



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



July 9, 2004

Mr. David Reese
Environmental Planning
Office of Safety and Environment
Management Directorate
Department of Homeland Security
Washington, DC 20528

Subject: Draft Environmental Planning Program

Dear Mr. Reese:

We are writing in response to the public notice published by the Department of Homeland Security (DHS) regarding the action noted above. We appreciate the direct notification of this notice, dated June 9, 2004, which we received on June 22, 2004. This Office is responsible for overseeing the implementation of Connecticut's federally approved Coastal Management Program, and it is with this in mind we reviewed the materials made available on the DHS web-site which include the DHS's draft policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA), Executive Order 11514, Executive Order 12114, and Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508). Federal agency activities and development projects affecting a state's coastal zone must be consistent to the maximum extent practicable with federally-approved state coastal management programs in accordance with the Federal consistency requirements of Section 307 of the Coastal Zone Management Act of 1972, as amended, (CZMA). With this in mind and based on our review, we offer the following comments.

In general, the DHS Environmental Planning Program is set forth clearly and it appears adequately comprehensive. We appreciate the format used to present the categorical exclusions which includes several examples for each proposed exclusion. However, we are concerned about the content of several of the proposed categorical exclusions. These concerns relate, in part, to the lack of a clear definition for several key terms and, in part, to the planned exclusion of several activities that, while they may be relatively innocuous in non-coastal areas, can raise significant concerns if proposed in or adjacent to sensitive coastal resources (e.g., tidal wetlands, intertidal flats, freshwater wetlands, beaches and dunes, bluff and escarpments, and coastal waters). More specifically, our comments and recommendations are as follows:

Regarding Categorical Exclusion D1 which reads:

Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g., realigning interior spaces of an existing building, extending an existing roadway in

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a developed area a short distance, adding a small storage shed to an existing building, or retrofitting for energy conservation. This could also include installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement.

In the absence of a clear definition of "minor renovations and additions" we are concerned about portions of this proposed categorical exclusion. Please be aware that we are not concerned about the described activities if they occur entirely within existing buildings. However, if the subject site is within or adjacent to sensitive coastal resources, any building addition and some alteration of the grounds and/or impervious surface such as to roadways and runways, may have the potential to cause adverse impacts to said resources depending on the site-specific/project-specific situation. Thus, a categorical exclusion is not supported without additional limitations. While it is not necessary to exempt all areas within the coastal zone (or "environmentally sensitive areas" as defined in the plan), **we recommend that this categorical exclusion be modified so that it does not apply to projects within or abutting sensitive resource areas including tidal wetlands, intertidal flats, inland wetlands, beach and dunes, bluffs and escarpments or coastal waters.** The boundaries of these resources should be delineated on the plans for individual projects based on both Federal definitions and definitions contained within any Federally approved State coastal management program that applies to the project site.

Regarding Categorical Exclusion D3 which reads:

Repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (e.g., replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, waterfront facilities that do not require individual regulatory permits and other facilities)

The concern with this section is the potential for some repair and/or maintenance activities to have adverse impacts on sensitive coastal resources including tidal wetlands, inland wetlands, beach and dunes, bluffs and escarpments or coastal waters. Of the list of example activities that could be excluded under this section the maintenance of culverts and waterfront facilities that do not require individual regulatory permits raise particular concerns from a coastal management perspective. For example, due to the nature of our regulatory interests, we most frequently deal with culverts that convey tidal waters beneath roadways, berms and other upland features. The maintenance of such structures (e.g., lining, replacing, cleaning/clearing out, replacing or resetting) can have significant impacts the amount of tidal water that can flow through the culvert which in turn can have significant impacts on upstream tidal resources, if present. **If the proposed text were modified to specifically exclude maintenance on culverts conveying tidal water from eligibility for this categorical exclusion, our concern would be addressed.**

Also, with respect to this proposed categorical exclusion, it is unclear whether by using the term "individual regulatory permits" the DHS includes Federal consistency review which technically not a permit. If not, the maintenance of waterfront facilities that do not require individual permits has the potential to cause adverse impacts to coastal resources depending on the specific nature of the maintenance activities to be conducted. In the absence of additional information and a clearer understanding of the types of activities that can be considered "maintenance," we are unable to provide suggested text modifications to make the appropriate clarification.

Regarding Categorical Exclusion E1 which reads:

Construction, operation, maintenance, and removal of utility and communication systems, mobile antennas, data processing cable, intrusion detection systems, and similar electronic equipment that use existing rights-of-way, easements, utility distribution systems, and or facilities and for equipment and towers not higher than 200 feet where the FCC would not require an environmental assessment or environmental impact statement for the acquisition, installation, operation or maintenance.

These activities, if occurring wholly on the upland, do not raise any significant concerns from a coastal management perspective. However, if any of these facilities cross tidal, coastal or navigable waters there is the potential for adverse impacts. Accordingly, **this section should be modified to clearly not include the construction or removal of listed facilities if such facilities cross tidal, coastal or navigable waters.**

Regarding Categorical Exclusion E2 which reads:

New construction or improvement of land where all of the following conditions are met:

- a) The structure and proposed use are compatible with applicable local planning and zoning standards.
- b) The site is in a developed area and/or a previously disturbed area.
- c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area.
- d) The site and scale of the construction or improvement are consistent with those of existing adjacent or nearby buildings.
- e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, water, parking, etc.).

It is unclear what the terms "developed area" and "previously disturbed area" mean. It is certainly conceivable that portions of tidal wetlands that in the eyes of the State of Connecticut are restorable could by others be considered "disturbed areas." Any disturbance of such areas that is not related to restoration activities would be inconsistent with the enforceable policies of Connecticut's federally approved coastal management program. Accordingly, **this categorical exclusion should be modified to clearly state that it does not apply to activities proposed within sensitive resource areas including tidal wetlands, inland wetlands, beach and dunes, bluffs and escarpments or coastal waters.** On individual project plans, the boundaries of these areas should be delineated based on both any Federal definitions that are in current use as well as any definitions contained within Federally approved State coastal management programs.

Regarding Categorical Exclusion I1 which reads:

A portable or relocatable facility or structure used to collect traveler data at or adjacent to an existing port of entry that does not significantly disturb land, air, or water resources, and does not individually or cumulatively have a significant environmental effect. The building footprint of the facility must be less than 5000 square feet and the facility or structure must not foreclose future land use alternatives (emphasis added).

Our concern is that even if the portable or relocatable facility or structure itself will not significantly disturb land, air or water resources, its use might (e.g., if the facility is located adjacent to sensitive resources, individuals queuing up to enter the facility may trample such resources). **This issue could be readily addressed by replacing the "that" (marked above with underline) in the first sentence with "whose placement or use."**

Please be reminded that specific activities and/or development projects that have reasonably foreseeable coastal effects in Connecticut's coastal zone will require Federal consistency review and concurrence by this Office. We look forward to maintaining existing and developing new working relationships with appropriate DHS staff and are available, if requested, to assist them in the planning and design of coastal projects to ensure that potential adverse impacts are avoided and possible inconsistencies are addressed at the earliest possible time.

We hope these comments prove useful during the final consideration by the Department of Homeland Security of the proposed Environmental Management Plan. Should you have any questions regarding this letter, or any other coastal management matter in Connecticut, please contact Margaret Welch of this Office either via e-mail at margaret.welch@po.state.ct.us or by phone at 860.424.3034.

Sincerely,



• Charles H. Evans
Director
Office of Long Island Sound Programs

CHE/MLW/w

cc: Allison Castellan
David Kaiser