



RPC VII

**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

NOV 4 1996

Mr. E. James Tabor, Chief  
Division of Coastal Programs  
Bureau of Land and Water Conservation  
Department of Environmental Protection  
P.O. Box 8555  
Harrisburg, PA 17105-8555

Dear Mr. Tabor:

This letter responds to your October 16, 1996 letter requesting that the Office of Ocean and Coastal Resource Management (OCRM) approve the following changes to the Pennsylvania Coastal Zone Management Program (PCZMP) as a routine program change: (1) regulatory changes affecting PCZMP enforceable policies in Title 25 of the PA Code, Chapters 82, 109, 260-267, 270, and Title 58 of the PA Code, Chapters 133 and 75; (2) the addition of three geographic areas of particular concern (GAPC) and the expansion of one GAPC; (3) the incorporation of 306(d)(14) procedures for increased public participation; (4) the incorporation of Bluff Recession and Setback Act guidance into the PCZMP Coastal Hazard Policy (1-A1); (5) Delaware Estuary coastal zone boundary change; and (6) Notice of Incorporation of changes under the Federal Clean Air and Clean Water Acts.

OCRM concurs with your finding that these proposed changes to the PCZMP are routine and not an amendment to the PCZMP. We find that the proposed changes augment and enhance the existing federally approved PCZMP.

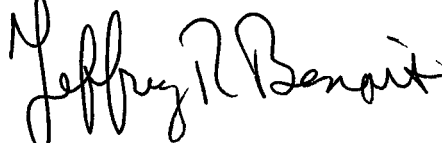
OCRM has identified the following enforceable policies as described in your program change analysis: Title 25 of the PA Code, Sections 82.2, 82.11-82.15, 82.16-82.19, 82.21, 82.44, 82.47, and 82.65; Sections 109.1, 109.5, 109.202, 109.301-109.303, 109.305, 109.401, 109.402, 109.503, 109.505, 109.603, 109.606, 109.701, 109.702, 109.705-109.707, 109.713, 109.801, 109.803, 109.805, 109.807, 109.901, 109.903, 109.1002, 109.1003, 109.1005, 109.1101-109.1103, and 109.1105-109.1108; Chapters 260-267 and 270 as listed in the PA Bulletin, Vol. 23, No. 3, Jan. 16, 1993, p. 373; Title 58 of the PA Code, Sections 75.1-75.3; Section 133.5.



In accordance with National Oceanic and Atmospheric Administration regulations at 15 CFR §923.84(b)(4)(C), Federal consistency will apply to these statutes after Pennsylvania publishes notice of our approval.

Please contact Neil Christerson at (301) 713-3113 ext. 167 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey R. Benoit". The signature is written in a cursive style with a large initial "J" and "B".

Jeffrey R. Benoit  
Director

RPC VII

RPC VII

PROPOSED ROUTINE PROGRAM CHANGES

TO

PENNSYLVANIA'S COASTAL ZONE MANAGEMENT PROGRAM

SEPTEMBER 1996

**RPC VII  
TABLE OF CONTENTS**

	Page
Introduction .....	1
Purpose .....	1
Proposed Changes .....	2
 <b><u>1993 Regulatory Program Changes</u></b>	
Introduction - General Regulatory Changes .....	3
25 PA Code Chapter 82 .....	3
58 PA Code Chapter 133 .....	3
Analysis of Impact of Chapters 82 and 133 .....	3
25 PA Code Chapters 260-267 and 270 .....	4
New Chapter 266 .....	6
25 PA Code Chapters 260, 263, and 265 .....	8
Analysis of Impact of Chapters 260-267 and 270 .....	8
New Chapter 266 Added Resulting from Chapters 260-267 and 270 Changes .....	9
Summary and Conclusion of Chapter 82, 133, 260-267, and 270 Regulatory Amendments .....	9
 <b><u>1994 Regulatory Program Changes</u></b>	
Introduction - General Regulatory Changes .....	10
58 PA Code Chapter 75 .....	10
Analysis of Impact of Chapter 75 .....	10
25 PA Code Chapter 109 .....	10
Analysis of Impact of Chapter 109 .....	11
Summary and Conclusion of Chapters 75 and 109 Regulatory Amendments .....	11
 <b><u>1994 Changes to Geographical Areas of Particular Concern</u></b>	
Introduction - GAPC Changes .....	13
Addition of Frontier Park GAPC .....	13
Analysis of Impact - Addition of Frontier Park GAPC .....	13
Expansion of Elk Creek Estuary GAPC .....	14
Analysis of Impact - Expansion of Elk Creek Estuary GAPC .....	14
Addition of Bristol Riverfront North GAPC .....	15
Analysis of Impact - Addition of Bristol Riverfront North GAPC .....	15
Summary and Conclusion of GAPC Changes .....	16
 <b><u>1995 Regulatory Program Changes</u></b>	
Introduction - General Regulatory Changes .....	17
 <b><u>1995 Section 306 Program Changes</u></b>	
Introduction - Section 306(d) (14) Program Changes .....	17
Selected Procedures for Meeting 306(d)(14) Public Comment Requirements .....	17
Analysis of Impact of Section 306(d)(14) Program Change .....	19
Summary and Conclusion of Section 306(d)(14) Program Change .....	20
 <b><u>1995 Section 309 Program Changes</u></b>	
Introduction - Section 309 Program Changes .....	21
Proposed Change to Coastal Hazard Policy I-A.1 .....	21
Analysis of Impact of Section 309 Policy Change .....	21
Summary and Conclusion of Section 309 Policy Change .....	22

**1995 Section 309 Boundary Changes**

Introduction - Section 309 Boundary Change .....	23
Proposed Delaware Estuary Boundary Change .....	23
Analysis of Impact of Section 309 Boundary Change .....	24
Summary and Conclusion of Section 309 Boundary Change .....	24

**1995 Changes to Geographical Areas of Particular Concern**

Introduction - GAPC Changes .....	25
Addition of McCord Vineyard GAPC .....	25
Analysis of Impact - Addition of McCord Vineyard GAPC .....	25
Summary and Conclusion of GAPC Changes .....	26

**1993, 1994, and 1995 Regulatory Changes Required Under the Federal Clean Air and Clean Water Acts**

Introduction - Incorporation of Water Pollution and Air Pollution Requirements .....	27
Chapter 93 - 1994 Changes .....	27
Chapter 121 - 1994 Changes .....	28
Chapters 121 and 127 - 1994 Changes .....	28
Chapters 121 and 129 - 1994 Changes .....	29
Chapters 121 and 127 - 1994 Changes .....	29
Chapter 121 - 1995 Changes .....	30
Notice of Incorporation of Federal Water Pollution and Air Pollution Requirements .....	30

**RPC VII**

**PROPOSED ROUTINE PROGRAM CHANGES  
TO  
PENNSYLVANIA'S COASTAL ZONE MANAGEMENT PROGRAM**

SEPTEMBER 1996

INTRODUCTION

Under the Federal Coastal Zone Management (CZM) Act, coastal states can modify their approved CZM Programs. The Commonwealth of Pennsylvania is now submitting to the National Oceanic and Atmospheric Administration (NOAA) these modifications as Routine Program Changes (RPCs) rather than Program amendments. An RPC is defined in CZM regulations (15 C.F.R. Section 923.84) as, "Further detailing of a state's program that is the result of implementing provisions approved as part of the state's approved management program that does not result in (an amendment)."

An amendment is defined (15 C.F.R. Section 923.80(d)) as "Substantial changes in one or more of the following five coastal management program areas:

1. **Uses Subject to Management** (15 C.F.R. Part 923, Subpart B) (i.e., permissible land and water uses within a coastal zone which have a direct and significant impact in coastal waters),
2. **Special Management Areas** (15 C.F.R. Part 923, Subpart C) (i.e., criteria or procedures for designating or managing geographical areas of particular concern, or areas for preservation or restoration),
3. **Boundaries** (15 C.F.R. Part 923, Subpart D),
4. **Authorities and Organization** (15 C.F.R. Part 923, Subpart E) (i.e., the state regulations and organizational structure on which a state will rely to administer its coastal management program), and
5. **Coordination, Public Involvement, and National Interest** (15 C.F.R. Part 923, Subpart F) (i.e., coordination with governmental agencies having interest and responsibilities affecting the coastal zone; the involvement of interest groups as well as the general public; and the provision for adequate consideration of the national interest involved in planning for and managing the coastal zone, including the siting of facilities (such as energy facilities) which are of greater than local significance).

PURPOSE

Therefore, the purpose of this paper is to demonstrate to NOAA that the following proposed changes to Pennsylvania's CZM Program are not substantial (amendments), but are routine changes (RPCs) that further detail this Program.

## PROPOSED CHANGES

Several CZM Program changes have occurred in 1993, 1994, and 1995. The Commonwealth of Pennsylvania is submitting these proposed changes to NOAA's Office of Coastal and Resource Management as RPC's, and not amendments.

The following are proposed Routine Program Changes (RPC) to the Commonwealth of Pennsylvania Coastal Zone Management Program, and Final Environmental Impact Statement (FEIS) (August 1980). These changes are to:

- Chapter 1 - Introduction and Overview, and concern boundary changes to the Delaware Estuary Coastal Zone;
- Chapter 2 - Coastal Zone Policy Framework, and concern general regulatory changes affecting the CZM Program's enforceable authorities;
- Chapter 3 - Special Management Concerns, and concern revisions to CZM's Geographical Areas of Particular Concern; and
- Chapter 5 - Intergovernmental/Public Coordination and Review, and concern changes in the coordination with, and review of direct federal development projects, by the public.

The format of this RPC is by year. Each year contains a discussion of every program change that had occurred that year, an analysis of the impact that the change will have on Pennsylvania's CZM Program, and justification as to why the change constitutes an RPC and not a program amendment, as defined by the federal CZM regulations.

## 1993 REGULATORY PROGRAM CHANGES

### INTRODUCTION - GENERAL REGULATORY CHANGES

CZM's enforceable policies are based on Department of Environmental Protection's (Department) regulations which are incorporated into this Program. These regulations were in effect at the time of original CZM Program approval in 1980. However, over time these regulations have been amended, and as such change Pennsylvania's originally approved CZM Program. These subsequent changes will further detail the original Program.

The regulatory amendments which are presently in effect statewide, have been subjected to public comments and hearings, and have been approved by the Commonwealth's Environmental Quality Board, and Independent Regulatory Review Committee.

### **25 PA CODE CHAPTER 82 - Conservation of Pennsylvania Native Wild Plants (Amended June 1993)**

Chapter 82 protects Pennsylvania's vulnerable native plant species. These 1993 amendments update plant species status classifications, delete certain classifications, revise aspects of the wild plant management permit, and add a reporting requirement for holders of vulnerable plant commercial licenses.

Of all these minor regulatory changes, the updating of one plant species status classification, and addition of another species to the list, are pertinent to the CZM.

One plant species, *Mitella nuda* L., previously listed in the Pennsylvania Extirpated Section of Chapter 82, was found during the 1992 field season, and has now been moved to Pennsylvania Endangered at Section 82.12. In addition, *Streptopus amplexifolius* L. has been added to the Pennsylvania Threatened at Section 82.13.

### **58 PA CODE CHAPTER 133 - Wildlife Classification (Amended October 1993)**

By default, birds and mammals of Pennsylvania not defined as Furbearers or Game Animals under Pennsylvania's hunting regulations, are protected under Chapter 133. With this change to Section 133.5, the coyote will now be classified as a Furbearer, and permits coyotes to either be hunted or trapped during the appropriate seasons.

The coyote is currently classified as a Protected Mammal under §133.1. As such, although the Commission has established seasons for trapping and hunting coyotes, as a Protected Mammal the carcass and hide cannot be lawfully bought or sold. Reclassifying the coyote as a Furbearer would bring it within the regulatory scheme relating to possession and sale of furs and its parts while keeping the options of either trapping or hunting coyotes.

With the new classification, a furtaker license will not be required to hunt coyotes. Hunters and trappers will be able to lawfully dispose of coyote carcasses and hides.

### **ANALYSIS OF IMPACT - Chapters 82 and 133**

Chapters 82 and 133 are referenced in Policy IV-1: Wetlands, found on page II-2-16 of our Final Environmental Impact Statement (FEIS). This policy preserves and protects Pennsylvania's native plant and wildlife habitat including Pennsylvania's Species of Special Concern listed in Chapters 82 and 133, respectively.



The changes to Chapter 82 upgrade the classification of *Mitella nuda* L. from Extirpated to Endangered, and adds the species *Streptopus amplexifolius* L. to the Threatened classification.

Chapter 133 previously did not specifically include the term "coyote" in its definition of "Furbearer". By default, the animal fell under the Protected Mammal classification, and its carcass and hide could not be lawfully bought or sold, even though the Pennsylvania Game Commission has established coyote trapping and hunting seasons. The reclassification will allow trappers and hunters to lawfully dispose of coyote carcasses and hides.

## **25 PA CODE CHAPTERS 260-267 and 270 - Hazardous Waste Management (Amended 1993 January)**

These regulations deal with the management and permitting of hazardous waste facilities in Pennsylvania. These changes amend Chapters 260-265, 267, and 270, and adopt a new chapter - Chapter 266. Chapters 260, 263, 264, and 265 were amended twice in 1993: the following is a discussion of the first set of amendments to these regulations.

The amendments incorporate changes made by the United States Environmental Protection Agency (EPA) to the Federal hazardous waste program, and clarify certain regulatory requirements. Many of the amendments are necessary to retain final authorization under the Federal Resource Conservation and Recovery Act of 1976 (RCRA). Others are adopted to implement obligations under Pennsylvania's Solid Waste Management Act.

States with final authorization under Section 3006(b) of RCRA have a continuing obligation to maintain a hazardous waste program that provides adequate enforcement, and is at least as stringent and broad in scope as the Federal hazardous waste program. Pennsylvania received final authorization for its hazardous waste program on January 30, 1986. The primary reason for these regulatory amendments is to update portions of the Commonwealth's authorized program by incorporating Federal changes.

Some specific amendments are:

### **§260.2. Definitions.**

The definitions of "byproduct," "discarded material," "waste", and "spent material" have been amended and the definitions for "coproduct," "expended material," "product," "garbage," "recycle," "recycling permit," "refuse," "raw material," "unregulated material," "crude material," have been added to reflect the Department's position on the definition of waste.

In this section the definitions of "hazardous waste oil" and "used oil" have been added, and the definition of "waste oil" has been amended to more clearly specify what used, or waste oils are hazardous waste, and to be consistent with the Used Oil Recycling Act.

Halogen acid furnaces have been added to the definition of "industrial furnace".

The definition of "incinerator" has been amended, and new related definitions are included for "carbon regeneration unit" and "sludge dryer".

The definition of "source reduction" has been amended, and the definitions of "toxicity characteristic" and "treatability study" have been added.

#### *§260.22. Delisting procedure.*

This section provides that each request for delisting shall include a fee of \$125 for administrative expenses.

These fees have been amended to include permit modifications, closure plan reviews, and requests for determinations of nonapplicability under §260.22. The amounts for the various fees have also been adjusted to more accurately reflect current Department costs in providing these services. In addition, the permit application fees have been restructured to incorporate new costs associated with the new siting requirements for commercial treatment and disposal facilities under the Pennsylvania's Hazardous Sites Cleanup Act.

Facilities which reclaim or otherwise recycle hazardous wastes in accordance with Department regulations are exempt from the hazardous waste management fees under Section 903(c) of Pennsylvania's Hazardous Sites Cleanup Act.

#### *§261.1. Scope.*

This section adds a Subsection (f) that states that the Department may regulate other wastes as hazardous wastes under Section 402 of the act (35 P.S. §6018.402) through the issuance of orders, and the imposition of permit conditions.

#### *261.2. Documentation of claims that materials are not wastes or are conditionally exempt from regulation.*

This section adds a new section from the Federal regulations concerning documentation of claims that a material is not a waste.

#### *§261.4. Exclusions.*

This section amends the exclusion for household waste. The final amendment clarifies the exclusion for the extraction, beneficiation, and processing of ores and minerals by adding a definition of "beneficiation" at §261.4(a)(13).

This section also adds an exclusion for treatability study samples, and samples undergoing treatability studies, as well as exclusions for coke, scrap metal, and sulfuric acid used to generate virgin acid.

Finally, this section provides that the subsequent revisions of the Federal exclusions at 40 CFR 261.4 which determine what materials are hazardous wastes, are incorporated by reference.

#### *§261.6. Requirements for hazardous wastes that are recycled.*

This section provides that battery manufacturing facilities reclaiming spent, lead acid batteries, petroleum refining facilities refining hazardous waste, along with normal process streams, are subject to the requirements of Chapter 266, Subchapter F.

#### *§261.24. Characteristics of toxicity.*

This section deletes the existing Table I, and replaces it with a new Table I that is consistent with the parameters listed for the EPA's new Toxicity Characteristic Leaching Procedure (TCLP) method for determining whether a waste is toxic.

*§262.10. Scope.*

This section provides that a household hazardous waste collection contractor, and a used oil collection contractor, under Section 1512 of Pennsylvania's Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §4000.1512) is a generator of hazardous waste. This section also provides that a used oil collection site operator is not a generator of hazardous waste.

*§262.80. Source reduction strategy.*

This section establishes requirements for a generator of hazardous waste to prepare a source reduction strategy, in place of the proposed waste minimization plan. The strategy will identify the generator methods and procedures that the generator will implement to achieve a reduction in the weight or toxicity of waste generation.

*§263.13. Licensing.*

This section increases the license fee to \$500, establishes a \$250 license renewal fee, and establishes a \$5 fee for each vehicle identification card requested in excess of ten cards.

*§§264.13 and 265.13. Hazardous waste management approvals and analysis.*

These sections allow the Department to waive prior approval of Module 1 forms for containerized wastes that are only stored at a facility, and require that a fee accompany Module 1 requests.

Sections 264.13 and 265.13 were also changed to reflect that a permitted facility receiving hazardous waste from a generator for the first time shall have a copy of the generator's source reduction strategy.

*§§264.75(b) and 265.75(b). Permit administration fees.*

These sections have lowered the annual administration fees from those that were initially proposed.

*§§264.113 and 265.113. Closure.*

These sections add an administration fee for review and implementation of closure requirements.

*§§264.195(a) and 265.195(a). Inspections.*

These sections require inspections of tanks every 72 hours when the facility is not operating.

*§265.431. Interim status.*

This section amends the requirements for interim status facilities to clarify the responsibilities of newly regulated facilities to file notices and permit applications.

*§265.447. Payment of fees.*

This section has increased the amount of permit applications fees differentiating between commercial and captive facilities, and added fees for permit modification applications. This section also differentiates between major and minor permit modifications, and lists what constitutes major permit modifications.

**NEW CHAPTER 266 - Special Standards for the Management of Certain Hazardous Waste Activities**  
(Added January 1993)

Chapter 266 has been developed to regulate recycled hazardous wastes.

A new definition has been added for "waste oil". "Hazardous waste oil" is defined as waste oil that is either a listed hazardous waste, or is characteristically hazardous, or contains greater than 1,000 parts per million total halogens. Waste oil that is characteristically hazardous and destined to be recycled or reclaimed by other than burning is not hazardous waste oil, and not regulated under these regulations. The waste oil is regulated under the residual regulation at Chapter 287-299. Hazardous waste oil must be managed as a hazardous waste. If it is burned for energy recovery, it shall comply with the requirements for hazardous waste fuels or oil at Chapter 266, Subchapters D and E.

#### *Chapter 266, Subchapter D*

Section 266.30(d) has also been added to clarify that mixing the blending of hazardous waste fuels is not allowed to achieve the 8,000 BTU value, or to avoid the 1,000 parts per million halogen content. The wastes to be burned must separately meet these requirements. Blending and mixing fuels is allowed, but requires a treatment permit, if any of the waste fuels are hazardous.

#### *Chapter 266, Subchapter E*

Subchapter E states the requirements for hazardous waste oil burned for energy recovery.

#### *Chapter 266, Subchapter F*

New Chapter 266, Subchapter F provides for permits-by-rule for battery manufacturing facilities reclaiming spent, lead-acid batteries and petroleum refining facilities refining hazardous waste along with normal process streams. This subchapter also provides that the Department may require an individual permit if the facility is not in compliance, or if the facility presents a threat to public health or the environment.

##### *§266.80. Reclaimed spent lead-acid batteries.*

This section establishes a permit-by-rule for facilities that reclaim spent lead acid batteries. This section also provides that the Department may require an individual permit if the facility is not in compliance, or if the facility presents a threat to public health or the environment.

##### *§266.90(c). On-site reclamation.*

This section provides that the Department may require an individual permit of an onsite reclamation facility with a permit-by-rule, if the facility is not in compliance or if the facility presents a threat to public health or the environment.

##### *§266.100. Other recycling activities.*

This section establishes a new permit-by-rule that facilities may qualify for, by petitioning for a determination of applicability.

##### *§267.56. Indemnification agreements.*

This section establishes new conditions and requirements for indemnification agreements for self-insurance.

*§267.61. Letter of credit.*

This section establishes new conditions and requirements for letters of credit for self-insurance.

*§267.61. Trust fund.*

This section establishes new conditions and requirements for trust funds for self-insurance.

*§270.1. Hazardous waste program.*

This section requires that the treatment, processing, storage, or disposal of hazardous waste can only be conducted in a facility that is designed to be capable of operating in accordance with Pennsylvania's hazardous waste regulations.

**25 PA CODE CHAPTERS 260, 263, 264 AND 265 - Hazardous Waste Management (Amended June 1993)**

The following is a discussion of the second set of amendments to these regulations in 1993.

These regulatory chapters deal with hazardous waste transportation and management fees. The changes to these regulations will implement Sections 901, 902, and 903 of Pennsylvania's Hazardous Sites Cleanup Act, which imposes fees on hazardous waste transportation, and hazardous waste management activities, by providing procedures for submission of fees due on a quarterly basis; providing a requirement for documentation to accompany submission allowing the Department to verify the accuracy of the payment; and providing penalties for violations.

Section 901 of the Act establishes the Hazardous Sites Cleanup Fund (Fund) which funds the Department's activities to respond to releases and threatened releases into the environment of hazardous substances and contamination. Section 902 provides authority for expenditures from the Fund including grants by the Department for various activities related to hazardous wastes and waste sites, and studies the Department finds necessary under the Act. Among the sources of monies deposited in the Fund are fees collected under Section 903 of the Act from persons who transport hazardous wastes within, into, or out of this Commonwealth, commercial management facilities which treat or store hazardous waste, and all facilities which dispose of hazardous waste. The regulatory amendments inform these persons of their duties and responsibilities under the Act. In addition, these amendments establish minimum civil penalties for certain violations.

**ANALYSIS OF IMPACT - Chapters 260-267, and 270**

These regulatory chapters are contained in Policy VIII-I: Energy Facility Siting/Permitting found on page II-2-25 of our FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations that intend to locate in the coastal areas are sited in such a manner that the coastal areas' ecosystems are not adversely affected.

Pennsylvania has an energy facility permitting process which has the ability, through the issuance of permits covering air discharges, water discharges and withdrawals, solid waste disposal, shoreline erosion control, wetlands protection and control of water obstructions and encroachments in the bed of Lake Erie and the Delaware River, to ensure that all facilities are sited in an environmentally responsible manner.

These regulatory amendments deal with hazardous waste. Specifically, they manage and permit hazardous waste facilities in Pennsylvania. The amendments incorporate changes made by EPA to the Federal hazardous waste program and clarify certain regulatory requirements. Many of the

amendments are necessary to retain final authorization under RCRA. Others are adopted to implement obligations under Pennsylvania's Solid Waste Management Act. They also impose fees for management and transportation of hazardous waste. In turn, these fees are used to carryout the Department's hazardous waste cleanup activities funded under Pennsylvania's Hazardous Sites Cleanup Fund.

Finally, new Chapter 266 regulations allow for the beneficial reuse, or recycling of waste once classified as hazardous. This RPC will also add Chapter 266 to this policy.

#### **NEW CHAPTER 266 ADDED RESULTING FROM CHAPTERS 260-267, AND 270 CHANGES**

As previously discussed, Chapter 266 was developed in order to provide for the beneficial reuse or recycling of waste once classified as hazardous. As a result, it must be added to Policy VIII -1: Energy Facility Siting in order to complement Pennsylvania's other hazardous waste regulations contained therein. With the revisions (*in bold faced italics*) the Regulation(s) section of the Energy Facility Siting/Permitting Policy on page II-2-25 of our FEIS will now read:

Regulations: 25 Pa. Code Chapters 75, 91, 92, 93, 95, 97, 101, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 260, 261, 262, 263, 264, 265, **266**, 267, 269, 270, 271, 272, 273, 275, 277, 279, 281, 283, 285, 287, 288, 289, 291, 293, 295, 297, 299, 6 Pa. Code Chapter V et seq.

#### **SUMMARY AND CONCLUSION** - Chapters 82, 133, 260-267, and 270 Regulatory Amendments

The regulatory amendments to Chapters 82, 133, 260-267, and 270 are not substantial changes to the Pennsylvania CZM Program, but are routine. The amended regulations are currently in use throughout the Commonwealth. Since the original regulations were incorporated into Pennsylvania's CZM Program, their amendments will also serve to strengthen the CZM Program. Furthermore, the addition of new Chapter 266 allows for the beneficial reuse or recycling of waste once classified as hazardous. Chapter 266 will also be incorporated into Pennsylvania's CZM Program to complement Pennsylvania's other hazardous waste regulations networked herein. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

These changes are routine changes in enforceable policies related to uses subject to management, and CZM Program authorities. Based on the previous discussion and impact analysis of the amendments to Chapters 82, 133, 260-267, 270, and addition of Chapter 266; we have determined that these regulatory changes further detail Pennsylvania's CZM Program, and are routine changes to Pennsylvania's CZM Program.

# 1994 REGULATORY PROGRAM CHANGES

## INTRODUCTION - GENERAL REGULATORY CHANGES

CZM's enforceable policies are based on Department of Environmental Protection's (Department) regulations which are incorporated into this Program. These regulations were in effect at the time of original CZM Program approval in 1980. However, over time these regulations have been amended, and as such change Pennsylvania's originally approved CZM Program. These subsequent changes will further detail the original Program.

The regulatory amendments which are presently in effect statewide, have been subjected to public comments and hearings, and have been approved by the Commonwealth's Environmental Quality Board, and Independent Regulatory Review Committee.

### **58 PA CODE CHAPTER 75 - Endangered Species (Amended April 1994)**

Chapter 75 protects Pennsylvania's threatened and endangered species of fish, amphibians and reptiles.

On February 1, 1993, the United States Fish and Wildlife Service determined two species of freshwater mussel to be endangered species. It is possible that these two mussels occur in Pennsylvania. Accordingly, the Commission has added the northern riffleshell mussel (*Epioblasma torulosa rangiana*), and the clubshell mussel (*Pleurobema clava*) to the Pennsylvania Endangered Species list. Pennsylvania endangered status is justified as a result of information gathered on these and other freshwater mussel in this Commonwealth during the last few years.

In addition, the eastern mud salamander (*Pseudotriton m. montanus*) was classed as a Candidate Species (§75.3). Based upon the rediscovery of this species in southcentral Pennsylvania, the Commission has reclassified it as an Endangered Species (§75.1).

### **ANALYSIS OF IMPACT - Chapter 75**

Chapter 75 is contained in Policy IV-1: Wetlands, found on page II-2-16 of our FEIS. This policy preserves and protects Pennsylvania's Threatened and Endangered Species of fish, amphibians, and reptiles.

The changes to Chapter 75 adds these two mussel species to the Endangered Species classification, and upgrades the eastern mud salamander from a Candidate Species to an Endangered Species.

### **25 PA CODE CHAPTER 109 - Safe Drinking Water - Phase II and Phase V and Wellhead Protection (Amended October 1994)**

These regulations were amended twice in 1994.

The 1986 amendments to the Federal Safe Drinking Water Act required states to develop a wellhead protection program for EPA approval. These amendments are a major step in assembling a state program. An approved wellhead protection program will strengthen the source protection efforts in Pennsylvania, result in reduced monitoring and treatment needs, and contribute towards implementation of the Department's groundwater protection strategy.

The amendments will also enable Pennsylvania to retain primacy under the Federal Safe Drinking Water Act, and preserve the Department's annual grant for program implementation.

Under a primacy extension agreement, and to maintain primary enforcement responsibility for the Federal Safe Drinking Water Program, Pennsylvania must adopt Phase II and Phase V regulations at least as stringent as the Federal rules, by July of 1994.

These regulatory amendments establish monitoring requirements for 66 regulated contaminants, and 14 unregulated contaminants; primary maximum contaminant levels (MCLs) for five contaminants; two treatment technique requirements; two secondary MCLs; and data management and waiver request fee schedules to help defray Department cost to implement these amendments. The amendments include provisions requiring the implementation of basic wellhead protection measures for new community groundwater sources. The amendments also delete two primary MCLs, and increase laboratory certification fees.

#### **25 PA CODE CHAPTER 109 - Safe Drinking Water - Lead and Copper Rule (Amended December 1994)**

This is the second amendment to Chapter 109 in 1994.

In 1991, EPA issued its final Lead and Copper Rule (LCR). That final rule fulfills a statutory requirement of the 1986 amendments to the Federal Safe Drinking Water Act. The 1986 amendments establish a list of 83 contaminants which EPA must regulate. Lead and copper are among those contaminants. Pennsylvania's amendments to Chapter 109 are necessary to comply with this Federal Act, and will allow the Department to adopt state regulations to implement the requirements of the Federal LCR. State regulations at least as stringent as the Federal rule are necessary for the Commonwealth to maintain primary enforcement responsibility (primacy) under the Federal Safe Drinking Water Act.

These regulatory amendments set forth action levels, and treatment techniques for control of lead and copper in public water systems, including requirements for corrosion control treatment, lead service line replacement, and public education. The amendments also include fees for permitting and related services, revised new source sampling requirements, requirements for a business plan for new public water systems, and the elimination of certain annual report submission requirements except those relating to water quantity.

#### **ANALYSIS OF IMPACT - Chapter 109**

Chapter 109 is contained in Policy IV-1: Wetlands, found on page II-2-16 of our FEIS. This policy preserves, protects, enhances, and restores coastal wetlands. It ensures the protection of wetlands' functions and values, and protects the habitat of federal and state threatened and endangered species. In addition, the policy requires that any wetlands which are impacted in the coastal zone area will be replaced, and/or mitigated within the coastal zone area.

As discussed above, all 1994 amendments to Chapter 109 are required by EPA's Federal Safe Drinking Water Program.

#### **SUMMARY AND CONCLUSION - Chapters 75 and 109 Regulatory Amendments**

The regulatory amendments to Chapters 75 and 109 are not substantial changes to the Pennsylvania CZM Program, but are routine. These amendments are currently in use throughout Pennsylvania. Since the original regulations were incorporated into Pennsylvania's CZM Program, their amendments will also serve to strengthen the Program. These changes are in keeping with the Pennsylvania CZM Program's, and the national CZM objectives and policies.



These changes are routine changes in enforceable policies related to uses subject to management, and CZM Program authorities. Based on the previous discussion and impact analysis of the amendments to Chapters 75 and 109, we have determined that these regulatory changes further detail Pennsylvania's CZM Program, and are not substantial changes to Pennsylvania's CZM Program.

# 1994 CHANGES TO GEOGRAPHICAL AREAS OF PARTICULAR CONCERN (GAPC)

## INTRODUCTION - GAPC CHANGES

The Federal CZM Act while noting the importance of the entire coastal zone, finds that certain areas are of greater significance. As a requirement for program approval, the Act required the Pennsylvania CZM Program to inventory and denote these geographical areas of particular concern (GAPCs). In addition, the Act further required the Pennsylvania CZM Program to make provision to denote future GAPC areas in order to preserve, protect, and restore them. The approved Pennsylvania CZM Program has met both of these requirements. (See FEIS page 11-3-1 - Purpose of Designated and Nominated GAPC.)

GAPCs can either be designated, or nominated. Designated GAPCs are designated by virtue of state ownership, state regulation, or contractual agreement with the agency, or entity responsible for management of the GAPC. Nominated GAPCs are those areas which the public, state, and federal agencies, interest groups, and other affected parties identified as deserving special management attention by CZM.

## ADDITION OF FRONTIER PARK GAPC - Lake Erie

Frontier Park has been nominated as an area of significant recreational, historical, and cultural value.

Frontier Park is situated on a 32.3 acre parcel of a land in the northwestern a section of the City of Erie (See Figure 1, Location Map.) The site is bounded by West 6th Street on the north; private property, and the Bayfront Parkway on the east; West 8th Street on the south; and Cherokee and Seminole Drives on the west. (See Figure 2, Site Map.) The Park is located in an urbanized, residential area, with some commercial uses located adjacent to the Park along West 8th Street. The Park, which has been owned and maintained by the City of Erie since 1954, includes six tennis courts, a soccer field, cross-country skiing areas, sledding/toboggan areas, a stocked fishing stream (Cascade Creek), a parking area for 20 vehicles, and a maintenance building. Frontier Park is presently within the Lake Erie Coastal Zone boundary.

## ANALYSIS OF IMPACT - Addition of Frontier Park GAPC

Local park areas have significant social value to citizens as a resource for recreational and cultural activities associated with the coastal zone. NOAA has suggested that a goal of state coastal programs should be to protect, maintain, or restore these areas. Pennsylvania CZM Program's FEIS (page 11-3-7) has listed the following activities as High Priority uses of areas of significant recreational, historic, or cultural value:

1. Activities that maintain or increase the resource value of these GAPCs, such as better access and walkways, increased parking, improved security, new park equipment, public boat launches, landscaping, etc.
2. Activities which provide financial support.

By nominating Frontier Park as a significant recreational, historical, or cultural value GAPC, CZM financial support can be used to maintain, and increase the resource value of this Park. The nomination of Frontier Park as a GAPC is also in conformance with CZM's Fisheries Management, and Public Access Policies found in our FEIS on pages 11-2-12 and 11-2-17, respectively.

CZM Boundary



OL

# Presque Isle Bay

PRESQUE ISLE BAY

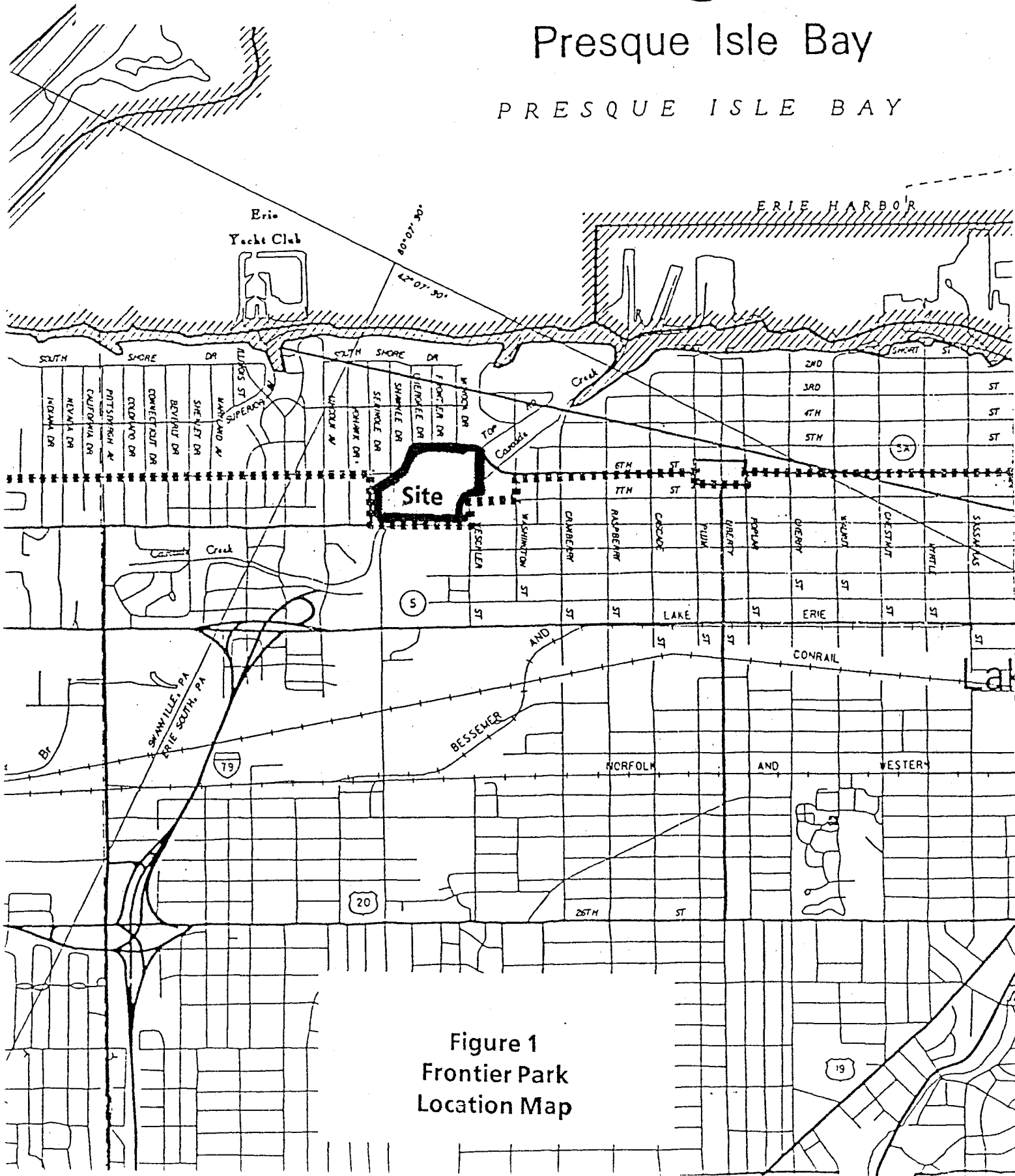


Figure 1  
Frontier Park  
Location Map

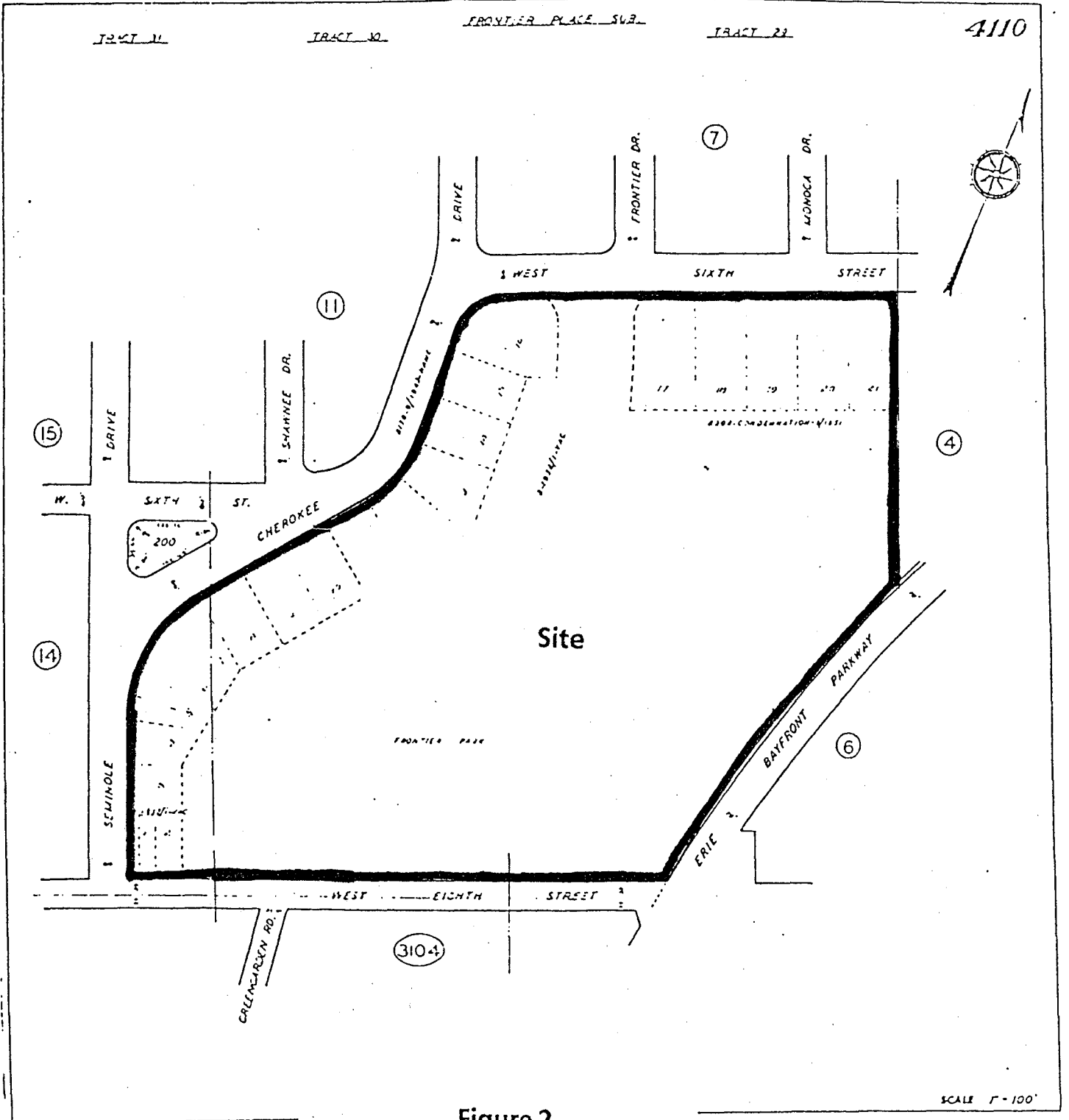


Figure 2  
Frontier Park  
Site Map

As a result of adding Frontier Park as a GAPC, the FEIS' Inventory of GAPC (page II-3-11) will be revised. With the revision (*in bold faced italics*) the Inventory will read as follows:

Identification No.	Recreation, Cultural, and Historic Value Areas	Approx. Size (Acres)
R-5	Scott Park, Sommerheim Park	108
*R-6	Presque Isle State Park	3,250
<b><i>R-11</i></b>	<b><i>Frontier Park</i></b>	<b><i>32.3</i></b>

\*Denotes state ownership

**EXPANSION OF ELK CREEK ESTUARY GAPC - Lake Erie**

A request has been made to expand the existing Elk Creek Estuary GAPC.

The 320 acre Elk Creek Estuary is presently a nominated significant recreational, historical, or cultural value GAPC. The majority of the site is located in Girard Township, while the remaining portion is located within the corporate limits of Lake City Borough. Lake City Officials are proposing to expand this GAPC in an eastward direction to include an additional ten acres of land at the intersection of Old Lake Road and PA Route 5 (See Figure 3, Location Map). The site includes three private properties (two residential and one commercial), and the adjacent right-of-ways of Old Lake Road, and PA Route 5. (See Figure 4, Site Map.) The expansion will occur entirely within the present Lake Erie Coastal Zone boundary.

**ANALYSIS OF IMPACT - Expansion of Elk Creek Estuary GAPC**

Old Lake Road is the only road which provides vehicle access to the Pennsylvania Fish and Boat Commission's boating access area at the mouth of Elk Creek, located in the existing Elk Creek Estuary GAPC. Residential, commercial, and industrial uses at the intersection of Old Lake Road, and PA Route 5 are causing traffic safety problems, and vehicle/pedestrian conflicts. Future residential, commercial, and recreational development in this area will exacerbate these problems. By expanding the Elk Creek Estuary GAPC to include this intersection, Lake City will be able to use CZM financial support to undertake a number of improvements at this intersection in an effort to provide a safer environment for vehicles and pedestrians using Elk Creek Estuary GAPC.

The expansion of Elk Creek Estuary GAPC is in conformance with CZM's Fishery Management, and Public Access Policies found in our FEIS on pages II-2-12 and II-2-17, respectively.

As a result of expanding Elk Creek Estuary GAPC, the FEIS' Inventory of GAPC (see page II-3-11) will be revised. With the revisions (*in bold faced italics*) the Inventory will read as follows:

Identification No.	Recreation, Cultural, and Historic Value Areas	Approx. Size (Acres)
R-1	Raccoon Creek Stream Corridor	300
R-2	Elk Creek Estuary Site	<b><i>330</i></b>
R-3	Lake Erie Community Park	111
*R-4	Walnut Creek Access Area	40

\*Denotes state ownership

CZM Boundary  
■■■■■■■■■■

LAKE ERIE

Elk Creek  
Estuary Site

Lake Erie Bluff

RHC

NV

Site

The  
Mouth

DO

Pennsylvania  
Electric Site

S

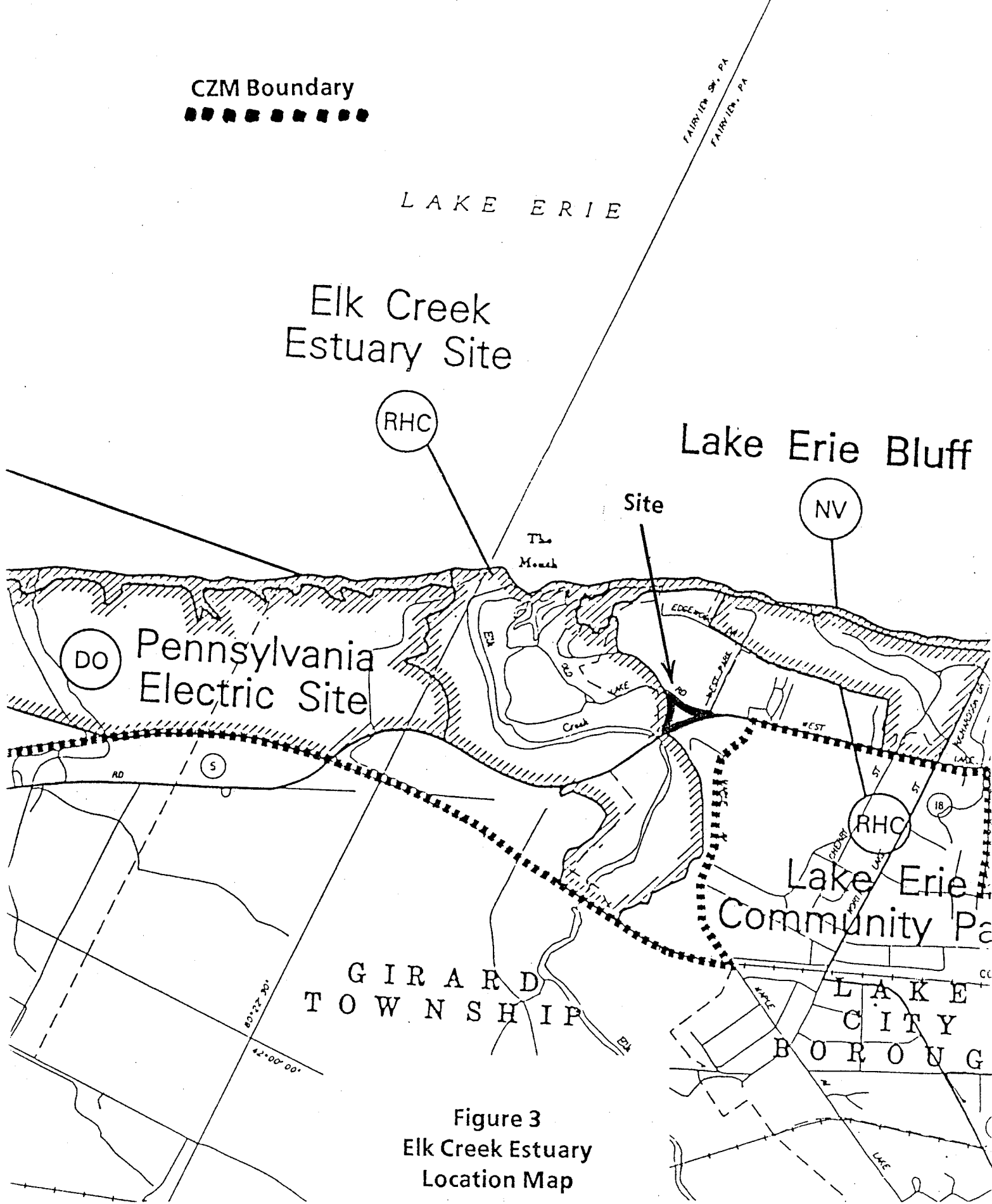
RHC

Lake Erie  
Community Pa

GIRARD  
TOWNSHIP

LAKE  
CITY  
BOROUGH

Figure 3  
Elk Creek Estuary  
Location Map



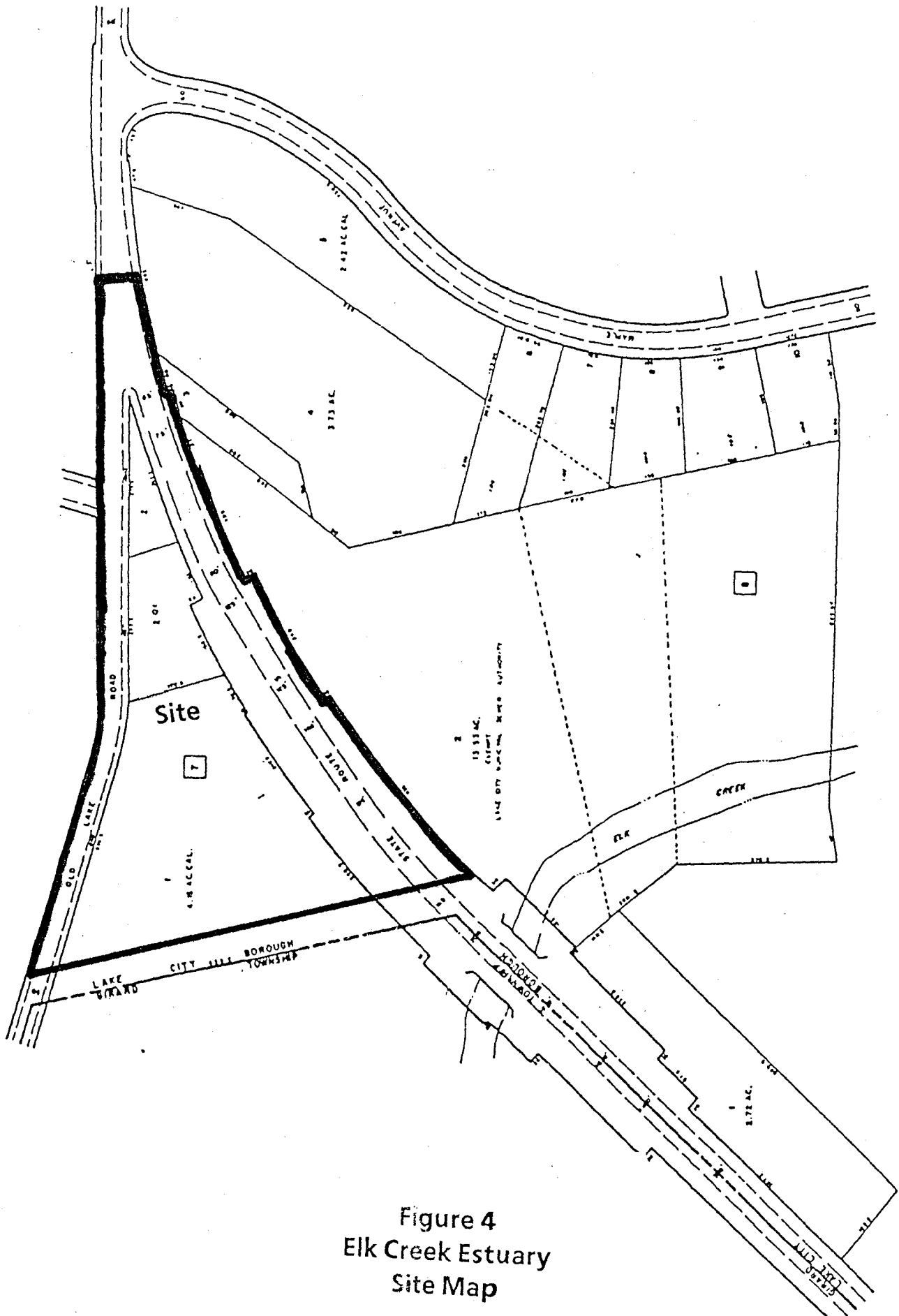


Figure 4  
 Elk Creek Estuary  
 Site Map

## **ADDITION OF BRISTOL RIVERFRONT NORTH GAPC - Delaware Estuary**

Bristol Riverfront North has been nominated as an overlap area GAPC. An overlap area GAPC is an area where the distinction between a natural area, a recreational area, and a development opportunity area is not easily defined. Underdeveloped sites such as these are appropriate for development, and also possess either natural amenities or recreational opportunities.

Bristol Riverfront North is an approximate 37 acre parcel of land located on the Delaware River in Bristol Borough. (See Figure 5 Location Map.) The site is bounded by Radcliffe Street on the west, and the Delaware River on the east. The Borough's boundary line and property line are the same on the north end, and the southern property line is indicated on Figure 6, Site Map.

The property is owned by the Redevelopment Authority of the County of Bucks. There is a Cooperation Agreement between the Redevelopment Authority, and the Borough of Bristol in reference to the property. There is also an Agreement between the Redevelopment Authority, and Borough Development, Inc., (future owner) in reference to the ultimate development of the property.

All the parties involved in the real estate have agreed that a significant portion of the riverfront area should be dedicated for public use. The alternatives for insuring this public use will be either retention of certain areas by the governmental agencies, or some type of permanent easement for municipal purposes.

With regards to the particular significance of the site, the parcel contains some wetlands adjacent to the Delaware River that require remediation, and the Borough is committed to providing some type of public access to the waterfront. Their "wish list" includes extension of the Spurline Park (now ending near the north end of the property on the opposite side of Radcliffe Street) to the river, a public boat launch and waterfront promenade. Additional amenities desired are a concession, and possible marina. While the remainder of the site will be intensely developed, coordination with the Borough and the prospective developer will ensure that some, or all of the "wish list" items are incorporated into the design.

## **ANALYSIS OF IMPACT - Addition of Bristol Riverfront North GAPC**

As previously discussed, local park areas have significant social value to citizens as a resource for recreational and cultural activities associated with the coastal zone. By nominating Bristol Riverfront North as an overlap GAPC, CZM Program financial support can be used to preserve and maintain the resource value of the area.

Presently, CZM has a grant application from Bristol Borough requesting design grant monies for this area. Should the grant be awarded, the site will be surveyed, wetlands delineated, non-point source pollution analyzed, and plans prepared for the construction of the Spurline Extension to the river and wetlands clean-up. Easements will be issued for Spurline Extension, thus guaranteeing a portion of the Borough's "wish list". The nomination of Bristol Riverfront North as a GAPC is also in conformance with CZM's Fisheries Management, Wetlands, Public Access, and Intergovernmental Coordination/Water Quality Policies found in our FEIS on pages II-2-12, II-2-16, II-2-17, and II-2-28,



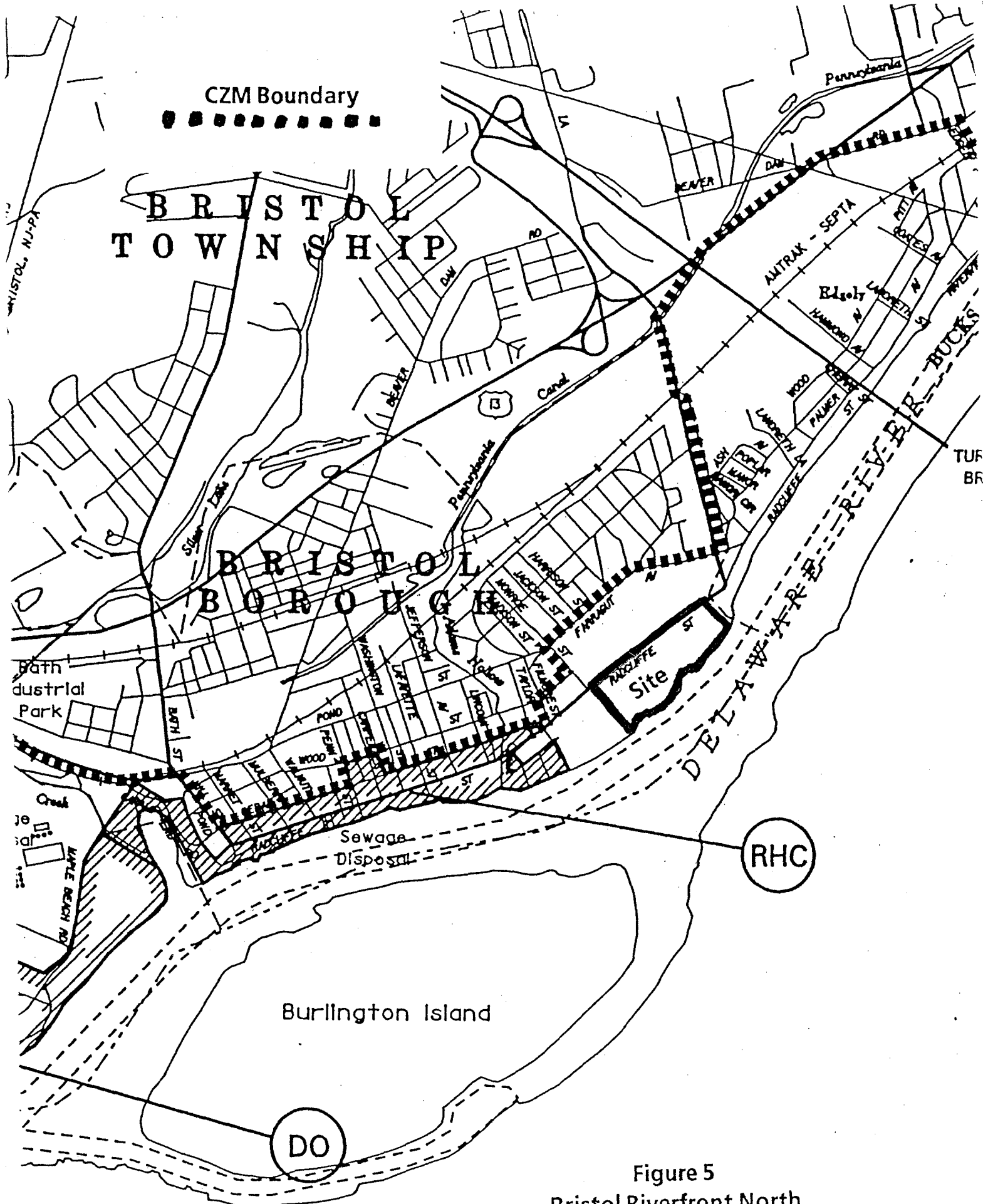
respectively. As a result of adding Bristol Riverfront North as a GAPC, the FEIS' Inventory of GAPC (pages II-3-10) will be revised. With the revision (in bold faced italics), the inventory will read as follows:

Identification No.	Overlap Areas	Approx. Size (Acres)
OV-2	Linton Avenue - River Road	82
OV-3	Martins Creek - Van Sciver	116
OV-4	Money Island	448
OV-5	Fordmill Road	90
<b>OV-6</b>	<b><i>Bristol Riverfront North</i></b>	<b>37</b>

### **SUMMARY AND CONCLUSION OF GAPC CHANGES**

The addition of Frontier Park GAPC, Bristol Riverfront North GAPC, and the expansion of the Elk Creek Estuary GAPC are not substantial changes to the existing Inventory of GAPC, but are routine. By nominating these areas as GAPCs, CZM financial support can be used to preserve, protect, and provide for additional recreational opportunities in Pennsylvania's Coastal Zones. Furthermore, a potential unsafe intersection at Elk Creek Estuary recreational GAPC can be averted.

These GAPC changes are routine changes to special management areas of Pennsylvania's CZM Program. Based on the previous discussion and impact analysis concerning the addition of Frontier Park, Bristol Riverfront North, and expansion of the Elk Creek Estuary GAPCs, we have determined that these GAPC changes further detail Pennsylvania's CZM Program, and are routine changes to Pennsylvania's CZM Program.



Burlington – Bristol  
Bridge Area

Figure 5  
Bristol Riverfront North  
Location Map



## 1995 REGULATORY PROGRAM CHANGES

### INTRODUCTION - GENERAL REGULATORY CHANGES

In 1995 there were no general state regulatory changes pertinent to CZM.

## 1995 SECTION 306 PROGRAM CHANGES

### INTRODUCTION - SECTION 306(d)(14) PROGRAM CHANGES

When Congress reauthorized the CZM Act in 1990, a new requirement was added. Section 306 (d)(14), requires that states with approved CZM Programs provide for public participation in their federal consistency determinations. NOAA has determined that Section 306(d)(14) imposes a new requirement for effective public participation only in the state's review of consistency determinations pertaining to direct federal activities, as discussed under Section 307(c)(1) of the CZMA, and as defined in 15 CFR Section 930.31.

Section 930.31 defines direct federal activities as activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency. Examples would include activities in National Parks such as installation of mooring buoys, or road construction, Fisheries Management Plans by the National Marine Fisheries Service, Naval exercises, the disposal of surplus federal land by the General Services Administration, a U.S. Army Corps of Engineers (COE) breakwater, or beach renourishment project, the development of COE regional, nationwide or state programmatic general permits, an outer continental shelf (OCS) oil and gas lease sale by the Minerals Management Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, etc.;

Section 930.31(c) clarifies that direct federal activities do not include the issuance of federal licenses or permits (i.e., activities requiring COE 404 permits, Interstate Commerce Commission water carrier licenses, MMS licenses for OCS exploration, development and production, COE permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, etc.), nor do they include federal financial assistance to states and local governments. (i.e., Federal Highway Administration funds to state and local governments, construction grants for wastewater treatment works, hazardous waste management trust fund, Housing and Urban Development grants, etc.).

### SELECTED PROCEDURES FOR MEETING SECTION 306(d)(14) PUBLIC COMMENT REQUIREMENTS

CZM has determined that the most efficient way of meeting these requirements is to modify the current review mechanism used by Pennsylvania to review federal activities.

In the current mechanism (called PREP), federal agencies send direct federal activities to this Department's Office of Policy, who then forwards a copy onto CZM for a consistency review and response. In many instances, federal agencies also send a copy of their activities directly to CZM for review and response.

In the proposed modified version, CZM will request that ALL federal agencies send a copy directly to CZM for review. Direct receipt of this information is crucial as it will ensure that a public comment period of sufficient length will occur within the mandated 45 day review period, and that the required public notice will be timely. These important aspects will be discussed in detail later in this RPC.

To begin the process, CZM will notify all pertinent federal agencies in writing of the CZM Act's public participation requirements. Copies of Section 306(d)(14) regulations will be provided, along with a listing of those direct federal activities (listed in CZM's FEIS) which specifically require 306(d)(14) coordination. State and federal agencies' respective 306(d)(14) requirements will be discussed, as well as the timeframes involved.

The Pennsylvania CZM Program will implement Section 306(d)(14) requirements by following OCRM's guidance contained in 59 Federal Register 30339. They are:

1. *Timely public notice must be provided. States must issue public notice at the earliest practicable time after the application, and/or consistency determination has been received by the lead state coastal management agency.*

CZM is mandated to review a direct federal activity, and make a decision within 45 calendar days. Historically, for those federal activities sent to CZM through PREP, CZM was able to review/respond under PREP's review timeclock. However, PREP does not provide for a public comment period.

CZM has determined that in order to issue a public notice at the "earliest practicable time," and meet the 45 day federal consistency timeclock period, it must receive these federal activities directly from the federal agencies. As such, CZM's federal consistency timeclock for direct federal development projects will now begin on the date that the federal project is stamped "Received" in the CZM office.

2. *Public participation at a minimum must consist of written public notice and solicitation of public comments.*

Within this 45 day federal consistency review timeframe, CZM will develop a public notice, publish the notice in the Pennsylvania Bulletin, solicit public comments, coordinate with other state agencies, and respond in writing back to the federal agency.

3. *A public comment period must be provided. The length of the comment period may vary in accordance with state or Federal law, and as appropriate for the type of authorization involved.*

CZM will provide for a 15 day public comment period.

In calculating the length of the public comment period, CZM had two timeframes to contend with. The first was the mandated 45 day federal consistency review timeframe, in which to review the federal activity, make a decision, and respond in writing to the federal agency.

The second timeframe to contend with was that submissions for publication in the Pennsylvania Bulletin must be received in Harrisburg by Tuesday, noon. Every Tuesday this information is collated, and the packet is sent to the Pennsylvania Bulletin to be published. Publication date is the second Saturday following that Tuesday. This two-week publication delay will not stop CZM's 45 day federal consistency timeclock. This

publication delay would consume between 12 to 18 days of the public's comment period.

Furthermore, CZM has to allow itself a reasonable time period for the review of public and state agency comments, further state agency coordination, and to develop and send a final consistency decision to the pertinent federal agency. Therefore, based on these time constraints, as well as a review of public comment periods offered by federal agencies, CZM has determined that 15 days is an equitable public comment period.

As can be seen, it is important that the CZM Program receives these projects DIRECTLY, in order to assure publication of a Public Notice, ensure a suitable public comment period, and respond back to the federal agency within 45 days. Under the CZM Act, federal agencies who do not receive a written response within 45 days can presume their project is consistent with Pennsylvania's CZM Program.

4. *Written public notice must:*

- (a) *specify that the proposed activity is subject to review for consistency under the policies of the state coastal management program;*
- (b) *provide sufficient information to serve as a basis for meaningful comment;*
- (c) *specify a source for additional information; and*
- (d) *specify a contact for submitting comments to the state coastal management program.*

CZM will develop a generic public notice form which will include the above requirements.

5. *At a minimum, public notice must be provided in the area(s) of coastal zone likely to be affected by the activity.*

One of OCRM's suggested procedural options will be used by CZM. CZM will provide its public notice via the Pennsylvania Bulletin, the official state gazette.

#### **ANALYSIS OF IMPACT OF SECTION 306 (d)(14) PROGRAM CHANGE**

From a federal procedural standpoint, there will be very little change. For those federal agencies not already doing so, these agencies will be asked to send an additional copy of their project directly to CZM for review. Providing project information to state CZM Programs for review has been a requirement of the federal CZM Act since 1972. Presently, the majority of federal development projects are already being sent directly to CZM for review. The remaining small percentage of these federal projects are sent indirectly to CZM via the state's PREP system. The new 306(d)(14) procedures will request that the federal agencies send this small percentage of projects directly to CZM for review.

The direct receipt of these projects by CZM is crucial due to the 45 day federal consistency timeclock, and in order to meet the new Section 306 requirements providing for public participation.

From a state procedural standpoint, CZM will be under a tight timeframe to quickly develop a public notice submission, and then consider any public comments received. There will be no discernible changes to the PREP system.

## **1995 SECTION 309 PROGRAM CHANGES**

### **INTRODUCTION - SECTION 309 PROGRAM CHANGES**

Section 309 of the Federal CZM Act, as amended in 1990 encouraged coastal states to reassess their CZM Programs. One purpose of the reassessment was for coastal states to identify new coastal problems that have arisen since the original state program's approval; and to develop program changes to resolve these problems.

The following CZM Program change resulting from Section 309, will help assure more consistent and coordinated municipal enforcement of the Commonwealth's Bluff Recession and Setback Act (BRSA).

### **PROPOSED CHANGE TO COASTAL HAZARD POLICY 1-A1**

CZM has determined that two major factors causing improper structure siting along the bluffs of Lake Erie are inconsistent local official decision making, and lack of a single file source of all legal interpretations of the BRSA for both CZM and municipal reference. These factors can cause structures regulated by the BRSA to be placed within the bluff recession hazard area in a way that is generally inconsistent with the intention of the Act.

Subsequently, CZM compiled existing field interpretations and Departmental guidance of the BRSA into the document "Municipal Reference Document, Compilation of Field Interpretations and Department Guidance for the Bluff Recession and Setback Act." The document was provided to the eight coastal municipalities responsible for enforcing these regulations.

Because of these aforementioned factors, CZM is proposing to revise its Coastal Hazards Policy I-A.1. An addition will be made to the Policy that will provide for written and verbal guidance to the municipalities to assure consistent and coordinated enforcement of the BRSA regulations. This guidance will be updated on a regular basis.

### **ANALYSIS OF IMPACT OF SECTION 309 POLICY CHANGE**

Policy I-A.1 requires municipalities with bluff recession hazard areas to enact setback ordinances affecting stationary structures in terms of regulating construction within a specified distance from the edge of the bluff. In certain instances, however, determination of this specified distance may not be clear due to the orientation of the bluff crest. Therefore, CZM recognized the need for consistent and accurate delineation of the bluff crest, as well as consistent and accurate interpretation of the requirements of the BRSA regulations. Guidance detailing interpretations of these requirements will assure proper enforcement of the BRSA regulations.

Under Section 309 criteria, the proposed policy addition is categorized as "new or revised guidelines, procedures and policy documents which are formally adopted by a state and provide specific interpretations of enforceable CZM Program policies to applicants, local governments, and other agencies that will result in meaningful improvements in coastal resource management and that will improve a state's ability to attain one or more of the coastal zone enhancement objectives."

As a result of this addition, Policy I-A.1: Bluff Setback and Erosion Control Setback of our FEIS's Coastal Zone Policy Framework (page II-2-3) will be revised. The original policy, followed by the addition (**in bold faced italics**) will read as follows:

It is the policy of the Coastal Zone Management Program to require municipalities with bluff recession hazard areas along the Lake Erie shoreline as determined in the "Shoreline Erosion and Flooding - Erie County" report of 1975 to enact setback ordinances affecting stationary structures. These ordinances will regulate construction within a specified distance from the edge of the bluff. At a minimum, the setback distance is computed as the economic life of the structure times the local bluff recession rate per year (in feet). ***In addition, it is the policy of the CZMP to provide written and verbal guidance to the municipalities to assure consistent and coordinated enforcement of the BRSA. The CZMP will compile all field interpretations and Department guidance for the BRSA into a written guidance document and provide the document to the municipalities. The document shall be amended and updated as new interpretations occur.***

#### **SUMMARY AND CONCLUSION OF SECTION 309 POLICY CHANGE**

Consistent and coordinated enforcement of BRSA is essential to Lake Erie residents of the Commonwealth affected by shoreline erosion and bluff recession phenomena. Both economic losses and losses of land to the lake waters occur as a result of these phenomena. Setback Regulations result in greater protection for property owners who may otherwise build structures too near to the bluff face, and will protect future investments in these structures. Setback Regulations also prevent accelerated rates of erosion which often result from development occurring too near the bluff edge. Ultimately, setback requirements safeguard the public from hazardous development. Therefore, it is important that implementation of the BRSA regulations is both accurate and consistent. As such, both written and verbal guidance will be provided by CZM to the municipalities to assure proper implementation of the regulations at the local level. This guidance will be updated as interpretations occur. This policy addition directs CZM to provide and update guidance to the municipalities administering the BRSA.

This addition to CZM's enforceable policies related to uses subject to management is not a substantial change, but routine. The addition to Policy I-A.1 results from, and is in conformance with Section 309 of the Federal CZM Act. Based on the previous discussion and impact analysis of the policy change, we have determined that this program change further details Pennsylvania's CZM Program and is a routine program change.



Current CZM Boundary

Expanded CZM Boundary

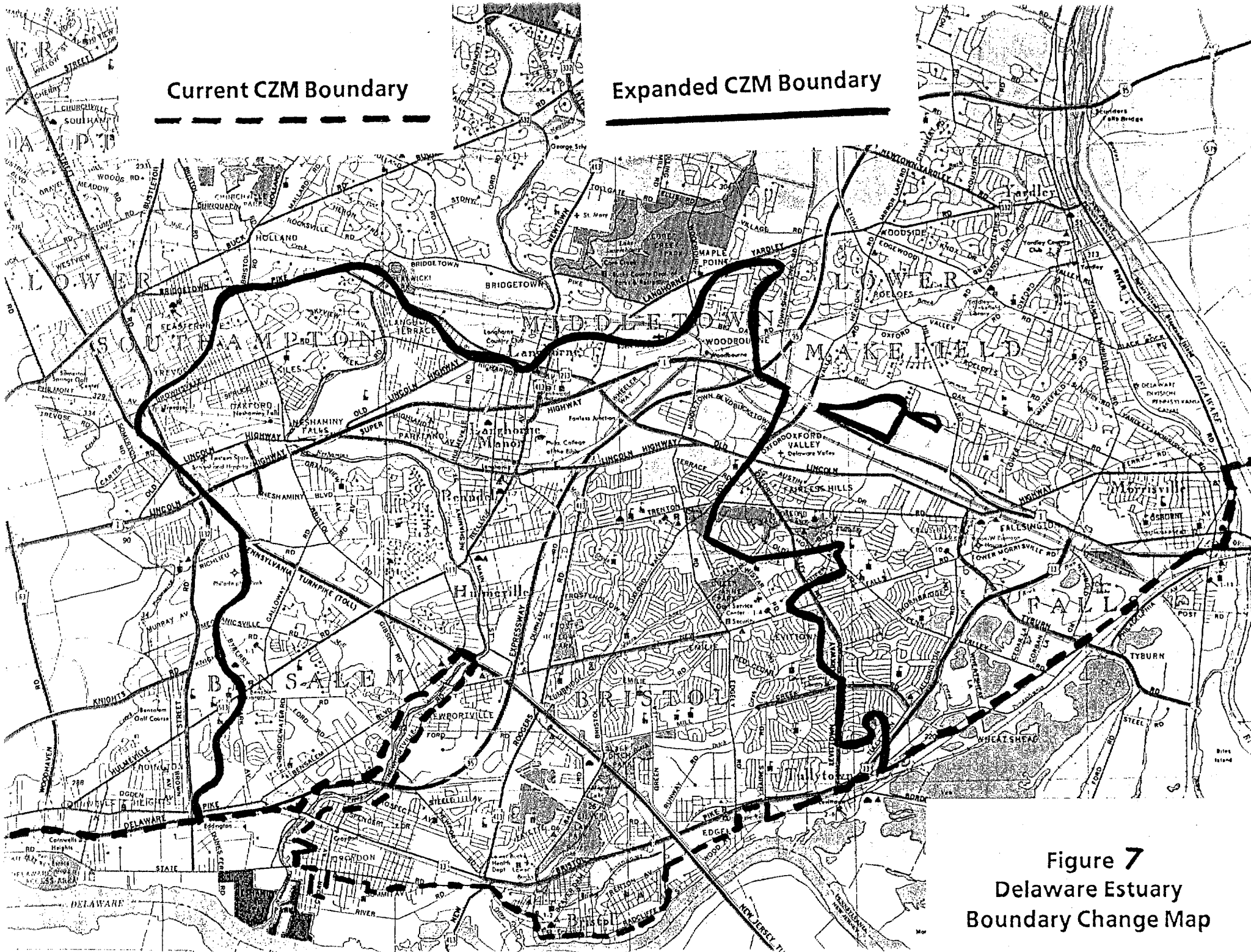


Figure 7  
Delaware Estuary  
Boundary Change Map

## **1995 SECTION 309 PROGRAM CHANGES**

### **INTRODUCTION - SECTION 309 BOUNDARY CHANGE**

Section 309 of the Federal Coastal Zone Management Act, as amended in 1990 encouraged coastal states to reassess their CZM Programs. One purpose of the reassessment was for coastal states to identify new coastal problems that have arisen since the original state program's approval; and to develop program changes to resolve these problems.

The following CZM Program change resulting from Section 309 will help ensure that direct impacts to wetlands located outside of the Delaware Estuary Coastal Zone (DECZ), will not have direct impacts to hydrologically connected wetlands located within the DECZ.

### **PROPOSED DELAWARE ESTUARY BOUNDARY CHANGE**

The two reasons for proposing the boundary expansion are to incorporate into the DECZ hydrologically connected wetlands, and potential wetland mitigation sites currently located outside the designated DECZ. Activities which occur in hydrologically connected waters/wetlands and surrounding uplands often directly and significantly impact coastal wetlands. Also, current CZM Wetland policy which was revised to reflect recent amendments to Chapter 105 regulations, requires that any wetland impacts within the coastal zone, due to encroachment activities, be replaced, and/or mitigated within the coastal zone. Since potential mitigation sites are scarce in the DECZ due to the high degree of urbanization, expansion of the boundary will also provide more areas for potential wetland mitigation sites, thus ensuring a no net loss of wetlands in the coastal zone.

The expansion area was determined by watershed boundaries, and the occurrence of wetlands and potential wetland mitigation sites. Ten municipalities are involved in the boundary change. Current municipalities within the DECZ whose areas will be expanded include Bristol Borough, Tullytown Borough, Bristol Township, and Bensalem Township. Portions of the following municipalities will be added to the DECZ: Middletown Township, Lower Southampton Township, Pennel Borough, Hulmeville Borough, Langhorne Borough, and Langhorne Manor Borough. All municipalities are located in lower Bucks County, Pennsylvania, (See Figure 7). The proposed expansion area includes portions of the lower Neshaminy Creek Watershed, Mill Creek Watershed, Black Ditch Creek Watershed, Queen Anne Creek Watershed, Otter Creek Watershed, and a small portion of Delaware River drainage. The present DECZ is 52 square miles. The additional area proposed for expansion encompasses approximately 40.8 square miles. The new boundary originates at the existing coastal zone boundary along Route 13 east of Eddington. It follows the Lower Neshaminy Creek Watershed boundary north to the Turnpike, Interchange 28, Route 213, and further north to just northwest of Langhorne Terrace. The proposed expansion boundary then follows the Neshaminy Creek Watershed boundary north, northeast to the Mill Creek Watershed boundary, Langhorne, Woodburne, and Maple Point. It then follows the Queen Anne Creek Watershed boundary further east to the Falls Township line. The boundary then follows the Falls Township line south until it meets the Black Ditch Creek Watershed boundary. It proceeds south along the watershed boundary, and then the Falls Township line, until it follows an unnamed watershed boundary draining into the Delaware River as it again joins the existing coastal zone boundary in Tullytown Borough.

When originally proposed, DECZ boundary expansion contained the entire Queen Anne Creek Watershed, which also includes Falls Township, and Lower Makefield Township. However, Falls Township, a portion of which is presently located within the DECZ boundary, has chosen not to be included in the expansion at this time. As can be seen by Figure 7, Falls Township's decision has

created a gap in the Queen Anne Creek Watershed, and has in affect isolated two areas of Lower Makefield Township (approximately .2 square miles). Essentially, these two portions of Lower Makefield have become "islands" and are not connected to the DECZ. As a result, OCRM determined that they could not approve CZM's originally proposed boundary expansion because Lower Makefield was not contiguous to the DECZ, as required by the federal CZM Act. In order to gain OCRM approval, CZM had to delete Lower Makefield from inclusion into the DECZ expansion.

#### **ANALYSIS OF IMPACT OF SECTION 309 BOUNDARY CHANGE**

Under Section 309 requirements, the proposed DECZ boundary change will improve the Commonwealth's ability to enhance its coastal wetlands, and provide for wetland habitat restoration. The Pennsylvania CZM Program's Policy IV-1: Wetlands, states that "It is the policy of the coastal zone management program to preserve, protect, enhance and restore the remaining wetlands within the Commonwealth's coastal areas-..." Expansion of the existing DECZ will aid in preserving and protecting coastal waters/wetlands. Activities that occur beyond coastal zone boundaries may have a direct and significant impact on coastal wetlands. This becomes increasingly important in the highly developed DECZ. By expanding our program boundary, CZM can closely monitor these wetlands and aid in the preservation of these unique ecosystems. Furthermore, since development pressures are so great in the DECZ, expanding the DECZ will offer more areas that will provide potential wetland mitigation sites.

The expansion of the DECZ would strengthen the CZM coastal wetlands protection program, and would increase the number of natural resource areas such as parks located within the DECZ boundary.

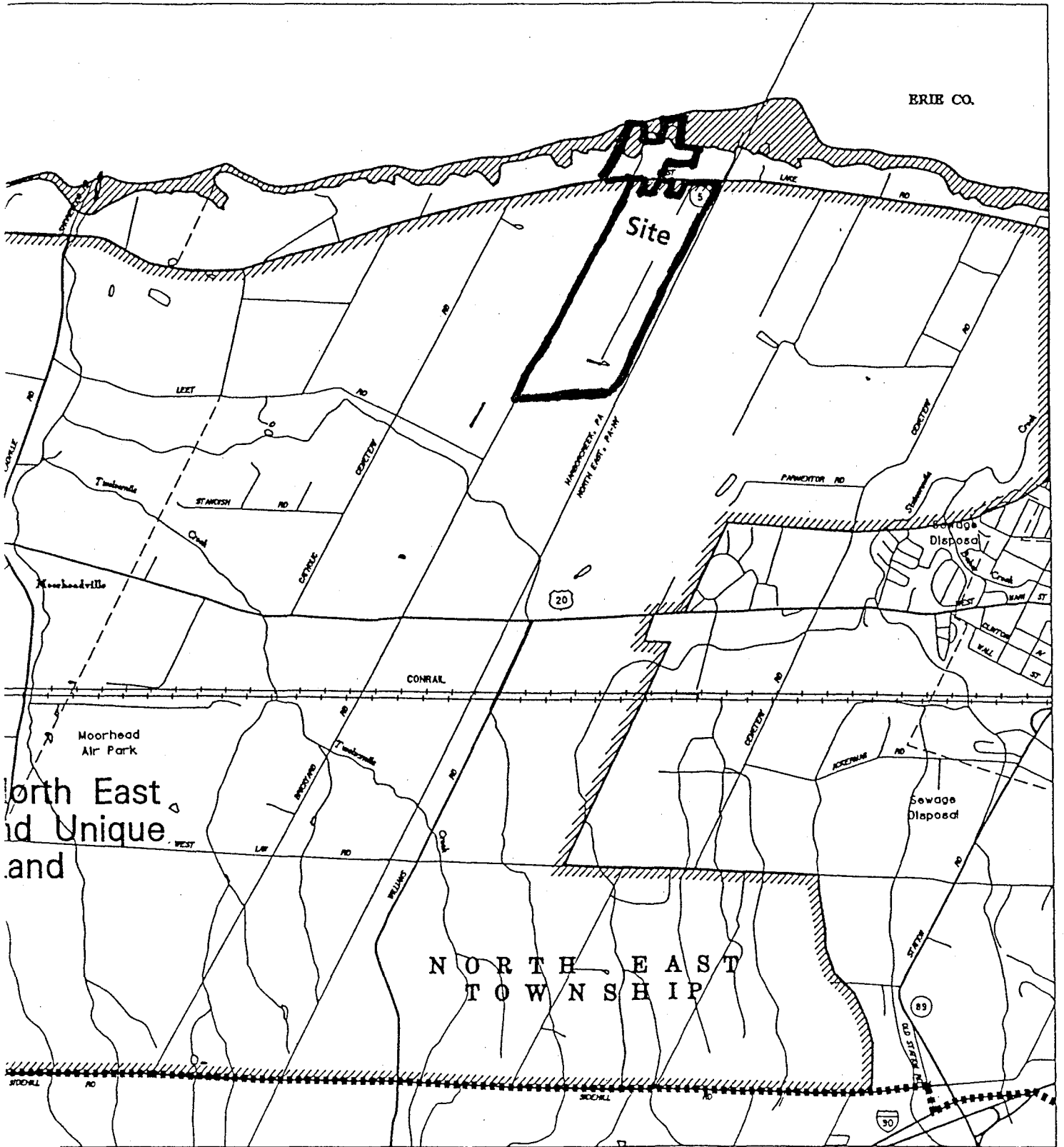
#### **SUMMARY AND CONCLUSIONS OF SECTION 309 BOUNDARY CHANGE**

The expansion of the DECZ boundary is a minor change to the overall size of the DECZ. The area to be added is approximately 40.8 square miles, and includes hydrologically connected wetlands, potential wetland mitigation sites and natural resource areas. With this addition, the CZM Program will be able to preserve and protect more coastal wetlands and perhaps provide better opportunities for wetland mitigation sites within the DECZ management area. Furthermore, with the addition of parts of six municipalities and an expanded area in four municipalities, the DECZ boundary expansion will allow CZM to fund beneficial projects in a larger coastal area.

Finally, Falls Township's decision of not wanting to be included in the DECZ boundary expansion at this time will not preclude it from becoming part of the expansion, should they decide to in the future. If Falls Township does decide to expand its area in the Queen Anne Creek Watershed, Lower Makefield will be asked to also participate in the DECZ expansion at that time.

The addition of 40.8 square miles to the DECZ in Bucks County, Pennsylvania, will provide the CZM Program opportunities to preserve and protect more coastal wetlands. It will also provide additional potential wetland mitigation sites in the DECZ, which will in turn will keep mitigated wetlands in the coastal zone management area. In addition to hydrologically connected wetlands and potential mitigation areas, many natural resource areas will now be part of the DECZ including parks and unique habitats such as remnant coastal plain forests. The approved Pennsylvania CZM Program's Wetlands Policy does provide for the protection and preservation of wetlands.

This boundary change is not a substantial change to Pennsylvania's Delaware Estuary Coastal Zone boundary. Based on the previous discussion and impact analysis, we have determined that this program change to Pennsylvania's coastal boundaries is routine, and will further detail Pennsylvania's CZM Program. This boundary change results from and is in conformance with Section 309 of the Federal CZM Act.



# PENNSYLVANIA COASTAL ZONE MANAGEMENT PROGRAM

Figure 8  
McCord Vineyard  
Location Map





One of the major goals of the CZM Program is the protection and enhancement of these unique areas, and the encouragement of only those uses which will not interfere with the area's natural functions. The CZM Program's FEIS (page II-3-5) lists agricultural activities which occur within prime and unique soils areas as a High Priority Activity.

Through the purchase of an Agricultural Conservation Easement, the Pennsylvania Department of Agriculture will be responsible for the management and protection of this GAPC.

The designation of the McCord Vineyard GAPC is in conformance with CZM's Coastal Hazards Area and Fisheries Management Policies found in our FEIS on pages II-2-3 and II-2-12, respectively.

As a result of designating the McCord Vineyard as a GAPC, the FEIS' Inventory of GAPC (see page II-3-11) will be revised. With the revisions (***in bold faced italics***), the Inventory will read as follows:

Identification No.	Natural Value Areas	Approx. Size (Acres)
<b>**NV-1</b>	Lake Erie Bluff	---
NV-5	Harborcreek and North East Township Prime and Unique Agricultural Land	21,000
<b><i>*1**NV-6</i></b>	<b><i>McCord Vineyard</i></b>	<b><i>185.54</i></b>

\*Denotes state ownership

\*\*Denotes state regulated

#### SUMMARY AND CONCLUSION OF GAPC CHANGES

The addition/designation of the McCord Vineyard GAPC is a not a substantial change to CZM's existing Inventory of GAPC, but is routine. The entire McCord Vineyard (185.54 acres) is presently located within the LECZ. Approximately 90% (167 acres) of this site presently is a nominated natural value GAPC. CZM will add the remaining 10% (18.5 acres), and designate the entire McCord Vineyard as a natural value GAPC.

The McCord vineyard contains prime agricultural and erodible soils. Through state ownership (purchase of conservation easement) state regulation, and contractual agreement with PDA, CZM will be able to better preserve and protect this prime agricultural site.

This GAPC change is a routine change to special management areas of Pennsylvania's CZM Program. Based on the previous discussion and impact analysis concerning the addition of McCord Vineyard GAPC, we have determined that this GAPC change further details Pennsylvania's CZM Program, and is a routine change to Pennsylvania's CZM Program.

# 1993, 1994, AND 1995 REGULATORY CHANGES REQUIRED UNDER THE FEDERAL CLEAN AIR AND CLEAN WATER ACTS

## INTRODUCTION - INCORPORATION OF WATER POLLUTION AND AIR POLLUTION REQUIREMENTS

Section 307(f) of the Federal CZM Act and 15 CFR Section 923.44 of the approval regulations calls for the "incorporation" of the requirements of the Federal Water Pollution Control Act, as amended, and the Federal Clean Air Act, as amended, into coastal zone management programs.

As a result, states are not required to submit these requirements to OCRM as program changes. However, states must notify OCRM, federal, state, and local agencies, and other interested parties, of the incorporation of these requirements into their state coastal management programs. As such, Pennsylvania's CZM Program is taking this opportunity to provide the required notification. (See FEIS page II-5-14 - Incorporation of Water Pollution and Air Pollution Requirements.)

### **25 PA CODE CHAPTER 93 - Triennial Review of Water Quality Standards (Amended February 1994)**

Chapter 93 sets forth water quality standards for the waters of this Commonwealth. These standards are based upon water uses which are to be protected, and will be considered by the Department in its regulation of discharges.

Water quality standards are an important element of the Commonwealth's Water Quality Management Program in that they set general and specific goals for the quality of Pennsylvania's streams. The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve, and maintain those uses. Thus, water quality standards are instream water quality goals that set standards of cleanliness for rivers, lakes and other surface waters. These goals are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution.

The Federal Water Pollution Control Act requires that states periodically, but at least once every three years, review and revise as necessary, their water quality standards. These amendments constitute Pennsylvania's current triennial review of its water quality standards.

The following changes are pertinent to CZM:

The Department has added a definition of "wetlands" and specific language providing that wetlands are waters of this Commonwealth. This is to clarify the Department's long standing practice, based on existing authority, of including wetlands in waters of this Commonwealth. Furthermore, the Department has incorporated its current existing Wetlands Protection Program found in Chapter 105, into the Water Quality Standards Program.

§93.1 has been amended by adding definitions of the "designated use" and "existing use". Section 93.4 has been amended as follows: §(b) has been amended and §93.4(c) has been added to provide that waters may not be redesignated to uses less restrictive than the existing use; §93.4(d) is added to provide for the protection of existing uses.

Section 93.7, Table 3 adopts the Environmental Protection Agency's (EPA) criteria as statewide criteria for Total Residual Chlorine (TRC), and requires all dischargers of chlorine to meet effluent limitations based on the more stringent of Best Available Technology (BAT), 0.5 mg/l, or the water quality criteria. It also requires dechlorination of effluents discharging to Exceptional Value waters or High

Quality waters, where economic or social justification and other factors under §95.1(b) have not been demonstrated.

Finally, where interstate or international agencies under an interstate compact or international agreement establish water quality standards, regulations applicable to the waters of this Commonwealth more stringent than those in this title, the more stringent standards shall apply. As such, Section 93.7, Table 3 for chlorides has been revised to provide for consistency with the Delaware River Basin Commission/Compact.

#### **25 PA CODE CHAPTERS 121 - Employer Trip Reduction (Amended January 1994)**

The Federal Clean Air Act requires that, for severe ozone nonattainment areas, the state submit a State Implementation Plan (SIP) revision requiring employers with 100 or more employees in the severe ozone nonattainment area to implement a program to reduce work related vehicle trips by employees. The SIP revision must, at a minimum, require that each employer of 100 or more persons in the severe ozone nonattainment area increase average passenger occupancy (APO) per vehicle in commuting trips between home, and the workplace during peak travel periods by not less than 25% above the average vehicle occupancy for these trips in the area at the time the SIP revision is submitted.

These regulatory amendments require employees with 100 or more employees in the Philadelphia Consolidated Metropolitan Statistical Area (CMSA), to implement a program to reduce work related vehicle trips. The Pennsylvania portion of the Philadelphia CMSA includes the counties of Bucks, Philadelphia, Montgomery, Delaware, and Chester. The program increases average passenger per vehicle occupancy for commuting trips by 25% above the area wide average vehicle occupancy.

Section 121.1 only contains the definitions applicable to the employer trip reduction program. Of particular importance are the definitions of "AVO - Average Vehicle Occupancy," "employee," and "employer." The term "AVO" describes the average number of passengers reporting to work in a vehicle during the hours of 6:00 a.m. through 10:00 a.m. inclusive Monday through Friday. The AVO applies to all commuting trips between home, and the workplace during peak travel periods. Commuters, including those who work for employers with less than 100 employees, and who commute during peak travel periods are included in the calculation of AVO. The DVRPC assisted the Department in developing the AVO for the Philadelphia CMSA by conducting a telephone survey. The AVO for the Philadelphia CMSA is 1.37 passengers per vehicle. The definition of employee includes both full and part-time, permanent and temporary, contract and employed individuals. The definition of employer makes it clear that the rulemaking only apply to employers with more than 100 persons at a single worksite with 33 or more employees reporting to the worksite from 6:00 a.m. to 10:00 a.m.

#### **25 PA CODE CHAPTERS 121 AND 127 - Air Quality New Source Review (Amended January 1994)**

These amended regulations will conform the Commonwealth's new source review (NSR) provisions with the requirements of the Federal Clean Air Act Amendments of 1990. New major stationary sources and major modifications to existing major stationary sources located in, or having an impact on nonattainment areas for regulated pollutants, including volatile organic compounds and oxides of nitrogen which are precursors to the formation of ozone, must undergo a preconstruction permitting review process which requires that the source obtain emissions offsets, and comply with the lowest achievable emissions rate (LAER) requirement. These amendments also establish a registry system for the certification, registration, and transfer of emission reduction credits (ERCs) from existing sources to new or modified sources and promulgate the new Federally required emission offset ratios for ERCs that are traded from existing sources to new or modified sources. These final amendments are designed to ensure that emissions resulting from new sources do not interfere with the Federally mandated annual reasonable further progress toward the goal of attainment of ozone, and other regulated pollutant National Ambient Air Quality Standards within the applicable time frames.



maintaining an oversight and approval role. These regulations are intended to provide the necessary authority for Pennsylvania to receive delegation of the Title V operating permit program from the EPA. The Federal Clean Air Act required states to seek delegation by November 15, 1993. Failure to seek and obtain delegation subjects states to Clean Air Act sanctions. These sanctions include the loss of federal highway funds and the imposition of a two-to-one emission offset ratio for new sources.

**25 PA CODE CHAPTER 121 - Oxygen Content of Gasoline for Carbon Monoxide Nonattainment Areas (Amended August 1995)**

These regulatory amendments concern the requirements and standards for the oxygen content of gasoline sold in a carbon monoxide (CO) nonattainment area during the wintertime control period, when a nonattainment area is prone to exceedances of the CO National Ambient Air Quality Standard (NAAQS). The oxygenated fuels program is currently required for the Philadelphia area.

In 1992, Pennsylvania adopted final regulations specifying standards and a record keeping and reporting procedures relating to oxygenated gasoline distributed, sold, transferred, or used in a CO nonattainment area within this Commonwealth.

Section 121.1 contains the definition applicable to the oxygen content of gasoline for carbon monoxide nonattainment areas. In Section 121.1 the term "distributor" is being revised from the proposed definition to make it clear that a distributor could also be an oxygenated blending facility or terminal, or both. As proposed, the term "distributor" could be interpreted as being limited to a person or entity which transports, stores or causes the transportation or storage of gasoline at any point between an oxygenated blending facility or terminal and a retail outlet or wholesale purchase-consumer's facility, but not necessarily as including an oxygenated blending facility or terminal. A wholesale distributor or an independent facility which distributes oxygenated gasoline to a retail outlet or wholesale purchaser-consumer may also be an oxygenated blending facility or terminal.

**NOTICE OF INCORPORATION**

Chapters 93, 121, 127, and 129 are contained in the following policies:

- Policy III-1: Fisheries Management/Support Fish Life, page II-2-13 (Chapter 93)
- Policy IV-1: Wetlands/Wetlands, page II-2-16 (Chapter 93)
- Policy VIII-1: Energy Facility Siting/Permitting, page II-2-25. (Chapters 93, 121, 127, and 129)
- Policy IX-B.1: Intergovernmental Coordination/Water Quality, page II-2-29 (Chapter 93)
- Policy IX-B.2: Intergovernmental Coordination/Air Quality, page II-2-31 (Chapters 127 and 129)

As a result of Section 307(f) of the CZM Act, the Pennsylvania CZM Program is providing notice that these aforementioned regulatory changes, required by the Federal Clean Air and Clean Water Acts are incorporated into the Pennsylvania CZM Program.

