

FORMAL OPINION

February 29, 1980

JERRY F. ENGLISH, *Commissioner*  
Department of Environmental Protection  
P.O. Box 1390  
Trenton, New Jersey 08625

FORMAL OPINION NO. 6—1980

Dear Commissioner English:

Our advice has been requested on certain questions pertaining to the expanded implementation of the permit requirements of the Waterfront Development Law. N.J.S.A. 12:5-1, *et seq.* The threshold question is whether the Waterfront Development Law authorizes the Department of Environmental Protection to regulate development on uplands adjacent to navigable waters or streams. It is our opinion that the statute provides jurisdiction to regulate any development on the "water-front" portion of uplands adjacent to navigable waters or streams.

N.J.S.A. 12:5-3, the key operative provision of the law, provides as follows:

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

Thus, the statute requires State approval for any "water-front development" that is either similar or dissimilar to the specifically mentioned types of development. The inquiries therefore are, what area is physically encompassed by the term waterfront and what constitutes development.

The Waterfront Development Law was passed in 1914. The legislative history reveals that it was passed in response to a need for the State to assume a direct role in the regulation of harbor development for competitive economic reasons. In its 1914 Fourth Preliminary Report to the Legislature prior to passage of the legislation, the temporary New Jersey Harbor Commission recommended direct State control over the "water-front, the waterways and the upland adjacent thereto". *Fourth Preliminary Report of the New Jersey Harbor Commission*, p. 6 (1914). Clearly, then, the perceived need for this remedial law was to regulate uplands as well as water areas.

This conclusion is reinforced by the unambiguous dictionary meaning accorded to the term waterfront. According to Webster's New Collegiate Dictionary (1977 ed.) it means "land, land with buildings, or a section

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of a town fronting or abutting on a body of water". *Black's Law Dictionary* (4th ed. 1968), defines waterfront as "land or land with buildings fronting on a body of water". See *City of Long Beach v. Lisenby*, 175 Cal. 575, 166 P. 333, 335, cited in *Black's*. Thus, without reasonable doubt the term waterfront as used in the Waterfront Development Law, was intended to include the uplands adjacent to navigable waters or streams.

On the ancillary question of what constitutes "development" requiring a permit, the listing of specific structures in N.J.S.A. 12:5-3 followed by the statement "or any other similar or dissimilar water-front development", can reasonably be viewed as inclusive of all structures of whatever type under the permit requirement. Under this view, the specific examples are seen as merely illustrative of typical waterfront structures, but by no means intended by the Legislature as exhaustive or limiting in any way. In its *Fourth Preliminary Report* the Harbor Commission also touched upon this issue and called for State approval of any improvement or construction whatever. *Fourth Preliminary Report of the New Jersey Harbor Commission*, p. 9 (1914). Thus, consistent with the expressed legislative purpose to remedy the perceived evil of unregulated waterfront development, it may be concluded that the Legislature intended to require a permit for all structures erected in the waterfront area. To conclude otherwise and give the term development a limited meaning obviously would tend to frustrate the essential underlying purpose of the Waterfront Development Law.

Your second inquiry is to what extent does the waterfront extend, and in particular, may the Department extend it by rule or otherwise to 1000 feet from the water. While it is certain that the concept of regulating a waterfront includes regulating development on uplands, the concept or term waterfront is elusive in its precise spatial definition. However, in light of the purpose of the law in promoting and safeguarding water oriented activities and in light of the direct waterfront nature of the specific examples of development mentioned in N.J.S.A. 12:5-3, it must be concluded that the waterfront to be regulated under the law is no larger than the area of the first substantial land use that directly adjoins the water and not an area extending 1000 feet inland. Since regulation of the first substantial land use (or area where that potential use will take place) is enough to promote and protect water oriented activities by insuring access, availability to dockage, etc., and since it is also large enough by definition, to encompass any development as called for by N.J.S.A. 12:5-3, the law does not contemplate regulation extending automatically 1000 feet inland.\*

It is also necessary to address the nature of the substantive standards to be adopted by the Department in its administration of the permit requirements of the Waterfront Development Law. The permissible scope

\* More precise definition of the waterfront should be undertaken by administrative rule. For example, a rule regulating at least the first 100 feet would be appropriate since it can reasonably be assumed that the first significant land use will occupy at least that large an area (a typical building lot is in excess of 100 feet deep). Moreover, the rule could indicate that where the potential area for the first significant land use extends more than 100 feet inland, a permit will be required for that entire use of the waterfront, subject to a reasonable maximum distance limitation.

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of such regulations lies in an understanding of the legislative purpose in enacting the Waterfront Development Law. That purpose was to promote the development and revitalization as well as to safeguard the port facilities and waterfront resources for the public's overall economic advantage. Fourth Preliminary Report, *supra*. The Waterfront Development Law therefore justifies the adoption of standards to insure access to the State's waterways for all water-dependent uses and, conversely, standards discouraging nonwater-dependent uses from usurping the waterfront. Furthermore, a variety of other considerations may come into play in the determination of an appropriate use in a particular case so long as they are in furtherance of the essential purposes underlying the Waterfront Development Law. For example, the development of extensive high rise housing on the waterfront would not be consistent with the legislative purpose to insure access to waterways for water dependent uses and at the same time denial of a permit may serve the purpose of protecting the scenic or aesthetic appearance of the waterfront. In summary, therefore, so long as regulations adopted under the Waterfront Development Law are designed to carry out and are in furtherance of the primary intent of the Waterfront Development Law, they may be permissibly used to control the exercise of administrative discretion in the issuance of waterfront development permits.

In summation, it is our advice that the Department may regulate the portion of uplands adjacent to the State's navigable waterways that constitutes the waterfront, but that the waterfront is a relatively narrow strip of land whose precise geographical limit should be defined by rule in accordance with the criteria set forth in this opinion. In addition the substantive standards that are to be used to guide Department permit decisions under the Waterfront Development Law must be in accord with the Legislature's intent to promote the development, revitalization and safeguarding of the waterfront for the public's overall economic wellbeing.

Very truly yours,  
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