Interagency State Land Lease Valuation Panel Report

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New Jersey Interagency State Land Lease Valuation Panel

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Introduction

Recent lease negotiations for private rights-of-way on State land indicate the current system for valuing certain types of leases is broken. Out-of-state companies as well as New Jersey utility companies that locate pipelines, electricity transmission lines and telecommunication towers and lines across many acres and hundreds of miles of State-owned land and water require right-of-way areas for their corridors.

In some cases, agency fee schedules are terribly outdated; in other cases, current rules and statutes prevent the State from realizing fair compensation for the private use of our precious state land, much of it preserved as unique open space, wildlife habitat, or recreational use. Concerned that New Jersey's approach to setting values for certain types of leases and easements on State land is not resulting in a fair and equitable return to the citizens of New Jersey, DEP Commissioner Martin established an interagency work group to evaluate leasing programs of State agencies and develop an improved valuation process. The valuation process described in this report will benefit business by providing a predictable cost structure for leasing those lands; and it will help satisfy our obligation to taxpayers that the public receives fair compensation.

The work group included members representing the Department of Environmental Protection, New Jersey State Treasurer's Office, Board of Public Utilities, Economic Development Authority, Pinelands Commission, New Jersey Department of Agriculture, State Agriculture Development Committee, New Jersey Water Supply Authority, Department of Consumer Affairs, Department of Transportation, and New Jersey Highlands Council. In addition to the work group effort, stakeholder meetings were held on September 27 (to discuss issues specific to Tidelands leases, licenses and grants) and October 22, 2010 (to discuss permitting and leasing issues associated with linear/corridor projects). A third stakeholder meeting was held on February 18, 2011 (general overview of recommendations). These meetings afforded a diverse group of stakeholders the opportunity to provide valuable input to the work group.

Scope

The scope of the work group's efforts was to review department and agency programs responsible for leasing State lands, including submerged lands (tidelands), and to review the practices and procedures for valuing those leases. This report includes recommendations for improvements to lease valuation from the perspective of the State as land owner. Areas evaluated and presented in this report include leases and easements of, on , and through land and property owned by: the Department of Environmental Protection, New Jersey Water Supply Authority, State Agriculture Development Committee and Department of Transportation, and property managed by the Department of the Treasury and the Economic Development Authority. The word "lease" in this report is meant to include conveyances of various rights in, on and under State lands, including easements, rights-of-way and licenses, but not fee simple.

The scope did not include an evaluation of how to value concessions (e.g. tour operators) and licenses to vend (e.g., operation of a food cart). These are usually activities with short-term lease or concession agreements and are usually let for bid or based on prevailing market conditions. Mitigation (e.g., compensation for disturbed or degraded environmentally sensitive areas) related to linear corridor projects, particularly for cases where those projects are subject to review by multiple agencies, is discussed in the last section of the report. This report does not address valuation of mitigation for the loss or degradation of environmental attributes, but does suggest a framework for future work in this area.

Findings and Recommendations

The work group found that some types of leases were common to multiple programs and agencies, while others are unique to specific programs. We found that many leases are achieving a fair and equitable return and are being managed in a manner consistent with specific program goals; however many other leases were outdated, below market value, or inconsistent with the goals of the State. In an effort to apply a uniform approach to valuing leases across program boundaries to the extent practicable, the recommendations in this report are organized into four sections:

1. Key Principles;
2. Appraisals;
3. Specific Recommendations; and
4. Mitigation and Coordination.

Key principles are applicable to all leases, with some exceptions noted here. Specific recommendations are classified by lease type to promote a consistent valuation approach across agencies and programs, where appropriate.

Based on its findings, the work group makes the following recommendations:

1. Key Principles

These key principles, some of which have already been adopted by State agencies, should apply to all leases, where applicable and unless otherwise noted:

A. *Program Coordination*. The State should adopt a simple, predictable, and consistent approach and cost structure for leasing State land for private use, including cross-agency valuation where more than one agency or department has jurisdiction over some or all aspects of managing private use of State land for a given project or type of project. It is recognized, however, that a uniform approach and cost structure is not feasible for all the different types of leases on State-owned land and the variety of purposes for which such land is leased. The specific recommendations in Section 3 provide guidance in this area.

B. *Lease Valuation*. Leases should be valued to ensure that the taxpayers of New Jersey receive fair and equitable compensation for private use of State land and property. The value of a lease and the decision to lease should include a determination of consistency with the mission of the subject parcel.

C. *Dedicated and Sufficient Funds*. The revenue generated by leases of State land/property should be designated for the department or program managing that land/property, at least as much as is sufficient to administer the program effectively and efficiently. Lease income must also be properly identified and utilized for the program or funding source when that source has statutory, regulatory or contractual conditions which require reinvestment into other projects.

D. *Rent for Temporary Use*. The State should collect rent for State land that is used by a private entity on a temporary basis. For example, a developer who wants temporary access to a park road during the construction phase of a project should pay rent for that access.

E. *Terms and Inflation Adjustment*. Leases of State land should be for a finite term, include a regular payment schedule (e.g., annual), and should be adjusted on an annual basis for inflation (two and one-half percent yearly, which is slightly below the long-term consumer price index (CPI) trend). Generally, if and when the State leases occupancy rights on parkland and other preserved lands, it should be for a finite term, not a permanent easement. This will keep maximum management control of those lands in the State's hands.

F. *Clear Sublease Terms*. Allowance or disallowance of sublets, and the terms for sublets when allowed should be clearly spelled out in the lease. For example, cell tower owners often co-locate other companies' antennas on their tower, for a fee, and the State's approach to capturing revenue from the subtenants has not been consistent.

G. *Application Fees*. Where appropriate, processing fees for lease applications should be adjusted based on the actual cost of materials, staff time, and resources required (some have not been adjusted in many years).

H. *Flexibility*. Provisions for a flexible response on a case-by-case basis should be built into the process.

I. *Value Added*. The Interagency Work Group recognized the added, but difficult to quantify, value that attaches to land when it is preserved as open space or its use restricted specifically for its environmental, historical, or heritage attributes on behalf of the citizens of New Jersey. Because they have been preserved for the benefit of all New Jersey, these lands have added value wherever they occur in the State. Some of the recommendations in this report will help provide sustainable sources of funding for state parks.

J. *Protect Existing Infrastructure*. A key guiding element for determining where and when leases are appropriate on State-owned land is to protect the existing State-owned infrastructure. Much of the land owned by the State of New Jersey includes critical infrastructure, such as buildings or artifacts with important historical and heritage significance, water supply and stormwater management, and roads and bridges.

K. *Uses Inconsistent with Mission*. Generally, uses that are not consistent with the managing agencies mission, such as an industrial use in a State park, are not permitted. However, when there is an over-riding public interest, often certified by a federal mandate, these inconsistent uses do occur. For those cases in particular, the recommendations in this report will help ensure that fair compensation is received by the State, and that public access and use of these areas are maintained to the maximum extent practicable.

2. Appraisals

A. ***Recommendation****: Guidance for appraisals of State land should include an adjustment for the intended private use of the land*. An appraisal is not always the most appropriate or cost-effective method for valuing an easement or lease on State land. However, when an appraisal is appropriate or required, guidance for appraisals of State land should include an adjustment for the intended private use of the land. Too often State land is appraised based on the State's public use, such as preservation, conservation or transportation. The public use of the land may not be equivalent to the highest and best private use of that land, and therefore it has often been appraised at inappropriately low values. For example, a company seeks a lease for an electric substation within a State park. Assuming the substation cannot be located elsewhere, determination of the land value should reflect the industrial/commercial use represented by the substation, regardless of the zoning of the area around the park, or the fact that the park is restricted from development.

B. ***Recommendation***: *Provide guidance or training for appraisers*. The State Agriculture Development Committee (SADC) holds training seminars for appraisers working in the area of preserved farmland regarding how to implement their rules. Similar guidance or training should be provided for appraisers in the specialty areas of corridor valuation and preserved State parkland and wildlife areas.

3. Specific Recommendations by Lease Type

The Work Group proposes specific recommendations for six categories of leases:

A. Tidelands (former "one-fee" licenses for linear projects)
B. Linear upland corridors
C. Publicly bid, market-based, and nominal fee
D. Telecommunication and broadcast towers/antennas
E. Aquaculture
F. Department of Transportation

Appendix I lists legislative, regulatory and/or policy actions necessary to implement the specific recommendations listed in this section. Appendix II summarizes recommended changes to the valuation approach by lease type.

A. Tidelands

The DEP Bureau of Tidelands Management, under the authority provided to the Tidelands Resource Council (TRC), manages 1) land that was previously tidally flowed, and 2) land that is currently tidally flowed. Tidelands include the entire coast of New Jersey and the tidal portion of rivers and streams. When the DEP conveys tidelands to a private party, the tidelands are either sold via grants or leased via licenses and leases. The State does not grant beaches or currently tidally flowed areas except for roads, bridges and parks. Various discounts currently exist for both grants and leases. The recommendations related to lease values in this report concern only linear projects, formerly referred to as "one-fee" licenses.

Revenue generated by the Tidelands program is not currently designated for the program or even for coastal zone protection and management. Revenue generated through grants, leases and licenses under the Tidelands Resource Council are constitutionally dedicated to the Fund for Support of Free Public Schools. A greater portion of revenue from Tidelands leases, licenses and grants should be appropriated back to the Department's budget to offset program administrative costs and improve application processing time. As there is a real nexus between tideland conveyances and protection of coastal areas, a greater portion of these revenues could be used to promote protection of coastal resources and tourism.

- *Tideland Leases and Licenses*

Leases and licenses are granted by the TRC for corridor-type projects such as pipelines, electric power lines, telecommunication cables and outfalls, as well as structures in the water (e.g., docks, piers, bulkheads, moorings, aquaculture cages and racks). The recommendations below will put New Jersey on par with other states regarding fair value for use of the State's tidelands. As the TRC had previously identified some of the same recommendations as identified by the work group, many of the recommendations below have already been implemented. These are indicated in Appendix I.

The table below indicates a comparison of tidal area linear project easement/license fees assessed by other states based on fee schedules or recent permit negotiations (normalized to $/square foot/year).

State	**Base Lease ($/SF/YR)**
Massachusetts	$0.22
New York	$0.05
Delaware	$0.03
Maryland	$0.05
California	$0.50
New Jersey	*$0.10*

Recommendations:

1. No new one-fee lump sum payments;
2. No new perpetual term leases;
3. Eliminate the discount for linear projects greater than 3,000 feet;
4. Leases/licenses for non-residential linear structures should be assessed as annual payments on a $0.10 per square foot basis;
5. Leases/licenses for projects conducted by a public agency should be assessed at a discounted per square foot basis of $0.03/SF;
6. Eliminate ancillary fees for extra cables and wires for linear projects;

7. Create umbrella licenses for entities with multiple licenses in the same category (e.g., outfalls and bridges) for a substantial cost savings to the Department and the licensed entity;
8. Adjust current minimum fees for inflation;
9. Include an annual adjustment for inflation (2.5%);
10. Eliminate buffer areas and *de minimis* areas in fee calculations;
11. Allocate additional human resources to shorten the turn-around time for decisions on licenses and grants; and
12. Greater share of revenue should be dedicated to remain in DEP for efficient and timely management of the program.

B. Linear Corridor Projects

Upland corridor or linear projects such as pipelines, electric power lines, telecommunication cables, water lines and sewer lines and outfalls have been criticized recently as undervalued. This criticism appears to occur most frequently as a result of inappropriate appraisal methods being used. Often an "across-the-fence" appraisal, which only considers nearby property values, is conducted which does not include the added value of preservation and ownership by the State on behalf of the citizens of New Jersey, nor does it include a corridor value analysis, which may represent the highest and best use.

The recommendations below include a flat rate lease fee of $0.15 per square foot per year for private sector projects and $0.05 per square foot per year for public projects. A flat rate would eliminate the need for costly and time-consuming appraisals that are also open to appeal due to their subjective nature. In addition, a lease rate based on square feet provides a strong incentive for project sponsors to minimize the environmental footprint of their project. A flat rate fee should represent a floor price, with the option for the agency to still conduct an appraisal if circumstances suggest the flat rate is too low for a particular parcel. If the anticipated value of the parcel is greater than $65,000 per acre, then a proper appraisal is also recommended. A flat rate will also facilitate umbrella lease agreements with easement holders, such as utilities, who lease many parcels throughout the State.

The following table provides a few examples of existing leases and how the value of the leasehold would change under the proposed recommendations. These recommended changes would apply to new leases and upon renewal or re-opening of existing leases.

Example leases on New Jersey State Park land						
Facility Type	**Lease Type**	**Location**	**Appraisal Year**	**Square Footage of Leased Area***	**Current Annual Lease Value**	**Proposed Annual Lease Value ($0.15/sq ft)**
Gas pipeline	Linear	Franklin	2009	7,405	$100	$1,111
Aerial line	Linear (with DEP land)	Franklin/ Millstone	2009	385,942	$2,900	$57,891
Aerial line	Linear	Delaware	2009	24,000	$210	$3,600
Aerial line	Linear	S Bound Brook	2006	48,700	$450	$7,305
Gas pipeline	Linear	S Bound Brook	2007	4,177	$200	$627
Aerial line	Linear	Franklin	2008	9,104	$100	$1,366
Monopole/ Aerial Line	Linear	Franklin	2008	15,507	$150	$2,326
Gas pipeline	Linear	Clinton/ Somerville	2002	81,000	$17,800	$12,150
* 43,560 square feet = 1 acre						

Many public and private owners of transportation corridors (railroad, road and highway) provide easements to other longitudinal corridor industries such as telecommunication, electricity transmission, natural gas transmission, and municipal utilities. A survey of recent (1990-2000) transactions for joint use of transportation right-of-way for installation of fiber optic cable in the Northeast and Mid-Atlantic region indicates an average value of $0.40/SF/YR in 2010 dollars. In addition, fee schedules for the Virginia Department of Transportation (for cable/telecom) and New Jersey Transit (pipelines) are both around $0.11/SF/YR. The New Jersey Turnpike Authority also uses a rate based on square feet to determine the value of linear leases (a linear lease for a permanent easement along the Garden State Parkway in Ocean County in 2004 was for $1.25/SF), but they still grant permanent easements. The following recommendations apply to both longitudinal (corridor) leases and transverse (crossings of existing corridors or small parcels) leases.

Recommendations:

1. No new perpetual term leases or easements;
2. Replace current parcel-by-parcel negotiation and appraisal method with a flat annual rate of $0.15/square foot for private projects and $0.05/SF for public projects;
3. Include annual rental fee for temporary work space and/or temporary access areas at a flat annual rate of $0.15/square foot for private projects and $0.05/SF for public projects;
4. Set an anticipated value threshold of $65,000 per acre to trigger an appraisal;
5. Minimum lease fee of $700 per year;

6. Revenue generated through these leases should be used to offset the cost of managing the program and for maintenance and improvement of State lands;
7. Provide umbrella leases to entities that have multiple leases and easements on State land;
8. Include an annual adjustment for inflation (2.5%); and
9. Manage through an automated, electronic management and billing system. Contracting these activities to a lease management company may provide added efficiency.

C. Publicly Bid, Market-based and Nominal Fee Leases

➢ *Leases consistent with mission of State agency*

Most New Jersey agencies that lease or rent State-owned property do so for uses consistent with the intended use of the overall property. It is obvious in these cases that the lease is consistent with the mission for that agency. These leases are typically valued through an appraisal process and/or publicly bid.

- *Natural and Historic Resources Group (DEP)*

The Natural and Historic Resources Group (NHR) within the Department of Environmental Protection administers approximately 300 leases on parkland and wildlife management areas (WMAs) for a variety of uses. Many of these leases are consistent with or further DEP's mission to preserve, manage and provide access to New Jersey's natural and historic resources. Examples of leased land and facilities within this category include marinas, interpretive centers, historic structures, golf courses, agricultural land, houses, and docks. Leases are with commercial entities, private individuals, non-profit organizations (NPOs), local government entities, and the federal government.

Most leases with NPOs are for nominal consideration and many of these NPOs assist DEP in managing land and providing interpretive services. Likewise, leases with other government entities that manage land on behalf of DEP are for nominal consideration. These leases are mostly for historic structures in parks or historic areas. NPO-State partnerships are key to maintaining these properties. Nominal fee leases are essential to obtaining these in-kind benefits for the State, and it is recommended that they continue to be encouraged and expanded.

Leases for the commercial or private use of DEP-owned land are typically conducted through a public bidding process. These leases are normally undertaken only when they are deemed public-private partnerships that enhance the public's enjoyment of State parkland and wildlife management areas while at the same time generating revenue for the State. In general, these leases return fair value, and are directly or closely tied to market rates through an appraisal and bid process.

Included among NHR's commercial, private leases are approximately 100 farm leases, constituting approximately one-third of all parkland/WMA leases. DEP recently initiated a new agricultural leasing program in WMAs. The leases were publicly bid at live auctions which, for the first time, provided all farmers with the opportunity to farm in WMAs. DEP established the fair market rental value/minimum bids using soil rental rates established by the United States Department of Agriculture, discounted by 20 percent to account for the limitations of farming on public lands.

NHR's policy for at least ten years has been not to grant leases in perpetuity and, in most cases, for no more than 20 years. Leases granted within the last five years generally contain annual rent escalation clauses that either mirror the CPI, or are for three percent annually. In addition, through the pursuit of back rental payments, creation of new leases, and better enforcement of payment obligations, DEP has increased its annual lease revenue by almost 50 percent since 2006.

DEP manages its own leases and has implemented many changes to the leasing program over the last few years. Notably, it created an inventory of its leases in the Land and Building Asset Management (LBAM) database system maintained by the Department of the Treasury. While the database continues to be reviewed and refined for accuracy, it is an enormous improvement to the leasing program, as it allows DEP to readily access data regarding individual leases and rental payments and generate reports to give a more complete picture of the leasing program.

Despite many recent improvements, the lease management database has deficiencies and DEP lacks an automated billing system and efficient way of tracking rental payments. In addition, a large percentage of leases are expired. Although the tenants on those properties remain on the land legally as "holdover" tenants, the rental values for those leases are outdated and undervalued. It is recommended that DEP update its data base of leases and revalue leases as they are due for renewal. In addition, the DEP should seek new leasing opportunities that benefit the public and generate revenue for continued support of the park system.

For most of the leases on State parkland, the lease revenue goes directly to the Department of the Treasury and is not directly allocated back to the State Park Service. This compromises DEP's ability and responsibility as a landlord to maintain the leased structures and ensure their use and habitability. As noted above, this problem could be alleviated by ensuring that DEP retains at least the portion of revenue that is necessary to manage the leased properties.

- *Economic Development Authority*

The Economic Development Authority (EDA) leases office space and grants long-term leases and easements of State property for private use. EDA manages about sixty permanent leases and ten temporary right-of-entry agreements on an annual basis. In general, these leases return fair value, and are directly or closely tied to market rates through a bid or auction process. EDA's projected revenue from permanent leases is $4.7 million for 2011. EDA currently manages its leases in-house, but outsources property management and brokerage services. The EDA also leases a few facilities to public or not-for-profit organizations (NPOs) for nominal amounts. These NPOs often conduct fund-raising and provide in-kind services to upkeep or enhance the facilities they lease. No changes are recommended for this program at this time.

- *State Agriculture Development Committee*

The State Agriculture Development Committee also manages a few short –term (typically 1-year) farm leases on farmland that it has purchased for preservation. Because the purpose of these leases is not to generate revenue, but to keep the land actively farmed pending public auction for the resale of the farm, the SADC does not set minimum bids when it solicits bids for leases. These short-term leases are provided through an open public bidding process. Rental rates as a result of this process average about $50/acre for temporary agricultural use of good quality farmland. This policy is reasonable given the short-term nature of the leases and the goal to keep the land in agricultural production. No changes are recommended for SADC leases at this time.

➢ *Leases that are not consistent with mission of State agency*

Utility companies hold many leases, easements and licenses on State-owned land, much of it on DEP-owned land. Though many utility projects are considered to provide a public service, the utility companies are typically private for-profit companies, and the projects are not consistent with the mission of the agency. DEP inherited many of these leases and easements when it acquired title to the land. Most of these rights were granted in perpetuity by the prior owner, for a one-time payment that has long since been paid. There are others, however, that DEP negotiated after it acquired the land, and an occasional new lease request.

Given recent developments in the energy industry, DEP anticipates that electric utility and natural gas pipeline companies will be proposing a number of new projects in the near future to accommodate rising consumer demand for energy. These projects will include the need to transport domestic natural gas and electricity across New Jersey from production and generation facilities in other states to customers in New York and other New England states. In addition, new “green energy” projects may require utility crossings on State land. It is anticipated that these types of leases will fall into the linear corridor category going forward.

DEP has not maintained an inventory of the utility rights on its land, but is currently compiling one. Once an inventory is established, the DEP hopes to be able to determine whether utility companies owe back rent, and which easements or leases have expired.

Currently, fifteen utility leases are in DEP’s lease management database, described above. Because DEP lacks an automated billing system, some of the utility companies/tenants of those 15 leases had been behind in paying their rent. Over the last few years, DEP made a concerted effort to collect back rental payments on those leases, collecting approximately $24,000.

Recommendations:

1. Develop and maintain inventory of utility leases;
2. Revenue generated from DEP-NHR leases should be dedicated to remain in DEP, as happens in the other agencies;
3. Assess and develop new leasing opportunities that are consistent DEP's mission; and
4. Increase efficiency, revenue generation and tenant satisfaction through:
   a. added resources, improvement of database, and implementation of an automated billing system, and/or
   b. contract with a property management company;
5. Include an annual adjustment for inflation (minimum 2.5%).

D. Telecommunications Towers and Antennas

Some programs and agencies lease space for telecommunications towers, including wireless communication and television/radio transmittal, and antennas. However, although the Department of the Treasury adopted guidelines on this subject in 1998, in practice there is not a consistent State-wide approach to valuing such leases. The table below summarizes current lease rates set by several New Jersey agencies. For comparison, the State of Maryland has a fee range for cellular and other antenna installations on State land. The range is from $12,420 to $62,160 per year depending on the type of antenna and the volume of traffic in the immediate area. Maryland also imposes an annual increase of 4% on its antenna licenses.

Annual Lease Fees for Wireless Communication Antennas and Towers

Department	Antenna on Existing Structure (base rent)	Cell Tower (base rent)	Inflation adjustment	Co-locator Fees (in addition to base rent)
NJ Turnpike Auth.	$40,000	$40,000		50% of whatever the primary wireless company charges
NJ Treasury	$38,000	$38,000	3 to 5%	50% of whatever the primary wireless company charges
NJDOT	$17,250	$37,500	3 or 3.5%	50% of whatever the primary wireless company charges
NJWSA*		$30,000	3%	50% of whatever the primary wireless company charges

*NJWSA and NJDEP lease terms are typically negotiated based on appraisal information.

With limited exceptions for the purpose of improving public safety, the DEP has not permitted the siting of new telecommunications towers on its properties (although it has re-leased towers already located on properties it has purchased and has allowed co-location of antennas on existing electric utility transmission towers.) This policy stems from concerns about conflicts with DEP's mission. When towers are located on State property, often to address public safety issues, they should be subject to the following recommendations:

Recommendation:

1. The fee formula or amount charged to lease space for a television/radio tower, wireless communications tower or antenna should be consistent from agency to agency. DEP and other agencies should adopt the methodology and pricing terms established by Treasury. Agencies should review private market and other states' market conditions periodically and at the renewal of each lease.
2. Explore the opportunity to maximize the value of current and future communication tower and antenna assets through master agreements and portfolio management, rather than individual sites. In addition, evaluate the potential savings from contracting with a private firm for management services related to leases of this asset class including integration with management of other asset classes described previously.
3. Telecommunications towers and antennas on Green Acres encumbered State property and other properties purchased with restricted sources of funding may require additional reviews and/or approvals.

E. Aquaculture

Background

The NJDEP Bureau of Shellfisheries, in conjunction with the New Jersey Shellfisheries Council, administers the shellfish leasing program which supports private aquaculture activities via the leasing of bay bottom for shellfish culture and harvest. Prior to the issuance of any shellfish lease within the Atlantic Coast Section, the Bureau performs a biological investigation to assess the area's natural productivity. Each year the Bureau performs approximately 30-50 biological investigations of prospective leases. Naturally-productive areas are not leased because the Bureau and the Atlantic Coast Shellfish Council (empowered by statute to grant shellfish leases) wants these areas to remain open for all shellfishers to use. This process facilitates aquaculture development while ensuring that naturally productive areas remain available for use by all.

DEP currently manages approximately 1,700 shellfish leases. The leases are mostly along the Atlantic Coast, with some linear parcels in the Mullica River system, and Delaware Bay. The Atlantic Coast leases are predominantly held by hard shell clam harvesters and the Delaware Bay leases are limited to harvesting oysters. New leases are limited to two acres each along the Atlantic coast, but individuals may own multiple leases. Existing leases total around 2,160 acres and 31,000 linear feet along the Mullica River system. New Delaware Bay leases are limited to a maximum of 200 acres each and existing leases cover approximately 32,200 acres. Some older established leases exceed the current "maximums." The leases are renewed annually.

The Shellfisheries Council is authorized by statute to set the rent for shellfish harvesting areas, with the approval of the Commissioner (N.J.S.A. 50:1-27). The annual lease fee along the Atlantic Coast is currently $2.00/acre (N.J.A.C. 7:25-24.7(b)). The annual lease fee in Delaware Bay is currently $0.50/acre and has not been included in regulations. These fees were established by the Council, but not codified by regulation. These lease fees have remained largely unchanged in almost 100 years.

The requirements to administer and manage the lease program include but are not limited to the following tasks: take lease applications, answer questions from applicants and lease holders, biological sampling of prospective lease areas, preparation of lease area reports reviewed by the Council, participation at Council meetings, routine inspections required by the federal Food and Drug Administration, and hydrographic surveys and marker placement for approved leases. The DEP oversees these leases as part of its mission and mandate to maintain and protect the diversity of New Jersey's fish and wildlife and the habitats they depend on, as well as to maximize the recreational and commercial use of New Jersey fisheries for both current and future generations. The Shellfisheries Council previously proposed nominal increases in lease fees, but those recommendations will not be enough to cover program costs.

Co-jurisdiction
The Tidelands Resource Council (TRC) has authority and a statutory mandate to require a license for occupation of State tidelands. In the case of shellfish leases, the TRC has interpreted this to apply only to the area of tidelands occupied by structures. The NJDEP Bureau of Tidelands administers these licenses. The Tidelands Resource Council passed a resolution in March 2010 setting the license price at $0.01/square foot for structures only related to shellfish growing and harvesting, for a trial period of three years. This policy, the lease price and the individual leases will be re-evaluated toward the end of the three-year period.

Aquaculture Development Zones
The NJDEP and the New Jersey Department of Agriculture have been pursuing the expansion of aquaculture to allow for the utilization of non-traditional (structural) aquaculture gear in Aquaculture Development Zones (ADZs). Before the NJDEP can lease these areas, regulations need to be promulgated and a statutory change was needed to allow leasing on one of the four ADZs that was below the "clam line."

Recommendations:

1. It is recommended that lease fees for aquaculture growing and harvesting be adjusted. At a minimum, lease prices should be increased to a level that will support the administration of the leasing program at its current level.
2. It is recommended to continue the pilot ADZ program before proposing regulations.
3. It is recommended that NJDEP, in consultation with the NJ Department of Agriculture assess the economic and environmental and benefits and costs of the shellfish industry in New Jersey.
4. Revenue generated through this program should be dedicated to remain in DEP for effective administration of the programs.

F. Leases Related to Transportation Corridors

The New Jersey Department of Transportation holds several types of leases. These include: temporary rental arrangements for parties being relocated from NJDOT property (acquisition lease), nominal rent leases for public use, general property leases valued by traditional real estate appraisal methods, cell tower licenses, and utility easements (no fee charged for occupancy, DOT charges a permit fee for road openings related to utility work on State roads). As stated in section B (above), the New Jersey Turnpike Authority requires compensation for easements provided to utilities and other private users on a square foot basis. In addition, a survey of recent transactions for joint use of transportation right-of-way for installation of fiber optic cable in the Northeast and Mid-Atlantic region indicates an average value of $0.40/SF/YR in 2010 dollars. In addition fee schedules for the Virginia Department of Transportation (for cable/telecom) and New Jersey Transit (pipelines) are both about $0.11/SF/YR.

Recommendation:
1. NJDOT should establish occupancy fees for private utility use of public NJDOT right-of-way areas. This will bring New Jersey DOT in line with other states, local units, and transportation authorities that rent their rights-of-way to private users. This will require a statutory change as the NJDOT is currently required to accommodate utilities within its right of way.
2. Occupancy leases in state-owned transportation corridors should be for finite terms and based on unit measures (e.g., square feet or linear feet). Minimum annual occupancy fees of $1.20/linear foot for fiber optic in an existing conduit and $0.15/SF for other than fiber optic are recommended in transportation corridors.

4. Mitigation and Coordination

Large projects, especially linear corridor projects often intersect multiple State-owned properties (e.g., DEP and DOT) and areas managed by one of New Jersey's regional planning entities: the Meadowlands Commission, the Highlands Council, or the Pinelands Commission. It is outside the scope of this report to make detailed recommendations on mitigation requirements and coordination between agencies, but some general recommendations and discussion are appropriate and included below. The DEP in partnership with other State agencies and the regional entities listed above will undertake a review of mitigation and coordination related to linear projects. The findings and recommendations of that study will be published separately.

For leases that are not consistent with DEP's mission to preserve, manage and provide access to New Jersey's natural and historic resources, the Department makes a distinction between its role as landlord and property owner (that is, its proprietary role) and its role as the agency responsible for protecting New Jersey's environment (that is, its regulatory role). As landlord and property owner, the Department will require fair value for the private use of State land through leases, licenses and easements, and may also require compensation and/or mitigation measures to address damage to State property and impacts on the recreation, aesthetic, or natural resource value of these lands. As environmental regulator, the DEP will require mitigation and/or compensation for environmental impacts associated with projects that require permits or approvals, whether or not the projects are located on State land.

Other agencies may also have jurisdiction for protection of specific environmental resources, or for private use of State land managed by that agency. Some projects, especially large corridor projects, are likely to cross these various jurisdictional boundaries. For timely review of these types of projects and predictability of outcomes, multi-program and multi-agency coordination is crucial.

Since 1961, the DEP has used a variety of State and federal funding sources to purchase over 650,000 acres of land for public use and enjoyment. Prior to the creation of the DEP, several large tracts were donated to the State or purchased by the State as public parks, forests and wildlife management areas. The DEP is now the guardian of this vast public trust resource. In general, the use of this land is limited (by statute) to recreation and conservation purposes. However, it may sometimes be necessary to allow leases of DEP property that are not consistent with DEP's mission to advance another competing public interest (such as the provision of utility services), as acknowledged in *N.J.S.A.* 13:1L-6 (which allows leasing of Parks properties for public benefit) and *N.J.S.A.* 23:8A-1 (which allows leasing of Fish and Wildlife lands "in the State interest."). In such cases, the DEP (as landlord/property owner) has an obligation to account for damages or other significant adverse impacts of the leases on its public lands (in addition to the base rent for the corridor or lease area that can be calculated under the methodologies recommended in this report.)

Given the above, we envision applying the following guiding principles to the determination of additional compensation or mitigation for leases and easements on DEP lands:

1. The recommended compensation to be calculated for corridor, utility or other leases described in this report shall be considered the base rent or occupancy value for the activity that will occur on DEP property.

2. In addition to the annual rent payment associated with the lease, the DEP seeks to account, through additional compensation or mitigation, for any permanent or significant negative impacts of its leases on the values for which the leased property was preserved. If the lease involves an activity that is truly short term and which can be discontinued at the end of the lease without any permanent or significant impact on the property, additional compensation or mitigation will not be due. For example, the lease of a portion of a DEP parking lot for use by a construction trailer or other temporary structure (as long as such lease does not interfere with public use of the surrounding State park, forest or wildlife management area). However, if the lease involves significant long-term or permanent negative impacts on DEP property, including but not limited to recreational impacts, endangered species habitat alteration or loss, significant

vegetation alteration or removal, blasting, trenching, disturbance of steep slopes, water resource impacts, significant aesthetic impacts or loss of public access, then the DEP shall require additional compensation or mitigation to account for such impacts (under guidelines to be developed as outlined below).

3. In calculating additional compensation and/or mitigation for leases of DEP lands, the DEP will be guided, to the extent practicable, by the rules and policies applicable to the diversion or disposal of Green Acres-restricted properties owned by municipalities, counties and nonprofits (currently found at *N.J.A.C.* 7:36).

   It may be necessary to calculate additional compensation and mitigation on a case by case basis, taking into account the impacts of construction and operation of a project on the DEP's property and the likely duration of the project.

   In order to provide predictability for leases requiring additional compensation and/or mitigation, the DEP will inform lease applicants about these requirements at the beginning of the project review process.

4. In order to coordinate State agency actions with respect to the environmental review of projects with a lease or easement component that is not consistent with DEP's mission, including the determination of the appropriate compensation for the use of State property, a project team approach and clearly defined process will be implemented through the DEP Office of Permit Coordination. To provide additional transparency and coordination, the DEP will evaluate the benefits of entering into Memorandums of Agreement (MOAs) with other State or regional agencies having authority to require mitigation or compensation for linear corridor projects.

   Leases are one aspect of a larger environmental review process. To allow for all appropriate input in this process, the DEP will coordinate closely among and between other agencies and programs within DEP (such as Land Use Regulation, the No Net Loss Program, the Pinelands Commission, the Highlands Council, or the Meadowlands Commission) with authority to require compensation or mitigation for environmental impacts from private use of State land. This close coordination will ensure that regulated entities are offered an efficient "One Stop" point of contact to interact with all regulating agencies early in the project's planning phase to receive information, guidance, and program specific contacts with which to pursue their necessary approvals and mitigation requirements.

   As part of the One Stop process and to provide applicants and stakeholders with a clear understanding at the outset, a pre-application meeting will be provided to ensure that all relevant State agencies and programs provide the applicant with the scope and anticipated timeline of any needed agency approvals. To receive the benefit of a clear and predictable framework, the applicant must submit complete and detailed project plans, that can be used to determine lease value (where applicable) and mitigation plans to address environmental impacts.

Appendix I

Specific Recommendations by Lease Type

Lease Type		Recommendation	Required Action	Implemented
Tideland Lease/License	1	No new one-fee lump sum payments	Policy/TRC approval	Y
	2	No new perpetual term leases	Policy/TRC approval	Y
	3	Eliminate the discount for linear projects greater than 3,000 feet	Policy/TRC approval	Y
	4	Leases for private linear structures assessed at $0.10/SF/year	Policy/TRC approval	Y
	5	Leases for public linear structures assessed at $0.03/SF/year	Policy/TRC approval	N
	6	Eliminate ancillary fees for extra cables and wires for corridor projects	Policy/TRC approval	Y
	7	Create umbrella licenses for entities with multiple licenses in the same category	Policy/TRC approval	N
	8	Adjust current minimum fees for inflation since date of last adjustment and annually thereafter	Policy/TRC approval	Y
	9	Include an annual adjustment for inflation (2.5%)	Policy/TRC approval	Y
	10	Eliminate buffer area from fee calculation	Policy/TRC approval	Y
	11	Allocate additional resources to shorten the turn-around time for decisions on licenses and grants, and to identify tideland encroachments (missing revenue) that have not come into the program voluntarily	Budgetary/Mgmt.	N
	12	Greater share of revenue generated through this program should be dedicated to remain in DEP	Budgetary	N
Upland Corridor Lease/Easement	1	No new perpetual term leases	Policy/State House Comm	N
	2	Replace current parcel-by-parcel negotiation with a flat rate (square foot basis)	Policy/State House Comm	N
	3	Assess flat rate (square foot basis) fee for rental of temporary work space or access	Policy/State House Comm	N
	4	Set anticipated value threshold of $65,000/acre to trigger an appraisal	Policy/State House Comm	N
	5	Minimum lease fee of $700 per year	Policy/State House Comm	N
	6	Revenue generated through this program should be dedicated to remain in DEP	Budgetary	N
	7	Provide umbrella leases to entities with multiple easements	Management	N
	8	Include an annual adjustment for inflation (2.5%) in lease terms and conditions	Policy/State House Comm	N
	9	Manage through an automated, electronic management and billing system	Management	N
Bid, Market-based and Nominal Fee Leases	1	Develop and maintain inventory of utility leases	Management	ongoing
	2	Revenue generated from DEP-NHR leases should be dedicated to remain in NHR, as happens in other agencies	Budgetary	N
	3	Assess and develop new leasing opportunities	Policy/Mgmt.	ongoing
	4	Develop a robust and maximally-automated system for management of leases (internally or through contract with outside lease mgmt. firm)	Management	N
	5	Include an annual adjustment for inflation in lease terms and conditions	Management	ongoing
Cellular Towers/Antennas	1	All agencies adopt a consistent method for pricing and lease terms (e.g., adopt Department of Treasury method and pricing)	Policy/Mgmt.	N
	2	Explore opportunities for portfolio management	Policy/Mgmt.	ongoing
	3	Require Green Acres review for towers/antenna on property purchased with restricted sources of funding	Policy/Mgmt.	N
Aquaculture	1	Increase lease fees to support administration of the leasing program	DEP/Shellfish council	N
	2	Create pilot ADZ program before proposing regulations	DEP/Shellfish Council/Dept. of Ag	ongoing
	3	Conduct economic analysis of shellfish industry in NJ	DEP/Dept. of Ag	ongoing
	4	Sufficient funds, based on lease revenue, should be dedicated to remain in the program(s) administering leases	Budgetary	N
Roadway right-of-way	1	NJDOT should establish occupancy fees for private use of public NJDOT right-of-way areas	Legislation	N
	2	Establish minimum occupancy fees for transportation corridors	Policy/Mgmt.	N
Mitigation Coordination (inter-agency)	1	Establish a project-based team approach, with a clearly defined process and designated inter-agency liaisons	Policy	ongoing

Appendix II

Specific Recommendations on Valuation Approach by Lease Type

Valuation Approach by Lease Type		
Lease Type	**Recommendation**	**Current Approach**
Tidelands Lease/License		
Linear projects*	$0.10/SF/YR	$0.375/SF in perpetuity, with discount if greater than 3,000 feet
Other tidelands licenses/leases	unchanged	varies from $0.01/SF/YR to $0.49/SF/YR depending on use
Upland Corridor Lease		
Linear projects	$0.15/SF/YR or appraisal for very high value parcels	appraisal-based negotiation
Rectangular parcels w/structures associated with corridors (e.g., electrical sub-stations, pump stations, etc.)	$0.15/SF/YR or appraisal for very high value parcels	appraisal-based negotiation
Publicly Bid and Market-based Leases	unchanged	open public bids and retail/office leases at market rates
Nominal Fee leases for non-profits that provide educational opportunities and other in-kind services	unchanged	mostly parkland or historic areas: non-profit groups are key to assisting the state maintain these properties. Nominal fee leases are essential to obtaining these in-kind benefits for the State
Cellular and other communications towers and antennas	adopt consistent state-wide pricing and lease terms	varies by agency
Aquaculture	Increase lease price, based on pending joint economic analysis by NJDEP and NJ Dept. of Agriculture	Atlantic Coast $2/acre Delaware Bay $0.50/acre
Roadway right-of-ways	Establish annual occupancy leases for private use of right-of-ways	NJTA/GSP - square foot basis (often in perpetuity) NJDOT - none
*this recommendation already implemented by the Tidelands Resource Council		