

PERFORMANCE AUDIT
OF THE

CLEAN MICHIGAN INITIATIVE,
ENVIRONMENTAL AND HEALTH PROTECTION PROGRAMS

DEPARTMENT OF ENVIRONMENTAL QUALITY AND
DEPARTMENT OF COMMUNITY HEALTH

February 2005

“...The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.”

– Article IV, Section 53 of the Michigan Constitution

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Michigan Office of the Auditor General REPORT SUMMARY

Performance Audit

Clean Michigan Initiative, Environmental and Health Protection Programs

Department of Environmental Quality and Department of Community Health

Report Number:
76-217-03

Released:
February 2005

The Department of Environmental Quality (DEQ) and the Department of Community Health (DCH) administer the natural resources protection programs funded by the Clean Michigan Initiative (CMI) bond. These programs include: Brownfield Redevelopment and Environmental Cleanup Program, Waterfront Improvements Program, Remediation of Contaminated Lake and River Sediments Program, Nonpoint Source Pollution Prevention and Control Program, Clean Water Fund Program, Pollution Prevention Program, and Abatement of Lead Hazards Program.

Audit Objective:

To assess whether DEQ and DCH expended CMI funds in compliance with applicable statutes, rules, and procedures.

Audit Conclusion:

DEQ and DCH generally expended CMI funds in compliance with applicable statutes, rules, and procedures.

Reportable Condition:

DEQ did not ensure that grantees and vendors submitted, and that DEQ approved, quality assurance project plans as required by *Michigan Administrative Code R 324.8914* (Finding 1).

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Audit Objective:

To assess whether CMI-funded projects met their proposed outcome goals.

Audit Conclusion:

CMI-funded projects generally met their proposed outcome goals.

Reportable Condition:

DEQ should improve its process for selecting facilities as Redevelopment-Based Cleanup Projects to help ensure the most effective outcomes from the expenditure of CMI funds (Finding 2).

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Agency Response:

Our report contains 2 findings and 2 corresponding recommendations. The agency's preliminary responses indicated that DEQ agreed with the first recommendation and has complied. DEQ partially agreed with the second finding but indicated that funding no longer exists for Redevelopment-Based Cleanup Projects.

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at:
<http://audgen.michigan.gov>



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February 25, 2005

Mr. Steven E. Chester
Department of Environmental Quality
Constitution Hall
Lansing, Michigan
and
Ms. Janet Olszewski
Department of Community Health
Lewis Cass Building
Lansing, Michigan

Dear Mr. Chester and Ms. Olszewski:

This is our report on the performance audit of the Clean Michigan Initiative, Environmental and Health Protection Programs, administered by the Department of Environmental Quality (DEQ) and the Department of Community Health.

This report is issued pursuant to Section 324.19615 of the *Michigan Compiled Laws*, which states that every two years that State programs are funded with money from Clean Michigan Initiative bond proceeds, the Office of the Auditor General shall conduct a performance audit of the programs. Upon completion of the performance audit, the Office of the Auditor General shall submit a report on the audit to the audited department and the Legislature.

This report contains our report summary; description of programs; audit objectives, scope, and methodology and agency responses; comments, findings, recommendations, and agency preliminary responses; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from DEQ's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a formal response within 60 days after release of the audit report.

We appreciate the courtesy and cooperation extended to us during this audit.

AUDITOR GENERAL

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Description of Programs

Clean Michigan Initiative

In November 1998, Michigan voters approved a \$675 million Clean Michigan Initiative (CMI) bond for environmental, health, and natural resources protection programs that would clean up and redevelop contaminated sites; protect and improve water quality; prevent pollution; abate lead contamination; reclaim and revitalize community waterfronts; enhance recreational opportunities; and clean up contaminated sediments in lakes, rivers, and streams. The scope of this audit included six programs administered by the Department of Environmental Quality (DEQ): Brownfield Redevelopment and Environmental Cleanup Program, Waterfront Improvements Program, Remediation of Contaminated Lake and River Sediments Program, Nonpoint Source Pollution Prevention and Control Program, Clean Water Fund Program, and Pollution Prevention Program. Our scope also included one program administered by the Department of Community Health (DCH): Abatement of Lead Hazards Program.

The Department of Natural Resources administers the CMI natural resources protection programs. The Office of the Auditor General separately audited and issued a report on the natural resources protection programs (#7521703).

Sections 324.19601 - 324.19616 of the *Michigan Compiled Laws* provide for the specific use of CMI bond proceeds as follows:

| <u>Environmental and Health Protection Programs:</u> | <u>Up to</u> |
|---|----------------------|
| Response activities* | \$335,000,000 |
| Waterfront improvements | 50,000,000 |
| Remediation of contaminated lake and river sediments | 25,000,000 |
| Nonpoint source pollution prevention and control projects or wellhead protection projects | 50,000,000 |
| Water quality monitoring, water resources protection and pollution control activities | 90,000,000 |
| Pollution prevention programs | 20,000,000 |
| Abatement of lead hazards | 5,000,000 |
| <u>Natural Resources Protection Programs:</u> | |
| State park infrastructure improvement | 50,000,000 |
| Local recreation grants | 50,000,000 |
| Total | <u>\$675,000,000</u> |

* See glossary at end of report for definition.

As of September 30, 2002, the State of Michigan issued approximately \$154 million in CMI bonds, yielding proceeds of approximately \$158 million. DEQ and DCH received approximately \$82 million and \$5 million, respectively, of the proceeds for the environmental and health related programs.

DEQ's CMI Programs

DEQ administers the following six CMI programs:

1. Brownfield Redevelopment and Environmental Cleanup Program (up to \$335 million): The Brownfield Redevelopment and Environmental Cleanup Program provides funding to four subprograms:

- Redevelopment-Based Cleanup Projects (up to \$243 million)

This subprogram funds cleanups at contaminated sites, including demolition, to promote commercial redevelopment, create jobs, and revitalize neighborhoods. This program also can be used to correct leaking underground storage tanks.

- Public Health and Environmental Cleanup Projects (not less than \$40 million or more than \$60 million)

This subprogram provides State-funded cleanups, including (1) ongoing projects that require additional funds to bring them to an appropriate completion point, including operation of treatment systems and (2) project needs at new sites that pose an imminent or substantial danger to public health, safety or welfare, or the environment.

- Local Redevelopment Grants (\$20 million)

This subprogram provides grants and loans of up to \$1 million per year to local units of government for locally managed cleanups of publicly owned contaminated sites.

- Municipal Landfill Cost-Share Grants (\$12 million)

This subprogram provides grants to local units of government that undertake cleanup actions at solid waste landfills on, or nominated for, the Super Fund National Priorities List of contaminated sites.

2. Waterfront Improvements Program (\$50 million): This Program provides up to \$47 million for grants to local communities for innovative waterfront improvements that contribute to the revitalization of neighborhoods and increase public access to the Great Lakes, their connecting waterways, a river, or a lake. Eligible activities include: environmental response activities, acquisition of waterfront property, relocation and/or demolition of buildings and facilities, and infrastructure and public facility improvements.

This Program also provides \$3 million for grants to local governments to preserve and restore lighthouses to promote local economic development.

3. Remediation of Contaminated Lake and River Sediments Program (\$25 million): This Program expands efforts already underway to remove sediments from lakes and rivers contaminated by toxins, such as polychlorinated biphenyls (PCBs), mercury, and dichlorodiphenyltrichloroethane (DDT).
4. Nonpoint Source Pollution Prevention and Control Program (\$50 million): This Program provides grants to nonprofit entities or local units of government to implement physical structures as identified in an approved DEQ watershed management plan to control the runoff of agricultural sediment, nutrients, and pesticides into rivers, lakes, and streams. This Program also funds activities to reduce nonpoint source pollution from a specific pollutant source as identified by DEQ, including the purchase of land or development rights to replace livestock operations and other agricultural sources of potentially contaminated runoff.
5. Clean Water Fund Program (\$90 million): This Program provides funds to implement a comprehensive water quality monitoring plan to determine water quality trends, evaluate water protection programs, and detect emerging problems. Also, funding is available to improve local watershed management plans, stem storm-water runoff, and create land-use plans; identify and eliminate illicit connections to storm sewer systems; provide State matching funds required to

access a federal grant for the reduction of agricultural runoff to surface waters; locate and plug abandoned wells*; identify and fix failing septic systems that threaten or impair State waters; and protect cold-water trout streams and lakes.

6. Pollution Prevention Program (\$20 million): The Pollution Prevention Program consists of three subprograms:

- Retired Engineers Technical Assistance Program (\$10 million)

This subprogram provides funds to create an endowment to provide pollution prevention assessments by retired engineers and scientists for small businesses, municipalities, and public institutions.

- Small Business Pollution Prevention Assistance Revolving Loan Fund (\$5 million)

This subprogram provides funds to establish a revolving loan fund for small businesses to implement pollution prevention improvements.

- Pollution Prevention Activities (\$5 million)

This subprogram will further pollution prevention activities throughout the State, including start-up funding for local governments to operate household hazardous waste collections; grants to public and private organizations to implement regional pollution prevention projects; and development of an environmental education curriculum for middle schools.

DCH's CMI Program

DCH administers the following CMI program:

- Abatement of Lead Hazards Program (\$5 million): The Abatement of Lead Hazards Program provides funding to eliminate lead exposure in 300 homes where children reside, including risk assessments and structural renovations.

* See glossary at end of report for definition.

CMI Appropriations and Expenditures

As of September 30, 2002, DEQ and DCH had appropriations of approximately \$354 million and \$5 million, respectively, and expended approximately \$141 million and \$3 million, respectively, on CMI programs:

UNAUDITED

CMI Programs Bond Proceeds Allocation, Appropriations, and Expenditures

| | Bond Proceeds Allocation* | Appropriations | Expenditures** |
|--|------------------------------|----------------------|----------------------|
| DEQ-Administered CMI Programs | | | |
| Brownfield Redevelopment and Environmental Cleanup Program | \$196,187,000 | \$ 77,594,705 | |
| Waterfront Improvements Program | 50,000,000 | 28,517,107 | |
| Remediation of Contaminated Lake and River Sediments Program | 13,500,000 | 2,823,949 | |
| Nonpoint Source Pollution Prevention and Control Program | 19,250,000 | 4,112,493 | |
| Clean Water Fund Program | 51,647,500 | 7,230,124 | |
| Pollution Prevention Program | 18,000,000 | 15,606,936 | |
| DEQ Administration | 5,550,900 | 4,982,284 | |
| Total | \$82,090,216 | \$354,135,400 | \$140,867,598 |
| DCH-Administered CMI Program | | | |
| Abatement of Lead Hazards Program | 5,000,000 | 5,000,000 | 3,360,667 |
| Grand Total | <u>\$87,090,216</u> | <u>\$359,135,400</u> | <u>\$144,228,265</u> |

* Allocations were not made to individual DEQ-administered programs.

** Expenditures in excess of bond proceeds were accomplished through interfund borrowing from funds available through the State Treasurer's Common Cash Pool.

Source: DEQ Consolidated Report on the Clean Michigan Initiative Bond Fund and Department of Treasury CMI Bond Distribution Data.

Audit Objectives, Scope, and Methodology and Agency Responses

Audit Objectives

Our performance audit* of the Clean Michigan Initiative (CMI), Environmental and Health Protection Programs, Department of Environmental Quality (DEQ) and Department of Community Health (DCH), had the following objectives:

1. To assess whether DEQ and DCH expended CMI funds in compliance with applicable statutes, rules, and procedures.
2. To assess whether CMI-funded projects met their proposed outcome goals*.

Audit Scope

Our audit scope was to examine the program and other records of the environmental and health protection programs of the Clean Michigan Initiative. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

Audit Methodology

Our audit procedures, performed from February through April 2003, included an examination of records and activities for the period October 1, 1998 through September 30, 2002.

To accomplish our objectives, we conducted a preliminary review of CMI operations. This included interviewing DEQ and DCH staff and reviewing applicable statutes, rules, policies and procedures, reports, and other reference materials. We performed a search for reports on evaluations of similar programs in other states.

We reviewed DEQ's and DCH's processes for prioritizing and selecting contaminated sites for CMI funding. We assessed the efficiency* of cleanup projects overseen by contracted project managers*.

* See glossary at end of report for definition.

We selected a sample of Redevelopment-Based Cleanup Projects from within the Brownfield Redevelopment and Environmental Cleanup Program for which DEQ had expended CMI funds from 4 of the district offices to assess CMI program outcomes. We reviewed available documentation for these projects to determine compliance with applicable requirements and to assess project outcomes. We reviewed the attainment of CMI goals related to leaking underground storage tank sites during our audit of DEQ's Storage Tank Division, issued November 15, 2002.

We examined documentation for a sample of sites for which DEQ expended CMI funds for response activities to determine DEQ's effectiveness* in identifying potentially responsible parties* and assessing their ability to reimburse the State for the response activities. Also, we assessed selected site documentation to determine the effectiveness of DEQ's efforts to recover all appropriate costs for response activities and damages to natural resources.

We interviewed staff and reviewed documentation of pollution prevention programs funded by CMI. In addition, we tested documentation for a sample of pollution prevention projects that received CMI funds to determine whether funded projects were eligible for CMI funding and whether DEQ monitored the projects' effectiveness and efficiency.

Agency Responses

Our report contains 2 findings and 2 corresponding recommendations. The agency's preliminary responses indicated that DEQ agreed with the first recommendation and has complied. DEQ partially agreed with the second finding but indicated that funding no longer exists for Redevelopment-Based Cleanup Projects.

The agency preliminary response that follows each recommendation in our report was taken from the DEQ's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and Department of Management and Budget Administrative Guide procedure 1280.02 require DEQ to develop a formal response to our audit findings and recommendations within 60 days after release of the audit report.

* See glossary at end of report for definition.

COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND PROCEDURES

COMMENT

Audit Objective: To assess whether the Department of Environmental Quality (DEQ) and the Department of Community Health (DCH) expended Clean Michigan Initiative (CMI) funds in compliance with applicable statutes, rules, and procedures.

Conclusion: DEQ and DCH generally expended CMI funds in compliance with applicable statutes, rules, and procedures. However, our assessment disclosed a reportable condition* related to quality assurance project plans (Finding 1).

FINDING

1. Quality Assurance Project Plans (QAPPs)

DEQ did not ensure that grantees and vendors submitted, and that DEQ approved, QAPPs as required by *Michigan Administrative Code R 324.8914*.

QAPPs provide DEQ with data to determine whether grantees and vendors conducted projects as proposed. Timely submission and approval of QAPPs would help ensure that environmental monitoring activities provide sufficient and reliable data from which to assess the objective of the monitoring activities. QAPPs provide the framework and procedures for collecting and using environmental monitoring data to achieve specific project objectives.

Our review of 16 Clean Water Fund Program projects that involved environmental monitoring activities disclosed:

- a. The grantees or vendors for 1 (6%) of the 16 projects did not submit a QAPP to DEQ prior to conducting environmental monitoring activities.
- b. The grantees or vendors for 2 (13%) of the 15 projects for which QAPPs existed had conducted environmental monitoring activities prior to receiving DEQ's approval of the QAPPs.

* See glossary at end of report for definition.

- c. DEQ did not approve QAPPs for 5 (33%) of the 15 projects for which QAPPs existed. DEQ informed us that it had informally approved 3 of these 5 QAPPs, which DEQ staff had developed. However, DEQ did not have documentation to support its approval.

RECOMMENDATION

We recommend that DEQ ensure that grantees and vendors submit, and that DEQ approves, QAPPs as required by *Michigan Administrative Code R 324.8914*.

AGENCY PRELIMINARY RESPONSE

DEQ agreed with the recommendation and informed us that it has instituted procedures to ensure that all grantees and vendors submit a QAPP prior to conducting environmental monitoring activities and that the QAPP approval by DEQ is adequately documented.

ACHIEVEMENT OF PROJECT OUTCOME GOALS

COMMENT

Audit Objective: To assess whether CMI-funded projects met their proposed outcome goals.

Conclusion: CMI-funded projects generally met their proposed outcome goals. However, our assessment disclosed a reportable condition related to Redevelopment-Based Cleanup Projects (Finding 2).

FINDING

2. Redevelopment-Based Cleanup Projects

DEQ should improve its process for selecting facilities* as Redevelopment-Based Cleanup Projects to help ensure the most effective outcomes from the expenditure of CMI funds.

Evaluating and selecting potential facilities for funding based on their redevelopment potential and planned redevelopment use would help ensure

* See glossary at end of report for definition.

successful redevelopment of facilities that create jobs and bring investment to the community.

Section 324.19608(7) of *Michigan Compiled Laws* requires DEQ to publish and disseminate criteria for evaluating and recommending projects for funding prior to DEQ submitting the first cycle of projects to the Legislature for approval. In March 1999, DEQ established criteria for selecting known or suspected facilities with redevelopment potential as Redevelopment-Based Cleanup Projects. The criteria included community priority, job creation and investment potential, cost of response activity, ability to implement, and geographic distribution of projects. DEQ selected these criteria to help achieve the Projects' goal of enhancing local environments and economies and promoting effective land use by reducing urban sprawl and development pressures on open green spaces and farmland.

Local units of government nominated facilities for designation as Redevelopment-Based Cleanup Projects. The following illustrates the number of Redevelopment-Based Cleanup Projects selected and the amount of CMI funds expended for the period October 1, 1999 through September 30, 2002:

| | Number of Projects | Percentage of Projects | Project Expenditures | Percentage of Project Expenditures |
|---|-----------------------|------------------------------|-------------------------|--|
| Non-underground storage tank-related sites | 186 | 29% | \$ 44,146,664 | 89% |
| Underground storage tank-related sites | 457 | 71% | 5,708,101 | 11% |
| Total | 643 | 100% | \$ 49,854,765 | 100% |

Our review of DEQ's selection process for CMI funding disclosed that DEQ did not collect sufficient data to completely assess the redevelopment potential of facilities nominated for CMI funding. DEQ's facility nomination application did not require nominating agencies to submit data regarding the potential for job creation and additional investment after the completion of the CMI-funded redevelopment activities at the facility.

To assess project outcomes related to the CMI outcome goals of job creation and additional investment, we focused on those facilities receiving the majority of the CMI funds expended. We reviewed DEQ records for 40 selected Redevelopment-Based Cleanup Projects that had received CMI funds and had completed CMI activity. The following table represents the redevelopment category of the 40 projects as of April 2003 (end of audit fieldwork):

| Redevelopment Category | Number of Facilities* |
|-------------------------------|-----------------------|
| No redevelopment | 14 |
| Commercial/Industrial | 10 |
| Park and recreation area | 6 |
| Residential | 6 |
| Government use | 4 |
| Abandoned building demolition | 2 |
| Property sold to developer | 1 |
| Total* | 43 |

* More than one redevelopment status may apply to a facility.

Source: DEQ records and staff interviews.

Facilities within the commercial/industrial category are more likely than the other categories to create jobs and obtain investment. Of the 40 facilities reviewed, only the 10 facilities in the commercial/industrial category helped DEQ achieve the Projects' economic goal of creating jobs and obtaining investment. For the 14 facilities with no redevelopment, CMI-funded response activities at 8 of the 14 facilities had been completed for over one year yet redevelopment activities had not begun.

RECOMMENDATION

We recommend that DEQ improve its process for selecting facilities as Redevelopment-Based Cleanup Projects to help ensure the most effective outcomes from the expenditure of CMI funds.

AGENCY PRELIMINARY RESPONSE

DEQ partially agreed with the finding. Because of the short turnaround time to request the first appropriation in fiscal year 1998-99, the initial CMI site listing did not include sufficient analyzing of the marketability of the properties. To address this in subsequent years, DEQ improved its process and solicited the services of the Michigan Economic Development Corporation and a national commercial real estate brokerage company to evaluate the marketability of the proposed properties prior to selection.

However, it is inappropriate to assess the success of the projects by merely evaluating whether the property itself has been redeveloped as a result of the State cleanup effort. Many properties selected for action had posed long-term blighting, which influenced surrounding properties, thereby causing deterioration of large areas. Removal of the blighting influence in many cases has caused substantial improvement and redevelopment on surrounding areas. This was not measured if the only means of success is whether the property worked on has been redeveloped. Therefore, it is appropriate to consider community priority and the other criteria in the site selection process and not focus solely on commercial/industrial properties.

Furthermore, the finding and recommendation are essentially moot. Because of December 2003 legislative action, which was based on a variety of factors including the need for additional funding for addressing imminent and substantial endangerment projects, no residual funding remains to begin new Redevelopment-Based Cleanup Projects.

EPILOGUE

The goal of Redevelopment-Based Cleanup Projects was to inspire reinvestment and redevelopment by the private sector. In November 2003, the Legislature conducted hearings on the effectiveness of CMI. The Michigan Chamber of Commerce presented testimony in which it concluded that funds provided to Redevelopment-Based Cleanup Projects had inspired no private investment and created no jobs. However, the Chamber concluded that Local Redevelopment Grants had inspired over \$314 million of private investment and created over 4,500 jobs.

Subsequent to the legislative hearings, the Governor signed legislation in December 2003 (Act 252, P.A. 2003) that reallocated \$55 million from Redevelopment-Based Cleanup Projects to Local Redevelopment Grants.

GLOSSARY

Glossary of Acronyms and Terms

| | |
|----------------|---|
| abandoned well | A well that has been inactive for one year is considered to be abandoned. To be properly abandoned, a well must be plugged and the well site returned, as nearly as possible, to its original condition. |
| CMI | Clean Michigan Initiative. |
| DCH | Department of Community Health. |
| DEQ | Department of Environmental Quality. |
| effectiveness | Program success in achieving mission and goals. |
| efficiency | Achieving the most outputs and outcomes practical with the minimum amount of resources. |
| facility | Any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of Section 324.20120a(1)(a) or Section 324.20120a(17) of the <i>Michigan Compiled Laws</i> or the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located. "Facility" does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in Section 324.20120a(1)(a) and Section 324.20120a(17) of the <i>Michigan Compiled Laws</i> or at which corrective action has been completed under part 213 of the Natural Resources and Environmental Protection Act (Act 451, P.A. 1994, as amended) which satisfies the cleanup criteria for unrestricted residential use. |
| goals | The agency's intended outcomes or impacts for a program to accomplish its mission. |

| | |
|-------------------------------|--|
| performance audit | An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action. |
| potentially responsible party | A person whose action or negligence may have caused a condition that requires a response activity or who may be otherwise responsible for a response activity under State or federal law. |
| project manager | The person responsible for oversight of projects. Division staff or contractors can perform this function. |
| QAPP | quality assurance project plan. |
| remedial action | The cleanup, removal, containment, isolation, treatment, or monitoring of hazardous substances released into the environment; the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare of the environment. |
| reportable condition | A matter that, in the auditor's judgment, represents either an opportunity for improvement or a significant deficiency in management's ability to operate a program in an effective and efficient manner. |
| response activity | The evaluation, interim response activity, remedial action, or the taking of other actions necessary to protect the public health, safety, or welfare; the environment; or the State's natural resources. |