DATE: August 8, 2003  
UPDATED: August 4, 2003  
SOURCE: NODOT (Outdoor Ads)  
SIGNATURE: hudsoncity.mxd\outdoor\_ads.shp\mxd

regulated spacing requirements. In addition, many local governments throughout New Jersey resist new billboard construction.

The New Jersey Department of Transportation regulates more signs along New Jersey roads than many of its neighboring states, such as Connecticut, Maryland and Delaware. Of the states in our region, only the much larger states, New York and Pennsylvania, have more billboards than New Jersey.



## 2. Increasing Size of Billboards

Of the some 14,000 sign faces permitted in New Jersey today, approximately 8,000 are 100 square feet or greater. While billboards range in size, a substantial number of new billboards are being built in the larger sizes, from 600 to 1,000 square feet. Outdoor Systems, Inc., et al. v. NJDOT, A-308-99T5, Brief of Petitioners/Appellants in Support of Appeal at 6. As depicted in the chart above, the rate of increase of outdoor advertising permits for greater than 1,200 square

feet of advertising at a single location has increased by approximately 47% over the past five (5) years, while permits for smaller sized billboards have decreased over time.

As the average size of new billboards continues to increase, so does their negative impact on the aesthetic environment of New Jersey. The number of large billboards in our state has increased dramatically. This runs counter to the public desire to protect the natural beauty, scenic vistas and open space in our state as articulated by, among other things, the New Jersey Constitution's provisions on open space.

**B. Legal and Regulatory Framework**

State billboard regulation was established as early as 1930. L. 1930, c. 41. The 1930 Act required licensing of all persons who used billboards for outdoor advertising, established a permit requirement for all off-premises signs and established requirements such as minimum setbacks from intersections and the requirement that written permission be obtained from public property owners. Jurisdiction for the program was placed with the then Tax Commissioner.

The distinction between on-premises and off-premises signs is long standing and well established. On-premises signs advertise and support the business or activities on the particular property on which the sign is located; all other signs are considered off-premises signs. Metromedia v. San Diego, 453 U.S. 490, 511-512 (1981); United Advertising v. Borough of Metuchen, 42 N.J. 1, 7 (1964); United Advertising Corp. v. Borough of Raritan, 11 N.J. 144 (1952).

During the 1950's, the State, through the Department of Transportation (NJDOT), participated in federal billboard control programs which were part of federal highway legislation to fund construction of the federal highway system. By 1965, Congress adopted a comprehensive federal billboard control program, known as the "Highway Beautification Act of 1965" ("HBA"). 23 U.S.C. 131 et seq. The HBA authorized States to enter into agreements with the Federal Highway Authority to regulate signs along the federal highway system. In return, the states received federal highway funding. In 1971, New Jersey entered into such an agreement (the "Federal Agreement"). However, neither the Federal Agreement nor the federal highway regulations preempt completely New Jersey's authority over the regulation of signs. New York Outdoor Advertising Co. v. New Jersey Department of Transportation, A-4609-92T5, certif.

denied, 142 N.J. 458 (1995). In addition, neither precludes the State's imposition of more restrictive regulations. 23 C.F.R. 750.706(a). The HBA merely established a floor regarding billboard regulation required to secure federal highway funding.

The Roadside Sign Control And Outdoor Advertising Act

The Roadside Sign Control and Outdoor Advertising Act, ("RSCOAA") N.J.S.A. 27:7-5.5 et seq. was enacted in 1991 and consolidated New Jersey's outdoor advertising statutes. It is now the primary basis for State billboard regulation along all roads and highways in the State. The goals and purposes of the RSCOAA are not dissimilar to the goals of the 1930 billboard control act, though they are more expansive. The RSCOAA states:

In order to balance the promotion of the safety, convenience and enjoyment of travel with the protection of the recreational value and public investment therein, to preserve and enhance the natural scenic beauty and aesthetic features of highways, promoting development and economic vitality and facilitating the flow of speech and expression, of which providing messages of commercial, public and social value conveyed through the medium of roadside signs and outdoor advertising is an important part, roadside signs and outdoor advertising shall be regulated by this act. [N.J.S.A. 27:5-6.]

Thus the statute attempts to balance the promotion of development, economic vitality and the flow of speech with the public's need for vehicular safety, enjoyment of aesthetic features and natural scenery and recreational values.

The RSCOAA assigns to the Commissioner of Transportation the duty to regulate all outdoor signs which are intended to attract, or do attract, the attention of pedestrians or the operators or passengers of motor vehicles using the roads, highways and other public thoroughfares and places. N.J.S.A. 27:5-6(c), 7. It assigns to him the authority to issue permits, license commercial advertisers, and adopt regulations. N.J.S.A. 27:5-6. Generally, with few

exceptions, the RSCOAA requires that permits be issued for all signs and that all signs comply with NJDOT regulations. N.J.S.A. 27:5-9. Permits are valid for one year and the Commissioner must renew all permits, unless they have been revoked for the submission of materially false information in the sign permit application or the permittee has surrendered it. N.J.S.A. 27:5-13c, -14.

According to NJDOT there are currently approximately 8,500 billboard permits for approximately 14,000 sign faces on public and private property. NJDOT's regulations do not mandate specific time periods for processing permit applications. The regulatory requirements for signs on public property are the same as for private property; both require the owner's approval. However, for signs on public property the RSCOAA regulations require express permission of the applicable governing body, which the NJDOT interprets to mean written approval. N.J.A.C. 16:41C-10.2(b)6.

The RSCOAA imposes requirements which are derived from the Federal Agreement. Those requirements apply within a zone extending 660 feet from the edge of the right-of-way along interstate highways and limited access highways. N.J.S.A. 27:5-11(a). It is unusual for a sign to be erected outside the zone of regulations since virtually all signs are ineffective and commercially substandard if they lie beyond this "protected area" because the Federal Agreement also establishes a maximum sign size of 1,000 square feet in most instances, depending on the classification of the highway. See N.J.A.C. 16:41C-8.7(b)4, (c)3, (d)2. Beyond the 660 foot zone and along all other highways other than interstate and limited access highways, only State standards apply. N.J.S.A. 27:5-11(b).

Consistent with the Federal Agreement, the RSCOAA also requires that permits can only be granted in areas zoned for commercial or industrial use. N.J.S.A. 27:5-11a(1)(b), (2)(b), and (3)(a). This requirement initially applied only to federal highways, but now applies to all roads and highways in the State. The highway statute also provides that the NJDOT Commissioner may issue permits for signs on public property when deemed to be in the public interest. The RSCOAA generally establishes public safety requirements for signs, but it does not regulate content.

The RSCOAA recognizes the jurisdiction of other State agencies and municipalities over the construction of signs. It provides that it shall not be construed to limit the powers of those political subdivisions. N.J.S.A. 27:5-23. Thus, under the Municipal Land Use Law, municipalities, not NJDOT, limit the height and setbacks of structures. N.J.S.A. 40:55D-1 et seq. The RSCOAA requires that all outdoor advertising signs erected on NJDOT property be subject to municipal zoning and building permit regulations, and that those outdoor advertising signs in the pinelands area be subject to the provisions of the Comprehensive Management Plan adopted by the Pinelands Commission. This provision is limited to NJDOT property and does not apply to other State agencies or authorities.

### Recently Enacted Legislation

In June 2003, P.L. 2003, c.124 was enacted into law. That law imposes a fee of 6% on the gross amounts collected by a retail seller for billboard advertising space. The fee is imposed directly on the retail seller (i.e. the person contracting with the customer) of the advertising space. This Act took effect on July 1, 2003 and automatically sunsets after one year as it applies only to gross receipts collected through June 30, 2004. In addition:

- This Act defines "billboard" as any outdoor advertising sign permitted pursuant to the "Roadside Sign Control and Outdoor Advertising Act," P.L.1991, c.413 (C.27:5-5 et seq.). The Roadside Sign Control and Outdoor Advertising Act defines "sign" as any outdoor display or advertising on real property within public view which is intended to attract, or which does attract, the attention of pedestrians or the operators, attendants, or passengers of motor vehicles using the roads, highways and other public thoroughfares and places, and shall include any writing, printing, painting, display, emblem, drawing, sign, or other device whether placed on the ground, rock, trees, tree stumps or other natural structures, or on a building, structure, signboard, billboard, wallboard, roofboard, frame, support, fence, or elsewhere, and any lighting or other accessories used in conjunction therewith. N.J.S.A. 27:5-7.
- This legislation defines "gross amounts collected by a retail seller for billboard advertising space" to include amounts collected from contracts that involve placing advertising on billboards located in this State regardless of the location of the advertiser. However, such gross amounts do not include fees received by an advertising agency that is not a related party of the retail seller and that are not received by the retail seller.
- The fees will be reported and paid on a quarterly basis and the first return will be due October 15, 2003, for the period of July 1 to September 30.

C. Existing Policies and Procedures for the Siting of Billboards on Public Property

The Task Force surveyed more than 65 State departments, agencies and instrumentalities on their policies and practices regarding billboards. The Task Force asked agencies to disclose whether the agency regulates the siting or construction of billboards, whether the agency had written policies on such siting or construction and whether the agency had written policies regarding the sale or lease of public property for the construction of billboards. Agencies were also asked whether any outdoor advertising signs were located on their property, how much revenue the agency realized on an annualized basis, and what process was used to award contracts or lease property for siting billboards.

As might be expected, the majority of the respondents have no involvement with billboards, either in a regulatory or proprietary capacity. They neither regulate the siting or construction of billboards on public or private land, nor do they have written policies or procedures on such siting or construction. Most agencies do not own, operate or have billboards located on their property. Therefore, they do not have policies or procedures on the award of contracts or leases for billboards. A chart containing the relevant data is found in the Appendix.

A significant number of agencies, however, do regulate the siting or construction of billboards (11) or do have outdoor advertising on public property (14). The agencies that regulate do so as part of longstanding, comprehensive statutory programs governing the siting or construction of billboards. For example, DOT regulates the siting of billboards as part of the Roadside Sign Control and Outdoor Advertising Act. The Pinelands Commission sets standards for development and use of land under the Pinelands Protection Act. The New Jersey Meadowlands Commission exercises zoning powers in the Hackensack Meadowlands Region

under the Hackensack Meadowlands Reclamation and Development Act. And the Department of Community Affairs and local code officials regulate the construction of billboards as part of their enforcement responsibilities under the Uniform Construction Code.

Those agencies that allow outdoor advertising on the property are primarily regional or transportation related agencies, and, billboards account for a substantial amount of money on an annualized basis ranging from a low of \$700 for the North Jersey District Water Supply Commission to \$1.3 million for New Jersey Transit and the South Jersey Transportation Authority. A few of the agencies with billboards located on their property "inherited" those billboards as a result of acquisition of land for transportation, watershed or park purposes. They do not have a policy or practice of leasing land or contracting for outdoor advertising.

Those agencies and authorities which do regulate billboards utilize a wide range of policies and procedures as set forth below:

CAMDEN ECONOMIC RECOVERY BOARD

The City of Camden regulates the siting and construction of billboards through the exercise of its zoning powers under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and its general police powers under N.J.S.A. 40:48-1 and -2. Pursuant to this authority, the City has prescribed various requirements with regard to the siting and construction of billboards within the City. These requirements are set forth in the City's municipal code.

The City of Camden is presently subject to the provisions of the Municipal Rehabilitation and Economic Recovery Act. N.J.S.A. 52:27BBB-1 et seq. Pursuant to that Act, a chief operating officer has been appointed by the Governor. Upon appointment, the chief operating

officer is authorized under the Act to exercise all of the functions, powers and duties normally exercised by the mayor. Further, the Act specifically authorizes the chief operating officer to propose ordinances, rules and policies for the proper conduct of the municipality's affairs and also to veto the minutes of various municipal entities including the municipal planning board and board of adjustment.

DELAWARE RIVER and BAY AUTHORITY

The Delaware River and Bay Authority is a bi-state agency created by compact between the states of New Jersey and Delaware. Its primary purpose is to

“[advance] the economic growth and development of those areas in both states which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas.”  
N.J.S.A. 32:11E-1.

The DRBA is responsible for the planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the two states across the Delaware River, together with approaches and connections necessary between such crossings. N.J.S.A. 32:11E-1 (Article IV(a)). The DRBA is also responsible for the planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which facility is required for the sound economic development of the area. N.J.S.A. 32:11E-1 (Article IV(b)). It is further responsible for the planning, financing, development, construction, purchase, lease, maintenance,

improvement and operation of any commercial facility or development within this same geographic area. N.J.S.A. 32:11E-1 (Article IV(c)). Among other facilities and development, the DRBA is responsible for operation of the Delaware Memorial Bridge connecting New Jersey to Delaware at the southern terminus of the New Jersey Turnpike and I-295 at the Delaware River in Salem County.

The planning, development, construction and operation of any project, other than a crossing, must comply with all environmental laws of each of the states and the DRBA cannot approve a project without first holding a public hearing. N.J.S.A. 32:11E-1 (Article XXII); -1.1. The DRBA is empowered to cooperate with each of the States, any political subdivision thereof, and with any municipality, local government, agency, public authority or commission in the planning, development, placement or construction of any project other than a crossing. N.J.S.A. 32:11E-1 (Article XVII). The DRBA's authorizing statute does not expressly address its role or responsibility in the approval or siting of billboards and no regulations have been found governing same. However, the definition of "commerce facility or development" includes facilities and structures adapted for public use or having a public purpose and "any other facility or activity designed, directly or indirectly, to promote business or commerce which, in the judgment of the authority, is required for the sound economic development of the area." N.J.S.A. 32:11E-1 (Article II). This broad definition, together with the DRBA's authority to review "any project" would seem to encompass the review and approval of billboards on the lands under the jurisdiction of the DRBA.

The DRBA does not have regulations governing the review and approval of billboards on agency property and apparently does not utilize any pre-determined process to award the right to

locate outdoor advertising on its property. See Letter Response of Brad E. Hopkins, DRBA CFO, dated June 19, 2003, to Billboard Policy and Procedure State Agency Follow Up Survey Form. The DRBA policy holds that outdoor advertising signs in the vicinity of river crossings is a safety concern to the traveling public. Id. The DRBA has, as a result, publicly opposed the placement of billboards in the vicinity of the Delaware Memorial Bridge. Id. The DRBA reports that there are four billboards developed in the vicinity of the Bridge where no Authority approvals were necessary. Id. As a result of leasing the New Castle Airport from New Castle County, Delaware, the DRBA assumed a number of leases involving billboards situated on the land. Id. DRBA reports that there are three billboards on the airport property which produce annual revenue in the amount of \$13,800 following the conversion of the existing lease from in-kind compensation to monetary compensation. Id. With the exception of these leases, DRBA reports that it has no history of awarding outdoor advertising on its property and has not been required to manage the award of a right to locate billboards on agency property. Id. In this one instance of approval of the billboard compensation, the DRBA acted by resolution of the full Authority. Id.

#### DELAWARE RIVER PORT AUTHORITY

The Delaware River Port Authority (DRPA) is a bi-state agency created by compact between the States of New Jersey and Pennsylvania. N.J.S.A. 32:3-1 et seq. It is a regional transportation and economic development agency serving the people of southeastern Pennsylvania and southern New Jersey.

The primary purposes of DRPA are to operate and maintain the bridges owned jointly by the two States across the Delaware River between the city of Philadelphia and city of Camden. DRPA is also authorized to construct, operate and maintain railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by DRPA. It is authorized to improve and develop the port district for port purposes by or through the acquisition, construction, maintenance or operation of any project, and may cooperate with other bodies interested in the promotion, development or use of the Delaware River and the port district. DRPA may construct and maintain other bridges and tunnels across or under the Delaware River between the city of Philadelphia and New Jersey. It may promote increased passenger and freight commerce on the Delaware River, make recommendations for the improvement of terminal warehouse and other facilities necessary to promote commerce on the Delaware River. Finally, DRPA may establish and operate a rapid transit system and perform such other functions as may be of mutual benefit to New Jersey and Pennsylvania as concerns the promotion and development of the port district for port purposes. N.J.S.A. 32:3-2.

Consistent with its authority, DRPA owns and operates the Benjamin Franklin, Walt Whitman, Commodore Barry, and Betsy Ross bridges. Through a subsidiary, the Port Authority Transit Corporation, DRPA runs the PATCO speed line. It also owns the River Link Ferry, the Philadelphia Cruise Terminal at Pier 1, and the AmeriPort Intermodal Rail Center.

The DRPA currently has 10 billboard sign faces located on DRPA property. The revenue realized by DRPA from these billboards in the past year was \$288,000. These contracts were apparently awarded on the basis of negotiation. DRPA is currently involved in litigation seeking to determine the enforceability of certain disputed agreements related to billboards. One issue in

that case is whether DRPA procedures set forth in its by-laws were followed. Another issue concerns the process by which those billboard contracts were negotiated, awarded and executed.

We have been advised that at the present time, DRPA does not intend to enter into new agreements relating to billboards. If, DRPA does decide to enter into new agreements for the placement of billboards on DRPA property at some time in the future, DRPA intends to develop formal, written policies to govern the award and management of such contracts.

#### DEPARTMENT OF COMMUNITY AFFAIRS

The Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., governs the construction of all buildings and structures in the State of New Jersey. Pursuant to the Act, and more specifically N.J.S.A. 52:27D-123, the Commissioner of the Department of Community Affairs is directed to adopt a State Uniform Construction Code for the purpose of regulating the structural design, construction, maintenance and use of buildings and structures to be erected in the State. The Commissioner has adopted such a Code as well as regulations with regard to its implementation and enforcement. N.J.A.C. 5:23-1.1 et seq.

Billboards are subject to the requirements of the New Jersey Uniform Construction Code because they constitute "structures" under the Act and the regulations promulgated pursuant thereto. As a consequence, a construction permit must be secured from the appropriate code enforcement official before construction of a billboard can begin. Further, as with any other building or structure being constructed pursuant to a construction permit, inspections are required and performed during the construction of a billboard. Finally, even though billboards are not "occupied", a certificate of occupancy must be issued pursuant to the Code, indicating

that the billboard has been constructed or erected in compliance with all applicable construction code requirements, before the billboard can be placed into service.

Generally, the issuance of construction permits, the performance of inspections, and the issuance of certificates of occupancy with regard to billboards are administered by the construction code department of the municipality in which the billboard is located. The exception to this rule is when a billboard is owned or constructed by a department, division, bureau, council, authority or other agency of the State in which case the requirements of the Code with regard to the billboard would be administered and enforced by the Department of Community Affairs. See N.J.S.A. 2:27D-129(a).

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Department of Environmental Protection (the "Department") is one of the principal departments in the Executive Branch of government and was established to promote protection of the environment and prevent pollution of the environment of the State. N.J.S.A. 13:1D-9. The Division of Parks and Forestry is a Division within the Department. N.J.S.A. 13:1B-15.100. The Legislature provides the Division of Parks and Forestry with the power to "acquire, plan, design, construct, operate and maintain State parks and forests." N.J.S.A. 13:1L-4. State parks and forests include "all State owned or leased lands, waters and facilities administered by the Department of Environmental Protection, including . . . forests, recreational areas, marinas, . . . and natural areas, but not including wildlife management areas or reservoir areas." N.J.S.A. 13:1L-3.

The Division of Parks and Forestry is entitled to grant privileges to individuals or corporations to maintain any facility or device on State park lands which the Department shall find is "necessary and proper" for the public's use and enjoyment. N.J.S.A. 13:1L-6a. By regulation the Department has provided that "[a] person shall not post signs . . . on State Park Service property without . . . written permission . . . ." N.J.A.C. 7:2-2.4. An individual must receive a permit or enter into a lease with the Department before engaging in any kind of commercial activity on State Park lands. N.J.A.C. 7:2-2.5.

The Division of Parks and Forestry's policy concerning billboards has been to honor current billboard leases existing at the time the State acquires the property. However, the Division requires the removal of the billboard when the lease expires.<sup>1</sup> The Division of Parks and Forestry has been successful in removing at least ten (10) billboards from the Department's property. There are currently six (6) known billboards on lands managed by the Division of Parks and Forestry. One is the subject of a dispute in Superior Court concerning whether the former owner retained certain rights in the property which include the ability to locate billboards on the property. Of the remaining five billboards, four are under review by the Department for removal. An enforcement letter has been sent out for removal of one of the billboards and removal of another one is the topic of negotiations with the billboard owner.

The Division has currently approved only one of six billboards located on its property. The approved billboard is located at Brendan T. Byrne State Forest and it is a no-fee sign used for non-profit purposes.

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\* Billboards located upon Department property may also be regulated by the New Jersey Department of Transportation.

The Division of Fish and Wildlife ("Fish and Wildlife") is also a Division under the supervision of the Department. N.J.S.A. 13:1D-4. The Legislature provides that when the Commissioner finds that it is in the best interest of the State, he has the power to sell, lease or exchange lands owned by the State and held by Fish and Wildlife. N.J.S.A. 23:8A-1.

There are currently fifteen (15) billboards located on property managed by Fish and Wildlife. One of the billboards has been abandoned. The Commissioner's office sent out letters to four of the billboard owners in May 2003 to remove the billboards. Fish and Wildlife has been attempting to remove two of the billboards since the mid 1990s without success. No enforcement action has been taken on the removal of the remaining eight billboards.

#### NEW JERSEY MEADOWLANDS COMMISSION

The Legislature created the New Jersey Meadowlands Commission ("the Commission") to coordinate the orderly and comprehensive development of approximately 21,000 acres of land spanning parts of 14 municipalities in Hudson and Bergen Counties. N.J.S.A. 13:17-1. To assure coordinated development of the District, the Legislature gave the Commission extensive powers designed to transcend municipal and county boundaries and powers. N.J.S.A. 13:17-6(i). To further this legislative goal for coordinated regional development, the Commission prepared and adopted a Master Plan<sup>2</sup>, embodied in the official zoning map. The zoning map denotes some areas for development (i.e., island residential, highway commercial, light industrial A and B zones) and other areas for limited development (i.e., marshland preservation zone). N.J.S.A.

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\* The Commission is currently in the process of adopting a new, comprehensive master plan which will change the focus of planning and development in the District from the current master plan.

13:17-6(i); N.J.S.A. 13:17-9; N.J.A.C. 19:4-1.4; N.J.A.C. 19:4-3.1. The Legislature directed that the Master Plan must contain provisions and criteria for the location and use of buildings, structures and facilities (N.J.S.A. 13:17-11) and land for solid waste disposal, N.J.S.A. 13:17-10 and may include provisions for a host of other matters such as sewerage, water supply, housing standards, transportation, distribution of population density, etc. N.J.S.A. 13:17-11(a)1-11. The Master Plan may also contain codes and standards covering land use, comprehensive zoning, subdivisions, building construction and design and the control of water and air pollution and solid waste disposal. N.J.S.A. 13:17-11(b).

The Legislature further directed that no building or structure may be constructed or altered in the District without a permit from the Commission. N.J.S.A. 13:17-12(a). A municipality that seeks to spend public funds on a specific project, moreover, must refer action involving the project to the Commission for review and approval. N.J.S.A. 13:17-12(b). Thus, a developer cannot proceed with development in the District without first obtaining a zoning certificate from the NJMC. See N.J.A.C. 19:4-4.133. The zoning certificate is required for “[t]he construction, moving, remodeling or reconstruction of any structure or addition thereto” and must be obtained prior to commencement of these activities. N.J.A.C. 19:4-4.133(a)1. In addition, a developer must receive NJMC approval prior to varying from a “use” permitted in a particular zone or the “bulk requirements” of structures. N.J.A.C. 19:4-4.142. Bulk requirements means standards that control the height, density, intensity and location of structures. The Commission must hold a public hearing on use and special exceptions and they may waive bulk variances prior to issuing a decision. N.J.A.C. 19:4-4.142(e).

As with any development or construction in the District, an applicant for placement and construction of a billboard must apply to the Commission for a zoning certificate. The application for a billboard is governed by design standards set forth in the Commission's zoning regulations for signs, N.J.A.C. 19:4-6.18(j). This provision states in part:

No sign, unless exempt . . . shall hereafter be constructed, erected, moved, remodeled, or expanded until a zoning certificate for such sign, indicating compliance with these regulations, has been obtained, or unless it is part of an approved implementation plan. No zoning certificate shall be issued unless the sign complies with the following [design standards].

The design standards include limitations on sign function (type of sign such as advertising, identification, business, construction, etc.); sign type (ground, awning, pole, projecting, etc.); and height, width, lighting, size of sign area and other related criteria. N.J.A.C. 19:4-6.18(j)1 through 5.

An applicant seeking approval of a billboard is required to file an application with the Office of Chief Engineer together with surveys, site plans and all other documentation required for review of the construction and placement of the particular sign. N.J.A.C. 19:4-4.134. The application is reviewed under the applicable regulatory standards as cited above. If the application meets these requirements, a zoning certificate is issued. N.J.A.C. 19:4-4.135.

If an applicant cannot meet all the zoning requirements, a variance can be requested. Generally, an applicant for a variance must establish that the characteristics of the property prevent compliance with the regulations and that hardship would result if the particular requirements are applied to the property or project. N.J.A.C. 19:4-4.142. As noted above, the Commission conducts a public hearing to consider the variance request.

Once either a zoning certificate or a variance is issued, an applicant for a billboard (as for all other construction) would prepare detailed construction drawings for submission to the municipal construction official ("CO")<sup>3</sup>. The CO forwards the plans to the Commission's Office of Chief Engineer for review and approval. Once the plans are approved, the Chief Plan Examiner issues a certificate of compliance. Upon receipt of a copy of the certificate of compliance, the CO issues a construction permit. The CO conducts inspections during construction and ensures that the applicant adheres to all sub-code requirements. Upon completion of the construction, the Commission's staff (engineers, planners and code officials) conducts a final inspection and issues a certificate of completion.

The Commission presently owns one billboard which was situated on property acquired in Secaucus. The property was acquired for wetlands mitigation. The Commission has removed the billboard.

#### SPORTS AND EXPOSITION AUTHORITY

The New Jersey Sport and Exposition Authority (SEA) was created in 1971 as a public body, corporate and politic in the Department of Community Affairs headed by a board of three (3) governmental and eleven (11) private sector members N.J.S.A. 5:10-1 et seq. Its purpose was to bring about the construction, operation and maintenance of a sports complex in the Hackensack Meadowlands consisting of one or more stadiums, arenas, playing fields, a race

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\*The procedures for issuance of a certificate of compliance and a construction permit are found in N.J.A.C. 19:6-1 et seq., the Commission building code. These procedures are available on the Commission website at: <http://www.meadowlands.state.nj.us/lup/lup-const-plan.html>.

track, and other structures and facilities suitable for holding sporting events, trade shows and other expositions or public meetings. The SEA's mission has been expanded over the years to include additional projects such as Monmouth Park Racetrack, the new and the historic Atlantic City Convention Centers, and a convention center in Wildwood.

The SEA is given broad powers to manage and promote these many projects. It is specifically authorized to enter into any contract or lease for the use or occupancy of its projects or any part thereof which are necessary or incidental to the performance of its duties.

Pursuant to its authority the SEA issued a request for proposal in 1996 and entered a six year agreement in 1998 with Interstate Developers, LLC (Interstate) designed to lease a portion of the Meadowlands Sports Complex property for Interstate to erect and maintain not more than six (6) double-faced outdoor advertising billboard structures. These six billboards could be erected only when authorized by SEA. The contract provides for an optional extension of the contract for an additional four-year term.

Under the agreement SEA is responsible for the out-of-pocket expenses related to the erection of the billboards. Such signs would not be erected, however until such time as contracts for the sale of advertising on such billboards had been executed, and the SEA retained authority to approve the proposed copy of any advertisement. Revenues from the advertisements were payable to the SEA and apportioned on the basis of 75% to SEA and 25% to Interstate, after the costs of erection were deducted by SEA.

Interstate is required to obtain and maintain all required governmental permits, approvals and licenses, and to comply with all federal, state and local laws, including Department of Transportation regulations, relating to the erection and operation of billboards.

The contract was amended in 1999 to allow Interstate, at its own risk, to erect billboards prior to the execution of contracts for the sale of advertising on those billboards. The obligation of SEA to pay the out-of-pocket costs of erection of such billboards was made contingent upon the prior execution of advertising contracts for the billboards.

The contract was amended again in 2000 to extend the term until May 2014 in exchange for a one-time payment to SEA of \$3.2 million.

#### NEW JERSEY TRANSIT

Since 1982, NJ Transit has contracted for the services of a firm to act as an intermediary between NJ Transit and the advertising industry to manage its multi-faceted advertising program. Pursuant to that contract (Advertising Contract), NJ Transit allows the placement of advertisements on its bus, rail, and light rail equipment, at its rail stations and other transit facilities. It also permits the design, development, construction, and management of various types of advertising signs, structures, billboards, and displays in its rail rights-of-way as well as at terminals, buildings, bridges, and other transit facilities.

There are 509 sign faces on NJ Transit property under 269 license agreements issued by NJ Transit's advertising contractor, Viacom Outdoor, Inc. Under the terms of these license agreements, the billboard owner receives 70% of the gross advertising revenues from the signboard. Viacom Outdoor receives 30% of gross advertising revenues and NJ Transit receives 65% of Viacom's 30% share. In addition, Viacom Outdoor sells painted advertising space on 54 faces of 30 NJ Transit railroad trestle bridges.

In summary, on NJ TRANSIT property there are:

- 71 Painted Bulletins (14'x48') generating approximately \$969,000 in annual net revenues to NJ Transit;
- 186 Poster Panels (12'x25') generating approximately \$112,000 in annual net revenues;
- 198 Junior Panels (6'x12') generating approximately \$37,000 in annual net revenues; and
- 54 faces on 30 railroad trestle bridge spaces generating approximately \$220,000 in annual net revenues.

Combined, NJ Transit earns in excess of \$1.3 million from outdoor advertising.

The current contract was awarded following a competitive Price and Other Factors Request for Proposal to award a global advertising contract, granting the successful contractor the exclusive right and privilege to sell NJ Transit advertising space, including external and internal bus and rail advertising and rail station platform posters. In addition, the global contractor was awarded the right to manage the licensing of existing billboards and the development of new billboards. Billboard prospectors/developers apply to the advertising contractor on a first-come, first-serve basis for permission to locate on the property and bear all risk for obtaining necessary State and local permits and approvals. Site licenses have a standard compensation clause requiring a minimum base rent against 30% of advertising revenues, whichever is greater.

NJ Transit grants the exclusive right to its contractor (with certain minor exceptions) to develop, place, sell, and maintain the various types of advertising media on NJ

Transit property and facilities. In consideration for this right, the contractor pays to NJ Transit the greater of the minimum annual guarantee bid for the contract year (in 2001, this was \$7 million) or the percentage share of its net revenues (65%) specified in the contract. Net revenues are defined as gross revenues invoiced by the contractor minus a deduction for advertising agency commissions as well as several other specified deductions.

NJ Transit's advertising contractor has been Transportation Displays, Inc. (TDI) since 1982.<sup>4</sup> TDI had the same relationship with Conrail, from whom NJ Transit acquired its railroad properties, and the predecessor railroads for many decades before that time. NJ Transit staff advises that they believe that TDI or its predecessors had a similar relationship with the predecessor of NJT Bus Operations. From 1982 until 1997, TDI held the contract with NJ Transit on a sole source basis. In 1997, it won a new contract after a competitive, negotiated procurement and that contract (with several extensions) remains in place today. It is currently slated to expire in August 2003.

The existing contract with TDI/Viacom provides that TDI shall comply with all federal, state, and local laws, ordinances and regulations and that it shall be responsible for acquiring all "necessary" licenses, certificates, permits, and authorizations. The scope of services attached to the contract provides that proposed new locations for advertising must be approved in writing by NJ Transit's real estate department and, if the location is within close proximity to the railroad, by NJT Rail Operations, as well. TDI must supply to NJ Transit for approval the plans and specifications for all new advertising structures.

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<sup>4</sup> Several years ago, TDI was purchased by a company which is now a subsidiary of Viacom Outdoor, Inc.

After TDI has located a billboard company that wishes to erect a new billboard on NJ Transit property and TDI has received the necessary approvals from NJ Transit as provided in the contract, TDI executes an outdoor advertising license with the billboard company. This one-year license (terminable on 30 days notice) permits the licensee to construct, maintain, and use for advertising purposes a billboard structure of specific dimension to be constructed at a specific location on NJ Transit property. Among other requirements, the license provides that the advertising structure shall be satisfactory to NJ Transit and shall comply with all federal, state, municipal, and other governmental requirements. The billboard licensee also agrees to obtain all permits at its own expense. It appears that NJ Transit relied on TDI/Viacom in conjunction with the billboard developers to deal with local zoning and building approvals. We have been advised that there is little or nothing in NJ Transit's files that indicates whether such approvals were obtained and that NJ Transit, and its predecessor railroads, previously took a "hands off" approach to this issue.

While the existing contract with TDI/Viacom as well as the TDI license with the billboard companies do not specify whether municipalities have a formal role in the billboard approval process or whether the construction of such structures is subject only to State review and control, NJ Transit's new advertising RFP and the draft scope of services sets out a precise procedure for the review, approval, and permitting of new billboards. This procedure squarely addresses the issue of local involvement by making explicit that new billboards are not subject to municipal approval but will be treated in a fashion similar to NJ Transit's own capital projects.

The proposed procedure sets out a multi-stage review and approval process that provides the municipalities with only a consultative role. After the advertising contractor submits a

written request to NJ Transit containing certain minimal information about a proposed billboard, the contractor will submit to NJ Transit preliminary engineering drawings prepared by the billboard company's licensed engineer showing the initial design of the new board. After NJ Transit gives its sign-off, the contractor would submit an application to NJDOT for an outdoor advertising permit and concurrently submit to the involved municipality the preliminary engineering plans. This letter submission will be done for informational purposes and the municipality will be advised that the Department of Community Affairs (DCA) will review the billboard design. The contractor will next provide NJ Transit with a summary of the steps taken by it and the billboard company to address local concerns and also indicate any "tangible benefits" offered to the municipality as part of this consultative process.

Following completion of final design plans, the contractor will prepare the necessary DCA permit application and forward it to NJ Transit for transmission to the DCA. Prior to the billboard being constructed, the contractor will notify NJ Transit and the local officials, and NJ Transit will coordinate with the DCA for the necessary construction inspections. As to existing billboards, if the licensee wishes to modify, rehabilitate, or reconstruct the foundation or other structural elements of the board, the same review, consultation, and approval process will be followed.

Last December, NJ Transit issued to TDI/Viacom instructions to implement essentially this procedure as part of the existing contract for all new billboard applications. We have been advised that no requests for new boards have been processed since that time and, therefore, the new procedure has yet to be implemented under the existing contract.

NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION

The Legislature has divided the State into two water supply districts, North Jersey and South Jersey. N.J.S.A. 58:5-1. North Jersey includes the counties of Sussex, Warren, Hunterdon, Passaic, Morris, Monmouth, Somerset, Bergen, Hudson, Essex, Union and Middlesex. N.J.S.A. 58:5-1. The commission that oversees water supply for North Jersey is known as the North Jersey District Water Supply Commission (the "Commission"). N.J.S.A. 58:5-5.

The Commission formulates plans for municipalities to receive water supply, prepares an estimate of the cost of the water, and enters into contracts with the municipalities for payment of the acquisition and operation of water supply. N.J.S.A. 58:5-12. The Legislature provides the Commission with the authority to acquire property by purchase or condemnation to construct reservoirs, pipe lines, buildings and other structures which are necessary to fulfill the Commission's purpose, and the Commission owns land throughout northern New Jersey. N.J.S.A. 58:5-16.

The Commission's authorizing statute does not expressly address the Commission's responsibilities with respect to billboards and there are no regulations addressing the Commission's authority to regulate billboards. The Commission confirms that it does not currently have any written policies, procedures or regulations concerning billboards on its property. The Commission currently has one single-sided billboard on its property. The lease agreement for the property upon which the billboard is located was executed in 1950 and revised in 1993. The annual rental amount for the property is \$700.00.

PINELANDS COMMISSION

The Pinelands Commission was created by the Legislature in 1979 to implement the directive in the National Parks and Recreation Act of 1978 that a planning entity be established to prepare a comprehensive management plan (CMP) for the area designated as the "Pinelands National Reserve." The Commission established by the Pinelands Protection Act (Act) was charged with developing a comprehensive plan containing minimum standards for county and municipal master plans and zoning ordinances for the development and use of land in the pinelands area. N.J.S.A. 13:18A-1. The Legislature found that the pinelands area comprises forests and wetlands which contain a variety of resources, including scenic resources, which should be preserved, and this preservation is threatened by pressures for residential, commercial and industrial development. Further, certain areas (designated the "preservation area") of the pinelands are particularly sensitive to degradation and so must be governed by more stringent restrictions on the development and use of land. N.J.S.A. 13:18A-2.

The Act provides that the CMP is to prohibit any development or construction in the preservation area which is incompatible with preservation of this unique area, and that within the remainder of the pinelands the CMP should "encourage appropriate patterns of compatible residential, commercial and industrial development, in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the pinelands environment from the individual and cumulative adverse impacts thereof." N.J.S.A. 13:18A-9.

The CMP, as adopted, contains "Minimum Standards" in Subsection 6. Part X of that subsection is devoted to minimum standards for protection of scenic resources. This section contains specific regulations relating to signs. N.J.A.C. 7:50-6.106 provides:

Each municipality shall adopt provisions governing signs in its municipal master plan and ordinances. N.J.A.C. 7:50-6.107 contains provisions which must be included in all municipalities; N.J.A.C. 7:50-6.108 contains mandatory provisions for municipalities in the Preservation Area District and Special Agricultural Production Areas; and N.J.A.C. 7:50-6.109 contains suggested guidelines for additional sign provisions for other areas of the Pinelands.

The regulations go on to prohibit moving signs or signs with flashing lights (except for warning or safety signs), to limit outdoor off-site commercial advertising signs to certain management areas, and to set maximum numbers and sizes for such signs.

Existing signs (i.e., in existence as of January 14, 1981) in Regional Growth Areas, Pinelands Towns and certain signs in existence as of December 5, 1994 within 1000 feet of Regional Growth Areas and Pineland Towns, may continue. Existing signs that did not satisfy these conditions were to be removed.

Within the Preservation Area and Special Agricultural Production Area, no "billboard" type signs are allowed. On-site advertising signs are strictly limited and may not exceed 20 square feet or exceed 15 feet in height from ground level. Similar guidelines apply to signs within other pinelands management areas. The only allowance the CMP makes for billboards not in existence when the CMP was adopted is as follows:

New off-site commercial advertising signs may be permitted by certified municipalities in Regional Growth Areas and Pinelands Towns provided that the applicant can demonstrate that for each new sign an existing lawful off-site commercial advertising sign

has been removed by the applicant pursuant to N.J.A.C. 7:50-6.107(d). [N.J.A.C. 7:50-6.109(a)9.]

In short, the policy is that there shall be no new billboards in the pinelands other than billboards replacing billboards that pre-existed the CMP. The provision quoted above also allows room for municipalities to further limit billboards within pinelands areas by making the allowance of new signs merely permissive.

#### SOUTH JERSEY TRANSPORTATION AUTHORITY

The SJTA has permits for 50 existing sign faces on 26 existing signs in the right of way of the Atlantic City Expressway (ACE). The ACE is the principal route connecting Philadelphia to Atlantic City. SJTA also holds an additional 15 permits for signs along the Atlantic City-Brigantine Connector. To date, these signs have not been constructed.

SJTA initially hired Transportation Displays Inc. (TDI) as its agent in billboard matters; but now manages its own billboard program. SJTA negotiates leases with individual outdoor advertising companies for specific locations on SJTA right of way for billboard use. There is no bidding or requests for proposals. Leases are approved by the SJTA governing board. The outdoor advertising companies erect own and maintain the billboards and make rental payments to SJTA. These leases generated \$1,395,478.44 in rent 2002 (i.e. \$27,909.56 each).

One of SJTA's standing Committees adopted a formal Policy Statement on Billboards to consider new requests for billboard locations on an individual basis with public notice and/or direct contact with the municipality. It would place the burden on the applicant to show that the benefits outweigh any detrimental impact on the visual environment, and that SJTA or its agent shall comply with all federal, state, municipal and governmental requirements, including land

use regulations. The Policy has not yet been formally considered or adopted by SJTA's governing board.

SOUTH JERSEY PORT CORPORATION

The South Jersey Port Corporation (SJPC) has 10 sign faces on 3 sign structures located on its property in Camden NJ. SJPC does not regulate the siting or construction of billboards; nor does it have written policies, procedures or regulations concerning the siting, permitting or construction of billboards. SJPC does not have written policies and procedures governing the sale or lease of billboard locations. Instead, if they receive a proposal from outdoor advertising companies, and if the proposal is satisfactory, it is then approved by the SJPC Board. In this case, Revere contacted SJPC in 1998 with its proposal to "lease" 3 billboard sites from SJPC; and that proposal was accepted.

All sign structures are owned by Clear Channel Communication, successor to Revere. No lease was provided; and it is unclear whether any property was actually conveyed or whether the structures are permitted by contract or by license. The billboards are permitted for a 6-year term beginning in August 1998, and ending in August 2004. Clear Channel currently pays SJPC a total of \$8,500 per year for these locations. The rate was initially set at \$750 per sign face. It escalated to \$850 per sign face. Two sign faces are 14' x 48'. One of these is made available to SJPC for the entire term of the agreement.

NEW JERSEY DEPARTMENT OF TRANSPORTATION

The New Jersey Department of Transportation (NJDOT) is authorized by the Roadside Sign Control and Outdoor Advertising Act, N.J.S.A. 27:5-12 et seq. to regulate the siting and construction of all signs in New Jersey, both on public and private property. Its regulations are published at N.J.A.C. 16:41C-1.1 et seq. This regulatory function is performed by NJDOT's Office of Outdoor Advertising Services which operates in accordance with NJDOT's written policies. In addition, NJDOT is authorized to erect and maintain all official highway signs within the right of way of roadways under its jurisdiction. The design and placement of these signs is governed by the Manual on Uniform Traffic Control Devices, pursuant to N.J.S.A. 39:4-183.27.

As an agency that acquires private property for public projects, NJDOT becomes an occasional owner of billboards which are existing on the acquired private property. NJDOT does not own or operate any billboards other than these.

Pursuant to NJDOT policy, where property with an existing tenant owned sign is taken in its entirety, the billboard is relocated, in accordance with the Relocation Assistance Act, N.J.S.A. 27:4-1 et seq., to a location that conforms with state and local land use regulations. If no conforming location is available, the sign owner is paid a relocation benefit. Owner owned signs are purchased at fair market value and then removed as part of the construction project. Where a property with a billboard is partially acquired, the billboard is either relocated to the remainder (if conforming with State and local regulations), relocated to another conforming site obtained by the owner, or, if no conforming sites are found, the owner is paid for the cost of the sign.

N.J.S.A. 27:7-21.4 permits the rental of acquired property pending commencement of the project. Where acquisitions significantly precede construction, NJDOT may acquire a sign and enter into a month-to-month lease with the sign owner. Rent is calculated as an average of the twelve prior months rent. This practice is not common because, typically, construction closely follows acquisition. NJDOT currently rents back 8 signs on State highways and an additional 21 signs along the state-owned portion of the Staten Island Railroad and Rahway Valley Railroad.

#### NEW JERSEY TURNPIKE AUTHORITY

The New Jersey Turnpike Authority (NJTA) was created in 1948 as a body corporate and politic to provide for the construction and maintenance of a modern, express highway in the State. N.J.S.A. 27:23-1 et seq. NJTA was granted broad powers to accomplish this task. In addition, the NJTA was given authority to do all things necessary and incidental to the construction and maintenance of the highway. The Turnpike consists of 148 miles of roadway and 28 interchanges. It is one of the most heavily traveled roadways in the nation.

NJTA developed its original Billboard Program to include twelve (12) permits on sites existing in its Right of Way. This policy was developed and approved by the NJTA governing board. The policy covered locations, safety regulations, maintenance, engineering program administration and community outreach.

The NJTA Billboard Program is broken into two (2) categories – Region I and Region II. In establishing this program NJTA held two hearings, one in Region I and one in Region II. Those hearings were held as required by Executive Order No. 172 (Kean), which requires toll road authorities to be responsive to communities where new projects are undertaken.

A Request for Proposal was issued by the NJTA, culminating in the award of contracts to two (2) outdoor advertising companies, one for Region I and one for Region II. The outdoor advertising companies are responsible, at their sole cost, for providing plans and specifications for review by the New Jersey Department of Community Affairs and NJTA. The outdoor advertising companies are also solely responsible for erecting and maintaining the billboards.

Currently, there are eight (8) active sites, four (4) in Region I and four (4) in Region II resulting in sixteen (16) sign faces generating \$487,139 in annual rent to NJTA. NJTA has complied with all Federal, State and local governmental requirements with respect to the initial twelve (12) locations. Eight (8) of these sites are currently active. NJTA withdrew its permit for one site, leaving three (3) sites permitted but not active. All sites included in the Authority's original Billboard Program are north of Interchange 10.

In addition to the Authority's original Billboard Program NJTA has permitted for approximately fifty (50) additional sites south of Interchange 10 to Interchange (6), none of these sites have been activated. The Authority is preserving its rights for future development of those sites.

#### IV. ANALYSIS OF ISSUES

##### A. Need for Uniform Policies and Procedures for Billboards on Public Property

In reviewing current and past practices of State departments, agencies and authorities, certain shortcomings are readily apparent. There is no uniform, written, statewide policy for siting outdoor advertising on state-controlled land. There is only a myriad of disparate agency practices. Indeed, in some instances there is no agency policy, just an ad hoc response to individual requests to site billboards on state-controlled land.

It is also evident that there is no uniform, transparent, statewide policy on the award of contracts or leases for siting billboards on agency lands or for administering outdoor advertising on agency property. Some contracts are publicly bid, others merely negotiated, others still simply awarded on a non-competitive basis. Finally, there is no uniform process that ensures that local interests and concerns are considered in siting decisions such as by giving notice to and, where appropriate, seeking approval of local officials.

The need for a uniform, transparent policy that is sensitive to local concerns is pressing. This uniform policy should adhere to well-established requirements for public bidding, and public disclosure. Public bidding is designed to deter improvidence, extravagance and corruption in the award of public contracts and leases. Public disclosure promotes public confidence in the integrity of government decisions by fully disclosing those with whom agencies contract. These measures, if enacted, will go a long way to restoring public confidence in agency billboard practices and will promote comity by ensuring the appropriate level of local approval in any agency decision for siting outdoor advertising.

In written submissions, counsel for the Outdoor Advertising Association of NJ, expressed the position that the current system of billboard regulation was sufficient without significant changes. However, during oral testimony at the Task Force hearing on July 29, 2003, Emanuel Levin, President of the Outdoor Advertising Association of NJ, recommended that uniform policies and procedures be adopted to “ensure that there are no loopholes” and to create “an even playing field.” Specifically, Mr. Levin endorsed: (1) notice and an opportunity to comment at a public hearing for all billboards on state property; (2) full financial disclosure of all individuals and entities which have ownership interests in billboards and billboard companies; and (3) the elimination of no-bid contracts for the siting of billboards on public property.

Don Avjean, Vice President, Northeast Region for Viacom Outdoor (“Viacom”), the largest billboard licensee in New Jersey, clarified Viacom’s position with respect to uniform policies and procedures that should be applied to all state agencies and authorities. In response to the issue of whether Viacom would support notice and an opportunity to comment at a public hearing prior to the construction of new billboards, Mr. Avjean stated: “We do that now.” With respect to supporting full financial disclosure, Mr. Avjean explained to the Task Force that Viacom, as a publicly traded company, already provides full financial disclosure with respect to its financial interests in billboards through Securities and Exchange Commission filings. Finally, with respect to the elimination of no-bid contracts, Mr. Avjean explained: “Viacom believes in public bidding.” Likewise, Drew Katz, Chief Executive Officer, Interstate Outdoor Advertising, LP, agreed with local public hearings, full financial disclosure and public bidding for any state billboard contracts.

Common Cause NJ and Scenic America, in their written submissions to the Task Force, concurred that uniform policies should be adopted that include: (a) notice and an opportunity to comment at a public hearing prior to the issuance of a permit for a billboard; (b) notice to local public entities for comment prior to the construction of new billboards; (c) a requirement for local planning and/or zoning board hearing(s) and approval(s) before any billboards are erected on state property, including agency and authority-owned property; and (d) elimination of no-bid contracts.

**B. Need for Notice and Public Comment Prior to Issuance of Billboard Permits**

At present, the NJDOT process for issuing billboard permits does not involve local zoning and planning agencies. The NJDOT issues their "Notice of Approval" to the permit applicant without consultation with local entities. Accordingly, local municipalities do not have the ability, in many instances, to voice issues of local concerns before a billboard permit is issued. Indeed, Emanuel Levin, President of the Outdoor Advertising Association of New Jersey stated in his presentation to the Task Force on July 29, 2003, that it is "not clear" whether the a billboard company must even seek local approval if it has obtained state approval to proceed with a billboard on state land.

It is apparent to the Task Force that in order to prevent the circumvention of local zoning and planning regulations and to foster full disclosure and best practices in the area of billboard regulation, there should be notice and an opportunity to comment at a public hearing prior to the issuance of any permit for a billboard.

C. Examination of Organizational Structure for Regulation and Placement of Billboards

As described more fully in Section III(B) above, the New Jersey Department of Transportation is currently charged with the responsibility of regulating outdoor advertising in New Jersey pursuant to the Roadside Sign Control and Outdoor Advertising Act, ("RSCOAA") N.J.S.A. 27:7-5.5 et seq. Within the NJDOT, the Office of Outdoor Advertising Services reviews applications submitted by individuals or companies that wish to install off-premise outdoor advertising signs. The application requires the applicant to identify the size of the proposed sign, the number of sign faces, and where the sign is to be located. The application is reviewed to see if it complies with the state regulations, then the Office issues a "Notice of Approval" or a "Notice of Denial". The "Notice of Approval" indicates the amount of the annual permit fee and states that additional permits or approvals may be needed to install the proposed sign. The "Notice of Denial" identifies the reason for the denial and notifies the applicant of their right to appeal the decision. A sample Permit Application, Notice of Approval and Permit are attached as part of the Appendix.

The Office also has enforcement functions. The Office issues "Notices of Violation" for signs that either do not have a state permit (illegal) or do not comply with other regulatory requirements (permits in violation). The "Notice of Violation" informs the sign owner and/or property owner of the infraction, as well as the necessary corrective action needed, e.g. permit, sign repair, re-location or removal. The time frame for the corrective action is also stated in the letter as well as potential penalty amounts and rights to appeal.

**Regulatory Responsibility.**

N.J.A.C. 16:41C-1.1 directs the Department of Transportation to regulate and permit all stationary off-premise signs, visible to the traveling public from any publicly traveled way. In New Jersey, this mandate includes 2736 miles of state-owned, 7,508 miles of county-owned, 25,049 miles of municipal-owned roadways, in addition to boardwalks and trails, totaling 35,943 miles of publicly traveled way. The process does not require local approval prior to applying for a state Outdoor Advertising permit. These permits are issued without local approval. Permit holders are given general instruction to obtain local approval, if it is needed.

**Commissioner's Waiver.**

N.J.S.A. 27:5-11(c) allows the Commissioner of the Department of Transportation, when the commissioner deems it is in the public interest, to issue a permit for a sign on public property which would not otherwise be permitted. This waiver provision should be modified to require that the Commissioner not grant a waiver for the issuance of a billboard permit on public property unless such waiver has been reviewed and allowed by the State House Commission.

**Data Management.**

The Office of Outdoor Advertising Services has been using an outmoded mainframe database system to manage the licensing, permitting and renewal process. A new Microsoft Access driven database is still in the developmental stage. Since 1995, duplicate data has been input into the two database systems. The newer database is incomplete. Some software needs to be upgraded to make the system compatible with Microsoft Windows 2000 and the Department's Geographic Information Systems standards. It is estimated that the software improvements and data collection required to complete the database system would cost two (2) million dollars. As

a result, complete information, such as the number of signs constructed on New Jersey highways and the number of signs constructed on public property, is not available through standard queries.

### **Organizational Structure.**

An agreement with the Federal Highway Administration and the Department of Transportation, dated December 29, 1971, formalizes the administration of "effective control" of outdoor advertising in New Jersey. Effective control means that the state has taken measures to ensure that signs are built and maintained in compliance with the terms of the Agreement and that illegal signs are identified and removed expeditiously. The Department of Transportation may be subject to a reduction of 10% of federal highway funding if it is found that "effective control" of outdoor advertising was not exercised. The Federal Highway Administration grants the state complete authority and responsibility for administering outdoor advertising controls. Monthly reports are filed with the FHWA.

The Roadside Sign Control and Outdoor Advertising Act, ("RSCOAA") N.J.S.A. 27:7-5.5 et seq. was enacted in 1991 and consolidated New Jersey's outdoor advertising statutes. It is now the primary basis for State billboard regulation along all roads and highways in the State. As stated in the RSCOAA:

"In order to balance the promotion of the safety, convenience and enjoyment of travel with the protection of the recreational value and public investment therein, to preserve and enhance the natural scenic beauty and aesthetic features of highways, promoting development and economic vitality and facilitating the flow of speech and expression, of which providing messages of commercial, public and social value conveyed through the medium of roadside signs and outdoor advertising is an important part, roadside signs and outdoor advertising shall be regulated by this act." [N.J.S.A. 27:5-6.]

**New Jersey Department of Environmental Protection.**

Given the regulatory factors set forth in the RSCOAA a strong argument can be made that the regulation of outdoor advertising is aligned better with the mission and strategic goals of the New Jersey Department of Environmental Protection, than the Department of Transportation. It is apparent that continued, diligent enforcement is needed. Controls on the outdoor advertising industry need to be strengthened to ensure that the aesthetic quality of New Jersey's environment is not jeopardized. The Department of Environmental Protection is a regulatory agency, with strong field enforcement and permitting expertise, whose mission is rooted in preserving the environment and protecting recreational value. The NJDEP also has vast experience in various divisions in administering regulatory programs, processing permits, performing on-site inspections and issuing fines and violations.

**New Jersey Department of Community Affairs.**

The New Jersey Department of Community Affairs is also positioned to adopt a larger regulatory function for outdoor advertising. The Bureau of Construction Project Review administers the requirements of the New Jersey Uniform Construction Code for all billboards owned or constructed on state-owned land by an agency, board, commission or authority of the State. A construction permit, issued pursuant to the Code, is required before construction may begin; inspections during the course of construction are required; and a Certificate of Occupancy issued pursuant to the Code is required before the billboard is placed in service.

A proposed rule change to the Division of Codes and Standards administrative procedures is currently underway; public comments are solicited by September 2003. This

proposed rule change would extend the authority of the Division to issue permits for all billboards constructed on public property, including state, county and local jurisdictions, regardless if the construction is by a private or public entity. This proposed change would ensure that the requirements of the Uniform Construction Code, including all prior approvals, are met whenever billboards are erected on public property. A definition of "Billboard" is provided in the proposal:

Billboard means any sign which exceeds 32 square feet in area on any face, except for signs which advertise or otherwise identify activities performed upon the property on which the sign is located.

Further extending the authority of the Department of Community Affairs to administer the Outdoor Advertising program in New Jersey, would utilize construction inspection experience already in place and improve interaction with local zoning and planning boards. Eliminating control over the smallest signs, as defined by the Department of Community Affairs rule, ("Billboard means any sign which exceeds 32 square feet in area on any face"), would also serve to reduce workload considerably, reducing the required permits by 35% and avoiding the problems of double-permitting for bus shelters. Requiring local zoning and planning board approval prior to issuing a State Outdoor Advertising and Construction permit, would reduce the current permit application workload. Similarly as above, if limitations on new construction of outdoor advertising signs were implemented, risk to the Department of Transportation's federal funding could be minimized.

**Reorganizing within New Jersey Department of Transportation.**

Retaining regulatory control of outdoor advertising within the Department of Transportation is also an option. Adopting this option provides the Department of

Transportation with greater control over minimizing the risk of a 10% reduction in federal highway funding if it is found that “effective control” of outdoor advertising is not being exercised. The existing regulations establish size, spacing and location standards that comply with the Agreement between the Federal Highway Administration and the Department. “Effective control” means that the state has taken measures to ensure that signs are built and maintained in compliance with the terms of the Agreement and that illegal signs are identified and removed expeditiously. To date, the Department has a good record with the Federal Highway Administration in exercising “effective control”.

Changes which should be considered are:

- Statutorily modify Commissioner waiver to require State House Commission review.
- Statutorily require local zoning and planning board, notice, hearings and approval as a condition for the approval of permit applications.
- Complete the efforts to populate and subsequently manage the outdoor advertising database.

While these efforts would result in a continued level of appropriate regulatory oversight, it is clear that the regulation of outdoor advertising is not a core business element of the Department of Transportation. Outdoor advertising oversight falls outside of the Department’s mission of providing reliable transportation services to support and improve safety and mobility of people and goods.

D. Feasibility of Reducing or Eliminating New Billboard Construction in New Jersey.

1. Can the State Ban and/or Cap the Number of Billboards on State and State Agency Property Under the First Amendment?

The Supreme Court has affirmed the right of the government to exclude the exercise of free speech from its own property, assuming that such action is undertaken in a nondiscriminatory fashion. In Greer v. Spock, 424 U.S. 828, 836, 96 S. Ct. 1211, 47 L. Ed. 2d 505 (1976), the Court upheld the Army's right at Fort Dix to exclude speeches and demonstrations of a partisan political nature, as well as the right to preclude distribution of literature without prior approval of the post commander. The Court stated "the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated," citing Adderly v. Florida, 385 U.S. 39, 48, 87 S. Ct. 242, 247, 17 L. Ed. 2d, 149, 156 (1966); and Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S. Ct. 2714, 41 L. Ed. 2d 770 (1974). In Shaker Heights, the town prohibited political advertising within its transit system, limiting it to vendors of goods and services in order to generate revenues. Therein, the Court likened the transit system to a public utility which "will be sustained in its protection of activities in public places when those activities do not interfere with the general public convenience, comfort and safety." 418 U.S. at 303, citing Public Utilities Comm'n v. Pollak, 343 U.S. 451, 464-465, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

The government's exclusion of political advertising on a portion of property was upheld in Lebron v. National Railroad Passenger Corporation, 69 F. 3d 650 (2d Cir. 1995), amended on denial of rehearing, 74 F. 3d 371 (1995). In Lebron, the Circuit Court upheld Amtrak's refusal to

lease space for political advertising on the "Spectacular" in Penn Station.\* Also, in Lebron, the Second Circuit first determined that this area had not been treated as a public forum or property that the state had opened for expressive activity by part or all of the public. In conducting its public forum analysis, Lebron stated:

we must examine the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum .... We must bear in mind that 'the government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse. [69 F. 3d at 655, citing Cornelius v. NAACP Legal Defense and Educ. Fund. Inc., 473 U.S. 788, 801, 105 S. Ct. 3439, 3448, 87 L. Ed. 2d 567.(1985).]

The Court in Lebron stated that even when the government opens a forum for some speech, the forum does not become a public forum, if the government did not intend to open the forum without limitation. Further, Lebron found it "especially significant" that Amtrak was acting in a proprietary capacity, rather than as a governmental regulator, 69 F. 3d 657, citing International Soc'y for Krishna Consciousness Inc. v. Lee, 505 U.S. 672, 112 S. Ct. 2701, 2705-06, 120, L. Ed. 2d 541 (1992); United States v. Kokinda, 497 U.S. 720, 730, 110 S. Ct. 3115, 3121-22, 111 L. Ed. 2d 571 (1990)(plurality opinion). Thus, the Court found that Amtrak's decision, as a proprietor, to decline to enter the political arena, even indirectly, by displaying political advertisements, to be "certainly reasonable." 69 F. 3d at 657.

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\* The Spectacular is "a curved back-lit display space approximately 103 feet wide by ten feet high... which dominates the west wall of the rotunda on the upper level of Penn Station where thousands of passengers pass each day." 69 F. 3d at 653. Plaintiff wanted to display a photomontage that "includes photographic images of convivial drinkers of Coors beer, juxtaposed with a Nicaraguan village scene in which peasants are menaced by a can of Coors that hurtles towards them ... The accompanying text, appearing on either end of the montage, criticizes the Coors family for its support of right-wing causes, particularly the Contras in Nicaragua." 69 F. 3d at 653.

Aside from the right to establish reasonable limits of time, manner and place on the First Amendment, the right of property owners to exclude others and to exclude physical encroachments "has traditionally been considered one of the most treasured strands in an owner's bundle of property rights." Loretto Manhattan CATV Corp. v. Teleprompter, 458 U.S. 419, 435, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982), citing Kaiser Aetna v. United States, 444 U.S. 164, 176, 100 S. Ct. 383, 391, 62 L. Ed. 2d 332 (1979) which also characterized the landowner's right to exclude as "one of the most essential sticks in the bundle of rights that are commonly characterized as property."\* Such intrusions by the government are generally determinative of a taking of property. In fact, permanent physical occupations of real property have invariably been found to be takings. Palazzolo v. Rhode Island, 533 U.S. 606, 617, 121 S. Ct. 2448, 2457, 151 L. Ed. 2d 592 (2001), citing Loretto, supra, 458 U.S. at 427, citing Pumpelly v. Green Bay Co., 13 Wall. (80 U.S.) 166, 20 L. Ed. 557 (1872), referring to Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of the "Just Compensation" Law, 80 Harv. L. Rev. 1165, 1184 (1967).

As set forth herein, the RSCOAA requires written approval by the applicable public governing body or entity that controls the property. N.J.A.C. 16:41C-10.2(b)6. The need to seek approval means that such assent can be denied. Moreover, as the Supreme Court has repeatedly recognized, the right to exclude permanent physical occupations is a fundamental and treasured strand in the property owner's bundle of rights associated with a property. For these reasons, the State likely holds the right as the owner of property to exclude physical intrusions such as

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\* Consistent with the right to exclude others, we are advised that New Jersey Transit's billboards are terminable licenses. Transit's contract with its media vendor expires on August 21, 2003.

billboards altogether from its own property, subject to any existing property rights discussed below. Such a decision also would likely be a reasonable limit of time, manner and particularly place on the exercise of First Amendment rights which have repeatedly been recognized as subject to limitations, Shaker Heights, *supra*, and Lebron, *supra*.

A ban and/or cap on all outdoor advertising on State property, would, in all likelihood, be an appropriate limitation of First Amendment rights because interested persons would still be entitled to seek permits for billboards on private property. The Supreme Court has repeatedly recognized the State's right to establish reasonable limitations of time, manner and place on the exercise of even First Amendment political free speech; the right is not absolute. Thus, the Court upheld the Postal Service's prohibition and exclusion of the use of letterboxes for unstamped mailable matters. United States Postal Service v. Council of Greenburgh Civic Associations, 453 U.S. 114, 129, 101 S. Ct. 2676, 2684, 69 L. Ed. 2d 517 (1981); Cox v. Louisiana, 379 U.S. 536, 554-557, 85 S. Ct. 453, 464, 13 L. Ed. 2d 471 (1965). A ban and/or cap on the number of billboards on State property would not be an improper intrusion into approval of the content of speech. It also would not abridge the rights of property owners to advertise for their own businesses on their own private property, nor would such a ban and/or cap abridge the right of property owners to authorize outdoor advertising companies, promoting off-site advertising for both political and commercial speech.

2. **Would a Ban and/or Cap on the Number of Billboards on State Property Create Inverse Condemnations Requiring Compensation?**

In light of the State's property right to exclude permanent physical occupations on its own property, especially lands dedicated to other uses, prospective prohibitions on the issuance

of approval for such structures on its own land would likely not result in takings. Removal of existing billboards lawfully on State property could result in the finding of a taking, as discussed in the section immediately below, depending on the specific circumstances and the reasonable investment-backed expectations of the billboard operator.\*

### 3. **Would a Billboard Ban on Private Property Create Inverse Condemnations Requiring Compensation?**

The complete prohibition on the erection of billboards on private property would, in some instances, constitute a taking of property for which compensation would be due. Generally, the Supreme Court has avoided and "been unable to develop any 'set formula'" for determining when economic injury caused by public action must be compensated by the government. Penn Central Transportation Company v. City of New York, 438 U.S. 104, 124, 98 S. Ct. 2646, 2658, 57 L. Ed. 2d 631 (1978). Instead, the Supreme Court has reviewed taking claims based upon the economic impact of the regulation on the petitioner and "particularly, the extent to which the regulation has interfered with distinct investment-backed expectations," when considering the "parcel as a whole." Id. at 130, 98 S. Ct. at 2662.

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\* Although the State might face inverse condemnation claims depending on the specific facts of the case, we have been advised that the prohibition of billboards on property owned by State authorities would not result in constitutional claims for the impairment of contracts, because the revenues realized from these structures are relatively de minimus income streams and do not constitute "substantial financial conditions" of any pledged funds. Fidelity Union Trust Company v. New Jersey Highway Authority, 85 N.J. 277, 287-293 (1981), Dickinson v. Fund for the Support of Free Public Schools, 187 N.J. Super. 224, 252 (App. Div. 1982).

Yet, diminutions in value in and of themselves, even up to 75%, have long been held not to cause a taking. Village of Euclid v. Ambler Realty Co., 272, U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926), although governmental regulation that permanently deprives the owner of "all economically beneficial use" constitutes a taking. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992).

In the case of potential billboard claims for takings of private property, the key factual issues would probably be whether, considering the parcel as a whole, the regulation has deprived the owner of all beneficial use, considering the plaintiff's reasonable investment backed expectations. As the Court said in Penn Central:

"Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole. [438 U.S. at 130, 98 S. Ct. at 2662.]

In Loveladies Harbor, Inc. v. United States, 28 F. 3d 1171, 1181 (Fed. Cir. 1994), the Circuit Court found no error in the trial court determination that the relevant parcel was the owner's land when the regulation was adopted. The parcel issue, referred to as the "denominator issue" in takings jurisprudence, is frequently critical because the more narrow the parcel is deemed to be, the more likely the regulation would adversely affect the economic value of the property, and hence the more likely that a court would find a taking. Thus, for instance, a regulation that prohibits a billboard on leased property at the edge of a farmer's productive crop field would likely not result in a taking, since the farmer would not be deprived of all economically viable use. In contrast, the billboard prohibition applied to an owner of a small

isolated lot which is not contiguous to any commonly owned economically productive land, whether the lot is conforming or non-conforming to the zoning ordinance would likely result in a taking, if no other economically viable use of the property could be identified.

It should be noted that the states of Maine, Vermont, Hawaii and Alaska have each enacted statewide bans on billboards (subject to certain narrow exceptions). Rhode Island limits the construction of new billboards.

V. CONCLUSIONS & RECOMMENDATIONS

The Task Force concludes that:

- New Jersey is over-saturated with billboards along its 35,000 miles of highway. Moreover, as the average size of new billboards continues to increase, so does their negative impact on the aesthetic environment of New Jersey. The number of large billboards in our state has increased dramatically. This runs counter to the public desire to protect the natural beauty, scenic vistas and open space in our state as articulated by, among other things, the New Jersey Constitution's provisions on open space. To counteract these problem, the state should cap the number of billboards on state property and encourage a reduction in the size of billboards on state property.
- State departments, agencies and authorities lack uniform, written policies for siting billboards on state-controlled land and for awarding billboard-related contracts. Rather, there is a myriad of disparate agency practices. A uniform policy for awarding billboard-related contracts is needed.
- There is no uniform process that ensures that local interests and concerns are considered in siting decisions such as giving notice to and, where appropriate, seeking approval of local officials. A uniform policy for addressing local concerns is needed.

- The mission and strategic goals of the New Jersey Department of Environmental Protection are best aligned with the regulation of outdoor advertising and the associated goals of mitigating the impact of billboards on the environment and of fostering interaction with local zoning and planning agencies.

The Task Force makes the following recommendations to Governor McGreevey:

1. Support legislation adopting a cap for billboard permits on state-controlled property. It is recommended that the number of billboard permits per agency, department or authority be capped at the existing number. It is further recommended that regulations be adopted under a cap program that lead to a reduction, over time, in the total square-footage of billboards on state-controlled property.
2. Support legislation requiring all state agencies, departments and authorities to adopt uniform policies and procedures that prohibit no-bid billboard contracts. Those uniform policies and procedures shall include competitive bidding standards for the sale, lease, development and construction of billboards on public property. This will protect the public interest by ensuring the integrity of the contract award process.
3. Support legislation that uniformly requires the full disclosure of the identity of all officers, directors, partners, stockholders (with greater than a 10% ownership interest in the company) and entities with any financial interest in billboards.

4. Require that all state agencies, departments and authorities provide notice to local planning and/or zoning boards, and that the public be provided an opportunity to comment at a local planning and/or zoning board hearing prior to the construction of new billboards on state-controlled property.

5. Condition all state permits for billboard siting and construction as follows:

- a. where the billboard is to be erected by any government entity on public property, require the opportunity for public comment and a local planning and/or zoning board hearing, and
- b. where the billboard is to be erected by a private entity or person on public property, require the opportunity for public comment and local planning and/or zoning board approval, and
- c. where the billboard is to be erected by a private entity or person on private property, require the opportunity for public comment and local planning and/or zoning board approval.

6. Require applicants for billboards on public property to obtain a Building Permit and Certificate of Occupancy from the Department of Community Affairs and make issuance of state billboard permits contingent upon receipt of the Building Permit and Certificate of Occupancy.

7. Support legislation changing existing organizational structure for the regulation of billboards by transferring primary responsibility from the New Jersey Department of

Transportation to the New Jersey Department of Environmental Protection, if feasible in light of all existing, relevant agreements between the Federal Highway Administration and the New Jersey Department of Transportation.

8. Direct the New Jersey Department of Transportation (or NJDEP as recommended above) not to grant waivers for the issuance of billboard permits on public property unless such waiver is reviewed and allowed by the State House Commission.

9. Require New Jersey Department of Transportation and New Jersey Department of Environmental Protection to make recommendations for additional designations of protected roadways in scenic locations to remain billboard free.

10. Support legislation to eliminate the one-year sunset provision from P.L. 2003, c.124 which imposes a fee of 6% on the gross amounts collected by a retail seller for billboard advertising space, and dedicate the funds collected to the "Highway Beautification Fund," for use by the NJDOT, NJDCA and the NJDEP.

11. Support legislation to repeal P.L. 2001, CHAPTER 438, which law determined that steel outdoor advertising signs and their steel supporting structures are not real property for local property tax purposes. Also support legislation that will clarify that billboards and their supporting structures are taxable as real property. This will provide revenues to local governments that are aesthetically harmed by the presence of billboards within their community.

VI. APPENDIX

1. Executive Order No. 59
2. Billboard Policy & Procedure Review Task Force's request for written comments dated June 19, 2003 and written responses thereto.
3. Chart of Survey Responses
4. New Jersey Department of Transportation Outdoor Advertising Sample Permit Application, Notice of Approval and Sample Permit.